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THE PRESIDENCY

No. 1319 10 December 2001

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 53 of 2001: Provincial Tax Regulation Process Act, 2001



AIDS HELPLINE: 0800-123-22 Prevention is the cure

(English text signed by the President.)
(Assented to 4 December 2001.)

ACT

To regulate an intergovernmental process that must be followed by provinces in the exercise of their power in terms of section 228 of the Constitution to impose taxes, levies and duties, and flat-rate surcharges on the tax bases of any tax, levy or duty imposed by national legislation; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Definitions

1. In this Act, unless the context indicates otherwise—
 - “Budget Council” means the Budget Council established by section 2 of the Intergovernmental Fiscal Relations Act, 1997 (Act No. 97 of 1997);
 - “Commission” means the Financial and Fiscal Commission established by section 220 of the Constitution;
 - “financial year” means a period beginning on 1 April in any year and ending on 31 March in the following year;
 - “MEC for Finance” means the Member of the Executive Council of a province who is responsible for finance in that province;
 - “Minister” means the Minister of Finance;
 - “national economic policy” includes the tax policy for the Republic as determined by the national government;
 - “prescribe” means prescribe by regulation in terms of section 7;
 - “provincial tax” means a tax, levy or duty, or a flat-rate surcharge on the tax base of a tax, levy or duty that is imposed by national legislation, which a province may impose in terms of section 228 of the Constitution.

General principles

2. (1) A province may not exercise its power in terms of section 228 of the Constitution to impose a provincial tax in a way that materially and unreasonably prejudices—
 - (a) national economic policies;
 - (b) economic activities across provincial boundaries; or
 - (c) the national mobility of goods, services, capital or labour.
 (2) Before imposing a provincial tax, a province must follow the process provided for in this Act to enable it to comply with—
 - (a) subsection (1); and
 - (b) the principles of co-operative government set out in Chapter 3 of the Constitution.

Introduction of provincial tax

3. (1) If a province intends to impose a new provincial tax, the MEC for Finance in the province must submit particulars of the proposed provincial tax to the Minister.

- (2) The submission contemplated in subsection (1) must, unless the Minister has by notice in the *Gazette* granted an exemption—
- (a) set out the reasons for the imposition of the proposed provincial tax;
 - (b) give particulars on the proposed provincial tax's compliance with section 228(2)(a) of the Constitution; 5
 - (c) identify and, where appropriate, describe—
 - (i) the tax base;
 - (ii) the desired tax rate;
 - (iii) the persons liable for the tax; and
 - (iv) any tax relief measures or exemptions; 10
 - (d) specify—
 - (i) the tax-collecting authority, if an authority other than the South African Revenue Service is to be designated;
 - (ii) the persons responsible for remitting the tax;
 - (iii) the methods and likely costs of enforcing compliance with that tax; 15
 - (iv) the compliance burden on taxpayers; and
 - (v) procedures for taxpayer assistance;
 - (e) give particulars of, and describe the estimation methods and assumptions used to determine—
 - (i) the amount of revenue to be collected on an annual basis over the three 20 financial years following the introduction of the tax;
 - (ii) the economic impact on individuals and businesses residing in the province;
 - (iii) the economic impact on individuals and businesses residing in other 25 provinces; and
 - (iv) the impact on economic development in the province;
 - (f) give particulars of any consultations conducted by the province, including consultations with other provinces; and
 - (g) give particulars of any consultations between the province and the South African Revenue Service and such other collecting agent contemplated in 30 section 4, regarding the administration of the proposed provincial tax.
- (3) The Minister may consult any other organ of state or interested persons on the submission contemplated in subsection (1).
- (4) On receipt of a submission contemplated in subsection (1), the Minister must—
- (a) distribute copies of the submission and other provinces' comments on such 35 submission to members of the Budget Council for discussion at the next meeting of the Council or such other subsequent Council meeting as may be determined by the Minister in consultation with the MEC for Finance concerned; and
 - (b) refer a copy of the submission to the Commission for comment. 40
- (5) The Minister must, at such intervals agreed with the Budget Council, indicate to the Council progress on the evaluation of the submission.
- (6) If the Minister, after having considered the comments of the Commission and having consulted with the Budget Council, is, on reasonable grounds, satisfied that the proposed provincial tax will not be in breach of section 228(2)(a) of the Constitution, 45 the Minister must—
- (a) notify the province concerned in writing of that view; and
 - (b) by not later than 90 days after the notification contemplated in paragraph (a) or such other later date agreed with the members of the Council, introduce a Bill in Parliament to regulate the proposed provincial tax as required by 50 section 228(2)(b) of the Constitution, including by determining the—
 - (i) tax base on which such provincial tax may be levied;
 - (ii) rate band within which a province may impose such provincial tax; and
 - (iii) collecting agent for such provincial tax, if it is not the South African 55 Revenue Service.
- (7) If, despite the submission contemplated in subsection (2)(b), the Minister, after having considered the comments of the Commission and having consulted with the

Budget Council, has, on reasonable grounds, reservations about the constitutionality of the proposed provincial tax, the Minister must—

- (a) notify the MEC for Finance concerned in writing of those reservations and refer the proposed provincial tax back for its reconsideration; and
- (b) submit a report on the matter to the Budget Council and both Houses of Parliament. 5

(8) If, after reconsideration by the MEC for Finance concerned, the proposed provincial tax fully accommodates the Minister's reservations, the Minister must deal with the proposed provincial tax in terms of subsection (6), and if it does not, the Minister must either— 10

- (a) deal with the proposed provincial tax in terms of subsection (6); or
- (b) refer it to the Constitutional Court for a decision on its constitutionality.

(9) If the Constitutional Court decides that the proposed provincial tax is constitutional, the Minister must deal with it in terms of subsection (6).

Collection of provincial taxes 15

4. (1) The South African Revenue Service is the collecting agent for a provincial tax, unless the Minister has, in the national legislation contemplated in section 3(6), designated another person for that purpose.

(2) Despite subsection (1), a province may not impose a provincial tax unless it has concluded an agreement with the South African Revenue Service or any other designated person to collect a provincial tax. 20

Introduction of provincial tax money Bill

5. (1) A money Bill providing for the imposition of a provincial tax must be introduced in the provincial legislature only on the date when the relevant province's annual budget is introduced in that provincial legislature. 25

(2) Despite section 3(1), if a province intends to impose a provincial tax that is already regulated in terms of the Act of Parliament contemplated in section 3(6)(b), the MEC for Finance in that province must, when introducing a money Bill in respect of such provincial tax for the first time, submit, only to the provincial legislature, the particulars contemplated in section 3(1). 30

(3) The particulars to be submitted to a provincial legislature in terms of subsection (2) must only contain the information contemplated in section 3(2)(a), (2)(d)(iii), (iv) and (v), (2)(e)(i), (ii) and (iv) and (2)(g).

Transitional provisions

6. (1) Any provincial tax imposed by a province prior to 1 April 2002 is deemed to have been imposed in accordance with this Act. 35

(2) Despite subsection (1), any draft amendment of an Act of Parliament relating to such provincial tax may be introduced only after the Minister has been consulted on the contents of such draft amendment.

(3) The Minister may, by notice in the *Gazette*, determine that specified procedures laid down by or under this Act be followed before the introduction of an amendment contemplated in subsection (2). 40

Regulations

7. The Minister may, by notice in the *Gazette*, make regulations regarding— 45

- (a) anything which must or may be prescribed in terms of this Act; and
- (b) any matter which is necessary to prescribe for the effective implementation of the provisions and objects of this Act.

Act No. 53, 2001

PROVINCIAL TAX REGULATION
PROCESS ACT, 2001

Short title and commencement

8. This Act is called the Provincial Tax Regulation Process Act, 2001, and takes effect on a date determined by the President by proclamation in the *Gazette*.