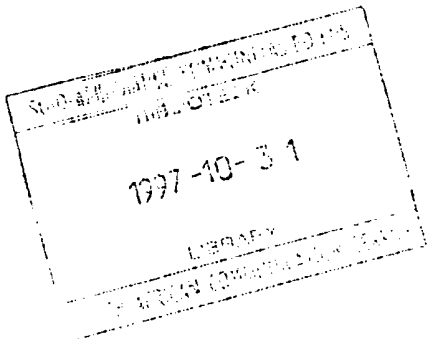
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REPUBLIC OF SOUTH AFRICA

# REVENUE FUNDS INTERIM ARRANGEMENTS BILL

*(As introduced in the National Assembly)*

(MINISTER OF FINANCE)




[B 103—97]

REPUBLIEK VAN SUID-AFRIKA

# WETSONTWERP OP TUSSENTYDSE REËLINGS OP INKOMSTEFONDSE

*(Soos ingedien in die Nasionale Vergadering)*

(MINISTER VAN FINANSIES)

[W 103—97]

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# BILL

**To make interim arrangements in connection with the payment of money into the National Revenue Fund and the Provincial Revenue Funds; and to provide for matters in connection therewith.**

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

**Definitions**

**1.** In this Act. unless the context otherwise indicates-

**"national department"** means a department. administration or office listed in Schedule 1or 2 of the Public Service Act. 1994 ( Proclamation No. 103 of 1994);

**"national government"** means—

*(a)* the national executive;

*(b)* any functionary or authority, or any department, administration. office or other organisation, or any statutory body, in, under the control of or responsible to the national executive: or

*(c)* Parliament:

"'National **Treasury"** means the Treasury in terms of the Exchequer Act. 1975 (Act No. 66 of 1975);

**"provincial department"** means—

*(a)* a provincial administration listed in Schedule I of the Public Service Act, 1994; or

*(b)* a department within a provincial administration;

**"provincial government"'** means—

*(a)* a provincial executive:

*(b)* any functionary or authority, a provincial administration. or any department, office or other organisation, or any statutory body, in, under the control of or responsible to a provincial executive; or

*(c)* a provincial legislature:

**"statutory body"** means any board, commission, company. corporation. fund or other institution established in terms of legislation and whose financial records must or may be audited by the Auditor-General in terms of legislation or section 188 of the Constitution;

**"trading entity"** means an entity which a national or provincial department has established within its administration, with the approval of the National Treasury, for the provision or sale of goods or services.

**Payments into National Revenue Fund**

2. All money received by the national government must be paid into the National Revenue Fund, excluding money falling within any of the following categories and exempted by the National Treasury from payment into the Fund:

*(a)* Money received by a statutory body in, under the control of or responsible to the national executive which is a juristic person or which is entitled to open its own bank accounts separate from the bank accounts of the National Revenue Fund.

*(b)* Money received by a national department operating a trading entity, in so far as the money is received in the ordinary course of operating the trading entity.


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(c) Money received by Parliament in the ordinary course of its activities.
(d) Money received by the national government in trust for a specific person, category of persons or purpose.
(e) Any other money received by the national government and exempted by any other Act of Parliament from payment into the National Revenue Fund.

**Payments into Provincial Revenue Funds**

3. All money received by a provincial government must be paid into the relevant Provincial Revenue Fund, excluding money falling within any of the following categories and exempted by the National Treasury from payment into the Fund:
(a) Money received by a statutory body in, under the control of or responsible to the provincial executive which is a juristic person or which is entitled to open its own bank accounts separate from the bank accounts of the Provincial Revenue Fund.
(b) Money received by a provincial department operating a trading entity, in so far as the money is received in the ordinary course of operating the trading entity.
(c) Money received by the provincial legislature in the ordinary course of its activities.
(d) Money received by the provincial government in trust for a specific person. category of persons or purpose.
(e) Any other money received by the provincial government and exempted by any other Act of Parliament from payment into the Provincial Revenue Fund.

**Withdrawal of exemptions**

4. The National Treasury may withdraw any exemption granted in terms of section 2 or 3 if—
(a) the exemption is not reasonable in the context of section 213(1) or 226(1) of the Constitution; or
(b) the National Treasury regards withdrawal of the exemption necessary for transparency or more effective and accountable financial management.

**Surpluses of trading entities**

**5.** If a trading entity at the end of a financial year shows a surplus, the surplus accrues to—
(a) the National Revenue Fund. if the trading entity is operated by a national department; or
(b) the relevant Provincial Revenue Fund, if the trading entity is operated by a provincial department.

**Inconsistency with the Exchequer Act, etc.**

6. To the extent that a provision of this Act is inconsistent with the Exchequer Act , 1975 (Act No. 66 of 1975), or a provincial exchequer Act, the provision of this Act prevails.

**Short title and commencement**

7. (1) This Act is called the Revenue Funds Interim Arrangements Act, 1997, and takes effect on 1 January 1998.
(2) Unless repealed earlier, this Act remains in force until 31 December 1998.

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## MEMORANDUM ON THE OBJECTS OF THE REVENUE FUNDS INTERIM ARRANGEMENTS BILL, 1997

The general rule in terms of sections 213(1) and 226(I) of the Constitution is that all money received by the national government must be paid into the National Revenue Fund, and that all money received by a provincial government must be paid into its Provincial Revenue Fund. Both these sections stipulate that the only exceptions to this general rule are those moneys that are ''reasonably'' excluded by an Act of Parliament.

Sections 213 and 226 will take effect as from 1 January 1998 and will radically change the existing arrangement relating to the payment of money into the Revenue Funds. In terms of the existing arrangement Acts of Parliament, such as the Exchequer Act, prescribe and define what money must be paid into the Revenue Funds. Money falling outside the statutory definition is automatically exempted.

Both "national government" and "provincial government" are expressions that are used in a wide sense in the new Constitution, and are not limited to the national and provincial executives: in other words they go wider than organs of executive government and public service institutions and departments. These expressions have been interpreted in the constitutional context to include Parliament and the provincial legislatures, statutory bodies within or under the control of the national or provincial executives. trading entities of national or provincial departments. statutory funds. etc. The consequence of sections 213 and 226 is that all money received by the "national government" and a '-provincial government" (in the wide sense) will as from 1 January 1998 have to be paid into the Revenue Funds, unless exempted from such payment by an Act of Parliament. Without such exemption it would no longer be feasible for instance for public institutions outside the public service, to retain and spend money outside [he Revenue Funds.

The object of the Bill is to provide for the existing arrangements to continue as interim measures until a more comprehensive Financial Control .4ct is enacted. The latter is expected to be introduced next year. which would mean that the interim measure contained in this Bill would not continue beyond31 December 1998. The Bill should not be viewed as acceptance of the *status quo*, but merely as breathing space for affected public institutions to make the necessary adjustments in accordance with the Constitution. Each exclusion from the Revenue Funds will eventually have to comply with the constitutional test of reasonableness as set out in sections 213 and 226.

In the meantime the Department of Finance will embark on a comprehensive audit to identify all current exemptions from the Revenue Funds.

The Bill provides for the following:

* **Clause 1** contains definitions of the expressions used in the Bill.
* **Clause** 2 basically repeats section 213(1) and adds certain generic circumstances under which money received by the national government could be excluded from the National Revenue Fund with the approval of the National Treasury. These generic exclusions cover money received by statutory bodies that are juristic persons or have their own bank accounts. departmental trading entities, Parliament, and organs of state holding funds in trust for other persons or purposes. It also provides for other money that maybe excluded by another Act of Parliament.
* **Clause** 3 is identical to clause 2, except that it applies to the Provincial Revenue Funds.
* **Clause** 4 enables the National Treasury to withdraw exemptions granted in terms of clauses 2 and 3.
* **Clause** 5 deals with surpluses that are generated by departmental trading entities. It states that such surpluses accrue to the Revenue Funds at the end of a financial year.
* **Clause** 6 provides that the provisions of the Bill prevail over the national and provincial exchequer Acts in the event of any inconsistency.

**OTHER DEPARTMENTWINSTITUTIONS CONSULTED**

All national departments.

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All provincial departments and treasuries.

**PARLIAMENTARY PROCEDURE**

The Department of Finance and the State Law Advisers are of the view [hat this Bill must be dealt with in terms of section 76(1) of the Constitution.