

REPUBLIC OF SOUTH AFRICA

PROVINCIAL TAX REGULATION PROCESS BILL

(As amended by the Portfolio Committee on Finance (National Assembly))
(Introduced as Provincial Tax Regulation Bill [B 51—2001])
(The English text is the official text of the Bill)

(MINISTER OF FINANCE)

[B 51D—2001]

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BILL

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;
 - (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;
- (d) specify— 5
 - (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;
 - (iv) the compliance burden on taxpayers; and 10
 - (v) procedures for taxpayer assistance;
- (e) give particulars of, and describe the estimation methods and assumptions used to determine— 15
 - (i) the amount of revenue to be collected on an annual basis over the three 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 provinces; and
 - (iv) the impact on economic development in the province; 20
- (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 section 4, regarding the administration of the proposed provincial tax. 25
- (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 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 30
 - (b) refer a copy of the submission to the Commission for comment.
- (5) The Minister must, at such intervals agreed with the Budget Council, indicate to the Council progress on the evaluation of the submission. 35
- (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, the Minister must— 40
 - (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 section 228(2)(b) of the Constitution, including by determining the— 45
 - (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 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— 50
 - (a) notify the MEC for Finance concerned in writing of those reservations and refer the proposed provincial tax back for its reconsideration; and 55
 - (b) submit a report on the matter to the Budget Council and both Houses of Parliament.
- (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— 60
 - (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

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. 5

(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.

Introduction of provincial tax money Bill 10

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.

(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). 15

(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). 20

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.

(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. 25

(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). 30

Regulations

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

- (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. 35

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*.

MEMORANDUM ON THE OBJECTS OF THE PROVINCIAL TAX REGULATION PROCESS BILL, 2001

1. Section 228(1) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996) (“the Constitution”), empowers provinces to impose certain taxes, levies and duties, but excluding an income tax, a value-added tax, general sales tax, and rates on property or customs duties. Provinces also have the power to impose a flat-rate surcharge on the tax bases of certain taxes, levies and duties, but not on corporate income tax, value-added tax, rates on property or customs duties. The power to impose any of these taxes is, however, subject to regulation by national legislation and policy.

2. Section 228(2) of the Constitution assigns a co-ordinating and monitoring role to the national government with respect to provincial taxes. Section 228(2)(b) of the Constitution requires that an Act of Parliament regulate the process whereby provincial governments may implement tax powers granted to them by section 228 of the Constitution.

3. The Bill meets constitutional requirements by defining the manner in which the national government, through the Minister of Finance, will exercise its policy oversight role. It also establishes the process whereby provinces may exercise their taxation authority.

4. The Bill regulates the exercise by provinces of their power to impose taxes, levies and duties and flat-rate surcharges on the bases of taxes, levies and duties imposed by national legislation.

5. The Bill does not set specific taxes which provinces may enact. Responsibility for initiating a provincial tax proposal rests with provinces and they may propose any tax not prohibited by the Constitution. Rather, the Bill regulates the process by which provincial taxes are imposed. The Bill covers neither provincial user charges nor existing taxes authorised under national legislation prior to the date of the Act.

6. The Bill requires that the power of a provincial legislature to impose taxes, levies, duties and surcharges may not prejudice national economic policies, economic activities across provincial boundaries, or the national mobility of goods, services, capital or labour. The Bill also requires that provincial taxes do not impair coherence in the national tax system across all three spheres of government. It also provides that these powers be regulated by an Act of Parliament, which can be enacted only after recommendations of the Financial and Fiscal Commission (FFC) have been considered.

APPROACH OF THE BILL

7. Regulating introduction of a provincial tax. To impose a new provincial tax, a Province must submit a proposal to the Minister of Finance.

8. Calendar for submission. A provincial tax proposal must be submitted to the Minister of Finance 10 months in advance of the start of the budget year, to allow for the possibility of including the new tax in the province’s budget for the next financial year.

9. Submission package for provincial tax proposals. When a province proposes a new provincial tax, its submission to the Minister of Finance will include a detailed analysis, including the following:

- a. Reasons and motivation for the proposed tax
- b. Identification of key aspects of the tax
 - * Tax base or the economic activity or income to be subject to the tax.
 - * The person legally responsible for paying the tax.
 - * Tax relief measures or exemptions to protect certain taxpayers or activities which otherwise would be included in the tax base.
- c. Administration
 - * Tax collection authority, including whether SARS or another agent would be the collection agency.
 - * Person responsible for actually remitting the tax and the timing of payments.
 - * Methods and costs of administration and compliance enforcement.
 - * Description of the problems which taxpayers may encounter.
 - * Procedures to assist taxpayers who request information or clarification and procedures for resolving taxpayer complaints.
- d. Estimates of revenue and economic impact
 - * Revenue analysis, including estimates of total revenue to be collected on a quarterly basis over three fiscal years.
 - * Economic analysis of the impact on individuals and businesses in the province.

- * Economic analysis of how much tax will be paid by non-residents of the province.
- * Economic analysis of impact on the province's economic development.

e. Consultations with interested parties

10. Preliminary review by the Minister. When a province submits its proposal to the Minister of Finance, it will first be screened to verify that it does not violate section 228(1) of the Constitution and that it meets the procedural requirements of the Bill. Thereafter the Minister will table the submission at the next meeting of the Budget Council and refer the submission to the FFC for its recommendations.

11. Calendar for comments. Any comments made by provinces or the FFC must be submitted to the Minister of Finance within 60 days.

12. Schedule for reporting by the Minister. The Minister will report the status of provincial tax proposals to the Budget Council and provinces to enable provinces to estimate the impact on their budgets for the next year.

13. Schedule for introduction of national legislation. If a proposal is consistent with section 228 of the Constitution, national economic policy, and the Bill, the Minister must introduce national legislation at the same time as the Annual Budget of the national government is presented.

14. Content of national legislation. The national legislation will enable the province making the original request, as well as any other province, then or in the future, to impose the tax. It will prescribe the "manner and form" in which the tax can be implemented, including the tax base, rate band, and any other terms required. This legislation will serve as a template for provincial legislation to ensure the tax is implemented consistently, thereby maintaining a coherent general tax system.

15. Regulatory procedures. The Bill defines additional regulations the Minister of Finance may issue by notice in the *Gazette*, when necessary, for effective implementation.

BRIEF SUMMARY OF THE BILL

The following is a brief summary of the Bill:

Clause 1: presents definitions of terms used in the Bill.

Clause 2: restates section 228(2) of the Constitution, noting that a provincial tax must not materially or unreasonably prejudice national economic policies, economic activities across provincial boundaries or the national mobility of goods, services, capital or labour. It also requires provincial taxes to be consistent with co-operative governance as outlined in Chapter 3 of the Constitution.

Clause 3: regulates the process for the introduction of provincial taxes. It requires provinces to submit new tax proposals to the Minister of Finance at least ten months before the start of the financial year. The Minister must provide the submission to the Budget Council and the FFC for comment, which must be given to the Minister within 60 days. Section 3 also requires that if the tax proposal complies with section 2 of the Bill, the Minister must introduce national legislation for the tax. The national legislation must prescribe the manner and form of the provincial tax, including tax base, rate band and collecting agent.

Clause 4: states that SARS is the collecting agent for a provincial tax, unless another agent is designated in the national legislation contemplated in section 3.

Clause 5: clarifies that current provincial taxes are deemed to have been imposed in accordance with the Bill. The clause also addresses amendments to such taxes by stating they can only be introduced in Parliament by the Minister of Finance or after consultation with the Minister.

Clause 7: empowers the Minister of Finance to make regulations prescribed in terms of this Act or necessary for the effective implementation of the Act.

Clause 8: provides for the short title of the Act and for the date on which the Act takes effect.

Parliamentary procedure

The National Treasury and the State Law Advisers are of the opinion that the Bill must be dealt with in accordance with the procedure set out in section 76(1) of the Constitution as it provides for legislation required in Chapter 13 of the Constitution, and affects the financial interests of the provincial sphere as contemplated in section 76(4)(b) of the Constitution.

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