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REPUBLIEK VAN SUID-AFRIKA

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## THE PRESIDENCY

No. 308 31 March 2001

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

No. 1 of 2001: Division of Revenue Act, 2001.

## DIE PRESIDENSIE

No. 308 31 Maart 2001

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 1 van 2001: Wet op die Verdeling van Inkomste, 2001.



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

*(English text signed by the President.)  
(Assented to 30 March 2001.)*

# ACT

**To provide for—**

**the equitable division of revenue raised nationally among the national, provincial and local spheres of government for the 2001/2002 financial year; reporting requirements for such allocations; the withholding and the delaying of payments; liability for costs incurred in litigation in violation of the principles of co-operative governance and intergovernmental relations; and to provide for matters connected therewith.**

## PREAMBLE

**WHEREAS** section 214(1) of the Constitution requires an Act of Parliament to provide for—

- (a) the equitable division of revenue raised nationally among the national, provincial and local spheres of government;
- (b) the determination of each province's equitable share of the provincial share of that revenue; and
- (c) any other allocations to provinces, local government or municipalities from the national government's share of that revenue, and any conditions on which those allocations may be made;

**B**E IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

## Definitions

1. In this Act, unless the context indicates otherwise, a word to which a meaning has been assigned in the Public Finance Management Act bears the same meaning, and—
- (i) **“accredited bank account”** means—
    - (a) in respect of a province, a bank account of the provincial Revenue Fund which the head official of the provincial treasury has certified to the National Treasury as the bank account into which allocations in terms of this Act must be deposited; and
    - (b) in respect of a municipality, a bank account of a municipality which the municipal accounting officer has certified to the national accounting officer responsible for local government as the bank account into which allocations in terms of this Act must be deposited;
  - (ii) **“Constitution”** means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);
  - (iii) **“Director-General”** means the Director-General of the National Treasury;
  - (iv) **“head official of the provincial treasury”** means the head official of the provincial department responsible for financial matters in the province;
  - (v) **“Intergovernmental Fiscal Relations Act”** means the Intergovernmental Fiscal Relations Act, 1997 (Act No. 97 of 1997);
  - (vi) **“municipality”** means a municipality established in terms of the Municipal Structures Act;
  - (vii) **“municipal accounting officer”** means the municipal manager of a municipality or such other person who has been instructed or delegated by the council to perform the functions of an accounting officer;

- (viii) **“Municipal Structures Act”** means the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);
- (ix) **“next financial year”** means the financial year commencing on 1 April 2002 and ending on 31 March 2003;
- (x) **“past financial year”** means the financial year which commenced on 1 April 2000 and ends on 31 March 2001; 5
- (xi) **“payment schedule”** means an instalment schedule which sets out—  
 (a) the amount of each instalment of an equitable share or an allocation to be transferred to a province or municipality for the financial year;  
 (b) the date on which each such instalment must be paid; and 10  
 (c) to whom, and to which accredited bank account, each such instalment must be paid;
- (xii) **“prescribe”** means prescribe by regulation in terms of section 33;
- (xiii) **“Public Finance Management Act”** means the Public Finance Management Act, 1999 (Act No. 1 of 1999); 15
- (xiv) **“receiving officer”** means—  
 (a) in respect of a Schedule 3 allocation transferred to a province, the head official of the provincial treasury;  
 (b) in respect of a Schedule 4 or 6 allocation transferred to a province, the accounting officer of a provincial department which receives such allocation; or 20  
 (c) in respect of a Schedule 5 or 6 allocation transferred to a municipality, the municipal accounting officer of that municipality;
- (xv) **“SALGA”** means the national organisation recognised in terms of section 2(1)(a) of the Organised Local Government Act, 1997 (Act No. 52 of 1997); 25
- (xvi) **“transferring national officer”** means the accounting officer responsible for a national department which transfers to a province or municipality a Schedule 3, 4, 5 or 6 allocation, but excludes the accounting officer of the National Treasury in respect of an allocation listed in those Schedules and which is on the vote of the National Treasury; and 30
- (xvii) **“transferring provincial officer”** means the accounting officer responsible for a provincial department which receives a Schedule 5 or 6 allocation for the purpose of transferring it to a municipality in the relevant province.

## PART I

### Promoting co-operative governance in intergovernmental budgeting 35

2. The object of this Act is to—
- (a) provide for the equitable division of revenue raised nationally among the three spheres of government;
- (b) promote co-operative governance in the budget allocation and transfer process; 40
- (c) promote better co-ordination between policy, planning, budget preparation and execution processes;
- (d) promote predictability and certainty in respect of all allocations to provincial and local governments in order that they may plan their budgets over a multi-year period; 45
- (e) promote transparency and equity in all allocations, including in respect of the criteria for their division;
- (f) promote accountability for the use of public resources by ensuring that all transfers are reflected on the budget of benefiting provincial and local governments, and are subjected to an audit ; 50

- (g) ensure that proper financial management is applied; and  
 (h) ensure that legal proceedings between organs of state of the three spheres of government are avoided.

## PART II

## EQUITABLE SHARE ALLOCATIONS

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**Equitable division of revenue raised nationally among spheres of government**

3. (1) Revenue anticipated to be raised nationally in respect of the financial year is divided among the national, provincial and local spheres of government for their equitable share as set out in Column A of Schedule 1.

(2) A recommended division of anticipated revenue for the next financial year and the 2003/2004 financial year, and which must be subject to the provisions of the annual Division of Revenue Act in respect of those financial years, is set out in Column B of Schedule 1. 10

(3) Despite subsection (2), the Minister may, in respect of the next financial year and until the commencement of the annual Division of Revenue Act for that financial year, determine that an amount not exceeding 45 per cent of the recommended division for the next financial year, be transferred as a direct charge against the National Revenue Fund to each province and to a municipality contemplated in section 5(1). 15

**Equitable division of provincial share among provinces**

4. (1) Each province's equitable share of the provincial share of revenue anticipated to be raised nationally in respect of the financial year is set out in Column A of Schedule 2. 20

(2) A recommended division of anticipated revenue for the next financial year and the 2003/2004 financial year, and which must be subject to the provisions of the annual Division of Revenue Act in respect of those financial years, is set out in Column B of Schedule 1. 25

(3) Each province's equitable share contemplated in subsection (1) must be transferred to the province in weekly instalments in accordance with a payment schedule determined by the National Treasury after consultation with the head officials of the provincial treasuries. 30

(4) Despite subsection (3), the National Treasury may, on such conditions as it may determine, advance funds to a province in respect of its equitable share contemplated in subsection (1), which have not yet fallen due for transfer in accordance with a payment schedule contemplated in subsection (3) in respect of that province.

(5) The advances contemplated in subsection (4) must be set off against transfers to the province which would otherwise become due in terms of that payment schedule. 35

**Equitable share for local government**

5. (1) The national accounting officer responsible for local government must determine the allocation for each category A and B municipality in respect of the equitable share for the local sphere of government set out in Schedule 1 for the financial year and such determination must be published by the Minister in a Gazette by 15 May 2001. 40

(2) The national accounting officer responsible for local government must, in the determination contemplated in subsection (1), also indicate the recommended division of anticipated revenue for the next financial year and the 2003/2004 financial year. 45

(3) The criteria for determining the division contemplated in subsection (1) must be in accordance with a framework approved by the National Treasury after consultation with SALGA.

(4) The allocation to each municipality contemplated in subsection (1) must be transferred to that municipality in quarterly instalments: Provided that such instalments are transferred within the first three weeks of May, August, November and February. 50

**Shortfalls and excess revenue**

6. (1) If actual revenue raised nationally in respect of the financial year falls short of the anticipated revenue set out in Schedule 1, the national government bears the shortfall.
- (2) If actual revenue raised nationally in respect of the financial year is in excess of the anticipated revenue set out in Schedule 1, the excess accrues to the national government and forms part of its equitable share. 5
- (3) Despite subsection (2), the national government may, by means of an adjustments budget, and additional to the equitable share allocation and the allocations contemplated in Part III, make further allocations to the provincial and local spheres of government from its share of revenue anticipated to be raised nationally. 10

**PART III****OTHER ALLOCATIONS TO PROVINCES AND MUNICIPALITIES****General norms and standards for all allocations**

7. (1) Other allocations to provinces and municipalities from the national government's share of revenue anticipated to be raised nationally are set out in Column A of Schedules 3, 4, 5 and 6 as follows: 15
- (a) Schedule 3 contains allocations to provinces for general and nationally allocated functions;
- (b) Schedule 4 contains allocations to provinces; 20
- (c) Schedule 5 contains allocations to municipalities; and
- (d) Schedule 6 contains allocations for designated special programmes and indirect allocations, or allocations-in-kind, to provinces and municipalities, the amount of which must, in respect of the votes of the Departments of Land Affairs, Minerals and Energy and Transport, be determined by 30 April 2001 and published in a Gazette. 25
- (2) A recommended division of anticipated allocations to provinces or municipalities for the next financial year and the 2003/2004 financial year and which must be subject to the provisions of the annual Division of Revenue Act for that financial year, is set out in Column B of the Schedules referred to in subsection (1). 30
- (3) Despite subsection (2), the Minister may, in respect of the next financial year and until the commencement of the annual Division of Revenue Act contemplated in subsection (2), determine that an amount not exceeding 45 per cent of the recommended division of the allocation for the next financial year set out in Schedule 3, 4, 5 or 6, be transferred to a province or municipality as a direct charge against the National Revenue Fund. 35

**Framework for all grants**

8. (1) In respect of an allocation set out in Schedules 3, 4, 5 and 6, the following information must be stated in the memorandum contemplated in section 10(5) of the Intergovernmental Fiscal Relations Act, and be published by 15 May 2001 in a *Gazette*: 40
- (a) The purpose and conditions of such allocations;
- (b) the measurable outputs;
- (c) the reason why the purpose of such allocation cannot be achieved by means of an equitable share allocation;
- (d) the projected period to be covered by such allocation; 45
- (e) the criteria to be utilised for the division of such allocation;
- (f) the recommended payment schedule for the disbursement of such allocation: Provided that such payment schedule must provide for at least two instalments, the last of which must be paid during the second half of the financial year unless the National Treasury directs otherwise. 50
- (2) The National Treasury may, in respect of a transferring national officer who has failed to provide the information contemplated in subsection (1), permit such

transferring national officer to provide such information by 30 April 2001: Provided that such information is published in a *Gazette*.

(3) For the purpose of this Act transfers of allocations to public or private entities in order to perform a function that is normally the responsibility of a province or municipality, are regarded as transfers to such province or municipality.

#### Transfers not listed in Schedules

9. (1) The transfer of an allocation not listed in the Schedules contemplated in Part III of this Act may only be made with the permission of the Minister and must be published in a *Gazette*.

(2) The permission contemplated in subsection (1) may only be granted if— 10

- (a) the allocation is approved by Parliament in an adjustments budget;
- (b) the allocation is for the purpose of defraying expenditure of an exceptional nature contemplated in section 16 of the Public Finance Management Act; or
- (c) the allocation was provided for in the transferring department's budget but, for good reasons, could not be included in the Schedules contemplated in Part III of this Act: Provided that the transferring national officer has, by 30 April 2001, submitted to the National Treasury the information contemplated in section 8(1). 15

(3) The transferring national officer must, in respect of an allocation contemplated in subsection (1)— 20

- (a) comply with the provisions of section 8(1); and
- (b) submit to the National Treasury an assessment of the likelihood for the province or municipality which receives, or benefits from it, to spend it in the financial year.

#### Supplementary allocation to provinces 25

10. The National Treasury must, in accordance with a payment schedule, and after taking into account the following information to be submitted to the National Treasury by 15 July 2001 and 15 November 2001 by the head official of the provincial treasury, transfer the supplementary allocation to provinces:

- (a) The province's compliance with the Public Finance Management Act and its duty to implement that Act; 30
- (b) the province's tabling of a realistic and credible budget which reflects adequate funding of projected expenditure for education, health, welfare and infrastructure;
- (c) the steps taken by the province to improve the collection of its revenue; and 35
- (d) the province's compliance with this Act, the Act of Parliament and national legislation contemplated in sections 228(2)(b) and 230, respectively, of the Constitution, and with resolutions of the Budget Council established in terms of the Intergovernmental Fiscal Relations Act.

#### Provincial infrastructure allocation 40

11. A provincial treasury must, in respect of an allocation for provincial infrastructure listed in Schedule 3, before the transfer of any funds, ensure that the province-

- (a) submits to the National Treasury by 30 April 2001 or such other date determined by the National Treasury, a detailed plan on proposed spending for the financial year; 45
- (b) submits to the National Treasury by 30 June 2001 or such other date determined by the National Treasury, a detailed plan on proposed spending for the next financial year and the 2003/2004 financial year; and

- (c) indicates to what extent it will match the allocations contemplated in paragraphs (a) and (b).

### **Municipal infrastructure allocations**

12. (1) Allocations for addressing backlogs in infrastructure for basic municipal services are set out in Schedule 5. 5

(2) Any allocation contemplated in subsection (1) which is intended, entirely or in part, for the installation, maintenance or rehabilitation of municipal infrastructure, must only be transferred in terms of a framework determined by the Minister.

(3) The objectives of the framework contemplated in subsection (2) must be— 10

- (a) to provide—
- (i) infrastructure for basic municipal services to poor households;
  - (ii) urban renewal and development;
  - (iii) integrated rural development; and
  - (iv) for three year allocations to municipalities;
- (b) to encourage the planning of appropriate local economic and spatial development: and 15
- (c) to co-ordinate, where applicable, the housing and municipal infrastructure programmes. 15

### **Transfer of assets to municipalities**

13. A national accounting officer or a provincial accounting officer may not make any commitment to a municipality, of assets or any other financial resource, including an allocation-in-kind or a future asset transfer, intended, entirely or in part, for the installation, maintenance or rehabilitation of municipal infrastructure without— 20

- (a) that municipality's confirmation, by means of a council resolution, that it will take transfer of such asset for operating purposes; 25
- (b) a realistic estimate of the value of the asset and potential liability, including a reflection on the budget of the benefiting municipality of the associated operating costs; and
- (c) an indication to the National Treasury of the steps taken or to be taken to ensure that such commitment will be converted into an allocation in terms of this Act. 30

### **Municipal capacity building allocations**

14. (1) Any transfer of an allocation aimed at developing and improving municipal systems and the capacity of municipalities to perform functions assigned to them may only be made— 35

- (a) in terms of a framework determined by the national accounting officer for local government after consultation with the national accounting officers responsible for Water Affairs and Forestry, Land Affairs, Transport, Minerals and Energy, Housing and Public Works; and
- (b) with the concurrence of the National Treasury. 40

(2) The objectives of the framework contemplated in subsection (1)(a) must take into account financial management, budgeting and spatial planning considerations.

## **PART IV**

### **DUTIES OF ACCOUNTING OFFICERS AND TREASURIES**

#### **Duties of transferring national officer 45**

15. (1) A transferring national officer must, by 30 April 2001 or such other date determined by the National Treasury, certify to the National Treasury that—

- (a) any business plans that are required in respect of an allocation, are in terms of a framework determined by the department and which has been approved by the National Treasury; 50

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- (b) frameworks, conditions and monitoring provisions are reasonable and do not impose an undue administrative burden on benefiting provincial and local governments;
- (c) funds will only be transferred after the information contemplated in section 8(1) has been provided; 5
- (d) funds will only be deposited into an accredited bank account of a province or municipality; and
- (e) all other arrangements or requirements necessary for the transfer of an allocation have been complied with.
- (2) A transferring national officer who has not complied with subsection (1) must, unless the National Treasury has, for exceptional reasons directed otherwise, transfer such funds unconditionally to provinces and municipalities: Provided that the Minister may determine that such funds be allocated on the basis of the equitable division of revenue formula. 10
- (3) Despite anything to the contrary contained in any law, a transferring national officer must, in respect of any allocation, as part of the report contemplated in section 40(4)(c) of the Public Finance Management Act, within 20 days after the end of each month and in the format determined by the National Treasury, submit to the National Treasury and the relevant executive authority information on- 15
- (n) the amount transferred to a province or municipality for the financial year up to the end of that month; 20
- (b) the amount of funds delayed or withheld from any province or municipality up to the end of that month;
- (c) the actual expenditure incurred by the province or municipality up to the month reported on; and 25
- (d) such other issues as the National Treasury may determine.

**Duties of transferring provincial officer**

16. (1) A transferring provincial officer must, as part of the report contemplated in section 40(4)(c) of the Public Finance Management Act, and in respect of any allocation to be transferred to municipalities, within 15 days after the end of each month and in the format determined by the National Treasury, submit to the national transferring officer, the relevant Treasury and executive authority responsible for that department, information on- 30
- (a) the amount transferred to a municipality up to the month reported on;
- (b) the amount of funds delayed or withheld from any municipality up to the month reported on; 35
- (c) actual expenditure in respect of that allocation; and
- (d) such other issues as the National Treasury may determine.

- (2) A provincial accounting officer intending to make an allocation, other than an allocation listed in any Schedule to this Act, to a municipality from the provincial Revenue Fund in the financial year must, by 30 April 2001, and in a format determined by the National Treasury, provide the provincial treasury with the information contemplated in section 8(1) and the provincial treasury must publish such information in a *Provincial Gazette*. 40

**Duties of receiving officer** 45

17. (1) The relevant receiving officer must, in respect of an allocation transferred to-
- (a) a province, and as part of the report contemplated in section 40(4)(c) of the Public Finance Management Act, within 15 days after the end of each month, submit a report to the relevant provincial treasury, the relevant provincial executive authority and the transferring national officer; and 50
- (b) a municipality, within 10 days after the end of each month, submit a report to the relevant transferring national or provincial officer.
- (2) The reports contemplated in subsection (1) must set out-
- (n) the amount received by the province or municipality, as the case may be, up to the month reported on; 55

- (b) the amount of funds delayed or withheld from the province or municipality, as the case may be, up to the month reported on;
- (c) the actual expenditure by the province or municipality, as the case may be, up to the month reported on;
- (d) the extent of compliance with the conditions of an allocation and with this Act; 5
- (e) an explanation for any material problems or variances experienced by the province or municipality, as the case may be, regarding an allocation which has been received and a summary of the steps taken to deal with such problems or variances; and
- (f) such other issues and information as the National Treasury may determine. 10

#### **Duties of provincial treasury**

**18.** A provincial treasury must, within 22 days after the end of each month and in the format determined by the National Treasury, and as part of its consolidated monthly report to the National Treasury, report on-

- (a) actual transfers received by the province from national departments directly or through public or private entities; 15
- (b) the actual expenditure on such allocations; and
- (c) any problems of compliance, by transferring provincial officers and receiving officers, with the provisions of this Act, and the steps taken to deal with such problems. 20

#### **Annual report and financial statements**

**19.** (1) A department transferring funds in respect of an allocation set out in Schedules 3, 4, 5 and 6 must, in its annual report and financial statements, also—

- (a) indicate the total amount of that allocation transferred to a province or municipality during the financial year; 25
- (b) indicate the funds, if any, which were delayed or withheld and the reasons for such delay or withholding;
- (c) certify that all transfers to a province or municipality were deposited into the accredited bank account of that province or municipality;
- (d) certify that, except in respect of allocations contemplated in Schedule 6, no other funds were transferred to a province or municipality, directly or through a public or private entity; 30
- (e) indicate to what extent a province or municipality was monitored for compliance with the conditions of an allocation and the provisions of this Act;
- (f) indicate to what extent the allocation achieved its purpose and outputs; 35
- (g) indicate whether any portion of the allocation was retained by the transferring department for administration costs; and
- (h) indicate any non-compliance with this Act, and the steps taken to deal with such non-compliance.

(2) The annual report and financial statements must, for a department or municipality receiving an allocation in terms of this Act, also— 40

- (a) indicate the total amount of that allocation received during the financial year;
- (b) certify that all transfers in terms of this Act to a province or municipality were deposited into the accredited bank account;
- (c) indicate to what extent a province or municipality met the conditions of such an allocation, and complied with the provisions of this Act; 45
- (d) indicate to what extent outputs were achieved; and
- (e) contain such other information as the National Treasury may determine.

**PART V****DUTIES OF DIRECTOR-GENERAL AND AUDITOR-GENERAL****Duties of Director-General**

- 20.** The Director-General must-
- (a) for the purposes of the report contemplated in section 32(2) of the Public Finance Management Act, publish a report on-
- (i) actual transfers of all allocations listed in the Schedules or in terms of section 9;
- (ii) estimated expenditure on the provincial infrastructure allocation and on allocations listed in Schedules 4, 5 and 6; and
- (b) report to the Auditor-General, within 40 days after the end of the second and the fourth quarters, the extent of compliance by accounting officers with the provisions of sections 8, 9, 15, 16 and 18, and any serious or persistent material non-compliance with the provisions of this Act.

**Duties of Auditor-General** 15

- 21.** Without derogating from the powers and duties of the Auditor-General in terms of the Constitution and any other law, the Auditor-General must, in the audit of financial statements on the allocations in terms of this Act, report on—
- (a) the extent of compliance with this Act by the Director-General, provincial treasuries, transferring national officers, transferring provincial officers and receiving officers; 20
- (b) whether there was compliance with the certification and reporting requirements of this Act;
- (c) whether, in respect of any monthly report or annual report, a department's internal audit process dealt with the accuracy of the information provided to that department's accounting officer and the National Treasury; 25
- (d) whether an accounting officer made unauthorised transfers to any province or municipality or to any entity under the control of a province or municipality; and
- (e) whether the transferring department fulfilled its monitoring responsibility in terms of the provisions of this Act. 30

**PART VI****GENERAL****Delaying of payments**

- 22.** (1) The transferring national officer may, for a period not exceeding 30 days, delay the payment of an allocation in terms of this Act, if the province or municipality which receives, or benefits from, such allocation, does not comply with sections 17 and 18, or if expenditure on previous transfers reflects significant underspending for which no satisfactory explanation is provided. 35
- (2) The transferring national officer must, within seven days after the decision has been made, inform the National Treasury and the relevant provincial treasury or municipality of the reasons for the decision to delay the payment of an allocation and of the steps taken to deal with the causes of the payment delay. 40

**Withholding of payments**

- 23.** (1) The National Treasury may direct that any allocation to a municipality or province in terms of section 5 or set out in Schedule 5 or 6, or any portion of such allocation, be withheld if a municipality committed a serious or persistent material breach of the measures contemplated in section 216(1) of the Constitution. 45
- (2) The National Treasury may, subject to section 216 of the Constitution, direct that-
- (a) an allocation to a province or any portion of it referred to in Schedule 3, 4 or 6; or 50

- (b) an allocation approved in terms of section 9, be withheld if the transferring national officer has submitted to the province concerned a written report at least 21 days before such allocation is due to be transferred, setting out facts reflecting serious or persistent material breach of the measures contemplated in section 216(1) of the Constitution: Provided that— 5
- (i) a supplementary allocation to provinces may be withheld even if a report has not been given to a province; and
  - (ii) an allocation to a province may be withheld if that province has not responded satisfactorily in writing to the Auditor-General regarding queries in the audit reports and the Auditor-General recommends such withholding. 10
- (3) For the purposes of this section, the following conduct may be taken into account to determine whether a serious breach of the measures contemplated in section 216(1) of the Constitution has been committed:
- (a) A failure by a municipality or province to meet its statutory financial obligations, including all payments of employee or employer contributions for taxes, pensions, medical aid and audit fees; 15
  - (b) a failure by a province or municipality to submit satisfactory financial statements within two months after the end of its financial year;
  - (c) a failure by a municipality or province to respond to, and comply with, audit queries raised in respect of the previous years' audited financial statements; 20
  - (d) non-compliance with the conditions to which an allocation is subject and the mismanagement of an allocation; and
  - (e) non-compliance with the provisions of this Act.
- (4) The Minister may, by notice in a *Gazette*, approve that an allocation or a portion of it withheld in terms of subsection (1), be utilised to meet a municipality's outstanding statutory financial commitments. 25
- (5) Despite subsections (1) and (2), the Minister may, by notice in a *Gazette*, and in order to prevent the disruption of basic services, permit the flow of funds to a province or municipality. 30

#### **Spending in terms of purpose and subject to conditions** 30

24. (1) Despite anything to the contrary contained in any law, an allocation set out in Schedule 3, 4, 5 or 6 may only be utilised for the purpose contemplated in the Schedule concerned and in accordance with the conditions it is subject to.
- (2) Despite subsection (1), the National Treasury may permit a province or municipality to retain and utilise such portion of an allocation set out in Schedule 3, 4, 5 or 6, which remains after the fulfillment of its purpose, and in compliance with the conditions to which it is subject. 35
- (3) The Minister may, by notice in a *Gazette*, determine that funds which, for any reason, may not flow to a province or municipality, be allocated unconditionally to such province or municipality. 40

#### **Transfers made in error**

25. (1) Despite anything to the contrary contained in any law, the transfer of an allocation to a province in error is regarded as not legally due to the province for the purpose of its Revenue Fund.
- (2) A transfer contemplated in subsection (1) must be recovered without delay by the responsible transferring national officer. 45
- (3) The Director-General may direct that the recovery contemplated in subsection (1) be effected by set-off against future transfers to the province, which would otherwise become due in accordance with a payment schedule or any other transfer.
- (4) Despite anything to the contrary contained in any law, the transfer of an allocation to a municipality in error is regarded as not legally due to that municipality and must be recovered without delay by the responsible transferring national officer. 50
- (5) The national accounting officer responsible for local government may direct that the recovery contemplated in subsection (4) be effected by set-off against transfers to the

municipality concerned, which would otherwise become due in accordance with any payment schedule.

### **Transfers to municipalities with weak administrative capacity**

26. (1) If the national accounting officer responsible for local government reasonably believes that a municipality is not able to effectively administer an allocation or a portion of it, that officer may transfer such allocation or portion of it to the province in which the municipality is located or, when appropriate, to the relevant Category C municipality, after consultation with the municipalities and province concerned: Provided that such allocation or portion of it is utilised for the benefit of the municipality to which it was originally allocated. 5 10

(2) Any allocation or portion of it contemplated in subsection (1) must be dealt with, by the province or Category C municipality to which it has been transferred, in accordance with any directions by the national accounting officer responsible for local government.

### **Funds follow transfer of functions or obligations** 15

27. (1) The transfer of functions or obligations from one sphere of government to another must take place with the prior written approval of the National Treasury and the national accounting officer responsible for provincial and local government and, unless the Minister directs otherwise, includes the transfer of funds available to the transferring sphere of government for performing such functions or obligations. 20

(2) Despite anything to the contrary contained in this Act or any other law, the National Treasury may, for the purpose of facilitating the transfer of funds contemplated in subsection (1), stop the transfer of funds to the sphere of government from which the functions or obligations are transferred.

(3) No financial obligation or function being performed by a national or provincial department may be imposed on a municipality without- 25

(a) that municipality's prior written acceptance by resolution of its council; and

(b) the prior written approval of the National Treasury.

(4) A province must utilise its own funds for any obligation which is in conflict with subsection (3). 30

(5) Any obligation arising from a determination, by a province, of functions between a Category B and C municipality, is a liability of that province and not of the national government.

### **Amendment of payment schedule**

28. (1) Subject to subsections (2) and (3), a transferring national officer may, in respect of an allocation set out in Schedule 3, 4, 5 or 6, amend a payment schedule due to the underspending of the funds or for any other exceptional reason. 35

(2) The transferring national officer must inform the National Treasury within seven days of the amendment contemplated in subsection (1) and the reasons for it.

(3) The National Treasury may, in the interest of improved debt and cash-flow management, or on the grounds of substantial non-compliance with any condition to which an allocation is subject, amend any payment schedule of an allocation listed in Schedule 3, 4, 5 or 6, and direct that no transfer of funds be effected through the payment schedule amended in accordance with subsection (1) or that the payment schedule be amended as directed by it. 40 45

### **Exemptions by National Treasury**

29. (1) The National Treasury may, on application in writing by a transferring national or provincial officer, exempt such officer in writing from the duty to comply with reporting requirements or any other requirements or any other duty regarding an allocation set out in Part III: Provided that such exemption may only be granted if such officer satisfies the National Treasury that— 50

- (a) the duty cannot be complied with at that stage;
  - (b) the allocation programme is properly designed; and
  - (c) that officer is taking steps to comply with the provisions of this Act.
- (2) Any exemption contemplated in subsection (1)—
- (a) may only be granted if that officer can provide reasons to the satisfaction of the National Treasury why the duty cannot be complied with; and
  - (b) must set out any condition to which it is subject and be published in a *Gazette*.

#### **Non-compliance with this Act constitutes financial misconduct**

30. Despite anything to the contrary contained in any law, any serious or persistent non-compliance with the provisions of this Act, or the conditions to which any allocation in terms of this Act is subject, constitutes financial misconduct.

#### **Liability for costs incurred in violation of principles of co-operative governance and intergovernmental relations**

31. (1) An organ of state involved in an intergovernmental dispute regarding an allocation provided for in this Act must, before approaching a court to resolve such dispute, make every effort to settle the dispute with the other organ of state concerned, including making use of the structures established in terms of the Intergovernmental Fiscal Relations Act.

(2) In the event that a dispute is referred back by a court in accordance with section 41(4) of the Constitution, due to the court not being satisfied that the organ of state approaching the court has complied with subsection (1), the expenditure incurred by that organ in approaching the court is regarded as fruitless and wasteful.

(3) The amount of any such fruitless and wasteful expenditure must, in terms of a prescribed procedure, be recovered without delay from the person who caused the organ of state not to comply with the requirements of subsection (1).

#### **Acts performed prior to commencement of this Act**

32. Any act performed prior to the coming into effect of this Act in fulfillment of the objects of this Act, is regarded as having been done in terms of the relevant provisions of this Act.

#### **Regulations** 30

33. The Minister may, by notice in a *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.

#### **Repeal of Acts** 35

34. This section repeals the whole of the-
- (a) Division of Revenue Act, 1998 (Act No. 28 of 1998);
  - (b) Division of Revenue Act, 1999 (Act No. 30 of 1999); and
  - (c) Division of Revenue Act, 2000 (Act No. 16 of 2000): Provided that this repeal takes effect on 1 April 2001 or on the date of commencement of this Act, whichever is the later.

#### **Short title**

35. This Act is called the Division of Revenue Act, 2001.

**SCHEDULE 1****Equitable division of revenue raised nationally among the three spheres of government**

Sphere of Government	Column A	Column B	
	2001/02 Allocation R'000	MTEF Outer Years	
		2002/03 R'000	2003/04 R'000
National	151 563 153	161 760 371	173 756 979
Provincial	104 136 460	1125603561	1202158241
Local	2 618 123	3002 1231	3 551 123
<b>Total Allocated Expenditure</b>	<b>258 317 736</b>	<b>277 322 850</b>	<b>297523926)</b>

**SCHEDULE 2****Determination of each province's equitable share of the provincial sphere's share of revenue raised nationally (as a direct charge against the National Revenue Fund)**

Province	Column A	C o l u m n B 1	
	2001/02 Allocation R'000	MTEF Outer Years	
		2002/03 R'000	2003/04 R'000
Eastern Cape	17964631	192205171	20317001
Free State	7 017 865	7 531 358	7 985 693
Gauteng	158483501	172888501	18 633 961
KwaZulu-Natal	21 034 301	22 944 445	24 727 753
Mpumalanga	7 205 792	7 919 122	8 597 022
Northern Cape	2 532 623	2 730 222	2908143
Northern Province	14 009 930	152330451	163649961
North West	8761 128	9 390 757	9944981
Western Cape	9 761 840	10 302 040	107362741
<b>TOTALS</b>	<b>104 136 460</b>	<b>112 560 356</b>	<b>120 215 824</b>

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**SCHEDULE 3**  
**General or allocated function grants to provinces and municipalities**

Vote	Name of Allocation	Purpose	Province	Column A		Column B	
				2001/02 Allocation R'000	MTEF 01/02 R'000	2002/03 R'000	2003/04 R'000
National Treasury (Vote 7)	(a) Supplementary Allocation Grant	<p>a) To ensure provincial budgets are credible and adequately provide for the social sectors and infrastructure.</p> <p>b) To ensure provinces make progress in implementing budget and financial management reforms.</p> <p>c) To provide for smaller functions.</p>	Eastern Cape	386 431	353 615	355 110	
			Free State	177 551	147 919	146 956	
			Gauteng	337 611	344 293	341 108	
			KwaZulu-Natal	455 029	429 783	431 489	
			Mpumalanga	153 003	151 809	158 126	
			Northern Cape	55 768	58 711	59 582	
			Northern Province	292 471	282 764	287 360	
			North West	182 336	177 957	179 552	
			Western Cape	207 647	205 149	198 717	
			<b>TOTALS</b>	<b>2 247 877</b>	<b>2 152 000</b>	<b>2 158 000</b>	
Health (Vote 15)	(b) Provincial Infrastructure Grant	<p>a) To fund provincial infrastructure such as roads, school and health buildings.</p> <p>b) To fund the reconstruction infrastructure damaged in the 2000 floods.</p>	Eastern Cape	147 275	286 107	428 504	
			Free State	48 342	93 913	140 653	
			Gauteng	80 860	157 084	235 266	
			KwaZulu-Natal	170 447	331 123	495 925	
			Mpumalanga	61 236	118 961	178 168	
			Northern Cape	29 411	52 997	71 931	
			Northern Province	143 389	278 519	417 139	
			North West	69 536	135 086	202 320	
			Western Cape	49 524	96 210	144 094	
			Unallocated	600 000	400 000	200 000	
<b>TOTALS</b>	<b>1 400 000</b>	<b>1 950 000</b>	<b>2 514 000</b>				
Health (Vote 15)	(a) Central Hospital Grant	To enable specific provinces to render highly specialised and academic hospital services to all residents of the country.	Eastern Cape	13 201	14 287	15 336	
			Free State	249 813	261 254	274 009	
			Gauteng	1 568 945	1 639 983	1 717 667	
			KwaZulu-Natal	427 525	446 990	468 269	
Western Cape	1 011 436	1 056 243	1 104 215				



### SCHEDULE 4

#### Grants to provinces

Vote	Name of Allocation	Purpose	Province	Column A	Column B	
				2001/02 Allocation R'000	2002/03 MTEF R'000	2003/04 Outer Years R'000
Education (Vote 14)	(a) Financial Management and Quality Enhancement for Education Departments Grant	To support financial management and quality-enhancing initiatives in school education.	Eastern Cape	39 405	41	500
			Free State	13 419	14	132
			Gauteng	26 199	27	591
			KwaZulu-Natal	47 073	49	575
			Mpumalanga	15 549	16	17 112
			Northern Cape	4 047	4	262
			Northern Province	33 441	35	218
			North West	17 040	17	946
			Western Cape	16 827	17	721
				<b>TOTALS</b>		<b>213 000</b>
	(b) Early Childhood Development Grant	To develop the capacity of provincial education departments to implement a compulsory reception year for six-year-old children.	Eastern Cape	3 885	9	620
			Free State	1 323	3	276
			Gauteng	2 583	6	396
			KwaZulu-Natal	4 641	11	492
			Mpumalanga	1 533	3	796
			Northern Cape	399		988
			Northern Province	3 297	8	164
			North West	1 680	4	160
			Western Cape	1 659	4	108
				<b>TOTALS</b>		<b>21 000</b>
	(c) HIV/AIDS Grant	To promote HIV/AIDS education in primary and secondary schools.	Eastern Cape	11 747		
			Free State	4 001		
			Gauteng	7 810		
			KwaZulu-Natal	14 033		
			Mpumalanga	4 636		
			Northern Cape	1 207		
			Northern Province	9 969		
			North West	5 080		
			Western Cape	5 017		
				<b>TOTALS</b>		<b>63 500</b>

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Vote	Name of Allocation	Purpose	Province	Column A		Column B	
				2001/02 Allocation R'000	2002/03 R'000	MTEF Outlier Years 2003/04 R'000	2003/04 R'000
Health (Vote 15)	(a) Redistribution of Specialised Health Services Grant	To fund the redistribution of specialised services to provinces which do not currently provide them in order to reduce referrals to central hospitals in other provinces.	Eastern Cape	49 172	57 000	60 848	
			Mpumalanga	37 588	32 000	32 918	
			Northern Cape	16 700	16 000	15 960	
			Northern Province	44 500	51 000	52 868	
			North West	34 200	33 000	34 911	
		<b>TOTALS</b>		182 160	189 000	197 505	
	(b) Hospital Construction Grant	To fund the construction and development of the Nkosi Albert Luthuli Hospital and Pretoria Academic Hospital.	Gauteng	50 000			
			KwaZulu-Natal	103 800	70 000	90 000	
		<b>TOTALS</b>		153 800	70 000	90 000	
	(c) Hospital Rehabilitation Grant	To fund the maintenance and rehabilitation of hospitals.	Eastern Cape	69 000	81 000	84 645	
			Free State	16 000	17 000	17 765	
			Gauteng	102 000	105 000	109 725	
			KwaZulu-Natal	87 000	90 000	94 050	
Mpumalanga			43 000	45 000	47 025		
Northern Cape			10 000	10 000	10 450		
Northern Province			88 000	92 000	96 140		
North West			56 000	50 000	52 250		
Western Cape			29 000	30 000	31 350		
			<b>TOTALS</b>		500 000	520 000	543 400
(d) Integrated Nutrition Programme Grant	To feed primary school children, and facilitate nutrition education and health promotion.	Eastern Cape	131 838	131 838	131 838		
		Free State	39 394	39 394	39 394		
		Gauteng	54 673	54 673	54 673		
		KwaZulu-Natal	132 471	132 471	132 471		
		Mpumalanga	39 728	39 728	39 728		
		Northern Cape	10 096	10 096	10 096		
		Northern Province	106 032	106 032	106 032		
		North West	39 390	39 390	39 390		
		Western Cape	28 789	28 789	28 789		
			<b>TOTALS</b>		582 411	582 411	582 411

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Vote	Name of Allocation	Purpose	Province	Column A	Column B	
				2001/02 Allocation R'000	2002/03 R'000	MTEF Outer Years 2003/04 R'000
Health (Vote 15)	(e) HIV/AIDS Grant	To expand access to voluntary HIV counselling and testing.	Eastern Cape	3 850		
			Free State	3 850		
			Gauteng	3 500		
			KwaZulu-Natal	4 500		
			Mpumalanga	3 350		
			Northern Cape	3 850		
			Northern Province	3 850		
			North West	3 850		
			Western Cape	3 500		
			<b>TOTALS</b>			<b>34 100</b>
Housing (Vote 16)	(a) Housing Subsidy Grant	a) To provide subsidies for the national housing programme in provinces.  b) To provide relief for families living in intolerable conditions or crisis situations.	Eastern Cape	498 311	531 323	549 740
			Free State	241 253	257 236	266 152
			Gauteng	681 831	727 002	752 201
			KwaZulu-Natal	617 647	658 566	681 393
			Mpumalanga	208 355	222 158	229 859
			Northern Cape	65 474	69 811	72 231
			Northern Province	334 787	356 967	369 340
			North West	256 735	273 743	283 232
			Western Cape	321 564	342 867	354 751
			<b>TOTALS</b>			<b>3 225 958</b>
	(b) Human Settlement Grant	To fund projects aimed at improving the quality of the environment in urban communities.	Eastern Cape	8 500	10 000	11 000
			Free State	5 000	7 500	8 500
			Gauteng	26 000	23 000	21 000
			KwaZulu-Natal	25 000	25 000	26 000
			Mpumalanga	5 000	6 000	7 000
			Northern Cape	1 000	2 500	3 000
			Northern Province	10 000	11 000	11 000
			North West	7 000	6 000	8 000
			Western Cape	12 500	13 000	13 500
			<b>TOTALS</b>			<b>100 000</b>

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Vote	Name of Allocation	Purpose	Province	Column A	Column B	
				2001/02 Allocation R'000	2002/03 R'000	MTEF Outer Years 2003/04 R'000
Social Development (Vote 17)	(a) Financial Management and Improvement of the Social Security System Grant	To improve the quality of financial management, administration and the functioning of the social security system.	Eastern Cape	642	1 200	
			Free State	642	1 200	
			Gauteng	642	1 200	
			KwaZulu-Natal	642	1 200	
			Mpumalanga	642	1 200	
			Northern Cape	642	1 200	
			Northern Province	5 100	1 200	
			North West	642	1 200	
			Western Cape	642	1 200	
			<b>TOTALS</b>	<b>10 236</b>	<b>108001</b>	
	(b) HIV/AIDS Grant	To advance the development of home-based care (HBC) programmes in communities.	Eastern Cape	1 500		
			Free State	1 500		
			Gauteng	1 000		
			KwaZulu-Natal	1 500		
			Mpumalanga	1 500		
			Northern Cape	1 500		
			Northern Province	1 500		
			North West	1 500		
			western Cape	1 000		
			<b>TOTALS</b>	<b>125001</b>	<b>To be allocated</b>	

**SCHEDULE 5****Recurrent grants to local government**

Vote	Name of Allocation	Purpose	Province	Column A	Column B	
				2001/02 Allocation R'000	2002/03 MTEF Outer Years R'000	2003/04 R'000
<b>Provincial and Local Government (Vote 5)</b>	(a) Local Government Support Grant	To assist medium-size and small municipalities experiencing severe financial problems to restructure their financial positions and organisations.	Allocations to be gazetted by 15 May 2001	160 000	220 000	230 000
	(b) Transition Grant	To assist municipalities with significant once-off establishment and administrative costs of amalgamation.	Allocations to be gazetted by 15 May 2001	250 000	200 000	
	(c) Municipal Systems Improvement Grant	To support municipalities in developing their systems and capacity for integrated and spatial planning in line with their budgetary framework.	Allocations to be gazetted by 15 May 2001	30 471	30 290	30 418
	(a) Local Government Restructuring Grant	To assist large municipalities to implement medium-term restructuring plans.	City of Johannesburg	200 000	100 000	
<b>National Treasury (Vote 7)</b>			Unallocated	150 000	350 000	465 000
	(b) Financial Management Grant	To support municipalities in implementing budget, accounting and financial management reforms.	Allocations to be gazetted by 15 May 2001	<b>350 000</b>	<b>450 000</b>	<b>465 000</b>
				60 000	120 000	125 000

**SCHEDULE 5**  
**Infrastructure grants to local government**

Vote	Name of Allocation	Purpose	Province	Column A		Column B	
				2001/02 Allocation R'000	2002/03 R'000	MTEF Offer Years	2003/04 R'000
Provincial and Local Government (Vote 5)	(a) Consolidated Municipal Infrastructure Programme Grant (CMIP)	To fund the creation, extension, upgrading and rehabilitation of internal bulk connector and internal infrastructure.	Allocations to be gazetted by 15 May 2001	994 000	1 159 000	2003/04 R'000	1 407 000
	(b) LED Fund and Social Plan Measures Grant	To support planning and implementation of job creation and poverty alleviation projects.	Allocations to be gazetted by 15 May 2001	75 570	98 550		127 000
Public Works (Vote 30)	(a) Community Based Public Works Grant	To fund job creation and poverty alleviation programmes for poor rural communities.	Allocations to be gazetted by 15 May 2001	374 000	374 000		374 000
Transport (Vote 32)	(a) Urban Transport Fund	To promote the planning of intermodal land transport infrastructure and operations.	Allocations to be gazetted by 15 May 2001	81 000	40 000		42 000
Water Affairs and Forestry (Vote 33)	(a) Implementation of Water Services Projects Grant	To fund bulk connector and internal infrastructure for basic water services schemes for low income households.	Allocations to be gazetted by 15 May 2001	821 753	818 063		835 287
	(b) Water Supply and Water-borne Sewerage Disposal Schemes Grant (historical subsidy)	To honour existing subsidy commitments in terms of GN No.1341 of 30 June 1989 (as amended) and GN No. 247 of 6 February 1987 (as amended).	Allocations to be gazetted by 15 May 2001	1 153	1 153		1 153

**SCHEDULE 6**  
Indirect grants to provinces and municipalities

Vote	Name of Allocation	Purpose	Province	Column A		Column B	
				2001/02 Allocation R'000	2002/03 R'000	MTEF Outer Years 2003/04 R'000	2003/04 R'000
Land Affairs (Vote 28)	(a) Land Restitution, Land Reform and Land Tenure Grant	To provide municipal infrastructure associated with the land reform programme.	Allocations to be gazetted in-year				
Minerals and Energy (Vote 29)	(a) National Electrification Programme Grant	To fund the implementation of the national electrification programme.	Allocations to be gazetted in-year				
Transport (Vote 32)	(a) Arrive Alive Grant	To fund the implementation of the Arrive Alive road safety campaign.	Allocations to be gazetted in-year				
Water Affairs and Forestry (Vote 33)	Water Supply and Sanitation Grant	To provide for the operating costs of water services infrastructure owned and operated by the department.	Allocation date and transfer mechanism to be presented to the Director-General by 15 May 2001	691 649	644 000		662 000