

REPUBLIC OF SOUTH AFRICA

PROVINCIAL TAX REGULATION BILL

(As introduced in the National Assembly as a section 76 Bill; explanatory summary of Bill published in Government Gazette No 22353 of 1 June 2001) (The English text is the official text of the Bill)

(MINISTER OF FINANCE)

[B 51—2001]

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BILL

To regulate the exercise by provinces of their powers 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 applying to a provincial tax

2. A provincial tax must—
 - (a) not materially or unreasonably prejudice—
 - (i) national economic policy;
 - (ii) economic activities across provincial boundaries; or
 - (iii) the national mobility of goods, services, capital or labour; and
 - (b) be consistent with the principles enshrined in Chapter 3 of the Constitution for the purposes of promoting co-operative governance between the national, provincial and local spheres of government.

Introduction of provincial tax

3. (1) If a province intends to impose a provincial tax, the MEC for Finance must submit particulars of the proposed provincial tax to the Minister at least ten months before the start of the next financial year or on such later date as the Minister may allow.
 - (2) The submission contemplated in subsection (1) must—
 - (a) set out the reasons for the imposition of the proposed provincial tax;
 - (b) identify and, where appropriate, describe for the proposed provincial tax—
 - (i) the tax base;
 - (ii) the desired tax rate;

- (iii) the persons liable for the tax; and
 - (iv) any tax relief measures or exemptions;
 - (c) specify with regard to the administration of the proposed provincial tax—
 - (i) the tax-collecting authority, if an authority other than the South African Revenue Service is to be designated; 5
 - (ii) the person responsible for remitting the tax;
 - (iii) the methods and likely costs of enforcing compliance with that tax;
 - (iv) the compliance burden on taxpayers; and
 - (v) procedures for taxpayer assistance;
 - (d) describe the estimation methods and assumptions used to determine the— 10
 - (i) amount of revenue to be collected on a quarterly basis over the three fiscal years following the introduction of the tax;
 - (ii) economic impact on individuals and businesses residing in the province;
 - (iii) economic impact on individuals and businesses residing outside the province; and 15
 - (iv) impact on economic development in the province;
 - (e) indicate consultations, including consultations with other provinces, to establish the general acceptability of the proposed provincial tax;
 - (f) indicate consultations with the South African Revenue Service and such other collecting agent contemplated in section 4, regarding the administration of the proposed provincial tax; and 20
 - (g) include such other particulars concerning the proposed tax as may be prescribed.
- (3) If a submission contemplated in subsection (1) complies with subsection (2), the Minister must table it at the next meeting of the Budget Council and refer it to the Commission. 25
- (4) The province concerned must, within 60 days of the date of the Budget Council meeting contemplated in subsection (3) or such other date as the Minister may allow, submit to the Minister any comments by other provinces in the consultations contemplated in subsection (2)(e). 30
- (5) The Minister may consult any other interested persons on the submission.
- (6) The Minister must indicate to the Budget Council the status of the evaluation of the submission in advance of the financial year referred to in subsection (1).
- (7) If a proposed provincial tax complies with section 228 of the Constitution and this Act, the Minister must, after considering the comments of the Commission and consulting with the Budget Council and other interested bodies or persons in accordance with subsections (3) and (5), when the annual budget is introduced in the National Assembly, also introduce national legislation which— 35
- (a) provides that the tax contained in the submission, subject to such changes as may be effected as a result of the consultations contemplated in subsections (3) and (5), may be imposed as a provincial tax; and 40
 - (b) prescribes the manner and form which such provincial tax must take, including 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 45
 - (iii) collecting agent for such provincial tax, if it is not the South African Revenue Service. 50

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(7), designated another person for that purpose. 50

(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.

Transitional provisions

5. (1) Any provincial tax imposed by a province in terms of national or provincial legislation enacted prior to 1 April 2002 is deemed to have been imposed in accordance with this Act. 55

(2) Despite subsection (1), any draft amendment of an Act of Parliament or a provincial legislature 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). 5

Regulations

6. 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 it is necessary to prescribe for the effective implementation of the provisions and objects of this Act. 10

Short title and commencement

7. This Act is called the Provincial Tax Regulation 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 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 6: empowers the Minister of Finance to make regulations prescribed in terms of this Act or necessary for the effective implementation of the Act.

Clause 7: 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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