



# Government Gazette

**REPUBLIC OF SOUTH AFRICA**

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## **THE PRESIDENCY**

No. 832

7 September 2007

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

**No. 12 of 2007: Municipal Fiscal Powers and Functions Act, 2007.**



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Act No. 12, 2007 MUNICIPAL FISCAL POWERS AND FUNCTIONS ACT, 2007

**GENERAL EXPLANATORY NOTE:**

[                    ] Words in bold type in square brackets indicate omissions from existing enactments.

\_\_\_\_\_ Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President.)  
(Assented to 3 September 2007.)

**ACT**

**To regulate the exercise by municipalities of their power to impose surcharges on fees for services provided under section 229(1)(a) of the Constitution; to provide for the authorisation of taxes, levies and duties that municipalities may impose under section 229(1)(b) of the Constitution; and to provide for matters connected therewith.**

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

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## CHAPTER 1

## INTERPRETATION AND OBJECTS OF ACT

## Definitions and interpretation 10

1. (1) In this Act, unless the context indicates otherwise—
- “**category of municipality**” means a category A, B or C municipality referred to in section 155(1) of the Constitution;
- “**collecting agent**” means the municipality or the collecting agent determined by the Minister in terms of section 6(b)(ii); 15
- “**Commission**” means the Financial and Fiscal Commission established by section 220 of the Constitution;
- “**Constitution**” means the Constitution of the Republic of South Africa, 1996;
- “**Minister**” means the Minister of Finance;
- “**municipal base tariff**” means the fees necessary to cover the actual cost associated with rendering a municipal service, and includes— 20
- (a) bulk purchasing costs in respect of water and electricity reticulation services, and other municipal services;
- (b) overhead, operation and maintenance costs;
- (c) capital costs; 25
- (d) a reasonable rate of return, if authorised by a regulator or the Minister responsible for that municipal service;
- “**municipal financial year**” means the financial year of a municipality commencing on 1 July and ending on 30 June;
- “**municipal service**” means— 30
- (a) any of the local government matters listed in Part B of Schedule 4 and Part B of Schedule 5 to the Constitution; and
- (b) any function assigned to a municipality in accordance with section 9 or 10 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), identified by the Minister by notice in the *Gazette*; 35
- “**municipal surcharge**” means a charge in excess of the municipal base tariff that a municipality may impose on fees for a municipal service provided by or on behalf of a municipality, in terms of section 229(1)(a) of the Constitution;
- “**municipal tax**” means a tax, levy or duty that a municipality may impose in terms of section 229(1)(b) of the Constitution; 40
- “**national economic policy**” includes the tax policy for the Republic as determined by the national government;
- “**organised local government**” means an organisation recognised in terms of section 2(1) of the Organised Local Government Act, 1997 (Act No. 52 of 1997), to represent local government nationally or provincially; 45
- “**prescribe**” means prescribe by regulation;
- “**regulation**” means a regulation made under sections 6, 8 or 10; and
- “**this Act**” includes any regulation or determination made or instruction given under this Act.

**Act No. 12, 2007 MUNICIPAL FISCAL POWERS AND FUNCTIONS ACT, 2007**

(2) If any conflict relating to the matters dealt with in this Act arises between this Act and any other legislation in force when this Act takes effect, this Act prevails.

**Objects of Act**

2. The objects of this Act are to—
- (a) promote predictability, certainty and transparency in respect of municipal fiscal powers and functions; 5
  - (b) ensure that municipal fiscal powers and functions are exercised in a manner that will not materially and unreasonably prejudice national economic policies, economic activities across municipal boundaries, or the national mobility of goods, services, capital or labour; 10
  - (c) effectively oversee the exercise of municipal fiscal powers and functions; and
  - (d) provide for an appropriate division of fiscal powers and functions where two municipalities have the same fiscal powers and functions with regard to the same area in accordance with section 229(3) of the Constitution, by—
    - (i) regulating the exercise by municipalities of their power to impose municipal surcharges on fees for services under section 229(1)(a) of the Constitution; 15
    - (ii) authorising the municipal taxes that municipalities may impose under section 229(1)(b) of the Constitution; and
    - (iii) regulating the exercise by municipalities of their power to impose municipal taxes, if authorised. 20

**Application of Act**

3. This Act applies to municipal surcharges and municipal taxes referred to in section 229 of the Constitution, other than rates on property regulated in terms of the Local Government: Municipal Property Rates Act, 2004 (Act No. 6 of 2004), and municipal base tariffs regulated under the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), or sector legislation. 25

**CHAPTER 2****MUNICIPAL TAX 30****Authorisation of municipal tax**

4. (1) The Minister may of his or her own accord or on application in terms of section 5 by a municipality, group of municipalities or organised local government authorise a municipal tax.
- (2) Prior to authorising a municipal tax in terms of subsection (1) the Minister— 35
- (a) must consult—
    - (i) the Minister responsible for local government, affected municipalities and organised local government; and
    - (ii) the Commission; and
  - (b) may consult any other organ of state or interested persons. 40
- (3) The Commission must within three months from the date of any consultation referred to in subsection (2)(a)(ii) submit its views on the proposed municipal tax in writing to the Minister.
- (4) The Minister authorises a municipal tax by prescribing the regulations contemplated in section 6. 45