

Division of Revenue Act, 2004 (Act 5 of 2004), has been repealed by
Division of Revenue Act (Act 1 of 2005) as of 1 April 2005



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THE PRESIDENCY

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

No. 5 of 2004: Division of Revenue Act, 2004.



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(English text signed by the President.)
(Assented to 30 March 2004.)

ACT

To provide for the equitable division of revenue anticipated to be raised nationally among the national, provincial and local spheres of government for the 2004/05 financial year and the reporting requirements for allocations pursuant to such division; to permit the withholding and the delaying of payments in certain circumstances; to provide for 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;

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

CHAPTER 1

INTERPRETATION AND OBJECTS OF ACT

Interpretation

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1. (1) In this Act, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Public Finance Management Act has the meaning assigned to it in that Act, and—

- I. **“budget year”** means the financial year commencing on 1 April 2004 and ending on 31 March 2005; 10
- II. **“head official”**, in relation to a provincial treasury, means the head of the provincial department responsible for financial matters in the province;
- III. **“Financial and Fiscal Commission Act”** means the Financial and Fiscal Commission Act, 1997 (Act No. 99 of 1997);
- IV. **“Intergovernmental Fiscal Relations Act”** means the Intergovernmental 15 Fiscal Relations Act, 1997 (Act No. 97 of 1997);
- V. **“municipal accounting officer”** means the official of a municipality referred to in section 60 of the Municipal Finance Management Act;
- VI. **“municipal financial year”** means the financial year of a municipality commencing on 1 July and ending on 30 June; 20
- VII. **“Municipal Finance Management Act”** means the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);

- VIII. **“municipality”** means the same as in section 1 of the Municipal Finance Management Act;
- IX. **“Municipal Structures Act”** means the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);
- X. **“Municipal Systems Act”** means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000); 5
- XI. **“next financial year”** means the financial year commencing on 1 April 2005 and ending on 31 March 2006;
- XII. **“payment schedule”** means a schedule which sets out—
 (a) the amount of each instalment of an equitable share or any other allocation to be transferred to a province or municipality for the financial year; 10
 (b) the date on which each such instalment must be paid; and
 (c) to whom, and to which primary bank account, each such instalment must be paid; 15
- XIII. **“prescribe”** means prescribe by regulation in terms of section 33;
- XIV. **“primary bank account”**—
 (a) in relation to a province, means 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; 20
 (b) in relation to a municipality which has only one bank account, means that account; or
 (c) in relation to a municipality which has more than one bank account, means one of its bank accounts which it has designated as its primary bank account; 25
- XV. **“Public Finance Management Act”** means the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- XVI. **“quarter”** means—
 (a) 1 April to 30 June; 30
 (b) 1 July to 30 September;
 (c) 1 October to 31 December; or
 (d) 1 January to 31 March;
- XVII. **“receiving officer”**—
 (a) in relation to Schedules 4 and 5 allocations transferred to a province, excluding the Provincial Infrastructure Grant, means the accounting officer of the provincial department which is responsible for spending or managing that allocation; or 35
 (b) in relation to Schedules 6 and 6A allocations transferred to a municipality, means the municipal accounting officer of that municipality, except for that portion of the Municipal Infrastructure Grant funds in terms of section 11(7), committed before 30 September 2003 and spent by the accounting officer of the national department for local government directly on behalf of the municipality; 40 45
- XVIII. **“transferring national officer”** means the accounting officer of a national department which transfers to a province or municipality Schedule 4, 5, 6 or 6A allocations, 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; 50
- XIX. **“transferring provincial officer”** means the accounting officer of a provincial department which is responsible for managing a Schedule 5, 6 or 6A allocation for the purpose of transferring it to a municipality in the relevant province.
- (2) In the event of any inconsistency between a provision of this Act and a provision of the Municipal Finance Management Act that has taken effect, the provision of the Municipal Finance Management Act is, to the extent of the inconsistency, suspended until 1 April 2005. 55
- (3) Section 35 of the Public Finance Management Act, section 3 of the Financial and Fiscal Commission Act and section 9 of the Municipal Systems Act do not apply in respect of any powers and functions assigned in terms of this Act to a province or municipality. 60

Objects of Act**2.** The objects of this Act are—

- (a) to provide for the equitable division of revenue anticipated to be raised nationally among the three spheres of government;
- (b) to promote co-operative governance and the principles of intergovernmental relations on budgetary matters; 5
- (c) to promote better co-ordination between policy, planning, budget preparation and execution processes;
- (d) to promote predictability and certainty in respect of all allocations to provincial governments and municipalities in order that such governments and municipalities may plan their budgets over a multi-year period; 10
- (e) to promote transparency and equity in all allocations, including in respect of the criteria for their division;
- (f) to promote accountability for the use of public resources by ensuring that all transfers are reflected on the budgets of benefiting provincial governments and municipalities; and 15
- (g) to ensure that legal proceedings between organs of state in the three spheres of government are avoided as far as is possible.

CHAPTER 2**EQUITABLE SHARE ALLOCATIONS**

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Equitable division of revenue anticipated to be raised nationally among spheres of government

3. (1) Revenue anticipated to be raised nationally in respect of the budget year must be divided among the national, provincial and local spheres of government for their equitable shares as set out in Column A of Schedule 1. 25

(2) An envisaged division of revenue anticipated to be raised in respect of the next financial year and the 2006/07 financial year, and which will 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.

(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 envisaged division for the next financial year as set out in Column B of Schedule 1, be transferred as a direct charge against the National Revenue Fund to each province and municipality. 30

Equitable division of provincial share among provinces

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

(2) An envisaged division for each province of revenue anticipated to be raised nationally in respect of the next financial year and the 2006/07 financial year, and which is subject to the provisions of the annual Division of Revenue Act for those financial years, is set out in Column B of Schedule 2. 40

(3) Subject to section 28(2), 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 official of the relevant provincial treasury. The payment schedule must take reasonable account of the monthly spending commitments of provinces, the revenue at the disposal of provinces, and the minimisation of risk and debt servicing costs. 45

(4) Despite subsection (3), the Minister may, on such conditions as the Minister 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 the payment schedule referred to in subsection (3) in respect of that province. 50

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

Equitable division of local government share among municipalities

5. (1) Each municipality's share of local government's equitable share of revenue anticipated to be raised nationally in respect of the budget year is set out in Column A of Schedule 3. 5

(2) An envisaged division between municipalities of revenue anticipated to be raised nationally in respect of the next financial and the 2006/07 financial year, and which is subject to the provisions of the annual Division of Revenue Act for those financial years, is set out in Column B of Schedule 3. 10

(3) Subject to subsection (4), each municipality's equitable share contemplated in subsection (1) must be transferred to the primary bank account of the municipality in quarterly instalments before the end of May, August, November and February in the budget year, in accordance with a payment schedule determined by the National Treasury. 15

(4) If a provincial executive has intervened in a municipality in terms of section 139 of the Constitution, the Minister responsible for local government may, with the concurrence of the Minister, and on such conditions as the Minister may determine, advance funds to a municipality in respect of its equitable share contemplated in subsection (1) which have not fallen due for transfer in accordance with the applicable payment schedule referred to in subsection (3) in respect of that municipality. 20

(5) Any advances in terms of subsection (4) must be set-off against transfers to the municipality which would otherwise become due in terms of the applicable payment schedule. 25

(6) Despite subsection (3), the National Treasury may direct the accounting officer of the national department for local government to delay or withhold the transfer of an instalment on the grounds of a municipality's serious or persistent material breach of uniform treasury norms and standards.

(7) Such uniform treasury norms and standards referred to in subsection (6) may include a requirement that a municipality must— 30

- (a) submit to the Auditor-General, not later than 30 April 2004, any outstanding financial statements in respect of municipal financial years preceding the 2003/04 municipal financial year;
- (b) submit to the National Treasury, by not later than 30 June 2004, its budget for the 2004/05 municipal financial year and such other budgetary information as may be required by the National Treasury, including, but not limited to, information on the nature and extent of basic services to be provided for water, sanitation, electricity, and municipal infrastructure, including free basic services, to be provided by that municipality; 40
- (c) submit to the Auditor-General and the National Treasury, not later than 30 September 2004, financial statements in respect of the 2003/04 municipal financial year, in a format determined by the National Treasury;
- (d) submit to the National Treasury, by not later than 20 days after the end of each quarter starting 1 July 2004, information on the implementation of its budget, including information up to the end of that quarter on actual— 45
 - (i) total revenue collected, borrowings and all allocations received in terms of this Act; and
 - (ii) total spending, including on water, sanitation, electricity, free basic services and municipal infrastructure; 50
- (e) in the case of local and district municipalities, co-operate on financial, budget and fiscal matters with other municipalities within the district in which it is located in order to eliminate duplication in the provision of services, reduce wastage, and ensure effective and efficient spending for purposes of sustainable delivery of municipal services in that municipal district; and 55
- (f) make timely payment of all statutory commitments including all taxes, levies, audit fees, medical aid and pension fund commitments.