Division of Revenue Act, 2001 (Act 1 of 2001) has been repealed by Division of Revenue Act, 2002 (Act 5 of 2002) as of 1 April 2002

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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

(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;

BE 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;

(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
- *(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);

(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
- *(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);

(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

(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

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;
- *(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;
- *(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 ;

(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

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.

(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).

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.

(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.

(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.

(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.

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.

(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.

(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.

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.

(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.

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:

(a) Schedule 3 contains allocations to provinces for general and nationally allocated functions;
(b) Schedule 4 contains allocations to provinces;
(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*.

(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).

(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.

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*:

(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;
(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.

(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