

MUNICIPAL FISCAL POWERS AND FUNCTIONS ACT 12 OF 2007

[ASSENTED TO 3 SEPTEMBER 2007]

[DATE OF COMMENCEMENT: 7 SEPTEMBER 2007]

(English text signed by the President)

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.

Be it enacted by the Parliament of the Republic of South Africa, as follows:-

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CHAPTER 1

INTERPRETATION AND OBJECTS OF ACT (ss 1-3)

1 Definitions and interpretation

(1) In this Act, unless the context indicates otherwise-

'category of municipality' 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);

'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-

- (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;
- (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-

- (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 32 of 2000), identified by the Minister by notice in the *Gazette*;

'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;

'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 52 of 1997), to represent local government nationally or provincially;

'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.

(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.

2 Objects of Act

The objects of this Act are to-

- (a) promote predictability, certainty and transparency in respect of municipal fiscal powers and functions;
- (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;
- (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;
 - (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.

3 Application of Act

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 6 of 2004), and municipal base tariffs regulated under the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003), the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000), or sector legislation.

CHAPTER 2 MUNICIPAL TAX (ss 4-7)

4 Authorisation of municipal tax

- (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-
 - (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.
- (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.

5 Application for authorisation

- (1) A municipality, group of municipalities or organised local government must submit an application to the Minister, which application must-
 - (a) set out the reasons for the imposition of the proposed municipal tax;
 - (b) the purposes for which revenue derived from the collection of the municipal tax will be utilised;
 - (c) give particulars on the proposed municipal tax's compliance with section 229 (2) (a) of the Constitution;
 - (d) give particulars on the proposed municipal tax's compliance with the prohibition contained in section 229 (1) (b) of the Constitution;
 - (e) identify and, where appropriate, describe-
 - (i) the tax base;
 - (ii) the desired tax rate;
 - (iii) the persons liable for the tax; and
 - (iv) any tax relief measures or exemptions;
 - (f) specify-

- (i) the tax-collecting authority;
- (ii) the persons 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;
- (g) give particulars of, and describe the estimation methods and assumptions used to determine-
 - (i) the amount of revenue to be collected on an annual basis over the three municipal financial years following the introduction of the municipal tax;
 - (ii) the economic impact on individuals and businesses; and
 - (iii) the impact on economic development;
- (h) give particulars of any consultations conducted, including consultations with, where applicable, a provincial government, organised local government and municipalities, and the outcomes of such consultations;
- (i) give particulars of any consultations with the South African Revenue Service and any other collecting agent contemplated in section 7, regarding the administration of the proposed municipal tax; and
- (j) include such other information as may be prescribed.

(2) If the Minister intends authorising the municipal tax in respect of which an application was submitted, the Minister must-

- (a) notify the municipality, group of municipalities or organised local government and the Minister responsible for local government in writing within six months of submission of the application of his or her intention; and
- (b) by not later than six months after that notification or such longer period as may be necessitated in complying with section 10 (4) (c), prescribe the regulations contemplated in section 6.

(3) In the event that the Minister does not approve the municipal tax in respect of which an application was submitted, the Minister must, within six months of submission of the application, notify the municipality, group of municipalities or organised local government and the Minister responsible for local government in writing of his or her decision and the reasons therefor.

6 Regulations regarding imposition and administration of municipal tax

The regulations-

- (a) must regulate the powers of a municipality, group of municipalities or a kind of municipality, which may be defined either in relation to the capacity of a municipality, a category, type or budgetary size of municipality or the powers and functions exercised by a municipality to impose the municipal tax;
- (b) must determine-
 - (i) the date from which the municipal tax may be imposed, which date must coincide with the start of a municipal financial year; and
 - (ii) the collecting agent for such municipal tax, if it is not the municipality or municipalities authorised to impose the tax;
- (c) must determine the tax base on which such municipal tax may be levied

and any exclusion from the tax base, if any, and-

- (i) where the tax is a specific purpose tax or a tax levied on the same tax base as that of national taxes, the rate expressed as a percentage or Rand value at which a municipality may impose that tax; or
- (ii) where the tax is not a specific purpose tax or a tax levied on the same tax base as that of national taxes-
 - (aa) the rate expressed as a ratio, a percentage of the municipal tax base or a Rand value at which a municipality may impose that tax; or
 - (bb) the bands or ranges within which that municipal tax may be imposed; and
- (iii) the basis upon and the intervals at which the rates referred to in paragraph (i) or (ii) may be increased;
- (d) may-
 - (i) limit the period during which the municipal tax may be imposed;
 - (ii) in respect of a specific purpose tax, limit the purpose for which revenue derived from the collection of the municipal tax may be utilised;
 - (iii) specify that a percentage of the revenue derived from the collection of the specific purpose tax must be utilised for a specific purpose; and
- (e) may include any other matter necessary for the proper imposition and administration of the municipal tax.

7 Collection of municipal tax

A municipality authorised to impose a municipal tax is the collecting agent for that municipal tax, unless the Minister has, in the regulations contemplated in section 6, designated another person for that purpose.

CHAPTER 3 MUNICIPAL SURCHARGES (ss 8-9)

8 Norms and standards

(1) The Minister may prescribe compulsory national norms and standards for imposing municipal surcharges, which may include, amongst others, maximum municipal surcharges that may be imposed by municipalities.

(2) The norms and standards contemplated in subsection (1) may-

- (a) in respect of maximum municipal surcharges-
 - (i) express the maximum municipal surcharge that may be imposed as a ratio, a percentage of the municipal base tariff or a Rand value;
 - (ii) provide bands or ranges within which municipal surcharges may be imposed;
- (b) differentiate between different-
 - (i) kinds of municipalities, which may be defined in relation to the capacity of a municipality, a category, type or budgetary size of municipality;
 - (ii) types of municipal services;
 - (iii) levels of municipal services;
 - (iv) categories of users, debtors and customers;

- (v) consumption levels; and
- (vi) geographical areas;
- (c) determine the basis upon and the intervals at which municipal surcharges may be increased; and
- (d) determine matters that must be assessed and considered by municipalities in imposing municipal surcharges on fees.

9 Obligations of municipality in respect of municipal surcharges

(1) (a) A municipality must, when imposing a surcharge on fees for services provided by it or on its behalf, comply with any norms and standards contemplated in section 8.

(b) The Minister may, where practicalities impede strict compliance with the norms and standards prescribed in terms of section 8, of his or her own accord or on application by a municipality, or a group of municipalities or organised local government, by notice in the *Gazette* exempt a municipality from complying with any norms and standards contemplated in section 8 for a period and on the conditions determined in the notice.

(c) An exemption under paragraph (b) may-

- (i) apply to municipalities generally; or
- (ii) be limited in its application to a particular municipality or kind of municipality, which may be defined in relation to the capacity of a municipality or the category, type or budgetary size of municipality.

(2) Section 75A (2), (3) and (4) of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000), relating to the manner in which fees, charges or tariffs are levied and how a resolution in that respect must be made known, applies with the changes required by the context to a municipal surcharge.

(3) A municipality must annually as part of its budget preparation process review any municipal surcharges.

CHAPTER 4 GENERAL (ss 10-14)

10 Regulations

(1) The Minister may, by notice in the *Gazette*, make regulations regarding-

- (a) any matter that must or may be prescribed in terms of this Act;
- (b) 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; and
- (c) any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act.

(2) The Minister must regularly, but at least once every five years, review the regulations made under this Act and any municipal tax authorised by those regulations.

(3) Any amendment to or repeal of the regulations made under this Act takes effect at the commencement of the municipal financial year following the municipal financial year in which the amendment or repeal was affected.

(4) Before any regulations are made under this section, the Minister must-

- (a) consult-
 - (i) the Minister responsible for local government;

- (ii) the relevant cabinet members on any matter affecting their executive authority;
 - (iii) the relevant members of the Executive Council of a province on any matter affecting their executive authority;
 - (iv) the Commission; and
 - (v) organised local government;
- (b) publish the draft regulations in the *Gazette* for public comment; and
- (c) submit the draft regulations to Parliament when in session for parliamentary scrutiny at least one month before their promulgation.

11 Amendments to this Act

Draft national legislation directly or indirectly amending this Act, or providing for the enactment of subordinate legislation that may conflict with this Act, may be introduced in Parliament-

- (a) by the Minister only; or
- (b) only after the Minister has been consulted on the contents of the draft legislation.

12 Transitional provisions

(1) A municipality must, within two years of the date on which this Act commences, apply to the Minister in accordance with this Act for the authorisation of a tax, other than a regional establishment levy or regional services levy imposed under the Regional Services Council Act, 1985 (Act 109 of 1985), or the KwaZulu and Natal Joint Services Act, 1990 (Act 84 of 1990), imposed by that municipality prior to the commencement of this Act.

(2) A tax referred to in subsection (1) lapses-

- (a) two years after the date on which this Act commences, if a municipality fails to apply for authorisation in accordance with subsection (1); or
- (b) six months after the Minister has notified the municipality that an application contemplated in subsection (1) is not approved.

13 Amendment of legislation and savings

The legislation referred to in the second column of the Schedule is hereby amended or repealed to the extent indicated in the third column of the Schedule.

14 Short title and commencement

This Act is called the Municipal Fiscal Powers and Functions Act, 2007.

SCHEDULE

(Section 13)

AMENDMENT OF LEGISLATION

No. and year of Act	Short title of Act	Extent of repeal or amendment
Act 32 of 2000	Local Government: Municipal Systems Act, 2000	1. The repeal of paragraph (d) of subsection (1) of section 86A.
Act 56 of 2003	Local Government: Municipal Finance Management Act, 2003	1. The repeal of subsection (2) of section 20.
2. The substitution for subsection (6) of section 28 of the		

following subsection:

'(6)
Municipal tax and tariffs may not be increased during a financial year **[except when required in terms of a financial recovery plan]**.'

3. The addition of the following subsection to section 43:

'(4)
This section does not apply to a municipal tax authorised in terms of the Municipal Fiscal Powers and Functions Act, 2007.'

4. The substitution for paragraph (c) of subsection (1) of section 168 of the following paragraph:

'(c) a framework for regulating the exercise of municipal **[fiscal and]** tariff-fixing powers.'