



MFPFA CIRCULAR NO. 2 VERIFICATION OF MUNICIPAL TAXES THAT EXISTED PRIOR TO THE INTRODUCTION OF THE MUNICIPAL FISCAL POWERS AND FUNCTIONS ACT NO.12 OF 2007

Purpose of this Circular

The purpose of this circular, together with (a) the pro-forma application form on existing municipal taxes and (b) the pro-forma submissions to Council that have been developed by the National Treasury, are to assist municipalities to comply with the requirements of section 12¹ of the Municipal Fiscal Powers and Functions Act (“MFPFA” or “the Act”).

Why is it necessary to verify municipal taxes that existed prior to the Act?

Significant reforms have been made to the South African tax system with the aim to simplify the tax system, broaden the tax base and reduce tax rates to ensure a stable, neutral, efficient and equitable tax regime. It is important that the local government fiscal system, including municipal taxes:

- ⇒ fits within the overall tax policy framework of Government and should not undermine national goals of macroeconomic stability and redistribution
- ⇒ comply with the basic tenets of a good and sustainable tax instrument (and the trade-offs it sometimes implies), such as
 - efficiency
 - equity (vertical and horizontal)
 - administrative simplicity and certainty
 - revenue raising capacity and buoyancy
 - political acceptability/responsibility
 - reasonable overall tax burden
 - flexibility

What are the legislative requirements with respect to the verification of municipal taxes that existed prior to the Act?

¹ Section 12 of the Municipal Fiscal Powers and Functions Act deals with transitional provisions as follows:

- (1) A municipality must, within two years of the date on which this Act commences, apply to the Minister of Finance 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 or the KwaZulu and Natal Joint Services Act, 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.

MFPFA Circular No.1 advised municipalities that all existing municipal taxes will be subjected to a verification process to determine whether municipal taxes that existed prior to the Act may be continued or should lapse.

Municipalities were also advised that they must, by no later than 7 September 2009 apply to the Minister of Finance for the consideration of a tax imposed by that municipality prior to 07 September 2007 other than:

- ⇒ a regional establishment levy or regional services levy imposed under the Regional Services Council Act No 109 of 1985 or the KwaZulu and Natal Joint Services Act No 84 of 1990
- ⇒ municipal property rates which are regulated under the Municipal Property Rates Act No 6 of 2004

An application must include the matters listed in section 5 of the Act

Should no application be made by a municipality to the Minister of Finance to continue all municipal taxes that existed prior to the Act such municipal tax will automatically lapse on **07 September 2009** and/or should the Minister of Finance not approve the continuation of a municipal tax, such municipal tax will lapse six months after the Minister's announcement.

Why is it important for municipalities to complete the pro-forma application on municipal taxes that existed prior to the Act?

There is currently no comprehensive list of municipal taxes. The pro-forma application, designed by the National Treasury, is intended to assist municipalities to provide the necessary information to the National Treasury so that all municipal taxes that existed prior to the Act can be subjected to the verification process prescribed in section 12 of the Act. It is accordingly important that municipalities complete this pro-forma application.

If a tax is identified through the verification process, the tax can be approved for that municipality, a group of municipalities, a category or categories of municipalities and/or all municipalities. There is thus scope for a municipality to extend its tax base by going through the "approved list of municipal taxes" applicable to them and including any taxes not yet levied by the municipality.

What will happen if a municipal tax that existed prior to the Act is disallowed?

All existing municipal taxes will be subjected to a verification process to determine whether they fit within the overall tax policy framework of Government and comply with the basic tenets of a good and sustainable municipal tax instrument.

Should an existing municipal tax be disallowed because it does not comply with one or both criteria, it will mean that a municipality may not levy such tax six months after notification has been received that this tax will be disallowed in future. Any revenues attached to this tax will be forfeited. The legislative provision in section 12 of the Municipal Fiscal Powers and Functions Act will

overrule any existing provincial ordinances and/or municipal by-laws that authorised such municipal tax.

If a municipality continues to levy a disallowed tax, it will be in contravention of the Municipal Fiscal Powers and Functions Act and could be required to pay back any payments received from tax payers which were levied by the municipality.

Who should complete the pro-forma application?

All municipalities should complete the pro-forma application whether they had any taxes prior to the Act or not. This is because some revenue sources could be defined under another name but can be considered a municipal tax. The municipality should report on taxes and revenue sources that are levied by the municipality as well as municipal entities.

It should be noted that all municipalities that assisted the National Treasury with the pilot should also complete the final pro-forma application as this is the formal process and has been adjusted by the lessons learnt from the pilots.

Who should approve the application that will be submitted to the Minister of Finance?

The application must be signed-off by the Municipal Manager and CFO and be sent to the Municipal Council for adoption. A pro-forma report on issues that the Council must adopt and agree upon is attached in order for the Council to support that the completed pro-forma application serves as a formal application with respect to section 12 of the Act.

Please note that applications for municipal taxes other than property rates and surcharges included in user charges that existed prior to the Act that are **NOT** signed by the CFO and Municipal Manager or **NOT** submitted to the Council for adoption in a Council Resolution will **NOT** comply with section 12 of the Act. In cases where such applications are received, they will be deemed as non-submissions.

What is the deadline for submitting the completed pro-forma application to the National Treasury and timeframes for the verification of municipal taxes that existed prior to the Act?

Although municipalities have to apply to the Minister of Finance prior to **07 September 2009**, the National Treasury would appreciate it if the applications could be submitted by **15 August 2009** or earlier depending on the outcomes of municipality's consultation with the Municipal Council. This will allow the National Treasury to analyse all submissions received as well as allow municipalities to correct any omitted information.

What income sources SHOULD NOT be provided as part of the applications?

Although municipalities have a vast range of revenue sources, most of them result in a direct benefit or a penalty to the user of the account and therefore are deemed to be user charges, examples of such are the following:

- ⇒ Surcharges on tariffs for the provision of municipal services such as water and sanitation, electricity and refuse removal that were submitted as part of the tariff applications to the regulator or national departments;
- ⇒ Rental of facilities and equipment;
- ⇒ Interest earned;
- ⇒ Grants;
- ⇒ Donations;
- ⇒ Administration fees;
- ⇒ Entrance and admission fees
- ⇒ Traffic fines;
- ⇒ Licenses and permits;
- ⇒ Penalties imposed; and
- ⇒ Petty sundry income receipts of the municipality other than taxes.

For further clarification on what information is required please see the instructions worksheet in the pro-forma application.

What should a municipality report on?

Section 12 of the Act provides for the verification of all existing municipal taxes (other than property rates, the already abolished RSC levies and surcharges on municipal services). However, not all municipal taxes are recorded as taxes on the financial statements of municipalities. The above section lists those that are clearly not municipal taxes. The pro-forma application has been designed to enable municipalities to provide a full list of taxes to the Minister of Finance for consideration including the following:

- ⇒ Surcharges imposed on fees collected by the municipality, e.g. surcharges levied in addition to property rates collected;
- ⇒ All municipal levies;
- ⇒ All municipal duties; and
- ⇒ Other municipal taxes.

Structure of the pro-forma application

The pro-forma application is structured in such a way to make it easy for municipalities to complete as well as to assist the National Treasury to obtain all relevant information in order to verify a tax/application. The pro-forma application requests information on:

- ⇒ the revenue/ income source base;

- ⇒ the desired rate;
- ⇒ reasons for receiving/ realisation of the revenue/income source;
- ⇒ charge liability payment and relief;
- ⇒ the revenue collecting authority; and
- ⇒ the frequency of revenue collection.

For more information on how to complete the pro-forma application, please refer to the instructions worksheet provided in the pro-forma application.

Timeframes for the section 12 process

The Municipal Finance Management Act Circular No.48 referred municipalities to the provisional timeframes for the section 12 process. Municipalities are now required to undertake a number of tasks within the following timeframes:

Task	Deadline
NT amended and finalised the pro-forma application based on the pilots and consultations with SALGA, the Department of Cooperative Governance and Traditional Affairs and Provincial Treasuries.	April to May 2009
NT to forward electronic pro-forma application on verification of municipal taxes to all municipalities.	18 June 2009
Municipalities must finalise the electronic pro-forma application as well as the report and submit to Council for adoption and to NT for analysis.	15 July 2009
As soon as Council has made a resolution, the municipality is to send formal application as signed by the CFO and Municipal Manager together with a Council Resolution.	15 July - 15 August 2009
NT's preferred date for municipalities to submit the fully completed, signed and adopted applications to NT for verification.	15 August 2009
Final deadline for municipalities to submit the pro-forma applications to NT compliant with the Act.	06 September 2009
Municipal taxes (other than property rates and surcharges included in user charges that existed prior to Act where no applications were received will immediately lapse.	07 September 2009
Notification by the Minister of Finance to (a) confirm municipal taxes that may be continued and to (b) advise municipalities on taxes not approved.	Mid January 2010
Municipalities may only include in their budgets the taxes that were approved and may no longer impose all the disapproved taxes.	01 July 2010

Enquiries

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