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**SOUTH AFRICAN GOVERNMENT OFFICE
- WORLD TRADE CENTRE -**

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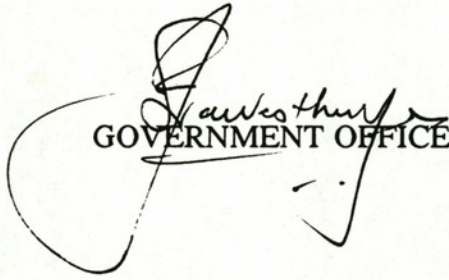
Head of the Administration
Multi-Party Negotiating Process
World Trade Centre

Dear Dr Eloff

**SUBMISSION BY THE SOUTH AFRICAN GOVERNMENT FOR THE
ATTENTION OF THE PLANNING COMMITTEE**

1. Attached is a submission by the South African Government entitled ***PROPOSED REFORMULATION OF CLAUSE 121 OF DRAFT INTERIM CONSTITUTION.***
2. Kindly transmit the document for immediate attention to the Planning Committee.

Yours sincerely



GOVERNMENT OFFICE: WORLD TRADE CENTRE

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PROPOSED REFORMULATION OF CLAUSE 121 OF DRAFT INTERIM CONSTITUTION

121 (1) An SPR shall be entitled -

- (a) to levy a surcharge on the central government's income tax on individuals, provided that the tax rate of such a surcharge does not exceed the maximum tax rate or is less than the minimum tax rate specified in national legislation, based on a recommendation of the Financial and Fiscal Commission established in terms of Chapter 11;

NOTE: The Financial and Fiscal Commission should perhaps be renamed to the Intergovernmental Fiscal Commission.

- (b) to levy a tax on the sale of petrol and distillate fuel for consumption within the Republic, provided that the rate of such a levy does not fall outside the maximum and/or minimum limits specified in national legislation, based on a recommendation of the Financial and Fiscal Commission;

- (c) to levy user-charges on those services where it has exclusive legislative competences, specified in section 118(1), provided that the revenue from the user-charges in respect of each service does not exceed the cost of providing each of these services.

NOTE: The second part of this last subsection is necessary to prevent taxes being levied on certain services under the pretext of it being user-charges.

- (2) An SPR government shall be competent to levy such additional taxes, levies, imposts and surcharges not provided for in subsection (1) as may be recommended by the Financial and Fiscal Commission and approved by Parliament (both the National Assembly and the Senate in terms of section 60), which approval shall not unreasonably be withheld.
- (3) An SPR government shall not be entitled to raise taxes detrimentally affecting national economic policies, inter-SPR commerce, or the national mobility of goods, services, capital and labour.

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- (4) The taxes and levies raised by an SPR government within its jurisdiction must be non-discriminatory for both residents and non-residents of that SPR.
- (5) An SPR shall be entitled to an equitable share of revenue collected nationally from income tax on individuals and companies as well as value added tax, where the total share of the SPRs will be specified in national legislation, based on a recommendation of the Financial and Fiscal Commission, and which in turn is based on the relative fiscal needs of national, SPR and local government to provide basic services and to execute their functions and powers, after taking into account each level's own revenue sources.

NOTE: This subsection specifies the share of each level of government of certain national taxes - eg. that SPRs will be entitled to 25% of the revenue from the abovementioned taxes. The next subsection specifies the share of each individual SPR in the total amount provided for SPRs. The next subsection also makes provision for budgetary grants to SPRs, that will be additional to the revenue sharing provided for in subsection (5).

- (6) The Financial and Fiscal Commission shall make recommendations to the Parliament regarding the equitable share of each SPR in the overall share of national revenue provided for SPRs in subsection (5), taking into account factors such as the origin of these taxes, the optimal utilization by each SPR of its own revenue sources provided for in subsections (1) and (2) and economic and fiscal disparities between the SPRs.

NOTE: This subsection (as well as (5) above) could be extended to also refer to revenue sharing to local government. It will however also depend on Chapter 10 of the Constitution.

- (7) The Financial and Fiscal Commission shall make recommendations to the Parliament regarding non-earmarked (unconditional) or block grants to SPRs in the national budget, taking into account the national interest, the fiscal capacity and need of each SPR to provide basic services and to execute its functions and powers, as well as the population and development needs, administrative responsibilities and other legitimate interests of each SPR.

- (8) An SPR Revenue Fund shall be established in every SPR, into which shall be paid all revenues raised by or accruing to the SPR.
- (9) An SPR government shall be competent to raise loans in the domestic financial markets, provided that
 - (a) it may not be utilized for current expenditure;
 - (b) it complies with the financial norms set for this purpose by the Financial and Fiscal Commission in respect of all SPRs, and which will be specifically reported on annually by the Auditor-General;
 - (c) in the case where loans by an SPR did not comply with the financial norms referred to in (b) and reported on by the Auditor-General, approval has to be obtained from the National Executive in respect of any additional loans by the SPR until such time as it again complies with the financial norms referred to in (b);
 - (d) interest payments and loan redemptions form first liabilities against the revenue of each SPR, excluding transfers from the national government that are earmarked for specific services;
 - (e) should an SPR be unable to meet its loan obligations, both in terms of interest payments and loan redemptions, the whole executive of the SPR must resign and a new executive be appointed on the basis provided for in section 113;
 - (f) should the national government provide any specific assistance to an SPR to meet its loan obligations, it will have the power to cut back the expenditures or raise the taxes of that SPR until such time as the SPR is able to meet its loan obligations.

NOTE: This subsection, or certain elements thereof, can also be extended to include loans by local government.

- (10) The national government may not guarantee any loans by SPR governments or local governments.

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- (11) Allocations by the national government to local governments shall ordinarily be made only via an SPR government.

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