

MCH 91-90-6-3

DEPARTMENT OF FINANCE

DRAFT THREE OF THE
PROPOSED REFORMULATION OF CLAUSE 121 OF THE DRAFT INTERIM CONSTITUTION(Taking into account the sentiments of the both
the SA Government and ANC at the Bilateral Meeting on 12 October 1993)

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- 121 (1) An SPR-government shall be competent to levy taxes, surcharges, user-charges and levies as may be recommended by the Financial and Fiscal Commission, established in terms of Chapter 11, and approved by national parliament, whose approval shall not unreasonably be withheld.
- (2) An SPR-government shall specifically be entitled to:
- (a) levy a surcharge on certain taxes assigned to the central government, provided that the tax rates of such levies or surcharges do not exceed the maximum tax rates or are less than the minimum tax rates specified in national legislation. Both the specific taxes on which surcharges are to be levied and the tax rates of these surcharges shall be based on a recommendation of the Financial and Fiscal Commission;
 - (b) levy taxes on the sale of specific commodities, as recommended by the Fiscal and Financial Commission, within the jurisdiction of the SPRs, provided that the rates of such levies do not fall outside the maximum and/or minimum limits specified in national legislation;
 - (c) levy user-charges in respect of those services where it has exclusive legislative competencies, as specified in Clause 118(1).
- (3) The taxes, user-charges and levies levied by an SPR-government shall not discriminate against non-residents of that SPR.
- (4) SPR-governments shall be entitled to a share of revenue collected nationally, from specific taxes which the Fiscal and Financial Commission shall make recommendations on. The total share of SPRs' revenue shall be specified in national legislation, based on recommendations of the Fiscal and Financial Commission, in order to assist them to provide at least the nationally determined basic standard of services and execute their functions and powers.

- (5) The sharing of revenues amongst the SPRs, referred to in Clause 121(4), shall be equitable and based on objective criteria as recommended by the Fiscal and Financial Commission.
- (6) Revenue transfers, both conditional and unconditional, from the national government to SPR-governments, shall be equitable and based on objective criteria as recommended by the Fiscal and Financial Commission.
- (7) A Revenue Fund shall be established in every SPR into which shall be paid all revenues raised by or accruing to that SPR.
- (8) An SPR-government shall not be competent to raise loans for current expenditure in the domestic or foreign financial markets, provided that it borrows only for bridging finance within nationally legislated limits, in anticipation of revenue receipts;
- (9) An SPR-government shall be competent to raise loans for capital expenditure in the domestic capital market provided that:
- (a) it complies with the norms, conditions and requirements as recommended by the Financial and Fiscal Commission, and which is specifically reported on annually by the Auditor-General;
 - (b) in the case where a loan by an SPR-government did not comply with the norms, conditions and requirements referred to in Clause 121(9)(a), approval has to be obtained from the National Executive in respect of any further loans by that SPR-government until such time as it again complies with the financial norms, conditions and requirements referred to in Clause 121(9)(a);
 - (c) interest payments and loan redemptions form a first charge against the revenue of the SPR-government, excluding transfers from the national government that are earmarked for specific services;
 - (d) should an SPR-government be unable to meet its loan obligations, both in terms of interest payments and loan redemptions, the entire SPR executive shall resign and a new executive shall be elected as soon as possible on the basis provided for in Clause 113;

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- (c) should the national government provide any specific assistance to an SPR-government to meet its loan obligations, the national government shall have the authority to cut back the expenditures or raise the tax rates of that SPR-government until such time as the SPR-government is able to meet its loan obligations.
- (10) The national government may not guarantee any loans unless:
- (a) the guarantee is an explicit requirement demanded by an international financial institution; and
 - (b) the Fiscal and Financial Commission has verified the requirement as defined in Clause 121(10)(a) above and makes such a recommendation to the national parliament.
- (11) Revenue allocations made by the national government to local authorities shall ordinarily be made only via the SPR-government into whose jurisdiction the local authority falls.

12 October 1993