

# Financial and Fiscal Commission Submission in terms of Section 12 of the Municipal Fiscal Powers Functions Act

Possible Continuation and/or Lapsing of Municipal Taxes  
(other than Property Rates) that Existed Prior to the  
Municipal Fiscal Powers and Functions Act

26 February 2010



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## 1. Background

Section 229 of the Constitution assigns local government an array of own revenue sources including rates on property and surcharges on fees provided by the municipality (Section 229 (1)). In addition section 229 (2) assigns further taxation powers to municipalities apart from income, value added, general sales taxes and import duties.

In order to build on and strengthen the provisions in the Constitution, national government enacted further pieces of legislation to regulate the revenue and taxation powers of local government. These include the Municipal Finance Management Act (MFMA) of 2003 and the Municipal Property Rates Act (MPRA) of 2004, the latter of which is exclusive to the regulation of taxes/rates on property.

As part of improving the process of regulating municipal taxes and revenue powers, the Municipal Fiscal Powers and Functions Act (MFPFA) was enacted on 07 September 2007. This act forms the basis for the regulation of the remaining municipal taxes. The major facets of these are the various surcharges on service tariffs provided by municipalities. Fundamentally, the MFPFA provides for the following:

- a. Section 5 – The provision allows a municipality, a group of municipalities or organised local government (in the form of South African Local Government Association (SALGA)) to apply for a new local government tax to the Minister of Finance for his/her perusal for the authorisation of such tax.
- b. Section 8 – The regulation of surcharges imposed by municipalities by authorising the Minister of Finance to prescribe norms and standards on such surcharges. This can include a set maximum level for a surcharge.
- c. Section 12 – The authorisation of additional municipal taxes that existed prior to the enactment of the MFPFA within a two year period since the inception of the Act, officially 07 September 2009. This was basically imposed as, prior to the enactment of the MFPFA, there was no record of the taxes or type of taxes that municipalities imposed in addition to property rates and surcharges. Therefore, the broader microeconomic and macroeconomic externalities of such taxes were not known let alone quantified.

As part of the provisions in section 12, the Ministry of Finance received a total of 155 applications for the authorisation of existing taxes from 55 municipalities. Of these 155, the

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Ministry of Finance deemed 24 to fall within the ambit of the broad definition of a municipal tax. These principles are based primarily on definitions extracted from public economic literature and definitions from respected dictionaries. In accordance with section 4 of the MFPFA, the Minister of Finance is obligated to consult with the Financial and Fiscal Commission (FFC) prior to the authorisation of any municipal tax. The official date of consultation was 11 December 2009, providing the FFC with 3 months from the date of consultation to provide its inputs in accordance with section 4 (3) of the Act.

This analytical document is in fulfilment of the FFC mandate as stipulated in section 4 of the MFPFA that the Minister of Finance consult with the FFC with regards to the authorisation of existing taxes in accordance to section 12 of the act. The document firstly reviews the public economic literature on what constitutes a local tax, drawing similarities and repetitions to the definitions provided by the Ministry of Finance. Section 2 of the document draws from previous FFC research that outlines the basic principles as to what constitutes a “good” local government tax or revenue source. Section 3 lists the 24 municipal revenue sources identified as taxes by the Ministry of Finance, gives the ministry’s reasons for deeming these a “good” tax and the FFC’s own analysis and position on the specific tax. Finally, a brief analysis will be done on the remaining 131 revenues sources/application that the ministry did not classify as taxes.

## **2. Definition of a Municipal Tax**

The documents provided by the Ministry of Finance as part of its consultation with the FFC provides definitions in order to differentiate between taxes, levies and tariffs. The National Treasury used this as a basic methodology to identify municipal revenue types as being a municipal tax, thus regulated by the MFPFA, or another revenue instrument, such as a license, penalty or a tariff.

Some of the defining principles used are identified below:

- a. A charge linked directly to the provision of a municipal service is NOT a municipal tax but a fee or tariff, if there is a direct benefit to the user of the service. This includes user charges for water or electricity, where if a user consumes more of the good, he/she pays a larger tariff to ensure that the operating costs to the municipality is covered. There is thus a direct benefit to the consumer when he/she pays more i.e. he/she receives more of the service

- b. Directly linked to the point above, if there is a charge related directly to a service but there is no direct benefit to the tax payer or user then the charge is considered to be a municipal tax.
- c. Similarly, if the charge is used for enhancing general revenues, then such charge is also a tax.
- d. The definition of a surcharge, which is an additional charge applied over and above a municipal base tariff, is a municipal tax.

The identification of whether the several applications received from municipalities are in fact municipal taxes or not was largely based on the brief definitions above.

Once a municipal revenue source is identified as a municipal tax, it should be scrutinised against another set of criteria to determine whether it is a “good” municipal tax. The basic principles that underlie a good local tax are discussed below and will inform the FFC’s analysis recommendations made by the National Treasury on the applications received.

### **3. Principles of a “Good” Local Tax**

With the abolition of the Regional Services Council (RSC) levies in 2005, the debate over an appropriate tax to replace this local government revenue source took precedent in dialogues between several government and governance departments including the FFC and the National Treasury. As part of its constitutional mandate, the FFC made several recommendations to government to assist in identifying a suitable replace for the RSC levy. As part of the 2009/10 Division of Revenue Annual submission, the FFC identified several principles that should underpin a good local tax. These include:

- a. Revenue Adequacy: The amount of revenue gained from the tax should mirror the expenditure responsibility assigned
- b. Correspondence: The burden of the tax should not overlap to adjacent municipalities whose citizens do not benefit from the expenditure of the tax funds
- c. Effective Administration: The cost of administering the tax should be reasonable fair
- d. Enhances Local Fiscal Autonomy: the base, rate and administration of the tax should have a strong local element i.e. should be controlled by the municipality

- e. Yield: The tax should contribute significantly to the municipality's revenue
- f. Collectability: Related to point c, the tax should be easily collectible at a low cost
- g. Economic Efficiency: Local taxes should not promote economic inefficiencies whereby taxpayers adjust their economic decisions away from the most optimal towards areas where taxation is minimised
- h. Immobility of Base: A local tax should be based upon assets or activities that are not easily transferrable or movable to another municipal jurisdiction. This would ensure that the economic efficiency principle is also maintained where the activity remains at its economically optimal location as opposed to moving to a less optimal location in order to minimise tax
- i. Base Stability in Economic Cycles: Revenues from a local tax should be buoyant at times of economic growth and less vulnerable to negative turns in the economy
- j. Horizontal Fiscal Imbalance: A local tax within a municipality should not promote horizontal fiscal imbalances where significantly large disparities are created between municipalities
- k. Fairness: The local tax should ensure that the burden is equitably shared, vertically and horizontally, among the taxpayers (be it households, companies etc).

In addition to the principles outlined by the FFC above, other generally accepted principles that constitute a good local tax include:

- a. Transparency: All aspects of the tax, including the purpose, legal basis, revenue, expenditure, base and rate of the tax, should be clear and liable to public scrutiny at any time.
- b. Accountability: Similar to point a, the tax authority should be accountable on how much is collected from the local tax and how much and the areas where the revenues from the tax are being spent.

The principles outlined above will serve as guidelines as to analyse and ascertain the merits of the 24 tax applications in accordance with section 12 of the MFPPA and would thus form the theoretical basis of the FFC's inputs as part of its mandate.

#### 4. Analysis of the Taxes Approved by Minister of Finance

##### **Tax Number: 1**

**Province:** Eastern Cape

**Municipality:** Kouga Local Municipality (EC108)

**Tax:** Waterways Riparian Levy St Francis Bay

**Intended Purpose:** For maintaining and dredging of canals

**NT Analysis and Recommendation:** Application is supported, though it is noted that this type of activity is usually levied as part of property rates

**FFC Analysis:** We agree that this is a tax given that it is not directly linked to the delivery of water to end-users. The activity (that is, maintaining/dredging canals) the tax is used to fund, generates a general benefit to all consumers. It also meets the general criterion with respect to transparency as it, for example, appears as a separate charge on the bill of consumers. In addition this tax appears to be in accordance with most of the principles that FFC has identified as characterising a good local tax, for example immobility of base, it does not create horizontal fiscal imbalance and the tax burden is equally shared.

**FFC Recommendations:** The Commission agrees that this fits the bill with respect to being a good municipal tax.

##### **Tax Number: 2**

**Province:** Eastern Cape

**Municipality:** Kouga Local Municipality (EC108)

**Tax:** Development Charges

**Intended Purpose:** To fund infrastructure within the municipality

**NT Analysis and Recommendation:** Treasury recommends support of this application until such time that policy has been developed on how to deal with this type of charge – at present practices around levying this charge vary from municipality to municipality. In addition a review of development charges is being proposed

**FFC Analysis:** The charge is being used to expand infrastructure delivery within the municipality, thus facilitating the expansion of services. Benefits arising from expansion of infrastructure would primarily benefit new property developments, but could also promote general benefit to consumers. As such this may possess elements of a municipal tax. In addition, it also corresponds with some of the principles the Commission considers important for a good local tax, for example it is based on assets/activities that are not easily transferrable or movable to another municipality.

**FFC Recommendations:** The FFC agrees that a review be undertaken in order to get a better handle on these types of charges and that appropriate policy measures to deal with development charges be established but in the interim this application is supported.

**Tax Number: 3**

**Province:** Eastern Cape

**Municipality:** Lukhanji Local Municipality (EC134)

**Tax:** Community Levy

**Intended Purpose:** To subsidise fire brigade and the SPCA services

**NT Analysis and Recommendation:** Treasury supports this application, though it suggests that consideration be given to including this charge as part of property rates as this is common practice with respect to these types of charges.

**FFC Analysis:** This charge meets the requirements of a municipal tax. For example, it provides a group or general community benefit in that it subsidises fire brigade as well as the SPCA services. Also it is not directly linked to the proportion of, or gratification received by the consumer from making use of the service. The tax is levied on the whole community and, as such, fulfils the requirement of fairness of the spread of the tax burden.

**FFC Recommendations:** The FFC supports this proposal.

**Tax Number: 4**

**Province:** Kwazulu-Natal

**Municipality:** Greater Kokstad Local Municipality (KZN433)

**Tax:** Fire Levy

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**Intended Purpose:** A fee charged to everybody so that in an event of fire, customers do not have to pay

**NT Analysis and Recommendation:** Treasury supports this proposal however notes that this charge would be better located as part of property rates charges.

**FFC Analysis:** The benefit that this charge generates is applicable to the whole community and not a specific consumer. In addition it charges a specific rate and the charge is reflected separately on the bill of the consumer – thus this charge meets the criteria of transparency as well as accountability. The tax also meets the FFC's requirements for a good municipal tax, namely correspondence (citizens within the jurisdiction of the municipality benefit). There is also fairness with respect to the sharing of the tax burden as everyone is levied this fee.

**FFC Recommendations:** The FFC supports this proposal

**Tax Number: 5**

**Province:** Free State

**Municipality:** Naledi Local Municipality (FS171)

**Tax:** Mineral Rights Extraction Licence Tax

**Intended Purpose:** Revenue enhancements, control measures on mineral extraction and job creation

**NT Analysis and Recommendation:** National Treasury agrees that these are municipal taxes, but given that they are proposed, future taxes, they will, for the time being, not be approved.

**FFC Analysis:** Given that the current focus is on Section 12 of the MFPFA, that is, assessing whether charges levied *prior* to the enactment of the MFPFA, are municipal taxes and should continue or be ceased, the proposals by Naledi Municipality should not be considered within this process. The municipality needs to apply for authorisation in terms of Section 5 of the MFPFA.

**FFC Recommendations:** The Commission recommends that these five applications be excluded from this process and that the prescripts of Section 5 of the MFPFA be followed.

**Tax Number: 6**

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**Province:** Free State

**Municipality:** Naledi Local Municipality (FS171)

**Tax:** Mineral Rights Extraction Licence Penalty

**Intended Purpose:** Revenue enhancement and control measures on mineral extraction

**NT Analysis and Recommendation:** National Treasury agrees that these are municipal taxes, but given that they are proposed, future taxes, they will, for the time being, not be approved.

**FFC Analysis:** Given that the current focus is on Section 12 of the MFPFA, that is, assessing whether charges levied *prior* to the enactment of the MFPFA, are municipal taxes and should continue or be ceased, the proposals by Naledi Municipality should not be considered within this process. The municipality needs to apply for authorisation in terms of Section 5 of the MFPFA.

**FFC Recommendations:** The Commission recommends that these five applications be excluded from this process and that the prescripts of Section 5 of the MFPFA be followed.

**Tax Number: 7**

**Province:** Free State

**Municipality:** Naledi Local Municipality (FS171)

**Tax:** Private owned biological assets disposable tax

**Intended Purpose:** Revenue enhancement, control measures and general community development

**NT Analysis and Recommendation:** National Treasury agrees that these are municipal taxes, but given that they are proposed, future taxes, they will, for the time being, not be approved.

**FFC Analysis:** Given that the current focus is on Section 12 of the MFPFA, that is, assessing whether charges levied *prior* to the enactment of the MFPFA, are municipal taxes and should continue or be ceased, the proposals by Naledi Municipality should not be considered within this process. The municipality needs to apply for authorisation in terms of Section 5 of the MFPFA.

**FFC Recommendations:** The Commission recommends that these five applications be excluded from this process and that the prescripts of Section 5 of the MFPFA be followed.

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**Tax Number: 8**

**Province:** Free State

**Municipality:** Naledi Local Municipality (FS171)

**Tax:** Local economic development and tourism fund contribution tax

**Intended Purpose:** General revenue enhancement and general community benefits

**NT Analysis and Recommendation:** National Treasury agrees that these are municipal taxes, but given that they are proposed, future taxes, they will, for the time being, not be approved.

**FFC Analysis:** Given that the current focus is on Section 12 of the MFPFA, that is, assessing whether charges levied *prior* to the enactment of the MFPFA, are municipal taxes and should continue or be ceased, the proposals by Naledi Municipality should not be considered within this process. The municipality needs to apply for authorisation in terms of Section 5 of the MFPFA.

**FFC Recommendations:** The Commission recommends that these five applications be excluded from this process and that the prescripts of Section 5 of the MFPFA be followed.

**Tax Number: 9**

**Province:** Free State

**Municipality:** Naledi Local Municipality (FS171)

**Tax:** Museum and heritage building tax

**Intended Purpose:** Revenue enhancement, control measures and conservation efforts

**NT Analysis and Recommendation:** National Treasury agrees that these are municipal taxes, but given that they are proposed, future taxes, they will, for the time being, not be approved.

**FFC Analysis:** Given that the current focus is on Section 12 of the MFPFA, that is, assessing whether charges levied *prior* to the enactment of the MFPFA, are municipal taxes and should continue or be ceased, the proposals by Naledi Municipality should not be considered within this process. The municipality needs to apply for authorisation in terms of Section 5 of the MFPFA.

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**FFC Recommendations:** The Commission recommends that these five applications be excluded from this process and that the prescripts of Section 5 of the MFPFA be followed.

**Tax Number: 10**

**Province:** Gauteng

**Municipality:** Mogale City Local Municipality (GT481)

**Tax:** Electricity Fixed Charge

**Intended Purpose:** To be used for maintenance of electricity infrastructure and subsidise other services.

**NT Analysis and Recommendation:** National Treasury does not support this application. The reason is that maintenance of infrastructure be included in the tariff charged for electricity. The component that is used to fund other services is referred to as a surcharge. Presently surcharges form part of the tariff. Once Sections 8 and 9 of the MFPFA, which deal with norms and standards for surcharges and the obligations of municipalities with respect to them, is activated, municipalities will have to separate surcharges from tariffs and levy them separately.

**FFC Analysis:** In accordance with Section 74(2) (d) of the Municipal Systems Act, costs related to the delivery of a service – this includes maintenance – should be included in the tariff charged for a service. Thus the component of the application relating to maintenance would not be considered eligible as a municipal tax. Revenue earned over and above the base tariff is referred to as a surcharge. In this instance the stated use of the surcharge is to cross subsidise the delivery of other services. As a result, this can be considered a municipal tax as it would be used for general revenue enhancement. Mogale City states in its individual application that it does include a surcharge in its tariff. If this is the case perhaps options for increasing the existing surcharge should be explored. Of course this is only possible if the size of the surcharge, relative to the tariff can be separated. As mentioned above, Sections 8 and 9 of the MFPFA will deal with municipal surcharges. Once these sections are activated, norms and standards will be applied to surcharges.

**FFC Recommendations:** Where a proposed tax is intended to fund maintenance with respect to the service provided, the Commission is not in favour of approving the application. Furthermore, with respect to using the revenue earned for the cross-subsidisation of other municipal services, the Commission recommends that if a municipality can distinguish the

surcharge component from the base tariff, then it should be allowed to continue – however it would be subject to the regulations of Section 8 of the MFPPA.

**Tax Number: 11**

**Province:** Gauteng

**Municipality:** City of Johannesburg Metropolitan Municipality (GT001)

**Tax:** Surcharge on Electricity, Water and Sanitation

**Intended Purpose:** To generate revenue to fund the regeneration of inner city and other central business areas

**NT Analysis and Recommendation:** Treasury recommends that this possible tax not be supported as it would be regarded as a double tax. This is because the City of Johannesburg's electricity tariff already includes a surcharge component. NT recommends that this be part of property rates.

**FFC Analysis:** The proposed reason for imposing the tax is valid and would constitute a municipal tax as it would bring with it a general benefit, not specific only to the tax-payer. In addition it would be considered a municipal tax given that it is a charge over and above the tariff and is used to cross-subsidise other services. If however, a surcharge is already contained within the City of Johannesburg's tariff for electricity, the FFC concurs that this could constitute double taxation. However, from the information contained in the individual application of the City of Johannesburg no surcharges are currently being levied.

**FFC Recommendations:** The Commission recommends that if there is a current surcharge, this would constitute double tax and therefore we would not support - explore the possibility of increasing the current surcharge.

**Tax Number: 12**

**Province:** Gauteng

**Municipality:** Ekurhuleni Metropolitan Municipality (GT000)

**Tax:** Maintenance Levy and Energy Efficiency Levy

**Intended Purpose:** To fund critical electricity maintenance refurbishment and to fund critical programmes to reach energy efficiency goals

**NT Analysis and Recommendation:** Treasury notes that this charge is divided into two components – the first relates to maintenance costs that should be included in the tariff and the second relates to electricity efficiency measures. Treasury notes that electricity efficiency initiatives require further exploration and that this should be, in the interim, funded through the property tax system.

**FFC Analysis:** In accordance with Section 74(2) (d) of the Municipal Systems Act, costs related to the delivery of a service, including maintenance, should be included in the base tariff charged. Whilst the component related to energy efficiency goals is related to electricity efficiency (that is, the service), it is considered a municipal tax (surcharge) as it brings with it benefits to the larger, general community. In addition, once Chapter 8 and 9 of the MFPFA are implemented, all surcharges will be subject to national norms and standards.

**FFC Recommendations:** It is recommended that the component of the application that aims to fund maintenance not be approved. With respect to the energy efficiency component of the application, the Commission recommends that as this is a surcharge that it be further regulated in accordance with Section 8 of the MFPFA and further agree that the issue of energy efficiency be reviewed and a more coherent framework be developed.

### **Tax Number: 13**

**Province:** Kwazulu-Natal

**Municipality:** iLembe (DC29)

**Tax:** Development Charge

**Intended Purpose:** To encourage property development within the district

**NT Analysis and Recommendation:** The National Treasury deems this to be a municipal tax as it is a charge to the developer of a scheme to recover infrastructure costs. National Treasury recommends that this tax be supported for implementation. The Treasury also proposes a review of development charges in order to improve the regulation and standardisation of these taxes given the random nature of implementation by different municipalities.

**FFC Analysis:** The definition of this as a tax would depend on how the charge was calculated. If it is on a cost basis, as is likely, then it would not be a tax, more so as the benefits are primarily received by the property development (i.e. access to network and bulk infrastructure, either in the form of new or existing capacity).

**FFC Recommendations:** The FFC agrees that a review be undertaken in order to get a better handle on these types of charges and that appropriate policy measures to deal with development charges be established.

From initial analysis, this revenue source appears to have more characteristics of a tariff or charge as opposed to a tax. We therefore do not support the proposed tax until more clarity or information is given.

**Tax Number: 14**

**Province:** Limpopo

**Municipality:** Aganang (LIM352)

**Tax:** Residential Levy

**Intended Purpose:** To assist in community development

**NT Analysis and Recommendation:** The National Treasury supports the authorisation of this tax as it used for general municipal infrastructure and corresponds with the FFC's principles regarding a good municipal tax for example

**FFC Analysis:** There is a general benefit to the community and the funds are transparent in its expenditure.

**FFC Recommendations:** The commission supports the approval of the authorisation of this tax on the condition that more information is required on how this tax is applied on households.

**Tax Number: 15**

**Province:** Limpopo

**Municipality:** Blouberg (LIM351)

**Tax:** Rural Development Fund Levy

**Intended Purpose:** Additional municipal revenues

**NT Analysis and Recommendation:** The National Treasury identified that there is no direct link to infrastructure and general benefits to the tax payer and the use of the revenues generated from these taxes. Therefore it does not support the authorisation of the tax as

funds from the tax are used to enhance general revenues and is recommended to form part of the property rates act

**FFC Analysis:** As this tax is used to support property rates, is used for general revenue and the actual revenue from this tax are minimal, it would seem more appropriate to include this tax under property rates to ease the administrative burden and cost of the tax.

**FFC Recommendations:** FFC supports the recommendation of the National Treasury

**Tax Number: 16**

**Province:** Limpopo

**Municipality:** Thulamela (LIM343)

**Tax:** Development fund levy

**Intended Purpose:** Additional municipal revenues

**NT Analysis and Recommendation:** The National Treasury identified that there is no direct link to the tax payer and the use of the revenues generated from these taxes. Therefore it does not support the authorisation of the tax as funds from the tax are used to enhance general revenues and is recommended to form part of the property rates act

**FFC Analysis:** Since there is an intended purpose to this tax i.e. for community development and extension of services and there is a general benefit to the taxpayer, this would constitute a local tax.

**FFC Recommendations:** The commission recommends that the imposition of this tax be supported for authorisation as long as the municipality adheres to principles of accountability and transparency with the use of these funds i.e. link the funds a specific purpose. This is proposed as opposed to simply bundling this revenue under property rates.

**Tax Number: 17**

**Province:** Mpumalanga

**Municipality:** Msukaligwa (MP302)

**Tax:** Royalties on mineral lease agreement

**Intended Purpose:** To support general municipal revenues and capital funding

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**NT Analysis and Recommendation:** Royalties on minerals are regulated to the Minerals Royalties Act, including taxes that are imposed on mineral royalties. National Treasury therefore deems this not to be an appropriate municipal tax.

**FFC Analysis:** The FFC supports this recommendation as according to the Minerals and Petroleum Resources Royalties Act, all royalties are to be paid to the National Revenue Fund and thus would constitute a national revenue source

**FFC Recommendations:** Therefore the commission does not support the imposition of this tax.

**Tax Number: 18**

**Province:** Northern Cape

**Municipality:** Richtersveld (NC061)

**Tax:** Social Fees

**Intended Purpose:** To support HIV and other social responsibilities

**NT Analysis and Recommendation:** The National Treasury supports the imposition of this tax as not linked to the service against which it is rendered. However, it is recommended that this tax be levied as part of the municipality's property rates.

**FFC Analysis:** Issues and services related to health, social services and welfare are constitutionally the mandate of provincial and national government. Municipalities are not prohibited to spend and support such services as long as it is from their own revenues. In this case it seems that the municipality is taxing residents to fund a function that is not constitutionally theirs. Even if there is an agreement with the municipality and the respective province, there should be a transfer of funds to provide this service.

**FFC Recommendations:** The FFC recommends that this tax not be supported.

**Tax Number: 19**

**Province:** Western Cape

**Municipality:** Breede Valley (WC025)

**Tax:** Development Charge

**Purpose:** To encourage property development

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**NT Analysis and Recommendation:** There is no direct link between the tax payer and the tax, hence the tax is supported by Treasury.

**FFC Analysis:** See Kouga analysis

**FFC Recommendations:** The FFC agrees that a review be undertaken in order to get a better handle on these types of charges and that appropriate policy measures to deal with development charges be established but in the interim this application is supported.

**Tax Number: 20**

**Province:** Western Cape

**Municipality:** Knysna (WC048)

**Tax:** Development Charge

**Intended Purpose:** Only for specific developments, not for general augmentations which are service specific

**NT Analysis and Recommendation:** The charge/fees are used to cover the actual cost associated with rendering the services and therefore falls within the user-benefit principle. National Treasury is supporting this application

**FFC Analysis:** See Kouga analysis

**FFC Recommendations:** The FFC agrees that a review be undertaken in order to get a better handle on these types of charges and that appropriate policy measures to deal with development charges be established but in the interim this application is supported.

**Tax Number: 21**

**Province:** Western Cape

**Municipality:** City of Cape Town (WC000)

**Tax:** Development Charges

**Intended Purpose:** Individual contracts with developers

**NT Analysis and Recommendation:** National Treasury supports this application based on the fact that the developer does not receive a specific benefit.

**FFC Analysis:** See Kouga analysis

**FFC Recommendations:** The FFC agrees that a review be undertaken in order to get a better handle on these types of charges and that appropriate policy measures to deal with development charges be established but in the interim this application is supported.

**Tax Number: 22**

**Province:** Western Cape

**Municipality:** George (WC044)

**Tax:** Development Charges

**Intended Purpose:** To provide infrastructure or services to developers under contract

**NT Analysis and Recommendation:** National Treasury supports this application based on the fact that the developer does not receive a specific benefit.

**FFC Analysis:** See Kouga analysis

**FFC Recommendations:** The FFC agrees that a review be undertaken in order to get a better handle on these types of charges and that appropriate policy measures to deal with development charges be established but in the interim this application is supported.

**Tax Number: 23**

**Province:** Western Cape

**Municipality:** George (WC044)

**Tax:** Capital contribution: Streets and storm water

**Intended Purpose:** To provide additional infrastructure

**NT Analysis and Recommendation:** National Treasury does not support this application. The rationale is that this levy is used to fund general expenditure and as such, the revenue should be collected via property rates taxes.

**FFC Analysis:** According to the applicant, this charge is used to cover costs on private property. Therefore it appears to have characteristics of a tariff although there is no direct benefit to the tax payer.

**FFC Recommendations:** The FFC does not support this tax

**Tax Number: 24**

**Province:** Western Cape

**Municipality:** Overstrand (WC032)

**Tax:** Development Charges

**Intended Purpose:** To recover the cost of upgrading existing infrastructure and/or providing new infrastructure from developers

**NT Analysis and Recommendation:** The National Treasury supports this application. It is noted that the development charge is recovered from the developer of a scheme to recover infrastructure costs. In addition, the developer does not receive a specific benefit, therefore this charge has elements of a tax.

**FFC Analysis:** See Kouga analysis

**FFC Recommendations:** The FFC agrees that a review be undertaken in order to get a better handle on these types of charges and that appropriate policy measures to deal with development charges be established but in the interim this application is supported.

## **5. Concluding Remarks**

- Currently there is no framework, legislated or not, to evaluate the appropriateness of municipal taxes and to inform the authorisation process as part of the MFPFA. This is evident in the narrow basis upon which National Treasury has undertaken its analysis. It is therefore recommended that a comprehensive and transparent framework for evaluating municipal taxes be developed for making these decisions with respect to new and existing taxes with ease and cost of administrating the tax being made explicit.
  - The authorisation/non-authorisation of local taxes for certain municipalities via the MFPFA should not perpetuate disparities within municipalities. In analysing the several applications for existing taxes it becomes apparent that certain taxes are not unique to the demographics, economy or social characteristics of a municipality. The current process led by the National Treasury should take the lead in seeking policy convergence. Development charges, for example, can be imposed by all municipalities in general and not just the municipalities that applied for the tax. Instead
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of asking for individual proposal, it would have been better if taxes are analysed collectively and assigned to groups of municipalities. This will avoid proliferation of small taxes which might increase administrative and compliance costs.

- It appears from a general assessment of the type of applications that National Treasury is approving or not approving, that they have looked specifically at what the revenue earned will be used for. A key issue that needs to be raised is the tendency to enforce earmarking of locally collected resources by National Treasury. The legislation does not include a requirement that for a tax to be approved they must have been earmarked for a particular function – in this particular case, the National Treasury determines the appropriateness on this basis. This goes against local government fiscal autonomy.
- The majority of applications whether approved or not are being recommended for consolidation within property rates. The danger with this type of 'bundling' of taxes is that it may reduce transparency and accountability at the margin as property rates will be reduced to a mere bundling of taxes. Retaining these applications as part of the MFPPA will allow for them to be transparent (see Figure 1 below).
- With that said, a premise should not be created whereby a municipality will have a separate tax or charge for each activity carried out by the municipality. The burden of proof should be on the municipality to motivate why an additional tax instrument is required, taking into consideration the principle of ease of administration.
- Included in the list provided by the National Treasury are several NEW applications for municipal taxes. According to the legislation, this process should follow the provisions of section 5 of the MFPPA and thus be independent of this process. Clarity is needed on this issue.

Figure 1: Applications recommended for inclusion under property rates

