



national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

All Accounting Officers

All Accounting Authorities

All Chief Financial Officers

All Heads of Provincial Treasuries

All Provincial Accountants-General

OFFICE OF THE ACCOUNTANT-GENERAL PRACTICE NOTE 4 OF 2006/07

ILLEGAL USE OF RESOURCES BY DEPARTMENTS AND PUBLIC ENTITIES

1. Purpose

The purpose of this practice note is to provide a policy framework for the transfer of funds between a public entity and its parent department.

2. Background

2.1 Departments receive funding through the budget process whereby funds are appropriated by the relevant legislature. The relevant legislature approves such appropriations per vote and per main division/programme within the vote in order for these departments to deliver on their legislative mandates within such appropriations.

2.2 The Adjustment Budget process may be utilised where departments experience the incurrence of unforeseen and unavoidable expenditure during a specific financial year for which additional funds may be required to meet such expenditure.

2.3 Public entities either receive their funds:-

- Through the budgetary process, in which case funds are made available by means of transfers from the votes of their parent departments; or
- By way of a tax, levy or money imposed in terms of legislation; or
- Through the sale of goods or rendering of services.

2.4 These revenue streams are meant for public entities to effectively deliver on their legislative mandates and to exercise functions related to these mandates.

3. Public entities effecting payments on behalf of departments

- 3.1 Whilst it is incumbent on departments and public entities to spend in accordance with their legal mandate and approved budgets, it has come to light that certain departments are making use of public entities reporting to their executive authority to fund departmental functions (over and above those provided for in budgetary appropriations) and to employ personnel on their behalf, the personnel costs related thereto is met by the public entity.
- 3.2 By performing departmental functions and employing personnel on their behalf, these public entities are in essence funding departmental programmes for which money was not appropriated and which might have resulted in unauthorised expenditure for the department, which is not permitted in terms of the Public Finance Management Act, 1 of 1999 (PFMA).
- 3.3 Further, by making use of their funds to perform departmental functions, these public entities are also not spending in accordance with their legal mandate and budgets as approved by their respective executive authorities.
- 3.4 Such expenditure amounts to irregular expenditure for the public entity as defined in section 1 of the PFMA. The PFMA defines irregular expenditure as being expenditure that is incurred in contravention of or that is not in accordance with a requirement of any applicable legislation.

4. Gifts, donations and sponsorships

- 4.1 In terms of Treasury Regulation (TR) 21.2.1, only the Accounting Officers may approve the acceptance of gifts, donations and sponsorships to the state, whether such donations are offered in cash or in kind.
- 4.2 The intention of the aforementioned Treasury Regulation was to make provision for external bodies to grant gifts, donations and sponsorships to departments not accommodated within the budget process and to allow these departments to adhere to requests of the donors in furthering interests of the State. In all instances, gifts, donations and sponsorships received in cash is required to be deposited either into the Reconstruction and Development (RDP) Fund or the relevant Revenue Fund. Money surrendered to the relevant Revenue Fund will be dealt in the normal budget process whereas RDP money will be treated in terms of the RDP Act and established prescripts.
- 4.3 It has, however come to light that public entities are making donations or granting sponsorships to their parent departments with a view to augmenting the budgets of these departments. In this regard, it must be emphasized that although not legislated or regulated against, it was never intended that public entities make donations or grant sponsorships to their parent departments, whether in cash or in kind, to augment the budget of the respective department.

5. Illegal transfer payments by departments

- 5.1 In terms of Treasury Regulation 15.10.3.1, departments may not open bank accounts without written approval of the relevant treasury. The Regulation further states that only bank accounts approved after 1 April 2001 shall be considered as being valid.
- 5.2 Despite the aforementioned Treasury Regulation, it has come to light that departments are still operating bank accounts that have not been approved by the relevant treasury.

It would appear that some departments are transferring funds to these unauthorised bank accounts to circumvent the PFMA and Treasury Regulation requirements that unspent funds or money received be deposited into the relevant Revenue Fund.

- 5.3 In the past few years a trend of excessive spending in the last month of the financial year has been noticeable. This expenditure often relates to transfer payments that are intended to create an impression that actual expenditure has been incurred when in fact no goods and services are received in return. Such payments are sometimes for goods and services receivable in the future which conceals under-spending by a department.
- 5.4 This arrangement supports TR 15.10.1.2(b) & (c) which discourages the use of funds earlier than necessary and the payment for goods/services in advance.
- 5.5 These practices do not only constitute bad financial management but also contravene an essential principle in the PFMA that is of transparency.

6. PFMA and Treasury Regulations

- 6.1 Whilst the relevant legislation does not cover every eventuality, departments, public entities, constitutional institutions and other government institutions should not devise strategies or schemes to circumvent the norms and standards set out in the PFMA and the Treasury Regulations. Such practices are in conflict with the ethos and spirit of the PFMA and are therefore illegal.

7. Policy

- 7.1 This practice note therefore serves to inform stakeholders that:
- Departments may not request public entities to undertake departmental functions on their behalf nor shall they request public entities to employ personnel on their behalf, the expenses for which are to be met by the public entity;
 - Public entities may not grant donations and sponsorships to departments, whether in cash or in kind, to augment the budget of the department;
 - Departments may not transfer funds to a bank account that has not been approved by the relevant treasury and only bank accounts approved after 1 April 2001 shall be regarded as valid, as per Treasury Regulation 15.10.3.1; and
 - Departments may not transfer funds to another department, public entity, constitutional institution and any other government institution other than as prescribed by Parliament through the Appropriation Act or through the virement process.
 - Any irregular expenditure must be dealt with in accordance with the prescripts issued by the National and provincial treasuries.

8. Auditor-General

- 8.1 This practice note will be brought to the attention of the Auditor-General for inclusion in their audit scope.
- 8.2 The National Treasury may request the Auditor-General to conduct special investigations on any matter dealt with in this practice note.

9. Effective date

- 9.1 This practice note applies to all National and Provincial Departments and Public Entities (including Constitutional Institutions) and takes effect immediately.

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Accountant-General: National Treasury

Date: