



## **DEBT POLICY**

### **POLICY INFORMATION AND LOG**

<b>File Name</b>	<b>DEBT Policies</b>
<b>Original Author</b>	<b>Department of Culture, Sport and Recreation</b>
<b>Review Date</b>	<b>2019</b>

## **1. INTRODUCTION**

Section 45(b) and (c) of the Public Finance Management Act places the onus on each official within the Department to take responsibility for the effective, efficient, economical and transparent use of financial and other resources within that official's area of responsibility, any unauthorised, irregular, fruitless and waste expenditure and any under-collection of revenue due.

## **2. DEFINITION**

For the purposes of this policy the following definition is applicable:

**"Debt"** –means an amount owing to the Department.

## **3. OBJECTIVE**

The objective of this document is to provide departmental officials with a uniform policy on the management and control of debts owed to the Department of Culture, Sport and Recreation.

## **4. SCOPE OF APPLICATION**

From a responsibility perspective, this policy is relevant to all departmental officials. It is, however, specifically applicable to all officials who have a formal, administrative duty to manage and control departmental debts, including the recovery and write off of debts, owed to the Department of Culture, Sport and Recreation.

## **5. POLICY**

### **5.1. DEBT TYPES**

Generally, the following types of debt may occur:

- a) A loss or damage suffered by the Department through the act of an official (whether that person is still in the employ of the Department or not), or any other person;
- b) An erroneous or irregular payment made to an employee in a form of a salary, wage or allowance;
- c) An amount owed as a result of an official or the department breaching a binding contract;
- d) Erroneous payment or overpayment made to a creditor, institution or private body;
- e) An advance that has been outstanding for more than thirty days and also an advance that is not used for the purpose it was intended; and
- f) Fruitless & wasteful expenditure caused by "no show" charges by hotel or service provider.

## **5.2. CLASSIFICATION**

In order to comply with Treasury Regulation 11.2.1(a), "The accounting officer of an institution must take effective and appropriate steps to timeously collect all money due to the institution including, as necessary-maintenance of proper and records for all debtors, including amounts received in part payment"; a debt must recorded in the general ledger of the Department as soon as it is discovered.

### **5.2.1 SIMPLE DEBT (NON-INTEREST BEARING)**

A simple debt is raised whenever a debt is non –interest bearing (refer to Government Notice 4653 of 2000). Simple debts are normally settled within a relatively short period (usually within one year or as determined by the Accounting Officer). Simple debts are usually restricted to the recovery of money from departmental officials, and occur in cases such as:

- a) Salary and related overpayments; and
- b) Debts which originate due to the actions of officials including, but not limited to, private telephone calls, leave without pay, arrear contributions, damage to official vehicles, etc.

Debtor statements do not have to be produced and debts are simply raised in the relevant disallowance account of the Department and recovered from the debtors concerned, provided that the debtors have been notified in writing of the departmental recovery actions.

### **5.2.2 COMPLEX DEBT (INTEREST BEARING)**

A complex debt is raised whenever a debt is interest bearing (refer to Government Notice 4653 of 2000). A complex debt account is structured on BAS with restricted parameters to control access thereto. Complex debts usually occur in cases such as:

- a) Breach of contract or loan agreements; and
- b) Debts, which originate due to malicious ("corrupt & evil intentions") actions of official, private bodies etc.

In the case of complex debts, debtor statements must be produced and forwarded to the relevant debtors. The debtor must be given 30 days to settle the amount owing and interest, at the rate determined by the Minister of Finance, must be levied on the outstanding amount should the debtor fail to comply. In the case of contractual agreement, the interest rate stipulated in the contract must be levied.

### **5.3. INTEREST PAYABLE ON DEBTS TO THE DEPARTMENT**

In terms of Section 11.5.1 of the Treasury Regulations (promulgated in terms of Section 80 of the PFMA), interest must be charged on all debts to the Department at the interest rate published in the Government Gazette.

#### **5.3.1. DETERMINATION OF INTEREST RATES FOR DEBTS OWING TO THE DEPARTMENT**

Section 80 of the PFMA departments as follows:

- 1) "The Minister, by notice in the National Government Gazette, must determine –
  - a) A uniform interest rate applicable to loans granted out of a revenue fund; and
  - b) A uniform interest rate applicable to all other debts, which must be paid into a revenue fund.
  
- 2) An interest rate determined in terms of subsection (1) (b) may differentiate between different categories of debt."

The Minister of Finance has fixed the uniform interest rate applicable to the following categories of debt, which are payable into a revenue fund, at nil percent (0%) per annum, with effect from June 2000:

- a) Remuneration granted in error, where the person is still in the employ of the Department; and
- b) Losses or damages caused unintentionally and without malice by persons still in the employ of the Department.

All other categories of debt bear interest at the prevailing rate set by the Minister of Finance after publication thereof in the Government Gazette, unless otherwise stipulated in a contractual agreement.

Note: see Government Notice No. 4653 of 2000 for the presently prevailing interest rates determined by the Minister of Finance.

#### **5.3.2 INTEREST CALCULATIONS**

Interest calculated on the decreasing balance of the debt and may not be capitalised, nor may it exceed the original capital amount (refer to the "in duplum" principle).

Note: if a debtor does not respond to a written notice to settle the debt within 30 days of the notice (the following day, i.e. 31 days after the debt was raised).

### **5.4 RECOVERY OF DEBT, LOSSES OR DAMAGES**

In terms of Section 38(1) (c) (l) of the PFMA, the accounting officer for a department must take effective and appropriate steps to collect all money due and owing to the department. The department must effectively manage and control all debts, specifically those relating to its personnel and the following recovery procedures must be followed in the management of debts:

Department must effectively manage and control all debts, specifically those relating to its personnel, and the following recovery procedures must be followed in the management of debts:

- a) Debts owing to the Department may, at the discretion of the Accounting Officer, be recovered by means of instalments, except in cases where the conditions of payment are determined by law, agreement etc., provided that due cognisance is taken of the debtor's standing and financial position in determining the period of payment. The debt must be recovered as soon as possible, at a maximum of 25% of net monthly salary, where net salary is defined as gross salary less statutory deductions.
- b) When the Department has suffered a loss or damage through an act of an official, whether or not the person is still in the employ of the Department, the Accounting Officer must recover the value of the loss or damage from the person responsible.
- c) The overpayment of salaries, wages or allowances to employees may be recovered in monthly instalments (see 5.4 (a)) as approved by the Accounting Officer, provided that the debtor has been notified, in writing, of the departmental recovery actions.
- d) Any outstanding subsistence and transport advance, where the relevant claim has not been rendered of claim against the advance is less than the advance or all or part of the substantiating documents are deemed unacceptable, then the relevant advance amount should be recovered from an employee's salary, unless the employee can provide evidence to prove the contrary.
- e) Any overpayments to creditors, institution or private bodies and persons must be disallowed and recovered as soon as possible. Where regular payments are made to suppliers, the amount shall be recovered from the first subsequent payment.
- f) Any amount that is not a legitimate charge against a vote account must immediately be disallowed to disallowance or debt account, until it is recovered or until an adjustment is authorised.
- g) Estate notices in the Government Gazette must be checked regularly to enable the Department to institute claims against insolvent and deceased estate in respect of persons owing money to the Department.
- h) When an official leaves the public service and debt exists or arises, the debt must, at the discretion of the Accounting Officer, be recovered from any remuneration

and/or benefits due to the person i.e. pro- rata service bonus, leave gratuity, severance pay, pension benefit etc.

- i) The Accounting Officer or the official to whom the duty has been delegated, must review the debtor's repayment arrangements annually with a view to increasing the instalments.
- j) Should a debtor default on payments agreed to the outstanding balance of the debt (where possible) must be recovered in one lump sum.
- k) Where a debtor is not in the employ of the Department, the Department must ensure that the debtor is not in the employ of the Department, the Department must ensure that the debtor receives a demand for payment of the debt as soon as possible, in order to prevent prescription of the debt.

#### **5.5. PRESCRIPTION ACT, 1969 (ACT NO. 68 OF 1969)**

A debt prescribes when payment thereof has not been demanded within the periods of as outlined in the prescription Act, 1969 (Act No. 68 of 1969). The Department cannot legally enforce payment of a debt once the debt has prescribed, but the period of prescription is interrupted if-

- a) Payment of the debt is demanded by registered letter of demand, for which proof of receipt has been obtained;
- b) Payment of the debt is demanded by the issue and service of summons;
- c) The debtor acknowledges the liability; and/ or
- d) The debtor commences payment of the debt.

In terms of Section 11 of the Prescription Act, 1969 (Act 68 of 1969), the periods of prescription of debts are as follows:

- a) Thirty years in respect of-
  - I. Any debt secured by a mortgage bond;
  - II. Any judgement debt;
  - III. Any debt in respect of any taxation imposed or levied by or under any law; and
  - IV. Any debt owed to the Department in respect of any share of the profits, royalties or any similar consideration payable in respect of the right to mine minerals or other substances.
- b) fifteen years in respect of any debt owed to the Department and arising out of an advance or loan of money or a sale or lease of land by the Department to the debtor,

unless a longer period applies in respect of the debt in question in terms of paragraph (a) above.

c) Six years in respect of a debt arising from a bill of exchange or other negotiable instrument or from a notarial contract, unless a longer period applies in respect of the debt in question in terms of paragraph (a) or (b) above.

d) Three years in respect of all other debts, save where an Act of Parliament provides otherwise.

## **5.6. THE STATE ATTORNEY**

In terms of paragraph 11.2.1(b) of the Treasury Regulations, in cases where it is necessary and economical to enforce the recovery of a debt by means of legal steps, and after consultation with the Sub-Directorate: Legal Services, the services of the State Attorney or any other attorney may be utilised. A handbook containing directives regarding the performance of work by the State Attorney, which must be adhered to, is available from the Office of the State Attorney. Note: The physical address of a debtor must be available when matters involving the recovery of debt are handed to the State Attorney for collection.

## **5.7. TRACING OF DEBTORS**

In the event that the debtor's address is not known, the Department must take all reasonable steps to trace the debtor. A reasonable effort to trace the debtor will include, but is not limited to, the following:

- a) Utilising all the information available in departmental files (such as personal information, housing, leave, salary, etc.) to locate the debtor;
- b) Utilising the telephone directory for the last town or city in which the debtor lived to locate the debtor and /or his /her relatives; and
- c) Contacting the following institutions or persons in order to locate the debtor:

- The Department of Home Affairs;
- The South African Revenue Services;
- The Government Employees Pension Fund Office: Pension Administration; and
- Officials and/ or colleagues at the debtor's last of employment.

## **5.8. WRITING OFF DEBTS OWING TO THE DEPARTMENT**

### **5.8.1 LEGISLATION**

In terms of Section 11.4 of the Treasury Regulations (Section 76(1) (e) and 76(4) (a) of the PFMA), any debt written off by the Accounting Officer may-

- a) Only be written off after all reasonable steps have been taken to recover the debt (see paragraph 5.7 above), and the Accounting Officer has convinced him/herself that-
  - I. Recovery of the debt would be uneconomical;
  - II. Recovery would cause undue hardship to the debtor or his /her dependants; and/or
  - III. It would be to the advantage to the Department to effect a settlement of the claim or to waive the claim.
- b) Be disclosed in the Annual Financial Statements, indicating the policy in terms of which the debt was written off.

#### **5.8.2 CONDITIONS FOR WRITE-OFF**

In addition to the above-mentioned criteria, the Department will consider debts for write-off in the following circumstances:

- a) Debts that have prescribed in terms of paragraph 5.5 above;
- b) Debts not recovered from deceased employees, where their estate has been finalised, and recovery of the debts from the heirs is not possible or will result in hardship;
- c) Debts owed by debtors that cannot be traced, notwithstanding compliance with the provisions in paragraph 5.7 above;
- d) Debts where no source documentation is available to substantiate or provide claims, provided that the Accounting Officer must have satisfied him/herself that all reasonable steps have been taken to locate the source documents;
- e) Debts where the debtors have emigrated without paying the debts, leaving no assets available for execution, and debtors 'whereabouts are unknown;
- f) Debts owed by employees who have left the public service, and are now destitute, provided that the Accounting Officer must have satisfied him/herself that the debtors are in fact destitute;



- g) Debts owed by employees amounting to or less than R5 000.00 where the debtors are no longer employed by the Department, provided that the provisions in paragraph 5.8.1 (a) have been complied with; and
- h) Debts owed by persons or institutions where the probability of recovery is remote and it is not in the Department's interest to pursue such debts, which includes, but is not limited to, circumstances where:
  - I. The deceased was the breadwinner of a family who continued to receive payment of the deceased's salary after his/ her death, and who have no means to repay the dept.;
  - II. Payments were received by persons other than the deceased employee's immediate family, and the identification of the debtor is not possible; and
  - III. No Executor, administrator, Liquidator or Curator has been appointed in terms of Section 4(1) of the Regulations published under Government Notice No. R200 dated 6 February 1987.

**Note:** unless affordable arrangements can be made with tracing agents, the costs associated with the tracing of a debtor and subsequent legal costs occasioned thereby, could exceed the amount claimed. It would therefore not be in the Department's interest to attempt recovery of debts where the prospects of recovery are remote, and where the possibility exists that the costs associated with recovery may exceed the debt.

### **5.8.3. DELEGATED AUTHORITY TO WRITE OFF DEBT**

The Accounting Officer may delegate authority, in writing, to write off debts.

## **6. MANAGEMENT REPORTING**

Management information concerning the status of all debtors of the Department shall be provided to the Accounting Officer on a regular basis. This should preferably include a debtors' listing and debtors' age analysis.

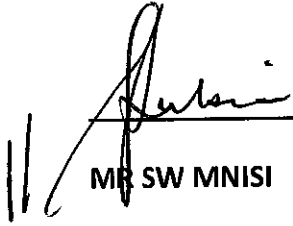
## **7. IMPLEMENTATION**

- a) This policy is effective from 01 April 2009
- b) The responsibility for implementation of this policy rests with the Management Accountant, within the Office of the Chief Financial Officer.

## 8.POLICY AMENDMENT

No amendment(s) may be made to any section of this policy without such amendment(s) duly approved and signed by the responsible authority or delegated official as per the HR's Delegation of Authority.

## 9.POLICY APPROVAL

A handwritten signature in black ink, appearing to read 'Mnisi', is written over a horizontal line. To the left of the signature, there are two vertical lines, possibly indicating a stamp or a specific section of the document.

MR SW MNISI

HEAD: CULTURE, SPORT AND RECREATION

DATE: 10/15/2016