

Parliamentary Submission:

Gold and Foreign Exchange Contingency Reserve Account Defrayal Amendment Bill

Introduction

1. I am an advocate of the High Court of South Africa and an academic in the Department of Commercial Law at the University of Cape Town. My areas of specialisation are tax law and public finance.
2. The following submissions are made, in my personal capacity, in respect of the Gold and Foreign Exchange Contingency Reserve Account Defrayal Amendment Bill (the 'Bill') announced by the Minister of Finance in February 2024.
3. I further request that the Standing Committee on Appropriations afford me the opportunity to make brief supplementary oral submissions.

Notional Account

4. I submit that the Bill misconstrues the status and operation of the Gold and Foreign Exchange Contingency Reserve Account (the 'Account').
5. The Account is established in terms of section 28 of the South African Reserve Bank Act¹ (the 'Act') and is in essence a notional account held by the Reserve Bank for the benefit of the national government.
6. In terms of section 28(1) of the Act, by mere operation of law, any gains made by the following accounts are credited to the Account, namely: 'Gold Price Adjustment Account, the Foreign Exchange Adjustment Account and the Forward Exchange Contracts Adjustment Account'.
7. In terms of section 28(2)(b) of the Act any profits in the Account which are carried forward 'at such times as the Treasury and the Bank may deem desirable, be credited to the State Revenue Fund'.
8. Here I note that the State Revenue Fund is the equivalent of the National Revenue Fund prior to the current constitutional dispensation. Further, it section 28(2) already creates a mechanism for crediting the National Revenue Fund without the need for additional legislation. This provision already empowers National Treasury and the Reserve Bank to make this decision.

¹ Act 90 of 1989.

The Bill erroneously envisages permitting a direct charge

9. I submit that the Bill erroneously envisages granting an additional direct charge in favour of the Reserve Bank when the money in question can and on the apparent information provided has *already* been credited to the National Revenue Fund.
10. If the Reserve Bank is concerned that in the future the notional Account will suffer a loss, then it must consult section 28(3)(a) of the Act.
11. In terms of section 28(3)(a) of the Act '[a]ny debit balance on the Gold and Foreign Exchange Contingency Reserve Account shall be a loss for the Government and shall be a charge against the State Revenue Fund'.
12. Therefore, it is unnecessary and counter productive for Parliament to consider an additional direct charge being enacted.

Submission recommendation

13. I submit that the Bill misconstrues the status and operation of the Account.
14. Further, I submit that:
 - a. it is neither desirable for a further direct charge to be enacted for the stated purpose of further public spending; nor
 - b. is unnecessary to give effect to the use of R100 billion which is credited to the National Revenue Fund by agreement with the Reserve Bank.
15. If there is any uncertainty regarding the wording in section 28 of the Act, then this is the provision that should be amended by Parliament.
16. Finally, I submit that the very purpose of section 28(2)(a) has been misunderstood in the process of drafting this Bill. Where profit arises in the notional Account it 'shall accrue to the Government as a profit and shall be for the benefit of the State Revenue Fund'.

Yours sincerely,

Benjamin Cronin