

Do Municipal Tariffs Have Restrospective Effect?

By **Maike Gohl** (Partner),
and **Nashina Harbhajan** (Paralegal)

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It has come to the writer's attention that in a number of consumers municipal invoices, various municipalities have rebilled accounts, due to some or other changes made in respect of their tariffs, which has prompted them to amend charges going backward. As such, this article seeks to examine the legality of whether or not a municipality can apply a change made to its tariff policy in one tariff year, to previous years as well.

In this regard, it should be examined in terms of what legislation a municipality is authorised to issue tariffs. These powers are given to the municipal council of a municipality, who are authorised to draft a budget, as well as tariffs, on a yearly basis, in terms of the Municipal Finance Management Act. Further thereto, the municipal council is also authorised to issue yearly tariffs in terms of section 74, 75 and 75A of the Municipal Systems Act. In terms of these sections, it becomes clear, that the tariffs must be published in advance for public comment and are then finalised and brought into force by the municipal council authorising and publishing them. In this regard, it is important to note that tariff years for most municipalities in South Africa are from 30 June of one year to 01 July in the next year.

A municipality's tariff policy is a crucial document that outlines how fees for municipal services are levied. It is compiled, adopted, and implemented in accordance with Section 74 of the Municipal Systems Act. The policy covers various aspects, including fees for services provided directly by the municipality or through service delivery agreements. Service tariffs imposed by the local municipality are considered user charges, not taxes.

Therefore, the ability of consumers or users to pay is not the primary criterion (except for indigency relief measures). The municipality aims for uniform and fair application of tariffs across its entire region. Tariffs for services (such as refuse removal) should ideally recover the expenses associated with providing each specific service. The amount paid by a consumer or user should be directly related to the service received and its quantity. The municipality strives to generate an operating surplus (typically 10% or as determined by the council) from service tariffs. These surpluses contribute to property rates relief and future capital expansion.

The municipality develops, approves, and annually reviews an indigency support program. This program clarifies the cost recovery policy for tariffs levied on registered indigents. It also outlines the implications of this policy for other users and consumers within the municipal region. The municipality may differentiate between various categories of users and consumers when setting tariffs. Such differentiation must always be reasonable and transparent, as per constitutional and legislative principles related to local government.

In summary, municipalities carefully design their tariff policies to balance cost recovery, fairness, and economic development.

As such, the question now is, whether tariffs are issued for the year of say 2024/2025, whether the tariffs, definitions or exceptions set out therein could be applied to another tariff year of say 2023/2024.

In South Africa, municipal tariffs generally **do not have retrospective effect**. This means that changes in tariffs typically apply from a specific date forward, rather than being applied retroactively to a previous period. This is because the municipal council specifically designates tariffs for a specific year in question and new tariffs and the amounts or definitions set out therein, cannot find application in another tariff year, because that tariff year would have had its own tariffs to refer to for that period.

It is also important to note that section 160 of the Constitution of the Republic of South Africa 1996 specifies that a municipality may not delegate the power to impose taxes, tariffs, and other charges. This means that only a municipality may bill you for charges, based on its published tariffs and no subsidiaries of the said municipality may bill a consumer for same or based on their own internal tariffs, as these do not form part of the published tariffs, which are the only ones lawfully allowed to be on-billed to a consumer.

Moreover, for interests sake, kindly see below a breakdown of how a lot of the tariffs are determined by various stakeholders at municipalities:

- Electricity tariff increases have historically exceeded inflation in South Africa. These increases impact municipal finances, as municipalities actively trade in electricity. Benchmarking municipal tariffs to Eskom tariffs has been a challenge because Eskom's tariffs are based on an embedded cost-to-supply approach, which aims to recover approved revenues. These rates do not necessarily align with industry/municipality-specific rates.
- The Department of Water and Sanitation (DWS) must table proposed tariff increases by all water boards with National Parliament on or before 15th March 2024. These proposed tariffs will be implemented from the 1st July 2024.



Maike Gohl
(Partner)

Specific cases may vary, and it's essential to consult official documents and legal guidelines for precise information regarding municipal tariffs in South Africa. If you have any specific questions or need further details, consider reaching out to local authorities or legal experts.