

REPUBLIC OF SOUTH AFRICA

TAXATION LAWS SECOND AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75);
explanatory summary of Bill published in Government Gazette No. 34664 of 14 October 2011)
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

[B 20—2011]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To—

- **amend the Income Tax Act, 1962, so as to amend certain provisions;**
- **amend the Customs and Excise Act, 1964, so as to amend certain provisions; to make additional provision for disclosure of information; to broaden the scope of a provision; and to make provision for continuations; and to provide for matters connected therewith.**

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 11D of Act 58 of 1962

- 1.** Section 11D of the Income Tax Act, 1962, is hereby amended by the substitution for subsections (11) to (18) of the following subsections: 5
- “(11) *(a)* A committee must be appointed for the purposes of approving research and development under subsection (9) consisting of—
- (i) three persons employed by the Department of Science and Technology, appointed by the Minister of Science and Technology;
 - (ii) one person employed by the National Treasury, appointed by the Minister of Finance; and 10
 - (iii) three persons from the South African Revenue Service, appointed by the Minister of Finance.
- (b)* The Minister of Science and Technology or the Minister of Finance may appoint alternative persons to the committee if a person appointed in terms of paragraph *(a)* is not available to perform any function as a member of the committee. 15
- (12) *(a)* The committee appointed in terms of subsection (11) must perform its functions impartially and without fear, favour or prejudice.
- (b)* The committee may— 20
- (i) appoint its own chairperson and determine the procedures for its meetings;
 - (ii) evaluate any application and make recommendations to the Minister of Science and Technology for purposes of the approval of research and development in terms of subsection (9); 25

- (iii) investigate or cause to be investigated research and development approved under subsection (9);
- (iv) monitor all research and development approved under subsection (9)—
 - (aa) to determine whether the objectives of this section are being achieved; and
 - (bb) to advise the Minister of Finance and the Minister of Science and Technology on any future proposed amendment or adjustment of this section;
- (v) for a specific purpose and on the conditions and for the period as it may determine, obtain the assistance of any person to advise the committee relating to any function assigned to that committee in terms of this section; and
- (vi) require any taxpayer applying for approval of research and development in terms of subsection (9), to furnish any information or documents necessary for the Minister of Science and Technology and the committee to perform their functions in terms of this section.

(13) A taxpayer carrying on research and development approved under subsection (9) must report to the committee annually with respect to the progress of that research and development within 12 months after the close of each year of assessment, starting with the year following the year in which approval is granted under subsection (9) in the form and in the manner that the Minister of Science and Technology may prescribe.

(14) Notwithstanding section 4, the Commissioner may disclose to the Minister of Science and Technology information in relation to research and development as may be required by that Minister for the purposes of submitting a report to Parliament in terms of subsection (17).

(15) The members of the committee appointed in terms of subsection (11) and any person whose assistance has been obtained by that committee may not—

- (a) act in any way that is inconsistent with the provisions of subsection (12)(a) or expose themselves to any situation involving the risk of a conflict between their responsibilities and private interests; or
- (b) use their position or any information entrusted to them to enrich themselves or improperly benefit any other person.

(16) The Minister of Science and Technology must—

- (a) provide written reasons for any decision to grant or deny any application for approval of any research and development under subsection (9), or for any withdrawal of approval contemplated in subsection (10);
- (b) inform the Commissioner of the approval of any research and development under subsection (9), setting out such particulars as are required by the Commissioner to determine the amount of the additional deduction in terms of subsection (3) or (4); and
- (c) inform the Commissioner of any withdrawal of approval in terms of subsection (10) and of the date on which that withdrawal takes effect.

(17) The Minister of Science and Technology must annually submit a report to Parliament advising Parliament of the direct benefits of the research and development in terms of economic growth, employment and other broader government objectives and the aggregate expenditure in respect of such activities without disclosing the identity of any person.

(18) Every employee of the Department of Science and Technology, every member of the committee appointed in terms of subsection (11) and any person whose assistance has been obtained by that committee—

- (a) must preserve and aid in preserving secrecy with regard to all matters that may come to their knowledge in the performance of their functions in terms of this section; and
- (b) and may not communicate any such matter to any person whatsoever other than to the taxpayer concerned or its legal representative, nor allow any such person to have access to any records in the possession or custody of the Department of Science and Technology or committee, except in terms of the law or an order of court.”.

(2) Subsection (1) comes into operation on 1 April 2012 unless a later date is determined by the Minister by notice in the *Gazette* and applies in respect of research and development on or after 1 April 2012, or such later date determined by the Minister by notice in the *Gazette*, but on or before 1 April 2022.

Amendment of section 12G of Act 58 of 1962, as inserted by section 12 of Act 19 of 2001 and amended by section 29 of Act 60 of 2001, section 22 of Act 74 of 2002 and section 27 of Act 35 of 2007

2. (1) Section 12G of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution in subsection (13) for the proviso of the following proviso: 5
 “Provided that the Minister of Trade and Industry or the Minister of Finance, as the case may be, may appoint alternative persons so employed if any person appointed in terms of paragraph (a) [of] or (b) is not available to perform any function as a member of the committee”;
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- (b) by the substitution in subsection (16)(e) for subparagraph (vi) of the following subparagraph:
 “(vi) any [decisions] decision not to withdraw the approval of a project, despite any material change in facts, as contemplated in paragraph (i) of the proviso to subsection (9).” 15
- (2) Subsection (1) comes into operation on 1 January 2012.

**Amendment of section 4 of Act 91 of 1964, as amended by section 2 of Act 105 of 1969, section 2 of Act 110 of 1979, sections 3 and 15 of Act 98 of 1980, section 2 of Act 84 of 1987, section 4 of Act 59 of 1990, section 1 of Act 105 of 1992, section 1 of Act 98 of 1993, section 2 of Act 45 of 1995, section 34 of Act 34 of 1997, section 58 20
 of Act 30 of 1998, section 47 of Act 53 of 1999, section 115 of Act 60 of 2001, section 43 of Act 30 of 2002, section 39 of Act 12 of 2003, section 133 of Act 45 of 2003, section 10 of Act 10 of 2006, section 9 of Act 21 of 2006, section 5 of Act 36 of 2007, section 25 of Act 61 of 2008 and section 24 of Act 8 of 2010**

3. Section 4 of the Customs and Excise Act, 1964, is hereby amended— 25
- (a) by the deletion in the first proviso to subsection (3) of the word “or” after subparagraph (v);
- (b) by the substitution in the proviso to subsection (3) for the colon at the end of subparagraph (vi) of the expression “; and”;
- (c) by the addition to the proviso to subsection (3) after subparagraph (vi) of the following subparagraphs: 30
 “(vii) disclosing to the Director of the Financial Intelligence Centre, the information required for the performance of the functions of the Financial Intelligence Centre in terms of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001); or 35
 (viii) disclosing to the head of any organ of state administering legislation regulating the movement of goods or persons into or out of the Republic, the information necessary for enforcing that legislation.”; and
- (d) by the substitution for subsection (3A) of the following subsection: 40
 “(3A) The Statistician-General or the Director-General of the Department of Trade and Industry or the National Treasury as defined in the Exchange Control Regulations, 1961, or the Governor of the South African Reserve Bank or the National Commissioner of the South African Police Service or the National Director of Public Prosecutions or the Director-General of the National Treasury or the Chief Commissioner of the International Trade Administration Commission or the Director of the Financial Intelligence Centre or the head of any organ of state or any person acting under the direction and control of such Statistician-General or Director-General of the Department of Trade and Industry or Governor of the South African Reserve Bank or National Commissioner of the South African Police Service or National Director of Public Prosecutions or the Director-General of the National Treasury or the Chief Commissioner of the International Trade Administration Commission or the Director of the Financial Intelligence Centre or the head of any organ of state shall not disclose any information supplied under the proviso to subsection (3) to any person or permit any person to have access thereto, except in the exercise of his or her powers or the carrying out of his or her duties under any Act from which such powers or duties are derived.” 45
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Amendment of section 119A of Act 91 of 1964, as inserted by section 32 of Act 18 of 2009

4. Section 119A of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“Notwithstanding anything to the contrary contained in this Act, for the purposes of modernising customs or excise administration where—”.

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Continuation of amendments made under section 119A of Act 91 of 1964

5. Any rule made under section 119A of the Customs and Excise Act, 1964, or any amendment or withdrawal of or insertion in such rule during the period 1 June 2010 up to and including 31 July 2011 shall not lapse by virtue of section 119A(3) of that Act.

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Short title and commencement

6. (1) This Act is called the Taxation Laws Second Amendment Act, 2011.

(2) Save in so far as is otherwise provided for in this Act, or the context otherwise indicates, the amendments effected by this Act come into operation on the date of promulgation of this Act.

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**MEMORANDUM ON THE OBJECTS OF THE TAXATION LAWS
SECOND AMENDMENT BILL, 2011**

1. PURPOSE OF BILL

The Bill amends administrative provisions of the Income Tax Act, 1962 (Act No. 58 of 1962), and the Customs and Excise Act, 1964 (Act No. 91 of 1964).

2. OBJECTS OF BILL

2.1: Income Tax Act, 1962: Amendment of section 11D

The Taxation Laws Amendment Bill, 2011, proposes certain amendments to section 11D, which deals with deductions in respect of scientific or technological research and development. The amendment to section 11D proposed by this Bill (i.e. the Taxation Laws Second Amendment Bill) relates to the procedures associated with the approval of activities as qualifying research and development under section 11D.

All applications for approval under section 11D must be made to the Department of Science and Technology in a prescribed form and containing information prescribed by the Department of Science and Technology. Provision is made for an approvals committee to evaluate all applications and make determinations approving such applications. Procedural guidelines for the approvals committee must be released by the Department of Science and Technology with concurring consent from the Minister of Finance.

A detailed explanation of the proposed amendments to section 11D is contained in an explanatory memorandum on the Taxation Laws Amendment Bill, 2011.

2.2: Income Tax Act, 1962: Amendment of section 12G

The proposed amendments are textual amendments, correcting spelling and grammatical errors.

2.3: Customs and Excise Act, 1964: Amendment of section 4

The proviso to section 4(3) allows the disclosure of information relating to a person, firm or business acquired by the Commissioner or an officer in the performance of his duties to Directors-General of certain departments, the National Commissioner of the South African Police Service, the Governor of the South African Reserve Bank and the Chief Commissioner of the International Trade Administration Commission, subject to certain conditions.

The proposed amendment provides for the disclosure to the Director of the Financial Intelligence Centre of the information required for the performance of the Centre's functions in terms of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001). The amendment further provides for the disclosure to the head of any organ of state administering legislation regulating the movement of goods or persons into or out of the Republic of the information necessary for enforcing that legislation, which would include the Department of Home Affairs and organs of state administering legislation prohibiting or restricting the importation or exportation of goods. The amendment to section (3A) includes a technical correction.

2.4: Customs and Excise Act, 1964: Special provisions for Customs Modernisation

Section 119A enables the adaptation of provisions of the Act for the purposes of customs modernisation where enabling provisions are urgently required and it is not possible to effect timeously the necessary amendments to the Act. As a need has

also arisen for similar provisions in respect of excise modernisation, a reference to excise is included to broaden the scope of the section

2.5: *Customs and Excise Act, 1964: Continuation of rules made under section 119A*

This clause provides, as contemplated in section 119A of the Act, for the continuation of any rule made under that section or any amendment or withdrawal of or insertion in such rule during the period 1 June 2010 up to and including 31 July 2011.

2.6: *Short title and commencement*

Clause 6 provides for the name and commencement of the proposed Act.

3. CONSULTATION

The amendments proposed by this Bill were published on the websites of National Treasury and SARS for public comment. Comments by interested parties were considered. Accordingly, the general public and institutions at large were consulted in preparing the Bill.

4. FINANCIAL IMPLICATIONS FOR STATE

The provisions of this Bill have no financial implications for the State.

5. PARLIAMENTARY PROCEDURE

- 5.1 The State Law Advisers and the National Treasury are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution of the Republic of South Africa, 1996, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.
- 5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it contains no provision pertaining to customary law or customs of traditional communities.