

**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.