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RELEASE

The draft Taxation Laws Second Amendment Bill, 2011, is hereby published for comment. The draft legislation gives effect to matters presented by the Minister of Finance in the Budget Review 2011, as tabled in Parliament earlier this year.

The National Treasury invites members of the public to submit comments on the draft legislation by no later than 5 July 2011 to:

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REPUBLIC OF SOUTH AFRICA

**DRAFT TAXATION LAWS
SECOND AMENDMENT BILL**

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

(MINISTER OF FINANCE)

[B – 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 Customs and Excise Act, 1964, so as to make additional provisions for disclosure of information; 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:—

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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 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

1. Section 4 of the Customs and Excise Act, 1964, is hereby amended—

- (a) by the deletion in the first proviso to subsection (3) of the word “or” after paragraph (v);
- (b) the substitution in the proviso to subsection (3) for the colon at the end of paragraph (vi) of the expression“;” and
- (c) the addition to the proviso to subsection (3) of the following paragraphs:

“(vii) disclosing to the Director of the Financial Intelligence Centre, 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); or

(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:

“(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.”.

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Continuation of amendments made under section 119A of the Customs and Excise Act, 1964

2. 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.

Short title and commencement

3. (1) This Act is called the Taxation Laws Second Amendment Bill, 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 Customs and Excise Act, 1964 (Act No 91 of 1964).

2. OBJECTS OF BILL

2.1: 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 or 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.

2.2: 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.

2.3: Short title and commencement

Clause 3 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

An account of the financial implications for the State was given in the 2010 Budget Review.

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

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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.