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Cape Town,
Kaapstad, 14 December 2011

No. 34867

THE PRESIDENCY

No. 1063

14 December 2011

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 25 of 2011: Taxation Laws Second Amendment Act, 2011

DIE PRESIDENSIE

No. 1063

14 Desember 2011

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 25 van 2011: Tweede Wysigingswet op Belastingwette, 2011

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.

*(English text signed by the President)
(Assented to 12 December 2011)*

ACT

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:

“(11)(a) A committee must be appointed for the purposes of approving research and development under subsection (9) consisting of—

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| <ul style="list-style-type: none"> (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 (iii) three persons from the South African Revenue Service, appointed by the Minister of Finance. | 5
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(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.

(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—

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| <ul style="list-style-type: none"> (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); (iii) investigate or cause to be investigated research and development approved under subsection (9); | 15
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ALGEMENE VERDUIDELIKENDE NOTA:

- [] Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordenings aan.

_____ Woorde met 'n volstreep daaronder dui inwoegings in bestaande verordenings aan.
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*(Engelse teks deur die President geteken)
(Goedgekeur op 12 Desember 2011)*

WET

Tot wysiging van—

- die Inkomstebelastingwet, 1962, ten einde sekere bepalings te wysig;
- die Doeane- en Aksynswet, 1964, ten einde sekere bepalings te wysig; bykomende voorsiening te maak vir die openbaring van inligting; die omvang van 'n bepaling te verbreed; en voorsiening te maak vir voortsettings; en voorsiening te maak vir aangeleenthede wat daarmee verband hou.

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 11D van Wet 58 van 1962

1. Artikel 11D van die Inkomstebelastingwet, 1962, word hierby gewysig deur subartikels (11) tot (18) deur die volgende subartikels te vervang: 5
“(11) (a) 'n Komitee moet aangestel word met die doel om navorsing en ontwikkeling kragtens subartikel (9) goed te keur, en bestaan uit—
(i) drie persone in diens van die Departement van Wetenskap en Tegnologie, aangestel deur die Minister van Wetenskap en Tegnologie;
(ii) een persoon in diens van die Nasionale Tesourie, aangestel deur die Minister van Finansies; en
(iii) drie persone in diens van die Suid-Afrikaanse Inkomstediens, aangestel deur die Minister van Finansies. 10
(b) Die Minister van Wetenskap en Tegnologie of die Minister van Finansies kan alternatiewe persone op die komitee aanstel indien 'n persoon ingevolge paragraaf (a) aangestel nie beskikbaar is om enige funksie as lid van die komitee uit te voer nie. 15
(12) (a) Die komitee ingevolge subartikel (11) aangestel moet sy funksies onpartydig en sonder vrees, begunstiging of vooroordeel uitvoer. 20
(b) Die komitee kan—
(i) sy eie voorsitter aanstel en die prosedures vir sy vergaderings bepaal;
(ii) enige aansoek evalueer en aanbevelings doen aan die Minister van Wetenskap en Tegnologie met die doel om navorsing en ontwikkeling ingevolge subartikel (9) goed te keur;
(iii) navorsing en ontwikkeling kragtens subartikel (9) goedgekeur, ondersoek of laat ondersoek; 25

<ul style="list-style-type: none"> (iv) monitor all research and development approved under subsection (9)— <ul style="list-style-type: none"> (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. <p>(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.</p> <p>(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).</p> <p>(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—</p> <ul style="list-style-type: none"> (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. <p>(16) The Minister of Science and Technology must—</p> <ul style="list-style-type: none"> (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. <p>(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.</p> <p>(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—</p> <ul style="list-style-type: none"> (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.”. <p>(2) Subsection (1) comes into operation on 1 April 2012 unless a later date is determined by the Minister by notice in the <i>Gazette</i> 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 <i>Gazette</i>, but on or before 1 April 2022.</p>	<p style="margin: 0;">5</p> <p style="margin: 0;">10</p> <p style="margin: 0;">15</p> <p style="margin: 0;">20</p> <p style="margin: 0;">25</p> <p style="margin: 0;">30</p> <p style="margin: 0;">35</p> <p style="margin: 0;">40</p> <p style="margin: 0;">45</p> <p style="margin: 0;">50</p> <p style="margin: 0;">55</p> <p style="margin: 0;">60</p>
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<ul style="list-style-type: none"> (iv) alle navorsing en ontwikkeling kragtens subartikel (9) goedgekeur, monitor— <ul style="list-style-type: none"> (aa) ten einde te bepaal of die oogmerke van hierdie artikel bereik word; en (bb) ten einde die Minister van Finansies en die Minister van Wetenskap en Tegnologie te adviseer oor enige toekomstige voorgestelde wysiging of aanpassing van hierdie artikel; (v) vir 'n bepaalde doel en op die voorwaardes en vir die tydperk wat die komitee bepaal, die bystand verkry van enige persoon om die komitee te adviseer met betrekking tot enige funksie aan die komitee ingevolge hierdie artikel opgedra; en (vi) van enige belastingpligtige wat aansoek doen om goedkeuring van navorsing en ontwikkeling ingevolge subartikel (9), vereis om enige inligting of dokumente te verskaf wat nodig is vir die Minister van Wetenskap en Tegnologie en die komitee ten einde hul funksies ingevolge hierdie artikel uit te voer. 	5
<ul style="list-style-type: none"> (13) 'n Belastingpligtige wat navorsing en ontwikkeling beoefen wat ingevolge subartikel (9) goedgekeur is, moet jaarliks in die vorm en op die wyse deur die Minister van Wetenskap en Tegnologie voorgeskryf, aan die komitee verslag doen aangaande die vordering van daardie navorsing en ontwikkeling binne 12 maande na die einde van elke jaar van aanslag, beginnende by die jaar wat volg op die jaar waarin goedkeuring kragtens subartikel (9) verleen word. 	10
<ul style="list-style-type: none"> (14) Ondanks artikel 4 kan die Kommissaris aan die Minister van Wetenskap en Tegnologie inligting in verband met navorsing en ontwikkeling openbaar soos vereis mag word deur daardie Minister ten einde 'n verslag ingevolge subartikel (17) aan die Parlement voor te lê. 	15
<ul style="list-style-type: none"> (15) Die lede van die komitee ingevolge subartikel (11) aangestel en enige persoon wie se bystand deur daardie komitee verkry is, mag nie— <ul style="list-style-type: none"> (a) op enige wyse optree watstrydig is met die bepalings van subartikel (12)(a) nie of hulself blootstel aan enige situasie wat die risiko van konflik tussen hul verantwoordelikhede en privaatbelange behels nie; of (b) hul posisie of enige inligting aan hulle toevertrou gebruik ten einde hulself te verryk of enige ander persoon onbehoorlik te bevoordeel nie. 	20
<ul style="list-style-type: none"> (16) Die Minister van Wetenskap en Tegnologie moet— <ul style="list-style-type: none"> (a) skriftelike redes verskaf vir enige besluit om enige aansoek om goedkeuring van enige navorsing en ontwikkeling ingevolge subartikel (9) goed te keur of af te wys, of vir enige intrekking van goedkeuring in subartikel (10) beoog; (b) die Kommissaris van die goedkeuring van enige navorsing en ontwikkeling kragtens subartikel (9) inlig, met uiteensetting van die besonderhede wat deur die Kommissaris vereis word ten einde die bedrag van die bykomende aftrekking te bepaal wat ingevolge subartikel (3) of (4) toelaatbaar is; en (c) die Kommissaris inlig oor enige intrekking van goedkeuring ingevolge subartikel (10) en van die datum waarop daardie intrekking van krag word. 	25
<ul style="list-style-type: none"> (17) Die Minister van Wetenskap en Tegnologie moet jaarliks aan die Parlement 'n verslag voorlê wat die Parlement in kennis stel van die direkte voordele van die navorsing en ontwikkeling wat betrekking het tot ekonomiese groei, indiensnemming en ander breër regeringsdoelwitte en die totale uitgawes ten opsigte van sodanige bedrywighede sonder om die identiteit van enige persoon te openbaar. 	30
<ul style="list-style-type: none"> (18) Elke werknemer van die Departement van Wetenskap en Tegnologie, elke lid van die komitee ingevolge subartikel (11) aangestel en enige persoon wie se bystand deur daardie komitee verkry is— <ul style="list-style-type: none"> (a) moet geheimhouding bewaar en help bewaar met betrekking tot alle aangeleenthede wat tot hul kennis mag kom in die verrigting van hul funksies ingevolge hierdie artikel; en (b) mag nie enige sodanige aangeleentheid aan enige persoon hoegenaamd bekend maak nie behalwe aan die betrokke belastingpligtige of aan daardie belastingpligtige se regsvteenwoordiger, of enige sodanige persoon toelaat om toegang te hê tot enige rekords in die besit of bewaring van die Departement van Wetenskap en Tegnologie of komitee nie, behalwe <u>ingevolge die reg of 'n hofbevel.</u>". 	35
<ul style="list-style-type: none"> (2) Subartikel (1) tree op 1 April 2012 in werking, tensy 'n later datum deur die Minister by kennismassing in die <i>Staatskoerant</i> bepaal word, en is van toepassing ten opsigte van navorsing en ontwikkeling op of na 1 April 2012, of die latere datum deur die Minister by kennismassing in die <i>Staatskoerant</i> bepaal, maar op of voor 1 April 2022. 	40
<ul style="list-style-type: none"> (2) Subartikel (1) tree op 1 April 2012 in werking, tensy 'n later datum deur die Minister by kennismassing in die <i>Staatskoerant</i> bepaal word, en is van toepassing ten opsigte van navorsing en ontwikkeling op of na 1 April 2012, of die latere datum deur die Minister by kennismassing in die <i>Staatskoerant</i> bepaal, maar op of voor 1 April 2022. 	45
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<ul style="list-style-type: none"> (2) Subartikel (1) tree op 1 April 2012 in werking, tensy 'n later datum deur die Minister by kennismassing in die <i>Staatskoerant</i> bepaal word, en is van toepassing ten opsigte van navorsing en ontwikkeling op of na 1 April 2012, of die latere datum deur die Minister by kennismassing in die <i>Staatskoerant</i> bepaal, maar op of voor 1 April 2022. 	55
<ul style="list-style-type: none"> (2) Subartikel (1) tree op 1 April 2012 in werking, tensy 'n later datum deur die Minister by kennismassing in die <i>Staatskoerant</i> bepaal word, en is van toepassing ten opsigte van navorsing en ontwikkeling op of na 1 April 2012, of die latere datum deur die Minister by kennismassing in die <i>Staatskoerant</i> bepaal, maar op of voor 1 April 2022. 	60

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:

“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”; and

(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).”.

(2) Subsection (1) comes into operation on 1 January 2012.

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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

3. 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 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:

“(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

(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

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Wysiging van artikel 12G van Wet 58 van 1962, soos ingevoeg deur artikel 12 van Wet 19 van 2001 en gewysig deur artikel 29 van Wet 60 van 2001, artikel 22 van Wet 74 van 2002 en artikel 27 van Wet 35 van 2007

2. (1) Artikel 12G van die Inkomstbelastingwet, 1962, word hierby gewysig—
(a) deur in subartikel (13) in die Engelse teks die voorbehoudsbepaling deur die volgende voorbehoudsbepaling te vervang:
“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) [or] (b) is not available to perform any function as a member of the committee”; en
(b) deur in subartikel (16)(e) in die Engelse teks subparagraaf (vi) deur die volgende subparagraaf te vervang:
“(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).”.
- (2) Subartikel (1) tree op 1 Januarie 2012 in werking.
- Wysiging van artikel 4 van Wet 91 van 1964, soos gewysig deur artikel 2 van Wet 105 van 1969, artikel 2 van Wet 110 van 1979, artikel 3 en 15 van Wet 98 van 1980, artikel 2 van Wet 84 van 1987, artikel 4 van Wet 59 van 1990, artikel 1 van Wet 105 van 1992, artikel 1 van Wet 98 van 1993, artikel 2 van Wet 45 van 1995, artikel 34 van Wet 34 van 1997, artikel 58 van Wet 30 van 1998, artikel 47 van Wet 53 van 1999, artikel 115 van Wet 60 van 2001, artikel 43 van Wet 30 van 2002, artikel 39 van Wet 12 van 2003, artikel 133 van Wet 45 van 2003, artikel 10 van Wet 10 van 2006, artikel 9 van Wet 21 van 2006, artikel 5 van Wet 36 van 2007, artikel 25 van Wet 61 van 2008 en artikel 24 van Wet 8 van 2010
3. Artikel 4 van die Doeane- en Aksynswet, 1964, word hierby gewysig—
(a) deur in die eerste voorbehoudsbepaling tot subartikel (3) die woord “of” na subparagraaf (v) te skrap;
(b) deur in die voorbehoudsbepaling tot subartikel (3) die dubbelpunt aan die einde van subparagraaf (vi) deur die uitdrukking “; en” te vervang;
(c) deur in die voorbehoudsbepaling tot subartikel (3) na subparagraaf (vi) die volgende subparagrawe by te voeg:
“(vii) aan die Direkteur van die Finansiële Intelligensiesentrum die inligting benodig vir die uitvoering van die Finansiële Intelligensiesentrum se funksies ingevolge die Wet op die Finansiële Intelligensiesentrum, 2001 (Wet No. 38 van 2001), te openbaar; of
(viii) aan die hoof van enige staatsorgaan wat wetgewing administreer om die beweging van goedere of persone tot in of uit die Republiek te reguleer die nodige inligting vir die toepassing van daardie wetgewing, te openbaar;”; en
(d) deur subartikel (3A) deur die volgende subartikel te vervang:
“(3A) Die Statistikusgeneraal of die Direkteur-generaal van die Departement van Handel en Nywerheid of die Nasionale Tesourie soos omskryf in die Devisiebeheerregulasies, 1961, of die Goewerneur van die Suid-Afrikaanse Reserwebank of die Nasionale Kommissaris van die Suid-Afrikaanse Polisiediens of die Nasionale Direkteur van Openbare Vervolgings of die Direkteur-generaal van die Nasionale Tesourie of die Hoofkommissaris van die Internasionale Handelsadministrasiekommisie of die Direkteur van die Finansiële Intelligensiesentrum of die hoof van enige staatsorgaan of enige persoon wat in opdrag en onder beheer van daardie Statistikusgeneraal of die Direkteur-generaal van Handel en Nywerheid of die Goewerneur van die Suid-Afrikaanse Reserwebank of die Nasionale Kommissaris van die Suid-Afrikaanse Polisie of die Nasionale Direkteur van Openbare Vervolgings of die Direkteur-generaal van die Nasionale Tesourie of die Hoofkommissaris van die Nasionale Handelsadministrasiekommisie of die Direkteur van die Finansiële Intelligensiesentrum of die hoof van enige staatsorgaan optree, mag nie enige inligting wat ingevolge die voorbehoudsbepaling by subartikel (3) verskaf is aan enige persoon openbaar nie of toelaat dat enige persoon toegang daartoe verkry nie, behalwe in die uitoefening van

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.”.

Amendment of section 119A of Act 91 of 1964, as inserted by section 32 of Act 18 of 2009

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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.

Short title and commencement

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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.

sy of haar bevoegdhede of die uitvoering van sy of haar pligte kragtens enige Wet waarvan sodanige bevoegdhede of pligte ontleen word.”.

Wysiging van artikel 119A van Wet 91 van 1964, soos ingevoeg deur artikel 32 van Wet 18 van 2009

4. Artikel 119A van die Doeane-en Aksynswet, 1964, word hierby gewysig deur in subartikel (1) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:

“(a) Ondanks andersluidende bepalings van hierdie Wet, met die doel om docane-
of aksynsadministrasie te moderniseer—”.

Voortduring van wysigings kragtens artikel 119A van Wet 91 van 1964 aangebring 10

5. Enige reël ingevolge artikel 119A van die Doeane- en Aksynswet, 1964, uitgevaardig of enige wysiging of intrekking of invoeging in sodanige reël gedurende die tydperk 1 Junie 2010 tot en met 31 Julie 2011, verval nie uit hoofde van artikel 119A(3) van daardie Wet nie.

Kort titel en inwerkingtreding 15

6. (1) Hierdie Wet heet die Tweede Wysigingswet op Belastingwette, 2011.

(2) Tensy hierdie Wet anders bepaal of dit uit die samehang anders blyk, tree die wysigings wat deur hierdie Wet aangebring word op die datum van promulgasie van hierdie Wet in werking.