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TABLING OF THE DIAMOND EXPORT LEVY BILL, 2007
NATIONAL ASSEMBLY
TREVOR A MANUEL, MP
MINISTER OF FINANCE
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Introduction

Madame Speaker, the Diamond Export levy Bills, 2007, provide for a levy on the exports of rough diamonds from South Africa. It should be noted that the imposition of an export tax is already contained in the Diamonds Act of 1986. One of the many positive aspects of our Constitution is the requirement that all taxes must be imposed by way of a Money Bill, thereby providing for greater transparency and oversight. Amendments to the Diamonds Act during 2005 have resulted in the need for amendments relating to the export levy on rough diamonds, thereby requiring a separate Money Bill. Both sets of changes represent an inter-departmental effort with the Department of Minerals and Energy working toward regulatory reform, while the National Treasury assists with supporting fiscal measures.

Beneficiation

The original intent of the export levy on rough diamonds was to facilitate adequate and regular supplies of rough diamonds to local cutters and polishers (diamond beneficiators). The Diamonds Act of 1986 was only partially successful in this regard. The Department of Minerals and Energy accordingly amended the Diamonds Act in 2005 to improve regulatory oversight. The revised export levy on rough diamonds is intended to compliment these regulatory provisions.

Revised levy rate

The export levy on rough diamonds in the Diamonds Act of 1986 is currently set at 15 per cent. However, this Act provided for relatively generous exemptions. The proposed Diamond Levy Bills, 2007 reduce the export levy on rough diamonds to 5% but tighten the relief provisions, thereby laying a foundation for increased effectiveness. It should also be noted that the reduced 5% rate was not intended to undermine the power of the levy as a deterrent. According to informal police estimates, diamond smuggling costs are between 2.5% and 5% of gross diamond values. Therefore, the current 15% rate merely enhances smuggling; whereas, the proposed 5% rate is high enough to deter unpolished exports without hidden benefits for smuggling.

Relief measures / exemptions

The proposed relief measures ensure that the local supply of rough diamonds is commensurate with local demand. No reason exists to force diamonds onto the local market beyond local capacity. The core element of these incentives is to encourage producers to supply the local market with rough diamonds so that they can export the remainder free from the levy.

(1) Relief for large producers

As a general rule, the Diamonds Act, as amended in 2005, requires that all rough diamonds intended for export must be offered via a tender process at a Diamond Export and Exchange Centre (DEEC) for sale. However, in the case

of large producers, the Minister of Minerals and Energy may waive the requirement to offer all rough diamonds on the DEEC. This waiver is, for practical reasons, to ensure that the DEEC tendering process is not overwhelmed by large volumes of very small rough diamonds.

The Minister of Minerals and Energy may exempt a large producer from the DEEC tendering process if the Minister believes that:

- (i) 40 per cent of that producer's total gross sales over the course of a year will comprise of sales to local diamond beneficiators, and
- (ii) that producer's total gross sales in the same period exceeds R3 billion.

The Diamond Export Levy Bill provides a large producer with a levy exemption for an assessment period under similar conditions.

(2) Relief for medium producers

Medium size producers will not receive a compulsory waiver from the DEEC tendering process. However, they can obtain relief from the levy if:

- (i) 15% of that producer's total gross sales is to local diamond beneficiators over the course of a year, and
- (ii) that producer's total gross sales within the same period do not exceed R3 billion per annum.

(3) Exemption for small producers

Like medium producers, small producers will not receive a compulsory waiver from the DEEC tendering process. However, small producers receive relief from the export levy without any prerequisite of sales to local diamond beneficiators. In order for this exemption to apply, the producer must satisfy two basic sets of requirements. Firstly, the producers total sales cannot exceed R20 million per annum. Secondly, anti-avoidance measures exist to prevent small producers from splitting sales across several controlled companies for purposes of avoiding the levy.

(4) Relief for diamond beneficiators

It is not always possible for a diamond beneficiator to cut and polish 100 per cent of the diamonds purchased. The Regulator may accordingly grant a

beneficiator permission to export rough diamonds if the local beneficiator will cut and polish 80% of the diamonds purchased. Once this permit is issued, the diamond beneficiator is exempt from the levy in respect of the 20 per cent remainder for export provided that the diamonds are first subject to the tendering process of the DEEC.

No revenue needs foreseen

While the levy is regulatory in nature (i.e., not primarily intended to raise revenue), the import credit and the exemptions may be limited in order to raise revenue if deemed necessary (*e.g. to fund the activities of the Regulator*). Currently, we see no need for this limitation because all related administration is being fully funded on budget.

Erroneous news reports

Before closing, I am compelled to correct recent news stories two daily newspapers that erroneously indicated Government's intent to make concessions on behalf of large producers. When revising the diamond export levy, the National Treasury was well aware of the fact that certain key stakeholders control more than 95% of local production. Ill-considered regulation could create undue pressures on smaller players. The loss of smaller players would clearly undermine competition, thereby undermining free market forces. In view of these concerns, a one-size-fits-all approach was rejected because such an approach would unduly impact smaller players.

Instead, National Treasury sought to impose the higher local beneficiation requirements on large producers. Only large producers have a 40% local diamond beneficiator sales requirement; whereas, medium producers face a 15% requirement and small producers must merely tender their diamonds at the DEEC. The threshold for a large producer was shifted from R5 billion gross sales per annum down to R3 billion to ensure that larger stakeholders retained the 40% requirement despite anticipated sales of certain diamond mines. Therefore, the R5 to R3 billion threshold change was not a

concession for large producers as erroneously reported but a tightening of beneficiation requirements.

Secondly, the news also erroneously reported that National Treasury planned to make the diamond export levy deductible from Income Tax. What was said during the parliamentary hearing process was that such a deduction would be considered. I have since considered the request but have decided against this concession. It is clear that the levy can be avoided in full if producers meet the requirements to supply local beneficiators. Hence, the levy effectively acts as a penalty where a producer fails in these local supply requirements. It is therefore reasonable to argue that the penalty nature of this levy prevents the levy from being deductible against Income Tax.

In closing, I would like to thank the Chairman Nhlanhla Nene of the PCOF for his leadership, and the members of the Portfolio Committees on Finance and on Minerals and Energy for their constructive role in the process. Madame Speaker, I hereby table the "Diamond Export Levy Bill, 2007", as well as its companion, the "Diamond Export Levy Administration Bill, 2007."