



**national treasury**

Department:  
National Treasury  
REPUBLIC OF SOUTH AFRICA

20 June 2007

## **PUBLIC COMMENT RESPONSE DOCUMENT**

### **DIAMOND EXPORT LEVY**

#### **PORTFOLIO COMMITTEES ON FINANCE AND ON MINERALS AND ENERGY**

##### COMMENTS / SUBMISSIONS BY:

The South African Diamond Producers Organisation (SADPO),  
Trans Hex Group Limited, and  
De Beers Group of Companies.

This document is structured as follows: comments by the industry are stated, followed in *bold italics* are the responses by the National Treasury and the Department of Minerals and Energy. The document also closes with internally-generated changes.

##### **1. South African Diamond Producers Organisation (SADPO)**

###### a. Relief for marginal mines should be considered

***This proposal is not accepted. The question of marginal mines does not arise (i.e. the levy is neither a tax nor a royalty). The levy is only applicable if an unpolished diamond is exported. The goal to deter unpolished diamond exports is the same regardless of whether a mine is marginal or profitable. The issue of marginality is more appropriate for a royalty bill.***

###### b. Clause 9 Comment: The definition / threshold for small mines should be increased from an annual turnover of R10 million to R35 million to be in line with the threshold as per the BEE codes undertaken by the Department of Trade and Industry.

***Mere linkage to other acts is unhelpful. This question is best resolved by reference to the underlying facts. At this stage, we lack full detailed information. However, we understand that roughly 1 800 local diamond producers exist besides De Beers, Trans Hex and Petra Diamonds. These diamond producers generate a turnover per annum of between R10 million and R35 million with R10 million turnover operating as a break-even point. From our preliminary understanding, a shift to a R20 million cut off appears to fully cover the smaller end. Care is being taken not to go too far up the scale at this stage given this issue's potential impact in terms of small business relief found in the upcoming Mineral and Petroleum Resource Royalty Bill.***

- c. Clause 9 Comment: The requirement of parcels consisting of 10 stones or less is not always practical.

***This proposal is accepted. The requirement that small diamond producers seeking relief provide their parcels in volumes of 10 stones or less will be dropped. Small producers should be eligible for relief based solely on turnover, regardless of how they parcel their stones.***

## **2. Trans Hex Group Limited**

- a. Clause 6 Comment: Under the proposed Bill, local purchases can export diamonds purchased from producers and beneficiators duty free if those producers or beneficiators elect. This election is based on the expectation that certain local beneficiation requirements will be met. If these expectations are not met, all levies and penalties fall on the selling producers and beneficiators, not the exempt purchasers.

***This proposal is not accepted. The beneficiation obligations of the Bill fall on producers and beneficiators. Producers are extracting non-renewable mineral resources, which must provide maximum benefit to the local economy (e.g. through beneficiation). Beneficiators must beneficiate most of their diamonds as a license obligation. Administrative efficiency also dictates focus on producers and beneficiators who lie at the centre of the Bill.***

- b. Diamonds Act Amendment: A diamond beneficiator should be defined in law - or is it defined as per the Diamonds Act?

***Yes. The definition of a diamond beneficiator is defined as per the Diamonds Act, 1986. The detailed obligations associated with this beneficiation license are provided pursuant to regulation by the Department of Minerals and Energy. The requirements of this license are simply not a tax-related function.***

- c. Clauses 7 and 8: The requirement for sales to be made to beneficiators as a precondition for the large and medium producer exemptions is too restrictive. Under the tender system, producers cannot choose their clients as in an allocation system. The Bill should provide positive support for all local sales in respect of the 15% and 40% requirements.

***This proposal is not accepted. The primary objective of the Bill is to encourage the local beneficiation of rough diamonds. The means by***

**which this Bill tries to achieve this objective is to facilitate the sale of more rough diamonds to local diamond cutters and polishers (diamond beneficiators). A (medium size) producer will be exempted from the diamond export levy if he or she can prove that he or she sold at least 15 per cent of gross sales to local beneficiators. If this requirement is discarded, the fundamental objective of the Bill will be undermined. If sales to local dealers qualify, local dealers could simply export the diamond rough as there is no obligation on a dealer to cut and / or polish diamonds. This is the problem with the current system.**

- d. Regulations: The draft regulations for beneficiators are too open-ended. The Regulator provides favourable treatment if the Regulator believes that the beneficiator will beneficiate at least 80 per cent of all the unpolished diamonds purchased during the upcoming 12-month period. Meanwhile, the producer requirements are based on hard data, creating an unfair disadvantage for producers.

**This statement is not accepted. These differences in requirements are based on timing. Beneficiators can hold a license for future exports if the Regulator believes the 80 per cent beneficiation requirement will be satisfied in the upcoming months. On the other hand, the Export Levy rules apply on a retroactive basis – i.e. to previously occurring transactions (all of which are measured on an after-the-fact basis).**

- d. Clause 14: Clarification is required on how the transition rules will operate.

**This statement is accepted. The law will be clarified to ensure that all the rules (including exemptions) for the old 15 per cent export levy will remain in effect until the new Export Levy Bill becomes fully operational. In addition, special rules apply for the first 6-months of the new Export Levy Bill that allow for simplifying assumptions to achieve exemption.**

### 3. De Beers Group of Companies

- a. Diamonds Act Amendment: Some basic principles for calculating the “fair market value” of diamonds should be defined in the Bill.

**Fair market value concepts for diamonds are appropriately of the subject of the Diamonds Act (as amended). The Department of Minerals and Energy will address these concerns at an administrative level.**

- b. Clause 7: The large producer monetary threshold of R5 billion should be reduced to R3 billion

**This proposal is accepted. The primary purpose of this monetary threshold is to differentiate between medium size and large producers without reverting to complicated criteria. Given the reality of the South African diamond market, to differentiate between large and medium size producers a threshold of R3 billion annual gross sales is more appropriate. This reduction takes into account possible changes in local diamond mine ownership. It should be noted that this change promotes beneficiation by extending the “large” producer exemption, which carries a 40 per cent local sales requirement as opposed to the 15 per cent local sales requirement for medium producers.**

- c. Diamonds Act Amendment: The DEEC waiver for large producers under section 74 of the Diamonds Act should be contained in the law as opposed to regulation. Legal entrenchment of rules provides greater certainty for investors.

***This comment is noted but should be addressed to the Minister of Minerals and Energy, as this exemption is in terms of the Diamonds Act. At this stage, the Department of Minerals and Energy prefers regulations so that changes can be made to cover unanticipated practical realities.***

- d. Clauses 7 and 8: The duty payable in the case of a shortfall should apply only to net exports (not gross exports).

***This comment is accepted. The focus of the Bill is on the net loss of unpolished diamonds. Local beneficiation requires a net surplus of diamonds. This surplus could stem from local production and from imports. Therefore, imports must be recognised as a positive factor that enhances local industry.***

- e. Income Tax: The export levy should be deductible for income tax purposes

***This comment is rejected. Penalties and fines are not deductible for income tax purposes. However, where a tax is included in the price of a product (e.g. the fuel levy), it is viewed as a deductible ordinary business expense. In this case, the levy operates more like a penalty than an underlying tax.***

- f. There is a need to define how and when foreign sales are converted to Rand.

***This comment is accepted. Rules will be provided for currency translations (especially since most diamonds sales are measured on a U.S. dollar basis).***

- g. Diamonds Act Amendment: In respect of item 3(4) of the schedule to the Administrative Bill, the term “exporter” should be read as “importer”.

***This comment is noted and the necessary correction will be made.***

#### **4. Internally-generated changes**

- a. Section 1 definition: ***Amendments are now made to the Diamonds Act to upgrade the current unpolished diamond definition. The new definition is more properly aligned with international customs criteria. The rules also clarify that synthetic diamonds are subject to regulatory oversight while falling outside the export levy.***

- b. Section 1 definition: ***Producers include both licensed producers under the Diamonds Act as well as members of the same group that sell or purchase diamonds purchased (on or behalf of) from those producers. It was always intended that this group include both domestic and foreign incorporated group members. This intention will now be directly expressed in the final version of the law.***

- c. Section 12: *Although the Bill is not intended to raise revenue because all associated diamond administration will be covered on-budget, section 12 creates room for the Bill to create revenue if funds are required. The Bill achieves this revenue raising function by providing the Minister of Finance with the power to reduce credits and exemptions. If action is taken in this regard, the final version of the Bill requires all reductions of credits and exemptions be applied equally and simultaneously. Any reduction of this kind must also apply equally and simultaneously to all parties potentially impacted (i.e. no discrimination will be allowed).*
  
- d. Sections 11(3) and 13: *The final version of the Bill seeks to clarify the impact of diamonds acquired by the State Diamond Trader. It is anticipated that the State Diamond Trader will purchase diamonds from producers, followed by resale to local diamond beneficiators. As a general rule, the export of State Diamond Trader diamonds through the system should be subject to the levy despite any other exemptions to the contrary. In other words, the State Diamond Trader was formed with the object to promote local beneficiation. However, some leeway is allowed in limited circumstances (e.g. where a beneficiator polishes 80 per cent of the State Diamond Trader's diamonds purchased with the problematic 20 per cent remainder exported under better terms).*
  
- e. Administration: *The final version of the administration Bill contains many practical adjustments suggested by the South African Revenue Service. Under this final version, the customs process will be used to monitor the entry and exit of unpolished diamonds. All licensed diamond stakeholders will be required to submit 6-monthly returns and pay any export levies associated with these returns.*