

REPUBLIC OF SOUTH AFRICA

DIAMOND EXPORT LEVY (ADMINISTRATION) BILL

*(As introduced in the National Assembly (proposed section 75)); explanatory memorandum of Bill
published in Government Gazette No ? of ?November 2006)
(The English text is the official text of the Bill)*

(Minister of Finance)

14 May 2007

GENERAL EXPLANTORY 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 provide for administrative matters in connection with the imposition of an export levy on rough diamonds.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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CHAPTER 1

Part I

Registration, returns and payments

Registration

1. (1) Any person that is a producer, dealer or diamond beneficiator or holder of an export permit pursuant to section 26 of the Diamonds Act on the promulgation date of this Act must apply to register with the Commissioner within 45 days of the date of promulgation of this Act.

(2) Any person that becomes a producer, dealer, diamond beneficiator or holder of an export permit pursuant to section 26 of the Diamonds Act after the promulgation date of this Act must apply to register with the Commissioner within 45 days of becoming such a person.

For purposes of this Act, the Commissioner must register any person described in subsections (1) or (2).

(3) The Commissioner may not register any person other than a person described in subsections (1) or (2).

Cancellation of registration

2. (1) Any producer, dealer or diamond beneficiator registered as described in section 1 (hereinafter referred to as a registered person) may apply to the Commissioner for deregistration after the date on which that registered person ceases to be a producer, dealer or diamond beneficiator.

(2) Upon receipt of an application in terms of subsection (1), the Commissioner may cancel a registered person's registration with effect from the last day of the assessment period to which that application relates.

Returns and assessment periods

3. (1) A registered person must submit a return within 30 days of the ending date of each assessment period described in subsection (2).

(2) For purposes of this Act, each registered person's assessment period—

(a) in the case of a natural person—

(i) begins on 1 March and ends on 31 August; and

(ii) begins on 1 September and ends on the last day of February; and

(b) in the case of any other person—

(i) begins on the first day of the financial year for which financial accounts are prepared and ends six calendar months after that day; and

(ii) begins on the following day immediately after the period described in subparagraph (i) and ends on the last day of that financial year,

and if any financial year begins on any day other than the first day of a calendar month, the financial year will be deemed to begin on the first day of that month.

(3) The Commissioner may prescribe rules for determining an assessment period in respect of any financial year that is shorter or longer than 12 months.

Payment of levy

4. (1) A registered person must submit payment of the levy in respect of a return to which that payment relates on the date that return must be submitted as described in section 3(1).

(2) To the extent an amount of value described in section 2(2) of the money Bill to this Bill is denominated in a foreign currency during any assessment period, that value will be translated into the currency of the Republic at—

(a) the opening spot rate; or

(b) the average exchange rate during that assessment period,
on the ending date described in section 3 (whichever is applicable) of that assessment period.

Form, manner and place determined by Commissioner

5. (1) All registrations, returns, forms, payments and elections required in terms of this Act must be submitted in the form, manner (including electronically) and place as determined by the Commissioner.

(2) For purposes of subsection (1), all producers that form part of the same group for financial reporting purposes pursuant to International Financial Reporting Standards must submit a return as described in section 3 and make payment as described in section 4 at the same place and on the same date as determined by the Commissioner.

Maintenance of records

6. (1) Every registered person must maintain records necessary to observe the requirements of this Act, including—

- (a) the original note of receipt or purchase in respect of a unpolished diamond as described in section 56 of the Diamonds Act;
- (b) a register in respect of unpolished diamonds as described in section 57 of the Diamonds Act;
- (c) a record of all unpolished diamonds imported into or exported from the Republic by that person with sufficient detail to identify such diamonds, values, purchasers and sellers involved;
- (d) a copy of any import credit granted under section 4 of the money Bill to this Bill;
- (e) a copy of any deferment certificate described in section 5 of the money Bill to this Bill;
- (f) a copy of any export waiver approval described in section 74 of the Diamonds Act;
- (g) a copy of any permit granted pursuant to section 26(h) of the Diamonds Act;
- (h) any invoice, contractual agreement, financial statement, deposit slip, or paid cheque relating to a receipt, register, or record described in this section; and
- (i) any other information required by the Commissioner or the Regulator.

(2) Every registered person's records must be maintained (either in their original form or in any other form permitted by the Commissioner) for five years after the date of the submission of the return to which those records relate.

(3) Pursuant to a notice of assessment, the Commissioner may extend the five-year maintenance requirement described in subsection (2) for purposes of resolving that assessment.

Part II

Election for producers and beneficiators

Election procedure

7. (1) Notwithstanding section 2(1) of the money Bill to this Bill, any producer or diamond beneficiator may elect pursuant to section 6 of the money Bill to this Bill in respect of any assessment period that any person that purchases an unpolished diamond at a diamond exchange and export centre from that producer or diamond beneficiator is not subject to the levy in respect of that diamond.

(2) The election described in subsection (1) must be submitted in the assessment period immediately preceding the assessment period in which the election will apply.

(3) The election described in subsection (1) is deemed to be immediately granted upon submission as described in subsection (2).

Penalties

8. (1) If during any assessment period a producer or diamond beneficiator has made an election in respect of an assessment period as described in section 7 and that—

- (a) producer during that period fails to be exempt from the levy otherwise imposed under this Act in terms of sections 7, 8, or 9 of the money Bill to this Bill (as the case may be); or
- (b) diamond beneficiator during that period fails to be exempt from the levy otherwise imposed under this Act in terms of section 10 of the money Bill to this Bill,

that producer or beneficiator (as the case may be) will be deemed to be subject to the levy as if that producer or beneficiator had delivered a bill of entry for export in respect of all diamonds purchased during that period from that producer or beneficiator at a diamond exchange and export centre.

(2) Section 2(2) of the money Bill to this Bill will not apply to the levy imposed in terms of subsection (1)(b), but instead the levy imposed will equal the levy rate multiplied by the price at which those diamonds were purchased from the producer or diamond beneficiator described in that subsection.

Part III

Assessments

Assessments to re-determine, recalculate and estimate amounts

- 9.** (1) If—
- (a) a registered person fails to furnish a return;
 - (b) the Commissioner is not satisfied with a return furnished by a registered person; or
 - (c) the Commissioner has reason to believe that any person has failed to pay a levy for which that person is liable,

the Commissioner may issue to that person a notice of assessment of the levy payable.

(2) Any person receiving a notice of assessment must pay the amount of the levy so assessed to the Commissioner within 30 days following the date of the notice of assessment.

Reduced assessments

- 10.** (1) The Commissioner may reduce any assessment—
- (a) to rectify any processing error made in issuing that assessment; or
 - (b) to account for an amount that should or should not have been taken into account by the Commissioner in determining a levy payable.
- (2) No reduction described in subsection (1) is allowed—
- (a) five years after the date of the notice of assessment; or
 - (b) if the assessment was accepted by the person concerned.

Withdrawal of assessments

- 11.** (1) The Commissioner may withdraw any assessment that is—
- (a) issued to an incorrect person; or
 - (b) issued in respect of an incorrect year of assessment.
- (2) For purposes of this Act, any withdrawn notice of assessment described in subsection (1) is deemed not to have been issued.

Time limit for assessments

12. (1) The Commissioner must issue a notice of assessment within five years following the submission of a return to which the assessment relates.

(2) The five-year limit with respect to a notice of assessment described in subsection (1) does not apply if the Commissioner has reason to believe that a person failed to pay the levy to which the assessment relates due to fraud, misrepresentation or non-disclosure of material facts.

Part IV

Refunds and interest

Refunds

- 13.** (1) A registered person is entitled to a refund in respect of any levy paid to the extent that levy paid exceeds the amount properly chargeable under this Act.
- (2) A person described in subsection (1) may claim a refund in respect of any levy paid only within two years following the year of assessment giving rise to that claim.

Interest

- 14.** (1) The Commissioner must pay interest calculated on a monthly basis in respect of any levy to the extent that levy—
- (a) exceeds the amount properly chargeable under this Act; and
 - (b) is not refunded within 30 days after receipt of a refund claim in respect of that levy.
- (2) A registered person that has failed to pay a levy properly due within 30 days after the close of the year of assessment to which that payment relates is liable for interest calculated on a monthly basis to the extent that payment is less than the amount properly chargeable under this Act.
- (3) Interest required under this section must be calculated at the prescribed rate as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962).

Part V

Miscellaneous

Division of responsibility

- 15.** (1) The Commissioner will be responsible for administering this Act with the assistance of the Regulator as described in subsection (2).
- (2) The Regulator will be responsible for assisting the Commissioner—
- (a) in the verification of the fair market value of any unpolished diamond;
 - (b) in the verification of the quantity and quality of any unpolished diamonds described in paragraph (a); and
 - (c) in the verification of any other information that the Commissioner and the Regulator agree will assist in administering this Act.
- (3) For purposes of this section, “**administering this Act**” means—
- (a) determining the correctness of any return, financial statement, document, declaration of facts, or valuation relevant to this Act;
 - (b) determining and collecting any amounts due under this Act;
 - (c) determining whether an offence has been committed under this Act; and
 - (d) performing any other administrative function necessary for carrying out this Act.

Applicability of Income Tax Act

- 16.** (1) The provisions of the Income Tax Act, 1962 (Act No. 58 of 1962) relating to—
- (a) the production of information, documents or things, enquiries, searches and seizures and evidence;
 - (b) objections and appeals;
 - (c) the payment and recovery of tax and penalties;
 - (d) burden of proof;
 - (e) collection;
 - (f) civil and criminal offences;
 - (g) reporting of unprofessional conduct;
 - (h) preservation of secrecy; and
 - (i) jurisdiction of courts as contained in section 105,
- apply, with changes required by the context, to the levy in terms of this Act.

(2) For purposes of subsection (1)(h), the Regulator will for purposes of administering this Act as described in section 15, have access to documents in the possession or custody of the Commissioner with respect to administering this Act, and vice-versa.

(3) Any person that is dissatisfied with any decision given in writing by the Commissioner or the Regulator (as the case may be)—

- (a) in terms of any unpolished diamond's value that is assessed by the Regulator as described in this Act;
- (b) in terms of section 1 notifying that person of the Commissioner's refusal to register that person in terms of this Act;
- (c) in terms of section 2 notifying that person of the Commissioner's decision to cancel any registration of that person in terms of this Act or the Commissioner's refusal to cancel registration;
- (d) in terms of section 7 notifying that person of the Commissioner's refusal to accept that person's election;
- (e) in terms of section 9 in respect of an assessment made upon that person; or
- (f) in terms of section 13 of the Commissioner's refusal to make a refund,

may lodge an objection thereto with the Commissioner.

Act binding on State and application of other laws

17. This Act will bind the State, and no provision in any other law will be construed as applying or referring to the levy unless the levy is specifically mentioned in that provision.

Short title and commencement

18. This Act will be titled the Diamond Export Levy (Administration) Act, 2007, and will come into operation on a date to be fixed by the Minister of Finance by proclamation in the *Gazette*.

Part VI

Regulations

19. The Minister may make regulations regarding any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act.

Part VII

SCHEDULE

Amendment or repeal of laws

Part 1: Laws enacted by Parliament

No. and year of law	Short title	Extent of amendment or repeal
Act No. 56 of 1986	Diamonds Act, 1986	<p>1. Section 1 of the Diamonds Act is hereby amended—</p> <p>(a) by the insertion after the definition of ‘regulation’ of the following definition: <u>“‘Republic’ means the Republic of South Africa, and when used in a geographical sense includes the territorial sea which has been or may be designated under international law and the laws of South Africa as areas within which South Africa may exercise sovereign rights or jurisdiction with regard to the exploration or exploitation of natural resources;”</u>;</p> <p>(b) by the substitution in the definition of ‘unpolished diamond’ of the following paragraph: <u>“‘unpolished diamond’ means any natural or enhanced diamond (but not including a synthetic diamond) which has after the production thereof not been substantially altered [in any manner,] and includes diamond powder, a crushed diamond, a fragment and a partly processed diamond, regardless of whether or not that diamond is won or recovered within the Republic.”</u>.</p> <p>2. Section 60 of the Diamonds Act is hereby substituted with the following section: “60. Export and import of unpolished diamonds.—</p> <p><u>(1) No exporter shall export any unpolished diamond from the Republic unless —</u></p> <p><u>(a) that diamond has been registered and released for export in terms of this Act; and</u></p> <p><u>(b) that exporter is registered in terms of the Diamond Export Levy Bill.</u></p> <p><u>(2) No importer shall import any unpolished diamond into the Republic unless—</u></p> <p><u>(a) that diamond has been registered and released for import in terms of this Act; and</u></p> <p><u>(b) that importer is registered in terms of the Diamond Export Levy Bill.</u></p>

		<p><u>(3) The Regulator shall confiscate any unpolished diamond that does not satisfy the requirements of the Kimberley Process Certification Scheme.”.</u></p> <p>3. Section 61A is hereby amended by the insertion after section 61 of the following section: <u>“61A. Registration of unpolished diamonds for import.—(1) Any importer who desires to register any unpolished diamond for import shall at a diamond exchange and export centre furnish the registering officer with a return on the prescribed form in respect of that diamond.</u></p> <p><u>(2) In the return furnished in terms of subsection (1), the importer shall specify the value of the unpolished diamond and declare that the value so specified is to the best of his or her knowledge and belief the fair market value of that diamond.</u></p> <p><u>(3) A return referred to in subsection (1) shall be accompanied by the unpolished diamond in question and the prescribed documents.</u></p> <p><u>(4) If the registering officer is satisfied that an exporter has complied with the provisions of this section, he or she shall register the unpolished diamond in question for import.”.</u></p> <p>4. Section 64 of the Diamonds Act is hereby substituted with the following section: <u>“64. Temporary exemption from diamond exchange and export centre—(1) If the Regulator is satisfied that any unpolished diamond will be exported from the Republic—</u></p> <p><u>(a) solely for purposes of—</u></p> <p><u>(i) being exhibited or displayed; or</u></p> <p><u>(ii) obtaining an expert opinion as to the fair market value or manner of beneficiating that diamond; and</u></p> <p><u>(b) for no longer period as the Regulator may determine (but not exceeding a period of 180 days from the date upon which that diamond was released for export as described in section 69), that diamond will not be subject to the provisions of section 48A.</u></p> <p><u>(2) If the Regulator is satisfied that an unpolished diamond may be exported as described in subsection (1), a registering officer will issue the exporter of that diamond with an</u></p>
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		<p><u>exemption certificate stipulating—</u></p> <p><u>(a) that the diamond is not subject to section 48A;</u></p> <p><u>(b) the value of that diamond—</u></p> <p><u>(i) specified and declared as described in section 61 by that exporter; or</u></p> <p><u>(ii) assessed as described in section 65: Provided that for purposes of this item, a certificate furnished in terms of 65(2) in respect of that diamond shall not be deemed to be an offer to purchase that diamond as described in section 65(3); and</u></p> <p><u>(c) any other particulars required to be furnished by the Regulator in respect of that diamond.</u></p> <p><u>(3) The exporter of an unpolished diamond that is exported as described in subsection (2) is in contravention of this Act if that diamond upon its re-importation is—</u></p> <p><u>(a) registered for import as described in section 61A on a date after the date determined by the Regulator as described in subsection (1) in respect of that diamond;</u></p> <p><u>(b) not released for import as described in section 69B; or</u></p> <p><u>(c) is physically different in any manner as of the date that diamond was released for export as described in section 69.</u></p> <p><u>(4) If the exporter of any unpolished diamond that is exported as described in subsection (2) contravenes subsection (3) that exporter shall be subject to a fine equal to 5 per cent multiplied by the higher of that diamond's value—</u></p> <p><u>(a) specified and declared as described in section 61 of the Diamonds Act; or</u></p> <p><u>(b) assessed as described in section 65 of the Diamonds Act; plus</u></p> <p><u>(c) 100 per cent of that higher value.</u></p> <p><u>(5) The Regulator may reduce the fine described in subsection (4)(c) to any percentage if he or she is satisfied that an exporter contravened subsection (3) for reasons beyond the exporter's control.</u></p> <p><u>(6) Any fine imposed in terms of this section shall be paid by the exporter concerned to the Regulator within 30 days of being notified by the Regulator that such amount is due.</u></p> <p><u>(7) Any money paid to the Regulator</u></p>
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		<p><u>as described in subsection (6) shall be paid into the National Revenue Fund within seven days after receipt thereof.”.</u></p> <p>5. The Diamonds Act is hereby amended by the repeal of sections 62, 63, 66, 68, 93 and 95(h).</p> <p>6. Section 65 of the Diamonds Act is hereby amended by the substitution in the title of section 65 of the following title: “Examination and valuation of unpolished diamonds for export.”.</p> <p>7. Section 65A is hereby amended by the insertion after section 65 of the following section: “65A. Examination and valuation of unpolished diamonds for import.—(1) <u>The registering officer or another person designated by the Regulator—</u> <u>(a) shall examine; and</u> <u>(b) may assess the value of, any unpolished diamond registered for import as described in section 61A and verify any particulars furnished in respect thereof.”.</u></p> <p>8. Section 67 of the Diamonds Act is hereby substituted with the following section: “67. Fine in case of difference in values—(1) <u>If the value of any unpolished diamond—</u> <u>(a) as specified in the certificate referred to in section 65(2) exceeds the value of that diamond as specified in the return referred to in section 61(2); or</u> <u>(b) as assessed in section 65A exceeds the value of that diamond as specified in the return referred to in section 61A(1)(b),</u> <u>by 20 per cent or more, the Regulator shall impose upon the exporter or importer of that diamond a fine equal to 20 per cent of the value specified in the certificate referred to in section 65(2) or assessed in section 65A (as the case may be) in respect of that diamond.</u> <u>(2) Any fine imposed in terms of this section shall be paid by the exporter or importer concerned to the Regulator within 30 days of the date that fine was imposed.</u> <u>(3) Any money paid to the Regulator as described in subsection (2) shall be paid into the National Revenue Fund within seven days after receipt thereof.”.</u></p> <p>9. Section 69B of the Diamonds Act is</p>
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		<p>hereby inserted after section 69A with the following section: “<u>69B. Release of unpolished diamonds for import</u>—(1) The registering officer shall not release any person’s unpolished diamond for import unless—</p> <p><u>(a) that unpolished diamond was registered for import as described in section 61A;</u></p> <p><u>(b) all fines imposed on that person in terms of this Act have been paid;</u></p> <p><u>(c) the provisions of any other law relating to the import of that unpolished diamond have been complied with;</u></p> <p><u>(d) that unpolished diamond has been made up in a parcel in such manner as the registering officer may determine; and</u></p> <p><u>(e) the prescribed certificate, which certifies that the unpolished diamond for import has been handled in a manner that satisfies the requirements of the Kimberly Process Certification Scheme, accompanies the parcel contemplated in paragraph (d).</u></p> <p><u>(2) The registering officer shall release an unpolished diamond for import by sealing the parcel contemplated in subsection (1)(d) with the seal of the Regulator.”.</u></p>
Act No. 29 of 2005	Diamonds Amendment Act, 2005	<ol style="list-style-type: none"> 1. Section 61 of the Diamonds Amendment Act is hereby amended by the insertion after subsection (2) of the following subsection: “<u>(2)(A) Notwithstanding subsection (1), any exporter that desires to register any unpolished diamond for export that pursuant to section 74 is not subject to section 48A shall at any diamond exchange and export centre furnish the registering officer with a return on the prescribed form in respect of that diamond specifying the value of that diamond and declaring that the value so specified is to the best of his or her knowledge and belief the fair market value of that diamond.</u>”. 2. The Diamonds Amendment Act is hereby amended by the repeal of sections 66 and 68.”. 3. Section 69 of the Diamonds Amendment Act is hereby amended by the insertion after subsection (2) of subsection (3): “<u>(3) Within 10 business days of the date the Regulator releases any packet contemplated in subsection (2), a bill</u>

		<p><u>of entry for export under the Customs and Excise Act, 1964 (Act No. 91 of 1964) must be delivered in respect of that packet.”.</u></p>
Act No. 30 of 2005	Diamonds Second Amendment Act, 2005	<p>Section 74A of the Diamonds Second Amendment Act is hereby amended by the insertion after section 74 of the following section: <u>“74A. Relief for certificated purchases—</u>Section 48A will not apply to any person in respect of any unpolished diamond that was purchased by that person pursuant to section 6 of the money Bill to the <u>Diamond Export Levy Bill.</u></p>

MEMORANDUM ON THE SECOND DIAMOND EXPORT LEVY BILL, 2007

1. OBJECTS OF THE BILL

1.1 This Second Diamond Export Levy Bill introduces administrative provisions to the Diamond Export Levy Bill. All importers and exporters of unpolished diamonds must register with the South African Revenue Service. These importers and exporters (hereinafter referred to as registered persons) include producers, dealers, diamond beneficiators (cutters) and persons holding an export permit granted by the Regulator. Registered persons must pay the export levy twice per year (i.e. every 6 months).

Registration is critical to the administration of this Bill. According to the South African Police Service, most diamond smuggling stems from record defects at the importer/exporter level. Once a diamond is officially recorded, smuggling that diamond offshore presents a far greater compliance risk. Hence, compelled registration at the importer/exporter level initiates an audit document trail that is easily traceable, thereby deterring illegal activities.

Lastly, it should be noted that the producer definition (contained in section 1 of the Diamond Export Levy Bill) extends beyond holders of mining rights. Other companies within the same consolidated financial group can be treated as a producer if that consolidated group company sells diamonds purchased from or on behalf of that producer. This extension of the term producer reflects the economic reality for group operations, which often separate pure extraction from sales into different companies.

1.2 Clauses 1 to 5 of Part I—

Registration

The Commissioner generally has the freedom to determine the registration process of registered persons. The law only mandates that registration occur within 45 days after the date that a person becomes a producer, dealer or diamond beneficiator or a holder of an export permit granted by the Regulator.

Cancellation of registration

The Commissioner may cancel registration upon application. Cancellation can only occur after the last day of the 6-monthly assessment period on which a person qualifies as a registered person.

Returns and assessment periods

Registered persons must submit 6-monthly returns (section 3(2)). Natural persons utilise six-monthly periods based on their year of assessment prescribed by the Income Tax Act, 1962 (Act No. 58 of 1962), starting on 1 March and ending on the last day of February. Other persons (i.e. entities) rely on their financial year. The actual return plus payment must be submitted 30 days after each 6-monthly assessment period (section 3(1)).

Payment of levy

Registered persons must submit payment of the levy within 30 days of end of their assessment period.

Form, manner and place determined by the Commissioner

The Commissioner largely controls the administration of returns, forms, payments and elections (section 5(1)). The only statutory requirement relates to consolidated financial returns. All registered persons (which include consolidated diamond sellers) must submit a single return at the same time and place determined by the Commissioner. This single return requirement will ensure that this single economic unit can be audited accordingly.

Maintenance and records

Like all tax acts, registered persons submitting 6-monthly returns must maintain sufficient books and records for the Commissioner to verify compliance (section 6(1)). These books and records must be maintained for a minimum of 5 years (subsections (2) and (3) of section 6). This 5-year minimum requirement matches the time limit for assessments described in section 9 (as well as the time limit for refunds in section 13).

1.3 Clauses 7 to 8 of Part II—

Election procedure

For purposes of bolstering South Africa's efforts at becoming a major diamond hub, all unpolished diamonds purchased at a local bourse from a registered person that has made an election under this section are exempt from the levy upon exportation (section 7(1)).

Penalties

If a registered person fails to satisfy its election requirements, that person will be penalized to the extent of the 5 per cent levy multiplied by the purchase price of the diamonds purchased at a local bourse (section 8).

1.4 Clauses 9 to 12 of Part III—

Assessments to re-determine, re-calculate and estimate amounts

The Diamond Levy operates as a self-assessment system, much like the Value-added Tax. A notice of assessment triggers an additional 30-day liability for payment (subject to objection and appeal).

Reduced assessments

The Commissioner has the power to reduce assessments without the formal objection and appeal process. This power similarly exists in the Income Tax and Value-added Tax Acts.

Withdrawal of assessments

The Commissioner has the power to withdraw assessments without the formal objection and appeal process. This power similarly exists in the Income Tax and Value-added Tax Acts.

Time limit for assessments

Similar to the Value-added Tax, the Diamond Levy has a 5-year time limit for assessments. This 5-year period begins to toll only after the submission of a diamond levy return to which that assessment period relates (Section 12(1)). Hence, if no return is submitted, the time limit for assessment continues indefinitely. Moreover, even if a return is submitted, the 5-year does not apply if the Commissioner has reason to believe that failure to pay the Diamond Levy stems from fraud, misrepresentation or non-disclosure of material facts (Section 12(2)).

1.5 Clauses 13 to 14 of Part IV—

Refunds

Registered persons may claim refunds for overpayments (Section 13(1)). Refunds have a 5-year time limit (Subsections (2) and (3) of Section 13).

Interest

Both the Commissioner and registered persons are eligible for interest to the extent of underpayments and overpayments, as the case may be (Subsections (1), (2) and (3) of Section 14). This interest is calculated on a monthly basis. The interest rate is calculated in accordance with the rate required by section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962).

1.6 Clauses 15 to 19 of Part V—

Division of responsibility: Section 15

The Commissioner is generally responsible for administering the Diamond Export Levy Bill (Section 15(1)). However, the Regulator will be responsible for assisting the Commissioner on issues requiring diamond expertise (Section 15(2)).

Applicability of the Income Tax Act: Section 16

Administrative processes falling within the purview of the Diamond Export Levy Bill are covered by reference to the Income Tax Act, 1962 (Act No. 58 of 1962) (Section 16(1)). The Commissioner and the Regulator may freely share information for enforcement of the Diamond Export Levy Bill (Section 16(2)). Lastly, discretionary decisions by the Commissioner and the Regulator are subject to objection and appeal (Section 16(3)).

Act binding on State and application of other laws: Section 17

The Diamond Export Levy Bill will be determined solely by its terms without reference to any other Act (unless that other Act makes specific mention of the Diamond Export Levy Bill).

Short title and commencement

The Diamond Export Levy Bill will come into operation on a date set by the Minister of Finance. This discretionary date will ensure that operation of the Diamond Export Levy Bill coincides with the existence of supporting administration apparatus (including the apparatus relating to the State Diamond Trader).

Currently, the 15 per cent diamond export levy contained within the Diamonds Act is fully operational, except for the potential waiver via section 59 agreement. The waiver via section 59 agreement only applies for one year from the promulgation of the Diamonds Amendment Act, 2005 (Act No. 29 of 2005). The Minister of Finance accordingly has the power to continue the section 59 agreement waiver until the new Diamond Export Levy Bill is fully operational. Without this deferral, a situation could inadvertently arise in which the 15 per cent export levy applies without any section 59 agreement relief.

1.7 Regulations—

The Minister of Finance may make regulations regarding the administration of this Act.

1.8 Schedule—

a. Amendments to the Diamonds Act

Sections 2, 3, 6, 7, 8 and 9 – Under section 4 (Import credit) of the money Bill to this Bill, a credit system is introduced that allows persons to import unpolished diamonds for purposes of offsetting their levy liabilities. The current version of the Diamonds Act does not contain administrative provisions that address an import credit system. This Bill updates the Diamonds Act by introducing consequential amendments that cater for the credit system.

Section 4 – The current version of section 64 of the Diamonds Act (Deferment of payment of export duty) allows a person to export an unpolished diamond exempt of the levy – but not from the requirement to tender that diamond at a bourse (section 48A of the Diamonds Act) – solely for marketing purposes. Since all unpolished diamonds exported for marketing purposes must be re-imported exactly in the same form (i.e., uncut) that they were exported or else be subject to a hefty penalties, it is futile to subject such diamonds to the considerable cost and time requirements associated with having to be tendered on the bourse. Thus, for purposes of administrative efficiency, section 64 exempts unpolished diamonds exported solely for marketing purposes from the tendering requirements of section 48A.

Section 5 – The Diamond Export Levy Bill fully replaces all diamond levies required by the Diamonds Act. Therefore, all diamond levies imposed by the Diamonds Act will be removed, including the 15 percent export levy as well as the fee to maintain the State Diamond Board.

b. Amendments to the Diamonds Second Amendment Act

Section 1 —The money Bill to this Bill exempts from the levy any unpolished diamond that was purchased at a local bourse from a person that has made an election in terms of section 7 of this Act, **“Election procedure”**. Section 74A of the Diamonds Second Amendment Act needed to be created in order to align the section 48A “bourse exemption” with this levy exemption. Thus, in the spirit of developing and bolstering our “diamond hub”, if a person purchases any unpolished diamonds at a local bourse from a person that has made an election pursuant to section 7 of this Act, that purchaser’s unpolished diamonds will be exempt from the bourse and the levy upon their export.

2. PERSONS AND INSTITUTIONS CONSULTED

The provisions contained in this Bill were published for public comment on the National Treasury and SARS websites. Comments were received from interested parties. These included professional bodies and business institutions.

3. FINANCIAL IMPLICATIONS TO THE STATE

As the changes relate to the administration of the various Diamonds Acts, it is not possible to quantify the financial implications for the State.

4. CONSTITUTIONAL IMPLICATIONS

None.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers, The National Treasury and the Department of Minerals and Energy are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution, as it contains no provisions to which the procedure set out in section 76 of the Constitution applies.

5.2 The State Law Advisers, the National Treasury and the Department of Minerals and Energy 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 does not contain provisions pertaining to customary law or customs of traditional committees.