

REPUBLIC OF SOUTH AFRICA

DIAMOND EXPORT LEVY BILL

(As introduced in the National Assembly as a money Bill)
(The English text is the official text of the Bill)

(Minister of Finance)

14 May 2008

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 the imposition of an export levy on rough diamonds and allow for offsets with respect to that levy.

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

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CHAPTER 1

DIAMOND EXPORT LEVY

Part I

Interpretation

Definitions

1. In this Act, unless the context indicates otherwise—

“**assessment period**” means an assessment period as described in section 15(2);

“**bill of entry for export**” means a bill of entry for export under the Customs and Excise Act, 1964 (Act No. 91 of 1964);

“**Commissioner**” means the Commissioner for the South African Revenue Service;

“**Diamonds Act**” means the Diamonds Act, 1986 (Act No. 56 of 1986);

“**levy**” means any levy payable as described in section 2(1);

“**notice of assessment**” means any notice of assessment described in section 21;

“**person**” includes any natural or juristic person; and

“**producer**” means—

- (i) any holder of a mining right or permit under the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002); or
- (ii) any company (other than the holder described in paragraph (i)) that—
 - (a) forms part of the same group for financial reporting purposes pursuant to International Financial Reporting Standards as that holder; and
 - (b) sells unpolished diamonds purchased from (or on behalf of) that holder.

(2) Unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Diamonds Act, bears the meaning so assigned for purposes of this Act.

Part II

Basic levy regime

Charging provision

2. (1) Any person is liable for the levy whenever that person delivers (or should have delivered) a bill of entry for export in respect of any unpolished diamond.
- (2) The levy in respect of an unpolished diamond equals the levy rate multiplied by the value of that diamond released for export in terms of section 69 of the Diamonds Act.
- (3) Any amount payable in terms of this Act must be paid for the benefit of the National Revenue Fund.

Rates

3. The levy applies at a 5 per cent rate.

Part III

General relief measures

Import credit

4. (1) Any person registered under section 1 of the Administration Bill to this Bill is entitled to receive a credit in respect of any unpolished diamond imported into the Republic on the date a registering officer releases that diamond for import as described in section 69B of the Diamonds Act.
- (2) The credit described in subsection (1) equals—
 - (a) the levy rate;
 - (b) multiplied by 100 per cent (or a lesser percentage prescribed by the Minister of Finance); and
 - (c) multiplied by the value in respect of which that diamond was released for import in terms of section 69B of the Diamonds Act.
- (3) All credits described in subsection (2) arising during an assessment period apply as an offset against the levy paid or payable in that assessment period.
- (4) To the extent credits remain after the offset described in subsection (3), those credits will be deemed to arise in the immediately succeeding assessment period.
- (5) A person is not entitled to receive any credits described in subsection (1) in respect of any unpolished diamond if that diamond was previously exported under—
 - (a) the cover of a deferment certificate described in section 5;
 - (b) the cover of an election described in section 6; or
 - (c) exemption from the levy otherwise imposed under this Act as described in Part IV.
- (6) A person is not entitled to receive any credits described in subsection (1) in respect of any unpolished diamond imported as described under subsection (1) during any assessment period in which that person qualifies for exemption in terms of Part IV.

Relief for temporary exports

5. Notwithstanding section 2(1), the levy does not apply to any unpolished diamond covered by a deferment certificate described in section 64 of the Diamonds Act.

Relief for election purchases

6. (1) Notwithstanding section 2(1), any person that purchases an unpolished diamond at a diamond exchange and export centre from a producer or diamond beneficiator making an election under section 6 of the Administration Bill to this Bill is not subject to the levy in respect of that diamond if that person—
 - (a) delivers a bill of entry for export in respect of that diamond within 10 business days after that purchase; and

- (b) provides a copy of that election with the bill of entry for export.

Part IV

Producer and beneficiary relief measures

Exemption for large producers

7. (1) Notwithstanding section 2(1), if during any assessment period—
- (a) the sum of a producer's gross sales to diamond beneficiaries described in section 11(1)(a) for that assessment period and the immediately preceding assessment period equals at least 40 per cent of the sum of that producer's total gross sales described in section 11(1)(b) during the aggregate of those assessment periods;
 - (b) the sum of the producer's total gross sales during those assessment periods described in paragraph (a) exceeds R 5 billion; and
 - (c) the producer holds a diamond exchange and export centre waiver approval pursuant to section 74 of the Diamonds Act that covers that entire assessment period,

that producer is exempt from the levy in respect of its unpolished diamonds that were subject to delivery pursuant to a bill of entry for export during that assessment period.

- (2) If during any assessment period a producer described in subsection (1)—
- (a) satisfies subsections (1)(b) and (c); and
 - (b) fails to satisfy the 40 per cent described in subsection (1)(a) by an amount equal to up to 5 percentage points with respect to that 40 per cent due to temporary circumstances outside of the control of that producer that satisfy the Commissioner,

that producer is exempt from the levy in respect of its unpolished diamonds that were subject to delivery pursuant to a bill of entry for export during that assessment period.

- (3) Notwithstanding subsections 2(1) and 2(2), a producer that is exempt from the levy during an assessment period described in subsection (2) will be deemed subject to a levy that equals—
- (a) the per cent by which that producer failed to satisfy the 40 per cent during that assessment period as described in subsection (2)(b); multiplied by
 - (b) the value all of its unpolished diamonds that were subject to delivery pursuant to a bill of entry for export during that assessment period.

Exemption for medium producers

8. (1) Notwithstanding section 2(1), if during any assessment period—
- (a) the sum of the producer's gross sales to diamond beneficiaries described in section 11(1)(a) for the assessment period and the immediately preceding assessment period equals at least 15 per cent of the sum of that producer's total gross sales described in section 11(1)(b) during the aggregate of those assessment periods; and
 - (b) the sum of the producer's total gross sales during those assessment periods described in paragraph (a) do not exceed R 5 billion,

that producer is exempt from the levy in respect of its unpolished diamonds that were subject to delivery pursuant to a bill of entry for export during that assessment period to the extent those unpolished diamonds were previously offered but not sold at a diamond exchange and export centre.

- (2) If during any assessment period a producer described in subsection (1)—
- (c) satisfies subsections (1)(b) and (c); and
 - (d) fails to satisfy the 15 per cent described in subsection (1)(a) by an amount equal to up to 5 percentage points with respect to that 15 per cent due to temporary circumstances outside of the control of that producer that satisfy the Commissioner,

that producer is exempt from the levy in respect of its unpolished diamonds that were subject to delivery pursuant to a bill of entry for export during that assessment period.

- (3) Notwithstanding subsections 2(1) and 2(2), a producer that is exempt from the levy during an assessment period described in subsection (2) will be deemed subject to a levy that equals—

- (a) the per cent by which that producer failed to satisfy the 15 per cent during that assessment period as described in subsection (2)(b); multiplied by
- (b) the value of all of its unpolished diamonds that were subject to delivery pursuant to a bill of entry for export during that assessment period.

Exemption for small producers

- 9.** (1) Notwithstanding section 2(1), if during any assessment period—
- (a) the sum of a producer’s total gross sales described in section 11(1)(b) during the assessment period and the immediately preceding assessment period do not exceed R 10 million;
 - (b) the producer described in paragraph (a) does not at any time during that period hold more than a 50 per cent ownership interest (directly or indirectly) in another producer;
 - (c) the producer described in paragraph (a) is not at any time during that period held more than 50 per cent (directly or indirectly) by another producer; and
 - (d) a producer described in paragraph (a) is not at any time during that period held more than 50 per cent (directly or indirectly) by any person that during that period holds more than a 50 ownership interest (directly or indirectly) in any other producer,

the producer is exempt from the levy in respect of its unpolished diamonds that were subject delivery pursuant to a bill of entry for export during that assessment period to the extent those unpolished diamonds were previously offered (in parcels consisting of no more than 10 stones) but not sold at a diamond exchange and export centre.

Exemption for diamond beneficiaries

- 10.** (1) Notwithstanding section 2(1), if during any assessment period a diamond beneficiary holds an export permit pursuant to section 26(h) of the Diamonds Act that covers that entire assessment period, that diamond beneficiary is exempt in respect of its unpolished diamonds that were subject to delivery pursuant to a bill of entry for export during that assessment period to the extent those unpolished diamonds were previously offered but not sold at a diamond exchange and export centre.

Gross sales

- 11.** (1) For purposes of this Chapter, during any assessment period—
- (a) gross sales to diamond beneficiaries in respect of a producer equals all amounts received or accrued in respect of all unpolished diamonds sold within the Republic during the assessment period by that producer to diamond beneficiaries; and
 - (b) the total gross sales of the producer described in paragraph (a) during that assessment period equals—
 - (i) all amounts received or accrued in respect of all unpolished diamonds transferred within the Republic during that assessment period; and
 - (ii) the value of all unpolished diamonds subject to delivery pursuant to bills of entry for export during that assessment period.
- (2) For purposes of subsections (1) and (2), “gross sales” includes—
- (a) the face value reduction or discharge of any outstanding obligations;
 - (b) the market value of any property, financial assistance, service or other benefit; and
 - (c) any premium paid in respect of an option on an unpolished diamond.
- (3) For purposes of subsections (1) and (2), “gross sales” do not include—
- (a) any tax imposed by the Value-Added Tax Act, 1991 (Act No. 89 of 1991);
 - (b) any transportation and insurance costs incurred for physically exporting unpolished diamonds from the Republic; and
 - (c) the value of any unpolished diamond sold to or acquired (directly or indirectly) from the State Diamond Trader in terms of section 59B of the Diamonds Act.

(4) To the extent any amount of total gross sales described in subsection (1) is not quantifiable, that amount is deemed received or accrued in the assessment period it becomes quantifiable.

Miscellaneous limitations

12. (1) During any assessment period, the Minister of Finance may reduce the exemptions described in sections 7, 8 and 10 by a prescribed percentage.

(2) No exemption contemplated in this Chapter applies to any person in respect of any unpolished diamond that was acquired (directly or indirectly) from the State Diamond Trader unless that diamond is exported by a diamond beneficiator contemplated in section 10.

Part V

Closing items

Short title and commencement

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

(2) Any certificate, exemption or any other form of authorisation issued as contemplated in section 31(9) of the Diamonds Amendment Act, 2005 (Act No. 29 of 2005) in terms of section 59 of the Diamonds Act continues in force until a date fixed by the Minister of Finance by proclamation in the *Gazette*.

Transitional arrangements

14. For purposes of this Act, any unpolished diamonds sold by a producer during the 6 calendar months immediately preceding the assessment period in which this Act comes into operation as described in section 13(1) of the Administration Bill to this Bill may be taken into account for purposes of satisfying sections 7, 8 or 9 (as the case may be).