



national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

DIAMOND EXPORT LEVY BILL

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

(MINISTER OF FINANCE)

11 October 2006

[B1 – 2006]

BILL

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

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PART I – DEFINITIONS

General Definitions

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

“assessment period” means any period described in section 10(2);

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

“connected person” means connected person as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962);

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

“levy” means any levy payable as described in section 2;

“Minister” means the Minister of Finance;

“notice of assessment” means any notice of assessment described in section 13;

“person” includes an insolvent estate, the estate of a deceased person, any trust, and any natural or juristic person;

“producer” means any holder of a mining right under the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), or any person approved by the Minister of Minerals and Energy that—

- (i) forms part of the same consolidated financial group (for purposes of generally accepted accounting practice) as a producer, and
- (ii) sells diamonds purchased from, or on behalf, of that producer;

“Republic” means the territory of the Republic of South Africa, including the territorial waters, the contiguous zone and the continental shelf referred to respectively in sections 4, 5, and 8 of the Maritime Zones Act, 1994 (Act No. 37 of 1994); and

“rough diamond” means any enhanced diamond or any diamond that is not polished (but not including any synthetic diamond) as defined under the Diamonds Act, regardless of whether or not that diamond is won or recovered within the Republic.

(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) A person is subject to a levy if a registering officer releases (or should have released) that person's rough diamond for export as described in section 69 of the Diamonds Act.

(2) The levy imposed in respect of a rough diamond described in subsection (1) is equal to the levy rate described in section 3 multiplied by the higher of—

- (a) the value specified on a return described in Section 61 of the Diamonds Act;
- or
- (b) a value assessed by the Diamond and Precious Metals Regulator as described in section 65 of the Diamonds Act.

(3) To the extent a value described in subsection (2) is denominated in a foreign currency, that value will be translated into the currency of the Republic at the closing spot rate on the date described in section 4.

(4) Any levy or penalty payable in terms of this Act must be paid into the National Revenue Fund.

Rates

3. The levy will be imposed at a 5 per cent rate.

Liability date

4. Liability for the payment of the levy occurs on the date a person delivers (or should have delivered) a bill of entry for export as required under the Customs and Excise Act, 1964 (Act No. 91 of 1964).

PART III – RELIEF MEASURES

Import credit

5. (1) A producer is entitled to receive a credit with respect to the importation of any rough diamond on the date that the rough diamond is imported into the Republic and duly entered as required in section 39 of the Customs and Excise Act, 1964 (Act No. 91 of 1964).

(2) The credit described in subsection (1) will equal the value of that rough diamond multiplied by the levy rate.

(3) The total credits described in subsection (2) that arise in respect of an assessment period will offset the levy paid or payable in respect of that period to the extent prescribed by the Minister as issued by regulation.

(4) Any excess credit arising from an offset described in subsection (3) will be carried forward to the immediately succeeding assessment period and will be deemed to arise in the succeeding period.

(5) The Commissioner may, in determining the value of any imported rough diamond described in subsection (2), adjust that value to reflect an arm's length price with respect to that diamond after consultation with the Diamond and Precious Metals Regulator.

(6) If any person or persons acquire more than 50 per cent of the ownership interests (directly or indirectly) of a company, corporation, or trust that is a producer and the sole or main purpose of that acquisition is to utilise a credit under this section, any unutilised credit to which that acquired company, corporation or trust is entitled on the date of acquisition will be disallowed.

(7) The import credit described in this section will not apply with respect to a producer that has been granted an exemption described in section 6 or 7.

Ministerial exemption in terms of the Diamonds Act

6. (1) If the Minister of Minerals and Energy under section 74 of the Diamonds Act exempts a producer from the provisions of section 48A of that Act with respect to any rough diamond, that person will not be subject to the levy otherwise imposed under this Act with respect to that diamond to the extent prescribed by the Minister as issued by regulation.

(2) The levy exemption described in subsection (1) will not apply with respect to any—

- (a) producer that acquires a rough diamond that was sold by the State Diamond Trader as described in the Diamonds Act; or
- (b) producer that has been granted a credit described in section 5.

Ministerial exemption at diamond exchange and export centre

7. (1) The Minister of Minerals and Energy may exempt any producer from being subject to the levy otherwise imposed under this Act with respect to any rough diamond as described in subsection (2) to the extent prescribed by the Minister as issued by regulation if—

- (a) that producer's activities within the Republic are supportive of local beneficiation of the Republic's diamonds; or

- (b) that producer's rough diamond sales do not exceed R10 million per annum.
- (2) A producer that has been granted an exemption described in subsection (1) will not be subject to the levy otherwise imposed with respect to a diamond if that diamond—
 - (i) is offered at the diamond exchange and export centre for a minimum of four business days;
 - (ii) is not sold at the diamond exchange and export centre to any person within the period described in (i);
 - (iii) is subsequently sold for export for an amount at least equal to the reserve price at which that diamond was offered on the diamond exchange and export centre as described in subparagraph (i); and
 - (iv) that producer submits proof of the reserve price described in subparagraph (iii) with a bill of entry for export as required under the Customs and Excise Act, 1964 (Act No. 91 of 1964).
- (3) The levy exemption described in subsection (1) will not apply with respect to any—
 - (a) producer that acquires a rough diamond that was sold by the State Diamond Trader as described in the Diamonds Act; or
 - (b) producer that has been granted a credit described in section 5.

PART IV – REGISTRATION, RETURNS AND PAYMENTS

Registration

- 8.** (1) Any producer must apply to register with the Commissioner in the form, manner (including electronically) and place as determined by the Commissioner within 45 days of becoming a producer.
- (2) For purposes of this Act, the Commissioner must register any producer described in subsection (1).
- (3) The Commissioner may not register a person other than a producer.

Cancellation of registration

- 9.** (1) A producer may apply to the Commissioner for deregistration after the date on which that producer ceases to be a producer.
- (2) Upon receipt of an application in terms of subsection (1), the Commissioner may cancel that producer's registration effective from the last day of the assessment period to which the application relates.

Returns and assessment periods

10. (1) Every producer must submit a return and payment in respect of each assessment period in accordance with section 11 within 30 days after the closing date of the assessment period to which that return relates.

(2) For purposes of this Act, each assessment period for a producer described in subsection (1)—

(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 assessment periods in respect of financial years that are shorter or longer than 12 months.

Form, manner and place determined by Commissioner

11. (1) All returns, forms and payments 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 registered producers that form part of the same consolidated financial group must submit a return and make payment described in subsection 10(1) at the same place and on the same date as determined by the Commissioner.

Maintenance of records

12. (1) Every producer must maintain records necessary to observe the requirements of this Act, including—

(a) the original note of receipt or purchase in respect of a rough diamond as described in section 56 of the Diamonds Act;

(b) a register in respect of rough diamonds as described in section 57 of the Diamonds Act;

- (c) a record of all rough diamonds imported into or removed from the Republic by that person with sufficient detail to identify such diamonds, values, purchasers and sellers involved;
- (d) a copy of an exemption granted under section 6 or 7;
- (e) any invoice, contractual agreement, financial statement, deposit slip, or paid cheque relating to a receipt, register, or record described in this section; and
- (f) any other information required by the Commissioner or the Minister of Minerals and Energy.

(2) Every producer'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 V – ASSESSMENTS

Assessments to re-determine, recalculate and estimate amounts

13. (1) If—

- (a) a producer fails to furnish a return;
- (b) the Commissioner is not satisfied with a return furnished by a producer; or
- (c) the Commissioner has reason to believe that a person has failed to pay a levy for which that person is liable,

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

(2) A 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

14. (1) The Commissioner may reduce an 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 the person's 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.

Withdrawal of assessments

- 15.** (1) The Commissioner may withdraw an assessment that is—
- (a) issued to an incorrect person; or
 - (b) issued in respect of an incorrect assessment period.
- (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

- 16.** (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 pay the levy to which the assessment relates due to fraud, misrepresentation or non-disclosure of material facts.

PART VI – REFUNDS AND INTEREST

Refunds

- 17.** (1) Any person will be 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 producer may claim a refund in respect of any levy paid only within five years following the assessment period giving rise to that claim.
- (3) Any person (other than a producer) may claim a refund in respect of any levy paid only within five years following the date of payment giving rise to that claim.

Interest

- 18.** (1) The Commissioner must pay interest calculated on a monthly basis in respect of any levy to the extent that levy exceeds the amount properly chargeable under this Act and is not refunded within 30 days after receipt of a refund claim with respect to that levy.
- (2) Every producer that has failed to pay a levy properly due within 30 days after the close of the assessment period 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) Every person (other than a producer) that has failed to pay a levy due within 30 days after that person delivered a bill of entry for export 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.

(4) 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 VII – MISCELLANEOUS

Division of responsibility

19. (1) The Commissioner will be responsible for administering this Act with the assistance of the Minister of Minerals and Energy as described in subsection (2).

(2) The Minister of Minerals and Energy (or any delegate of the Minister of Minerals and Energy) will be responsible for assisting the Commissioner—

- (a) in the verification of the fair market value of any rough diamond;
- (b) in the verification of the quantity and quality of any rough diamonds described in paragraph (a); and
- (c) in the verification of any other information that the Commissioner and the Minister of Minerals and Energy 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

20. (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)(i), the Minister of Minerals and Energy will for purposes of administering this Act as described in section 19, 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 Diamond and Precious Metals Regulator, as applicable—

- (a) in terms of section 2(2)(b) of a value assessed by the Diamond and Precious Metals Regulator;
- (b) in terms of section 5(5) of an adjustment of the value of an imported diamond;
- (c) in terms of section 8 notifying that person of the Commissioner's refusal to register that person in terms of this Act;
- (d) in terms of section 9 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;
- (e) in terms of any assessment made upon that person in terms of section 13; or
- (f) in terms of section 17 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

21. 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

22. (1) This Act will be titled the Diamond Export Levy Act, 2006, and will come into operation on a date to be fixed by the Minister by proclamation in the *Gazette*.

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

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	<ol style="list-style-type: none">1. Repeal of sections 62, 63, 64, 93 and 95(h)2. Amendment of section 68 by the deletion in the title of section 68 of: “Payment of [“export duty and”] fine.”3. Amendment of section 68 by the deletion in: subsection (1) of section 68 of [“export duty levied or any”]; subsection (2) of section 68 of [“export duty or”]