

15 August 2018

The Deputy Director National Treasury
240 Madiba Street
Pretoria Central
PRETORIA
0002

Attention: Mr Momoniat

By email: Ismail.Momoniat@treasury.gov.za

Dear Mr Momoniat

PROPOSED CHANGES TO THE DIAMOND EXPORT LEVY ACT, 2007 DIAMOND PRODUCER THRESHOLDS

We refer to our letter of 14 February 2018 opposing the Petra Diamonds Southern Africa (Pty) Ltd request for changes to the Diamond Export Levy Act, 2007 ("**Diamond Export Levy Act**") producer threshold limits, our meeting with you and your team of 10 May 2018 where we engaged around the matter and the Draft Taxation Laws Amendment Bill and Draft Tax Administration Laws Amendment Bill ("**Draft Tax Bill**") released for public comment on 16 July 2018.

We hereby submit our opposing view to the proposed threshold limit changes for large and medium producers in the Draft Tax Bill. The implementation of the proposed changes, without a holistic review of the purpose and relevant provisions of, and interplay between, the Diamond Export Levy Act, the Diamonds Act, 1986 (as amended) ("**the Diamonds Act**") and Regulation 2Y(2) of the Regulations to the Diamonds Act ("**Regulation 2Y(2)**") will have a detrimental impact on, and unintended consequences for, our business as well as the South African diamond beneficiation (cutting and polishing) industry.

We hereby submit the following key points informing our opposed view:

1. Under Regulation 2Y(2) of the Diamonds Act, large producers are required to sell at least 40 percent of their total gross sales to local beneficiaries in order to promote local beneficiation. If a producer meets this local offer threshold, it also qualifies for the large producer exemption under section 7(1) of the Diamond Export Levy Act, assuming it meets all of the other requirements contained in that section.

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2. 85% of the local beneficiation industry is supplied by De Beers. De Beers Consolidated Mines, together with its wholly owned subsidiary De Beers Sightholder Sales South Africa (together De Beers RSA) is a large producer under Regulation 2Y(2) and section 11 of the Diamond Export Levy Act and thus supplies 40% of its total gross sales to the local industry.
3. The change in the producer threshold limits (without also reviewing the balance of the Diamond Export Levy Act and inter-related provisions of the Diamonds Act and Regulation 2Y(2)) might result in De Beers RSA being classified as a medium producer under the Diamond Export Levy Act during the periods of mining through the open pit bottleneck and the subsequent transition from open pit to underground mining at Venetia Mine. This is because the technical events will result in De Beers RSA producing reduced production volumes and mining low grade stockpiles during those periods.
4. The classification of De Beers RSA as a medium producer would have the following detrimental impact (and unintended consequences) on De Beers' business and the industry, as well as on the operation of the legislation:
 - a. De Beers RSA will only be required to sell 15% of its total gross sales to local beneficiaries thereby significantly reducing the supply to the local beneficiation industry which benefits from De Beers RSA supply.
 - b. De Beers' supply to the local industry consists of suitable goods made up of De Beers' international mixture from its aggregation activities in Botswana. The aggregation process, which is a fundamental part of De Beers' business model and enables the provision of consistent mixtures of diamonds to our clients (including those in South Africa), requires De Beers RSA to be exempted from section 48A of the Diamonds Act in relation to its diamond exports, an exemption that applies only to large producers as defined in Regulation 2Y(2) as read with the Diamond Export Levy Act. It is not clear whether and how the revised threshold limit in the Draft Tax Bill will impact this.
 - c. The impact to the De Beers aggregation and sales model will lead to poorer and inconsistent mixtures of diamonds being offered to the local beneficiation industry thereby significantly impacting local beneficiation in South Africa.
 - d. De Beers would be unable to claim the large producer exemption under section 7(1) of the Diamond Export Levy Act given it will not meet the required threshold, and it is not clear how De Beers RSA would claim the exemption for medium producers under section 8 given its business model does not entail it offering diamonds at the Diamond Exchange and Export Centre, as this would be detrimental to its aggregation model.
5. The rationale for changes to the threshold limits is based only on the weakening of the rand against the US dollar since 2007 and does not consider the extent to which South African diamond producers support or should be required to support diamond cutting and polishing in South Africa taking into account their relative sizes, footprints in South Africa and mechanisms available to them to provide such support. It should be noted that the weakening of the rand has also benefitted South African producers since

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2007, as it resulted in an increase in the Rand-based revenue for producers, given diamond prices are US dollar based.

6. The classification of additional producers as large producers by virtue of their total gross sales exceeding R3 billion would have a positive impact on the local beneficiation industry. The parties would move from the requirement of selling 15% to local beneficiaries to a new requirement of selling 40% to local beneficiaries thereby increasing supply to the local beneficiation industry.

We are thus opposed to the proposal in the Draft Tax Bill to change the large and medium producer limits without a holistic review of the legislation. We believe that the structure of the current legislation (Diamonds Act and Diamond Export Levy Act) requires a combined review in the context of promoting beneficiation, the current position of the South African beneficiation industry (which has been in decline since 2008) and De Beers' aggregation model.

In the event of effecting the proposed amendments, we hereby propose a threshold limit of US\$280 million instead of the current proposed threshold limit of US\$325 million. The proposed amount will enable De Beers RSA to continue providing South African beneficiaries with over 40% of its total gross sales.

We would like to make ourselves available for a further discussion with your office at your earliest convenience.

Please contact Innocent Mabusela on innocent.mabusela@debeersgroup.com regarding the discussion.

Yours sincerely



PHILLIP BARTON
CHIEF EXECUTIVE OFFICER

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