

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President.)
(Assented to 5 December 2007.)

ACT

To provide for administrative matters in connection with the imposition of an export levy on unpolished diamonds (but not including synthetic diamonds).

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

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SCHEDULE

Part I

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Interpretation

Definitions

1. (1) In this Act, unless the context indicates otherwise—
- | | |
|---|----|
| “assessment period” means an assessment period as described in section 4(2); | |
| “Commissioner” means the Commissioner for the South African Revenue Service; | 25 |
| “Income Tax Act” means the Income Tax Act, 1962 (Act No. 58 of 1962); | |
| “Levy Act” means the Diamond Export Levy Act, 2007; | |
| “notice of assessment” means a notice of assessment as described in section 10; | |
| and | 30 |
| “registered person” means a person registered by the Commissioner as described in section 2(4). | |
- (2) Unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Diamonds Act, 1986 (Act No. 56 of 1986), or the Levy Act bears the meaning so assigned for purposes of this Act. 35

Part II

Registration, returns and payments

Registration

2. (1) A person qualifies for registration in terms of this Act if that person is a producer, dealer, diamond beneficiator or holder of a permit to export pursuant to section 26(h) of the Diamonds Act. 40

(2) A person who qualifies for registration on the promulgation date of this Act must apply to register with the Commissioner within 60 days of the promulgation date of this Act.

(3) A person who qualifies for registration after the promulgation date of this Act must apply to register with the Commissioner within 60 days of qualifying for registration. 5

(4) The Commissioner must register a person who qualifies for registration and that registration takes effect from the beginning date of the assessment period during which that person qualified for registration.

Cancellation of registration

3. (1) A registered person who no longer qualifies for registration or who anticipates that he or she will no longer qualify for registration from a specified date may apply to the Commissioner for cancellation of registration. 10

(2) Upon receipt of an application in terms of subsection (1), the Commissioner may cancel a registered person's registration with effect from the day after the ending date of the assessment period in which that registered person no longer qualifies for registration. 15

(3) The obligations and liabilities under this Act or the Levy Act of a person in respect of anything done, or omitted to be done, by that person while that person is a registered person shall not be affected by the fact that the Commissioner has cancelled that person's registration.

Returns and assessment periods 20

4. (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 25

(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. 30

(3) The Commissioner may make rules in respect of circumstances when an assessment period may be shorter or longer than six months. 35

Payment of levy

5. (1) A registered person must submit payment of any levy due in respect of a return to which that payment relates on the date that return must be submitted as described in section 4(1). 40

(2) To the extent a value described in section 2(2) of the Levy Act in respect of an unpolished diamond is denominated in a foreign currency, that value will be translated into the currency of the Republic at the selling rate on the date of shipment of that unpolished diamond as determined by the Commissioner, in consultation with the South African Reserve Bank, or if no such rate is determined for such date, the latest rate determined before that date. 45

Form, manner and place determined by Commissioner

6. 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 in respect of any matter necessary to administer this Act or Levy Act. 5

Maintenance of records

7. (1) Every registered person must retain records necessary to observe the requirements of this Act and the Levy 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; 10
- (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 diamonds, values, purchasers and sellers involved; 15
- (d) a copy of any temporary exemption certificate described in section 5 of the Levy Act;
- (e) a copy of any exemption from section 48A of the Diamonds Act pursuant to section 74 of that Act;
- (f) a copy of any permit to export granted pursuant to section 26(h) of the Diamonds Act; 20
- (h) any ledger, cash book, journal, cheque book, bank statement, deposit slip, paid cheque, invoice, other book of account, or financial statement; and
- (i) any other information required by the Commissioner or the Regulator.

(2) Every registered person's records must be retained (either in their original form or in any other form, including any electronic form as may be prescribed by the Commissioner) for five years after the date of the submission of the return to which those records relate. 25

(3) Notwithstanding subsection (2), a registered person that notes an objection or appeal against a notice of assessment must retain all records relevant to that objection or appeal until that notice of assessment becomes final. 30

Part III**Election for producers and diamond beneficiators****Election procedure**

8. (1) Notwithstanding section 2(1) of the Levy Act, any producer or diamond beneficiary may elect pursuant to section 6 of the Levy Act in respect of an assessment period that any person purchasing an unpolished diamond at a diamond exchange and export centre from that producer or diamond beneficiary during that assessment period is not subject to the levy in respect of that diamond. 35

(2) In order for the election described in subsection (1) to apply in respect of a particular assessment period, that election must be submitted to the Commissioner in the assessment period immediately preceding the assessment period for which that election will apply. 40

(3) The election described in subsection (1) is deemed to be immediately granted upon submission as described in subsection (2). 45

Penalties

9. (1) If during any assessment period in respect of which an election described in section 7 applies a producer fails to be exempt (in terms of sections 7, 8 or 9 of the Levy Act, as the case may be) from the levy otherwise imposed under the Levy Act, that producer must— 5

- (a) be deemed to be subject to the levy as if that producer had delivered a bill of entry for export in respect of all diamonds purchased during that period from that producer at a diamond exchange and export centre; and
- (b) take into account the unpolished diamonds subject to the levy described in subparagraph (a) for purposes of determining its total gross sales value as described in section 11(1)(b) of the Levy Act in terms of sections 7, 8 or 9 of the Levy Act (as the case may be). 10

(2) If during any assessment period in respect of which an election described in section 7 applies, a diamond beneficiator fails to be exempt (in terms of section 11 of the Levy Act) from the levy otherwise imposed under the Levy Act, that diamond beneficiator will be deemed to be subject to the levy as if that diamond beneficiator had delivered a bill of entry for export in respect of all diamonds purchased during that period from that diamond beneficiator at a diamond exchange and export centre. 15

Part IV**Assessments** 20**Assessments to re-determine, recalculate and estimate amounts**

10. (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 25
- (c) the Commissioner has reason to believe that any registered person has failed to pay a levy for which that registered person is liable,

the Commissioner may issue to that person a notice of assessment of the levy payable for the assessment period concerned, notwithstanding the provisions of section 81(5), 83(18) and 83A(12) of the Income Tax Act. 30

(2) If a registered person defaults in furnishing any return or information or the Commissioner is not satisfied with the return or information, the Commissioner may estimate the amount upon which the levy is payable.

(3) The Commissioner must, in the notice of assessment, give notice to the registered person that any objection to the notice of assessment must be noted as described in section 81 of the Income Tax Act. 35

(4) 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 40

11. (1) The Commissioner may, notwithstanding the fact that no objection or appeal has been noted, reduce any notice of assessment—

- (a) to rectify any processing error made in issuing that notice of assessment; or
- (b) where it is proved to the satisfaction of the Commissioner that in issuing that notice of assessment any amount which— 45

- (i) was taken into account by the Commissioner in determining the registered person's liability in respect of the levy, should not have been taken into account; or
- (ii) should have been taken into account in determining the registered person's liability in respect of the levy, was not taken into account by the Commissioner: 5

Provided that such assessment, wherein the amount was so taken into account or not taken into account, as contemplated in subparagraph (i) or (ii), as the case may be, was issued by the Commissioner based on information provided in the registered person's return for the current or any previous year of assessment. 10

- (2) The Commissioner shall not reduce an assessment under subsection (1)—
 - (a) after the expiration of five years from the date of that assessment; or
 - (b) if the amount was assessed in terms of an assessment accepted by the registered person and which was made in accordance with the practice generally prevailing at the date of that notice of assessment. 15

Withdrawal of assessments

- 12. (1) The Commissioner may withdraw a notice of assessment that is—
 - (a) issued to an incorrect person; or
 - (b) issued in respect of an incorrect assessment period. 20

(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

13. (1) The Commissioner may not issue a notice of assessment more than five years after the submission of a return to which the assessment relates. 25

(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 notice of assessment relates due to fraud, misrepresentation or non-disclosure of material facts.

Part V 30

Refunds and interest

Refunds

14. (1) A registered person may claim a refund of any amount paid in respect of an assessment period to the extent that the amount exceeds—

- (a) in the case where that amount was paid in respect of a notice of assessment, the amount so assessed; or 35
- (b) in any other case, the amount properly chargeable under the Levy Act.

(2) The Commissioner may not authorise a refund under subsection (1)(b), where—

- (a) that amount was paid in accordance with the practice generally prevailing at the date of the payment; or 40
- (b) the refund is claimed by that person after a period of five years from the date of the official receipt acknowledging such payment or, where more than one such payment was made, the date of the official receipt acknowledging the latest of such payments.

- (3) The Commissioner may refuse to authorise a refund under subsection (1), if that registered person has failed to furnish—
- (a) a return for any assessment period as required by this Act, until that registered person has furnished such return as required; or
 - (b) the Commissioner in writing with particulars of that registered person's banking account or account with a similar institution to enable the Commissioner to transfer a refund, if any, to that account until that registered person has furnished such particulars as required. 5
- (4) If any refund contemplated in subsection (1) is due to a registered person who has failed to pay any amount of tax, additional tax, duty, levy, charge, interest or penalty levied or imposed under this Act or any other Act administered by the Commissioner, within the period prescribed for payment of the amount, the Commissioner may set off against the amount which that registered person has failed to pay, any amount which has become refundable to that registered person under this section. 10
- (5) If the amount that would be refunded under subsection (1) is determined to be less than R100 or less than such other amount as the Commissioner may determine by Notice in the *Gazette*, the amount so determined shall not be refunded in respect of that assessment period but shall be carried forward to the immediately succeeding assessment period. 15

Interest 20

15. (1) The Commissioner must pay interest calculated on a monthly basis in respect of any amount paid in respect of an assessment period to the extent that amount—
- (a) exceeds the amount assessed or properly chargeable under the Levy Act for that assessment period, as the case may be; and
 - (b) is not refunded within 30 days after receipt of a refund claim in respect of that excess. 25
- (2) A registered person must pay interest calculated on a monthly basis in respect of any amount due in respect of an assessment period that is not paid within 30 days after the ending date of that assessment period.
- (3) Interest required under this section must be calculated at the rate described in paragraph (b) of the definition of prescribed rate in section 1 of the Income Tax Act. 30

Part VI

Miscellaneous

Division of responsibility

16. (1) The Commissioner will be responsible for administering this Act and the Levy Act with the assistance of the Regulator as described in subsection (2). 35
- (2) The Regulator will be responsible for—
- (a) the verification of the fair market value of any unpolished diamond;
 - (b) the verification of the quantity and quality of any unpolished diamonds described in paragraph (a); and
 - (c) the verification of any other information that the Commissioner and the Regulator agree will assist in administering this Act or the Levy Act. 40
- (3) For purposes of this section, "administering this Act and the Levy Act" means—

- (a) determining the correctness of any return, financial statement, document, declaration of facts, or valuation relevant to this Act or the Levy Act;
- (b) determining and collecting any amounts due under this Act or the Levy Act;
- (c) determining whether an offence has been committed under this Act or the Levy Act; and
- (d) performing any other administrative function necessary for carrying out this Act or the Levy Act.

Applicability of Income Tax Act

17. (1) The provisions of the Income Tax Act relating to—
- (a) the exercise of powers and performance of duties;
 - (b) preservation of secrecy;
 - (c) the production of information, documents or things, enquiries, searches and seizures and evidence on oath;
 - (d) objections and appeals;
 - (e) settlement of disputes;
 - (f) the payment and recovery of tax, interest and penalties;
 - (g) offences;
 - (h) reporting of unprofessional conduct; 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 and the Levy Act.

(2) For purposes of subsection (1)(b), the Commissioner and Regulator must disclose to one another information requested or required for purposes of administering this Act and the Levy Act as described in section 16.

(3) Any person that is dissatisfied with any decision given in writing by the Commissioner—

- (a) in terms of section 2 notifying that person of the Commissioner's refusal to register that person in terms of this Act;
 - (b) in terms of section 3 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;
 - (c) in terms of section 10 in respect of an assessment made upon that person; or
 - (d) in terms of section 14 of the Commissioner's refusal to make a refund.
- may note an objection thereto with the Commissioner.

Rules

18. The Commissioner may make rules with respect to any matter necessary to administer this Act or the Levy Act, including rules to ensure that all foreign currency translations are consistently applied.

Amendment of laws

19. The laws mentioned in the Schedule are amended to the extent set out in the third column of the Schedule.

Act binding on State and application of other laws

20. 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

21. This Act is called the **Diamond Export Levy (Administration) Act, 2007**, and comes into operation on a date to be fixed by the Minister of Finance by proclamation in the *Gazette*.

SCHEDULE

(Section 19)

Amendment 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 by the substitution for the definition of "unpolished diamonds" of the following definition:</p> <p><u>" 'unpolished diamonds' means—</u></p> <p><u>(a) diamonds in their natural state, as they occur in deposits or extracts from the parent rock;</u></p> <p><u>(b) diamonds simply sawn, cleaved, bruted, tumbled or which have only a small number of polished facets (windows which allow expert examination of the internal characteristics), and includes diamonds that are provisionally shaped but clearly require further working;</u></p> <p><u>(c) tumbled diamonds of which the surface has been rendered glossy or shiny by chemical treatment or chemical polishing;</u></p> <p><u>(d) broken or crushed diamonds;</u></p> <p><u>(e) diamond dust; or</u></p> <p><u>(f) diamond powder,</u></p> <p><u>and applies regardless of whether such diamonds are won or recovered within the Republic;"</u></p> <p>2. Section 60 of the Diamonds Act is hereby substituted with the following section:</p> <p>"Export and import of unpolished diamonds</p> <p>60. (1) No exporter shall export any unpolished diamond from the Republic unless—</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 Act.</u></p> <p>(2) No importer shall import any unpolished diamond into the Republic unless—</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 under the Diamond Export Levy Act.</u></p> <p>(3) The Regulator shall confiscate any unpolished diamond that does not satisfy the requirements of the Kimberley Process Certification Scheme, as prescribed."</p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> <p>40</p> <p>45</p> <p>50</p>

No. and year of law	Short title	Extent of amendment or repeal
		<p>3. Section 61A is hereby amended by the insertion after section 61 of the following section:</p> <p><u>“Registration of unpolished diamonds for import</u> 5</p> <p><u>61A. (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> 10</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> 15</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> 20</p> <p><u>(4) If the registering officer is satisfied that an importer has complied with the provisions of this section, he or she shall register the unpolished diamond in question for import.”.</u> 25</p> <p>4. Section 64 of the Diamonds Act is hereby substituted with the following section: 30</p> <p><u>“Temporary exemption from diamond exchange and export centre</u></p> <p><u>64. (1) If the Regulator is satisfied that an unpolished diamond will be exported from the Republic—</u> 35</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> 40</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> 45</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 a temporary exemption certificate stipulating—</u></p> <p><u>(a) that the diamond is not subject to section 48A;</u> 55</p> <p><u>(b) the value of that diamond as released for export in terms of section 69; and</u></p> <p><u>(c) any other particulars required to be furnished by the Regulator in respect of that diamond.</u> 60</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>

No. and year of law	Short title	Extent of amendment or repeal
		<p><u>(a) not registered for import as described in section 61A on a date within the date determined by the Regulator as described in subsection (1) in respect of that diamond:</u></p> <p>or</p> <p><u>(b) 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 25 per cent multiplied by that diamond's value as released for export in terms of section 69 of the Diamonds Act.</u></p> <p><u>(5) The Regulator may reduce the fine described in subsection (4)(c) up to 20 percentage points 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 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 for the heading of section 65 of the following heading:</p> <p><u>"Examination and valuation of unpolished diamonds for export."</u></p>

No. and year of law	Short title	Extent of amendment or repeal
		<p>7. The Diamonds Act is hereby amended by the insertion after section 65 of the following section:</p> <p style="text-align: right;">5</p> <p><u>“Examination and valuation of unpolished diamonds for import</u></p> <p><u>65A. (1) The registering officer or another person designated by the Regulator—</u></p> <p style="text-align: right;">10</p> <p><u>(a) shall examine; and</u></p> <p><u>(b) may assess the value of,</u></p> <p style="text-align: right;">15</p> <p><u>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:</p> <p style="text-align: right;">20</p> <p><u>“Fine in case of difference in values</u></p> <p><u>67. (1) If the difference in value of any unpolished diamond—</u></p> <p style="text-align: right;">25</p> <p><u>(a) as specified in the return referred to in section 61(2) in relation to the value of that diamond as released for export in terms of section 69; or</u></p> <p style="text-align: right;">30</p> <p><u>(b) as specified in the return referred to in section 61A(2) in relation to the value of that diamond as released for import in terms of section 69B,</u></p> <p style="text-align: right;">35</p> <p><u>is greater than 20 per cent, the Regulator shall impose upon the exporter or importer concerned a fine equal to 20 per cent of the value of that diamond as released in terms of section 69 or section 69B (as the case may be).</u></p> <p style="text-align: right;">40</p> <p><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></p> <p style="text-align: right;">45</p> <p><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. The Diamonds Act is hereby amended by the insertion after section 69A of the following section:</p> <p style="text-align: right;">50</p> <p><u>“Release of unpolished diamonds for import—</u></p> <p style="text-align: right;">55</p> <p><u>69B. (1) The registering officer shall not release any person’s unpolished diamond for import unless—</u></p>

No. and year of law	Short title	Extent of amendment or repeal
		<p><u>(a) that unpolished diamond was registered for import as described in section 61 A;</u> <u>(b) all fines imposed on that person in terms of this Act have been paid;</u> <u>(c) the provisions of any other law relating to the import of that unpolished diamond have been complied with;</u> <u>(d) that unpolished diamond has been made up in a parcel in such manner as the registering officer may determine; and</u> <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> <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	<p>1. Section 61 of the Diamonds Amendment Act is hereby amended by the insertion after subsection (2) of the following subsection:</p> <p><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></p> <p>2. The Diamonds Amendment Act is hereby amended by the repeal of sections 66 and 68.</p> <p>3. Section 69 of the Diamonds Amendment Act is hereby amended by the insertion after subsection (2) of subsection (3):</p>

No. and year of law	Short title	Extent of amendment or repeal
		<p>“(3) Any packet contemplated in subsection (2) may not be exported from the Republic if a bill of entry delivered in terms of section 38(3)(a) of the Customs and Excise Act, 1964 (Act No. 91 of 1964) is not delivered in respect of that packet within 10 business days of the date the Regulator released that packet.”.</p>
Act No. 30 of 2005	Diamonds Second Amendment Act, 2005	<p>The Diamonds Second Amendment Act is hereby amended by the insertion after section 74 of the following section:</p> <p>“Relief for certificated purchases—</p> <p>74A. 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 Levy Bill to the Diamond Export Levy Bill.”.</p>