

*(English text signed by the President.)
(Assented to 2 December 2007.)*

ACT

To provide for the imposition of an export levy on unpolished diamonds (but not including synthetic diamonds) and allow for offsets with respect to that levy.

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

ARRANGEMENT OF SECTIONS

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Part I

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Interpretation

Definitions

1. (1) In this Act, unless the context indicates otherwise-
- “**Administration Act**” means the Diamond Export Levy (Administration) Act, 2007; 10
 - “**bill of entry for export**” means a bill of entry delivered in terms of section 38(3)(a) of the Customs and Excise Act, 1964 (Act No. 91 of 1964);
 - “**Diamonds Act**” means the Diamonds Act, 1986 (Act No. 56 of 1986);
 - “**levy**” means any levy payable as described in section 2(1);
 - “**person**” includes an insolvent estate, the estate of a deceased person and any trust; 15
 - “**producer**” means—
 - (i) a producer as defined in the Diamonds Act; or
 - (ii) any company (other than a producer described in paragraph (i)) that—
 - (a) is incorporated in or outside of the Republic and forms part of the same group for financial reporting purposes pursuant to International Financial Reporting Standards or Generally Accepted Accounting Practice as that producer; and 20
 - (b) sells unpolished diamonds purchased from (or on behalf of) that producer; and 25
 - “**unpolished diamond**” means an unpolished diamond as defined in section 1 of the Diamonds Act, but does not include a synthetic diamond as defined in section 1 of that Act.
- (2) Unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Diamonds Act or the Administration Act bears the meaning so assigned for purposes of this Act. 30

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. 35
- (2) The levy in respect of an unpolished diamond equals the levy rate multiplied by the value of that diamond as 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. 40

Rates

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

Part III

General relief measures

Import credit

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4. (1) Any person registered under section 2 of the Administration Act 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—

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(a) the levy rate; multiplied by

(b) the value in respect of that diamond as 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 respect of that assessment period.

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(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 this section in respect of any unpolished diamond if that diamond was previously exported under—

(a) the cover of a temporary exemption certificate described in section 5; or

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(b) the cover of an election described in section 6.

(6) A person is not entitled to receive credits described in this section in respect of any unpolished diamond imported during any assessment period in which that person qualifies for relief in terms of Part IV.

Relief for temporary exports

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

Relief for election purchases

6. Notwithstanding section 2(1), any person that purchases an unpolished diamond at a diamond exchange and export centre in respect of which an election described in section 8(1) of the Administration Act applies is not subject to the levy in respect of that diamond if that person—

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(a) delivers a bill of entry for export in respect of that diamond within 10 business days after that purchase; and

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

Part IV

Producer and diamond beneficiator relief measures

Exemption for large producers

7. (1) Notwithstanding section 2(1), if during any assessment period—

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(a) the sum of a producer's gross sales to diamond beneficiators described in section 11(1)(a) for that assessment period and the immediately preceding assessment period equal 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 described in section 11(1)(b) during those assessment periods described in paragraph (a) exceeds R 3 billion; and
- (c) the producer holds an exemption from section 48A of the Diamonds Act pursuant to section 74 of that Act that covers that entire assessment period, that producer is exempt from the levy during that assessment period. 5
- (2) If during an assessment period a producer—
- (a) satisfies subsections (1)(b) and (c);
- (b) fails to satisfy the 40 per cent described in subsection (1)(a) by an amount up to 5 percentage points; and 10
- (c) in respect of that assessment period, satisfied subsection (1) in the immediately preceding assessment period,
- the levy rate in subsection (3) applies to that producer in lieu of the levy rate applied in section 3. 15
- (3) A producer described in subsection (2) is subject to a levy that equals—
- (a) the percentage by which that producer failed to satisfy the 40 per cent described in subsection (2)(b) during the assessment period described in subsection (2); multiplied by
- (b) the value all of its unpolished diamonds that were under the cover of a bill of entry for export delivered during the assessment period described in subsection (2); less 20
- (c) the value of all of its unpolished diamonds as released for import in terms of section 69B of the Diamonds Act during the assessment period described in subsection (2), but not exceeding the value described in paragraph (b). 25

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 beneficiators described in section 11(1)(a) for the assessment period and the immediately preceding assessment period equal 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 30
- (b) the sum of the producer's total gross sales described in section 11(1)(b) during those assessment periods described in paragraph (a) do not exceed R3 billion,
- that producer is exempt from the levy in respect of its unpolished diamonds under the cover of a bill of entry for export delivered during that assessment period to the extent those unpolished diamonds were previously offered but not sold at a diamond exchange and export centre. 35
- (2) If during an assessment period a producer—
- (a) satisfies subsection (1)(b); 40
- (b) fails to satisfy the 15 per cent described in subsection (1)(a) by an amount up to 5 percentage points; and
- (c) in respect of that assessment period satisfied subsection (1) in the immediately preceding assessment period,
- the levy rate in subsection (3) applies to that producer in lieu of the levy rate applied in section 3. 45
- (3) A producer described in subsection (2) will be subject to a levy that equals—
- (a) the percentage by which that producer failed to satisfy the 15 per cent as described in subsection (2)(b) during the assessment period described in subsection (2); multiplied by 50
- (b) the value of all of its unpolished diamonds that were under cover of a bill of entry for export delivered during the assessment period described in subsection (2); less

- (c) the value of all of its unpolished diamonds as released for import in terms of section 69B of the Diamonds Act during the assessment period described in subsection (2), but not exceeding the value described in paragraph (b).

Exemption for small producers

9. Notwithstanding section 2(1), if during any assessment period— 5
- (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 R20 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; 10
- (c) the ownership interest in a 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) the ownership interest in 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, 15

the producer is exempt from the levy in respect of its unpolished diamonds under the cover of a bill of entry for export delivered during that assessment period to the extent those unpolished diamonds were previously offered but not sold at a diamond exchange and export centre. 20

Exemption for diamond beneficiaries

10. Notwithstanding section 2(1), if during any assessment period a diamond beneficiary holds a permit to export pursuant to section 26(h) of the Diamonds Act covering that entire assessment period, that diamond beneficiary is exempt in respect of its unpolished diamonds under the cover of a bill of entry for export delivered during that assessment period to the extent those unpolished diamonds were previously offered but not sold at a diamond exchange and export centre. 25

Gross sales 30

11. (1) For purposes of this Chapter, during any assessment period—
- (a) gross sales to diamond beneficiaries in respect of a producer means all amounts received or accrued during that assessment period by that producer in respect of all unpolished diamonds delivered to the premises within the Republic of those diamond beneficiaries; and 35
- (b) the total gross sales of the producer described in paragraph (a) during that assessment period means—
- (i) all amounts received or accrued during that assessment period by that producer in respect of all unpolished diamonds delivered to premises within the Republic (other than unpolished diamonds described in subparagraph (ii)); and 40
- (ii) the value of all unpolished diamonds under the cover of bills of entry for export delivered during that assessment period; less
- (iii) the value of all unpolished diamonds as released for import in terms of section 69B of the Diamonds Act, but not exceeding the aggregate of the amount described in subparagraph (i) and the value described in subparagraph (ii). 45

- (2) For purposes of subsections (1) and (2), “gross sales” in respect of a producer described in subsection (1) include—
- (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 received or accrued in respect of an option on an unpolished diamond.
- (3) For purposes of subsections (1) and (2), “gross sales” in respect of a producer described in subsection (1) 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.

Ministerial reduction

12. (1) During any assessment period the Minister of Finance may reduce the import credit described in section 4 and the exemptions described in sections 7, 8 and 10 by a prescribed percentage.
- (2) Any percentage reduction described in subsection (1) must—
- (a) equally and simultaneously apply to the import credit and exemptions described in that subsection; and
 - (b) affect producers and diamond beneficiators equally and simultaneously.

Acquisitions from State Diamond Trader

13. 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 or a person granted a permit to export pursuant to 26(h).

Part V

Closing items

Transitional arrangements

14. (1) For purposes of satisfying sections 7, 8 or 9 (as the case may be) in respect of the initial assessment period after the date this Act comes into operation, a producer takes into account all gross sales described in section 11 during the 6 calendar months immediately preceding that date.
- (2) For purposes of the gross sales calculations described in subsection (1), paragraph (a) of section 11(1) will be substituted to mean “gross sales to diamond beneficiators in respect of a producer means all amounts received or accrued during that assessment period by that producer in respect of all unpolished diamonds delivered to premises within the Republic (other than unpolished diamonds described in section 11(1)(b)(ii)).”

Short title and commencement

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