

South Africa

Diamond Export Levy (Administration) Act, 2007

Act 14 of 2007

Legislation as at 18 December 2017

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South Africa

Diamond Export Levy (Administration) Act, 2007

Act 14 of 2007

Published in Government Gazette 30557 on 10 December 2007

Assented to on 5 December 2007

Commenced on 1 November 2008 by [Diamond Export Levy \(Administration\) Act, 2007: Commencement](#)

[This is the version of this document from 18 December 2017.]

[Amended by [Taxation Laws Second Amendment Act, 2008 \(Act 4 of 2008\)](#) on 3 July 2008]

[Amended by [Taxation Laws Second Amendment Act, 2009 \(Act 18 of 2009\)](#) on 30 September 2009]

[Amended by [Tax Administration Act, 2011 \(Act 28 of 2011\)](#) on 1 October 2012]

[Amended by [Tax Administration Laws Amendment Act, 2017 \(Act 13 of 2017\)](#) on 18 December 2017]

(English Act signed by the President)

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:—

Part I – Interpretation

1. Definitions

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

“**assessment period**” means an assessment period as described in section [4\(2\)](#);

“**Commissioner**” *[definition of “Commissioner” substituted by section 271 of [Act 28 of 2011](#) and deleted by section 19(a) of [Act 13 of 2017](#)]*

“**Customs and Excise Act**” means the Customs and Excise Act, 1964 ([Act No. 91 of 1964](#));

[definition of “Customs and Excise Act” inserted by section 53 of [Act 18 of 2009](#)]

“**Income Tax Act**” *[definition of “Income Tax Act” deleted by section 19(a) of [Act 13 of 2017](#)];*

“**Levy Act**” means the Diamond Export Levy Act, 2007;

“**notice of assessment**” *[definition of “notice of assessment” deleted by section 19(a) of [Act 13 of 2017](#)];* and

“**registered person**” means a person registered by the Commissioner as described in section [2\(4\)](#).

“**Tax Administration Act**” means the Tax Administration Act, 2011 ([Act No. 28 of 2011](#)).

[definition of “Tax Administration Act” inserted by section 271 of [Act 28 of 2011](#) and substituted by section 19(b) of [Act 13 of 2017](#)]

[subsection (1) previously unnumbered, numbered by section 271 of [Act 28 of 2011](#)]

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

[subsection (2) added by section 271 of [Act 28 of 2011](#) and substituted by section 19(c) of [Act 13 of 2017](#)]

Part II – Registration, returns and payments

2. Registration

- (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.

(2) *[subsection (2) deleted by section 54(a) of [Act 18 of 2009](#)]*

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

[subsection (3) substituted by section 54(b) of [Act 18 of 2009](#)]

- (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.

3. Cancellation of registration

- (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.

- (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.

- (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.

4. Returns and assessment periods

- (1) (a) A registered person must submit a return and payment as contemplated in section 5 to reach any office designated by the Commissioner by rule made under section 18 during the hours of business prescribed by the Commissioner by rule under the Customs and Excise Act, 1964, within a period of 30 days after the ending date of each assessment period described in subsection (2), but not later than the penultimate business day of that period.

[paragraph (a) substituted by section 20 of [Act 13 of 2017](#)]

- (b) For the purposes of subsection (1)(a), 'business day' means any day which is not a Saturday, Sunday or public holiday.

[subsection (1) substituted by section 55 of [Act 18 of 2009](#)]

- (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
(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 make rules in respect of circumstances when an assessment period may be shorter or longer than six months.

5. Payment of levy

- (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\(1\)](#).
- (1A) Notwithstanding subsection [\(1\)](#), the Commissioner may require—
 - (a) a registered person; or
 - (b) a person that qualifies for registration under section [2](#),

that is not ordinarily resident in the Republic or does not regularly and substantially engage in processes that are directly related to unpolished diamond beneficiation, production or sales in the Republic to submit payment of the levy in the form, manner (including electronically) and place determined by the Commissioner.

[subsection [\(1A\)](#) inserted by section 26 of [Act 4 of 2008](#)]

- (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 on such date and at such rate 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.

[subsection [\(2\)](#) substituted by section 56 of [Act 18 of 2009](#)]

6. Form, manner and place determined by Commissioner

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.

7. Maintenance of records

- (1) In addition to the records required under the Tax Administration Act, every registered person must retain the following records—
 - (a) the original note of receipt or purchase in respect of a unpolished diamond as described in section [56](#) of the Diamonds Act;
 - (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;
 - (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;
- (h) any ledger, cash book journal, cheque book, bank statement, deposit slip, paid cheque, invoice, other book of account, or financial statement; and

[Please note: numbering as in original.]

- (i) any other information required by the Commissioner or the Regulator.

[subsection (1) amended by section 271 of [Act 28 of 2011](#)]

(2) *[subsection (2) deleted by section 271 of [Act 28 of 2011](#)]*

(3) *[subsection (3) deleted by section 271 of [Act 28 of 2011](#)]*

Part III – Election for producers and diamond beneficiaries

8. Election procedure

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

9. Penalties

- (1) If during any assessment period in respect of which an election described in section 8 applies a producer fails to be exempt (in terms of section 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—
 - (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).

[subsection (1) amended by section 21(a) of [Act 13 of 2017](#)]

- (2) If during any assessment period in respect of which an election described in section 8 applies, a diamond beneficiary fails to be exempt (in terms of section 11 of the Levy Act) from the levy otherwise imposed under the Levy Act, that diamond beneficiary will be deemed to be subject to the levy as if that diamond beneficiary had delivered a bill of entry for export in respect of all diamonds purchased during that period from that diamond beneficiary at a diamond exchange and export centre.

[subsection (2) substituted by section 21(b) of [Act 13 of 2017](#)]

Part IV – Assessments

10. ***

[section 10 repealed by section 271 of [Act 28 of 2011](#)]

11. ***

[section 11 repealed by section 271 of [Act 28 of 2011](#)]

12. ***

[section 12 repealed by section 271 of [Act 28 of 2011](#)]

13. ***

[section 13 repealed by section 271 of [Act 28 of 2011](#)]

Part V – Refunds and interest

14. ***

[section 14 repealed by section 271 of [Act 28 of 2011](#)]

15. ***

[section 15 repealed by section 271 of [Act 28 of 2011](#)]

Part VI – Miscellaneous

16. Division of responsibility

- (1) The Commissioner will be responsible for administering this Act and the Levy Act, in accordance with the provisions of the Tax Administration Act, together with the assistance of the Regulator as described in subsection (2).

[subsection (1) substituted by section 271 of [Act 28 of 2011](#)]

- (1A) Administrative requirements and procedures for purposes of the performance of any duty, power or obligation or the exercise of any right in terms of this Act are, to the extent not regulated in this Act, regulated by the Tax Administration Act.

[subsection (1A) inserted by section 271 of [Act 28 of 2011](#)]

- (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.

- (3) *[subsection (3) deleted by section 271 of [Act 28 of 2011](#)]*

17. ***

[section 17 repealed by section 271 of [Act 28 of 2011](#)]

18. Rules

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.

19. Amendment of laws

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

20. Act binding on State and application of other laws

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.

21. Short title and commencement

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
<p>Act No. 56 of 1986</p>	<p>Diamonds Act, 1986</p>	<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>(a) <u>diamonds in their natural state, as they occur in deposits or extracts from the parent rock;</u></p> <p>(b) <u>diamonds simply sawn, cleaved, bruted, tumbled or which have only a small number of polished facets (windows which allow expert examination of the internal</u></p>
<p>By LawLibrary, AfricanLII, the Judicial Institute for Africa, and Laws.Africa.</p>		<p>Share widely and freely.</p>
		<p><u>characteristics), 7 and includes diamonds that</u></p>

No. and year of law	Short title	Extent of amendment or repeal
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 style="padding-left: 40px;">"<u>(2)(A)</u> <u>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> <p style="padding-left: 40px;">"<u>(3) Any packet contemplated in subsection (2) may not be exported from the Republic if a bill of entry delivered in terms of section 78(3) («) of the Customs and Excise Act, 1964 (Act No. 91 of 1964) is</u></p>
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No. and year of law	Short title	Extent of amendment or repeal
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>"74A. <u>Relief for certificated purchases</u>—</p> <p><u>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.</u>"</p>