

South Africa

Diamond Export Levy (Administration) Act, 2007

Act 14 of 2007

Legislation as at 18 December 2017

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Diamond Export Levy (Administration) Act, 2007

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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
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>(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</u></p>

examination
of the
internal
characteristics),
and
includes
diamonds
that
are
provisionally
shaped
but
clearly
require
further
working;

(c) tumbled
diamonds
of
which
the
surface
has
been
rendered
glossy
or
shiny
by
chemical
treatment
or
chemical
polishing;

(d) broken
or
crushed
diamonds;

(e) diamond
dust;
or

(f) diamond
powder,

and applies
regardless of
whether such
diamonds are
won or recovered
within the
Republic;”;

2. Section 60 of the Diamonds Act is hereby substituted with the following section;

"60. Export and import of unpolished diamonds

- (1) No exporter shall export any unpolished diamond from the Republic unless—
- (a) that diamond has been registered and released for export in terms of this Act; and
- (b) that exporter is registered in terms of the Diamond Export Levy Act.
- (2) No importer shall import

any
unpolished
diamond
into
the
Republic
unless

—

(a)
that
diamond
has
been
registered
and
released
for
import
in
terms
of
this
Act;
and

(b)
that
importer
is
registered
under
the
Diamond
Export
Levy
Act.

(3) The
Regulator
shall
confiscate
any
unpolished
diamond
that
does
not
satisfy
the
requirements
of
the
Kimberley
Process
Certification
Scheme,

as
prescribed.”.

3. Section 61A is hereby amended by the insertion after section 61 of the following section;

**"61A. Registration
of
unpolished
diamonds
for
import**

- (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.
- (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.

(3) A
return
referred
to
in
subsection
(1)
shall
be
accompanied
by
the
unpolished
diamond
in
question
and

the
prescribed
documents.

- (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.”.

4. Section 64 of the Diamonds Act is hereby substituted with the following section;

"64. Temporary exemption from diamond exchange and export centre

- (1) If
the
Regulator
is
satisfied
that
an
unpolished
diamond

will
be
exported
from
the
Republic—

(a) solely
for
purposes
of—

(i) being
exhibited
or
displayed;
or

(ii) obtaining
an
expert
opinion
as
to
the
fair
market
value
or
manner
of
beneficiating
that
diamond;
and

(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.

- (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—

- (a) that
the
diamond
is
not
subject
to
section
48A;
- (b) the
value
of
that
diamond
as
released
for
export
in
terms
of
section
69;
and
- (c) any
other
particulars
required
to
be
furnished
by
the
Regulator
in
respect
of
that
diamond.

- (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—

(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;
or

(b) is
physically
different
in
any
manner
as
of
the
date
that

diamond
was
released
for
export
as
described
in
section
69.

- (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

- | | | | |
|--|-----|--|--|
| | | | <u>the</u>
<u>Diamonds</u>
<u>Act.</u> |
| | (5) | <u>The</u>
<u>Regulator</u>
<u>may</u>
<u>reduce</u>
<u>the</u>
<u>fine</u>
<u>described</u>
<u>in</u>
<u>subsection</u>
<u>(4)</u>
<u>(c)</u>
<u>up</u>
<u>to</u>
<u>20</u>
<u>percentage</u>
<u>points</u>
<u>if</u>
<u>he</u>
<u>or</u>
<u>she</u>
<u>is</u>
<u>satisfied</u>
<u>that</u>
<u>an</u>
<u>exporter</u>
<u>contravened</u>
<u>subsection</u>
<u>(3)</u>
<u>for</u>
<u>reasons</u>
<u>beyond</u>
<u>the</u>
<u>exporter's</u>
<u>control.</u> | |
| | (6) | <u>Any</u>
<u>fine</u>
<u>imposed</u>
<u>in</u>
<u>terms</u>
<u>of</u>
<u>this</u>
<u>section</u>
<u>shall</u>
<u>be</u>
<u>paid</u>
<u>by</u>
<u>the</u>
<u>exporter</u>
<u>concerned</u>
<u>to</u>
<u>the</u>
<u>Regulator</u>
<u>within</u> | |

30
days
of
being
notified
by
the
Regulator
that
such
amount
is
due.

(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.".

5. The Diamonds Act is hereby amended by the repeal of sections 62, 63, 66, 68, 93 and 95(h).

6. Section 65 of the Diamonds Act is hereby amended by the substitution for the heading of section 65 of the following heading:

"Examination and valuation of unpolished diamonds for export."

7. The Diamonds Act is hereby amended by the insertion after section 65 of the following section:

"65A. Examination and valuation of unpolished diamonds for import

- (1) The registering officer or another person designated by the Regulator—
- (a) shall examine; and
 - (b) may assess the value of, any unpolished diamond registered for import as described in section 61A and verify any particulars furnished in respect thereof."

8. Section 67 of the Diamonds Act is hereby substituted with the following section:

**"67. Fine
in
case
of
difference
in
values**

(1) If
the
difference
in
value
of
any
unpolished
diamond—

- (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
- (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.

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).

(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.

(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.”.

9. The Diamonds Act is hereby amended by the insertion after section 69A of the following section:

**“69B. Release
of
unpolished
diamonds
for
import—**

- (1) The
registering
officer
shall
not
release
any
person’s
unpolished
diamond
for
import
unless—
- (a) that
unpolished
diamond
was
registered
for
import
as
described
in
section
61A;
- (b) all
fines
imposed
on
that
person
in

terms
of
this
Act
have
been
paid;

(c) the
provisions
of
any
other
law
relating
to
the
import
of
that
unpolished
diamond
have
been
complied
with;

(d) that
unpolished
diamond
has
been
made
up
in
a
parcel
in
such
manner
as
the
registering
officer
may
determine;
and

(e) the
prescribed
certificate,
which
certifies
that
the
unpolished
diamond
for

		<p><u>import</u> <u>has</u> <u>been</u> <u>handled</u> <u>in</u> <u>a</u> <u>manner</u> <u>that</u> <u>satisfies</u> <u>the</u> <u>requirements</u> <u>of</u> <u>the</u> <u>Kimberly</u> <u>Process</u> <u>Certification</u> <u>Scheme,</u> <u>accompanies</u> <u>the</u> <u>parcel</u> <u>contemplated</u> <u>in</u> <u>paragraph</u> <u>(d).</u></p> <p>(2) <u>The</u> <u>registering</u> <u>officer</u> <u>shall</u> <u>release</u> <u>an</u> <u>unpolished</u> <u>diamond</u> <u>for</u> <u>import</u> <u>by</u> <u>sealing</u> <u>the</u> <u>parcel</u> <u>contemplated</u> <u>in</u> <u>subsection</u> <u>(1)</u> <u>(d)</u> <u>with</u> <u>the</u> <u>seal</u> <u>of</u> <u>the</u> <u>Regulator”.</u></p>
Act No. 29 of 2005	Diamonds Amendment Act, 2005	1. Section 61 of the Diamonds Amendment Act is hereby amended by the insertion

after subsection (2) of the following subsection:

"(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.".

2. The Diamonds Amendment Act is hereby amended by the repeal of sections 66 and 68.
3. Section 69 of the Diamonds Amendment Act is hereby amended by the insertion after subsection (2) of subsection (3):

"(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)
(«) of the Customs
and Excise Act.
1964 (Act No.

		<p>91 of 1 964) is not delivered in respect of that packet within 10 business days of the date the Regulator released that packet.”.</p>
<p>Act No. 30 of 2005</p>	<p>Diamonds Second Amendment Act, 2005</p>	<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>