

EXCISE

EXTERNAL POLICY

DIAMOND EXPORT LEVY

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1 SUMMARY OF MAIN POINTS

- a) This **policy** applies to ‘Producers’, ‘Dealers’, ‘Beneficiator(s)’ or the holder of a permit who **imports and exports unpolished diamond(s)** from South Africa. It also includes **import credits** of such diamonds into South Africa for trade statistic purposes.
- b) This **policy** does not cover:
- i) Customs and Excise payments as this is dealt with in document BP-02;
 - ii) Declaration and Return submission via eFiling as this is dealt with in document SE-AM-19-M01;
 - iii) Prescribed payment terms/periods as these are dealt with in document SE-AM-21;
 - iv) Submission of accounts/returns as this is dealt with in document SE-CL-12;
 - v) The completion of the DL 163 Diamond Export Levy Return as this is dealt with in SE-DL-03-CM01;
 - vi) Registration requirements as this is dealt with in document SE-FS-21;
 - vii) Guide to **Introduction to Excise Duties, Levies and Air Passenger Tax** as this is dealt with in document SE-FS-09-G01; and
 - viii) Refunds as these are dealt with in document SE-FS-19.

2 POLICY

- a) This **policy must be read together with the Constitution of the Republic of South Africa, the South African Revenue Service Act, 1997 (“SARS Act”), the Tax Administration Act, 2007 (“TAACT”) and any other applicable legislation. Should the policy be in conflict with any provisions of the legislation, the applicable Act shall take precedence.**

2.1 Liability for levy

- a) Return levy payers must pay the levy in accordance with the provisions of **Section 4(1) read with Section 5(1)** of the Diamond Export Levy (Administration), 2007.
- b) **A holder of a license must make payment of the levy within a period of thirty (30) days after the ending date of each assessment period.**

2.1.1 General relief measures and exemptions

- a) The Diamond Export Levy Act, No. 15 of 2007 makes provision for the following relief measures:
- i) **Import Credits: Section 4 -**
 - A) Under Section 2 of the Administration Act, a person is entitled to receive a credit in respect of any unpolished diamond(s) import into South Africa.
 - B) A person is not entitled to receive any credit(s) in respect of any unpolished diamond(s) if the unpolished diamond(s) was previously exported under:
 - I) Cover of an exemption certificate in terms of Section 26(h) of the Diamonds Act, No. 56 of 1986.
 - II) Cover of an election; and/or
 - III) Cover of a temporary exemption (deferment) certificate.
 - C) A person is not entitled to receive any credit(s) in respect of any unpolished diamond(s) during an assessment period in which that person qualifies for relief measures in terms of Section(s) 7, 8, 9 and 10 of the Diamond Export Levy Act.
 - D) A registered person can set-off import credits accumulated on imported unpolished diamond(s) on the EXD 01.
 - ii) **Temporary Exports: Section 5 -**
 - A) All registrants inclusive of the holder of a Section 26(e) can export unpolished diamond(s) temporarily for the following purposes:
 - I) To obtain an expert opinion on the value or manner of beneficiation of the diamond(s); and/or
 - II) For exhibition.
 - B) If the ‘Diamond and Precious Metals Regulator’ has issued a temporary exemption certificate (deferment) certificate, the diamond(s) may be exported levy free. If the same exported diamond(s) are not returned within the specified period of 180 days from the date the diamond(s) was released for export, the exporter is liable for the levy.

- iii) **Elections: Section 6 –**
- A) A registered ‘Producer’ or ‘Diamond Beneficiator’ may opt to place his/her diamond(s) under an election, under Section 8 of the Diamond Export (Administration) Act, at the Diamond Export and Exchange Centre (DEEC) for sale for export. It is however important that the registered ‘Producer’ or ‘Diamond Beneficiator’ that intends to make use of the election option must register such election option on DL 1 with SARS, in the assessment period prior to the period in which such option is intended to be carried out. The diamond(s) bought under the election will then be allowed to be exported free from the levy payment.
- B) Any person that purchased an unpolished diamond(s) at a DEEC in respect of which an election has been approved, is not subject to the levy if that person:
- I) Delivers a clearance declaration for export within ten (10) business days after the purchase, or
 - II) Provides a copy of the approved election together with the clearance declaration for export.
- C) If a registered Diamond Beneficiator or Producer qualifies for exemption in terms of Sections 7, 8, 9 or 10 of the Diamond Export Levy Act, a person buying such unpolished diamond(s) at the DEEC from such Diamond Beneficiator or Producer is then exempt from payment of the levy.
- D) Election procedure:
- I) The client declares the Election for the specified assessment period on DL 1; The Controller/Branch Manager Johannesburg (situated at Alberton Campus): process the DL 1 and issues the DL 1(A) with a unique reference number;
 - II) The original DL 1 and DL 1(A) are recorded and filed;
 - III) The DL 1 and DL 1(A) are faxed to the Regulator;
 - IV) The Regulator records and files the DL 1 and DL 1(A); and
 - V) The Regulator attaches a copy of the DL 1(A) to the declaration for the client to submit to the SARS upon processing of his/her export documents.
 - VI) The election referred to in (I), must be declared in the assessment period prior to the period in which such election will be exercised by the client.

2.1.2 Producer and diamond beneficiator relief measures

- a) The Diamond Export Levy Act makes provision under Sections 7, 8, 9 and 10 for exemptions under part IV – relief measures for producers and beneficiators.
- b) Exemptions are amongst others, based on:
- i) The percentage gross sales to Beneficiators made by the Small, Medium and Large Producers; and/or
 - ii) The permit issued by the Regulator for an assessment period to Beneficiators to export under section 26(h) of the Diamonds Act.
- c) Exemption for Small, Medium and Large Producers is granted based on the requirements as specified below:
- i) **Large Producers -**
 - A) Gross sales must exceed R3 billion;
 - B) 40% of their gross sales should be to a diamond Beneficiator(s);
 - C) Exemption from Section 48A (Exemption from DEEC) of the Diamonds Act pursuant to Section 74; and
 - ii) **Medium Producers -**
 - A) Gross sales do not exceed R3 billion;
 - B) Their gross sales (15%) should be to a diamond Beneficiator(s);
 - C) Unsold unpolished diamond(s) are exempt from export levy; and
 - D) Must offer unpolished diamond(s) at the DEEC.
 - iii) **Small Producers -**
 - A) Gross sales do not exceed R20 million and they should be independent;
 - B) Unsold, unpolished diamond(s) are exempt from export levy; and
 - C) Must offer unpolished diamond(s) at the DEEC.

- d) **Gross sales –**
- i) During any assessment period -
 - A) Gross sales to diamond Beneficiators in respect of a Producer means all amounts received or accrued during an assessment period by a Producer in respect of all unpolished diamond(s) delivered to the premises within South Africa to Diamond Beneficiators; and
 - B) The total gross sales of the Producer described in the paragraph above during the assessment period means –
 - I) All amounts received or accrued during the assessment period by the producer in respect of all unpolished diamond(s) delivered to premises within South Africa (other than unpolished diamond(s) described in the sub paragraph below); and
 - II) The value of all unpolished diamond(s) under the cover of a clearance declaration for export delivered during that assessment period; less
 - III) The value of all unpolished diamond(s) as released for import in terms of Section 69B of the Diamonds Act, but not exceeding the aggregate of the amount described in the first subparagraph and the value described in the second subparagraph above.
 - ii) **For purposes of this subsection and the first, “gross sales” in respect of a producer described in the first subsection include –**
 - A) The face value reduction or discharge of any outstanding obligations;
 - B) The market value of any property, financial assistance, service or benefit; and
 - C) Any premium received or accrued in respect of an option on an unpolished diamond.
 - iii) **For purposes of the first and second subsections, “gross sales” in respect of a producer described in the first subsection do not include -**
 - A) Any tax imposed by the Value Added Tax Act No. 89 of 1991;
 - B) Any transportation and insurance costs incurred for physically exporting unpolished diamond(s) from South Africa; and
 - C) The value of any unpolished diamond(s) sold to or acquired (directly or indirectly) from the State Diamond Trader in terms of section 59B of the Diamonds Act.
 - iv) **To the extent any amount of total gross sales described in the first subsection is not quantifiable, that amount is deemed received or accrued in the assessment period it becomes quantifiable.**

2.2 Keeping of records

- a) A registered person and any other person engaged in the importation or exportation of unpolished diamond(s) must keep **for a period of five (5) years from the date the documentation became valid as proof of a transaction**, in one (1) of the official languages, the records contemplated in Section 7 of the Diamond Export Levy (Administration) Act on his / her premises in South Africa or such other places as may be approved by the Commissioner.
- b) A registered person who imports or exports unpolished diamond(s) must keep - in the case of imported diamond(s), copies of the relevant clearance declaration, **inclusive of all vouchers of corrections**, bills of lading, airway bills or other transport documents, supplier’s invoices, such other documents as contemplated in Section 101 and the Rules made there under and Kimberley Process Certificates relating to such an import.
- c) In the case of exported diamonds:
 - i) Copies of the relevant clearance declaration, bills of lading, airway bills or other transport documents, supplier’s invoices, notes of receipt or purchase in terms of Section 56 of the Diamonds Act, Kimberley Process Certificates, such other documents as contemplated in Section 101 made there under and any relevant documents or forms prescribed in the Diamonds Act, relating to the recording, sale, or registration of diamond(s) for export; and
 - ii) As applicable in the circumstances, any –
 - A) Election certificate contemplated in Section 6 of the Diamond Levy (Administration) Act;
 - B) DL 1 prescribed by the Commissioner for the purpose of exercising an election as contemplated in Section 8 of the Diamond Export Levy (Administration) Act;
 - C) Permit to export pursuant to Section 26(h) of the Diamonds Act;
 - D) Exemption certificate issued in terms of Section 64 of the Diamonds Act;
 - E) Notice contemplated in Section 74 of the Diamonds Act;

- F) Certificate issued in respect of the fair market value; and
- G) Other documents relating to the levy status of an unpolished diamond(s) as the Commissioner or a Controller/Branch Manager may require.

2.3 Penalties

- a) The Commissioner is responsible for administering the Diamond Export Levy (Administration) Act, 2007 and the Diamond Export Levy Act, 2007 in accordance with the provisions of the TAACT. Administrative requirements and procedures for purposes of the performance of any duty, power or obligation or the exercise of any right in terms of the Diamond Export Levy (Administration) Act are, to the extent not regulated in the Act, regulated by the TAACT.
- b) Failure to adhere to the provisions of the Diamond Export Levy (Administration) Act, as set out in this document, is considered an offence.
- c) Offences may render the permit/license holder liable to penalties, as provided for in the TAACT. i.e.:
 - i) Administrative non-compliance penalties;
 - ii) Understatement penalties;
 - iii) Other monetary penalties;
 - iv) Criminal prosecution; and/or
 - v) Suspension or cancellation of registration and/or license.
- d) Administrative non-compliance penalties means a penalty imposed by the SARS and excludes an understatement penalty referred to in Chapter 16 of the TAACT. Section 210 of the TAACT provides that non-compliance is failure to comply with an obligation that is imposed by or under a tax Act and is listed in a public notice issued by the Commissioner. For the non-compliance referred to in section 210, the SARS must impose a fixed amount penalty as contained in Section 211 of the TAACT.
- e) In terms of Section 213 of the TAACT, if the SARS is satisfied that an amount of tax was not paid as and when required the SARS must, in addition to any other 'penalty' or interest for which a person may be liable under this Chapter, impose a 'penalty' equal to the percentage of the amount of unpaid tax as prescribed in the TAACT.
- f) Section 221 of the TAACT makes provision for understatement penalties in cases where there is a prejudice to the fiscus as defined in that section.
- g) Currently no offences have been listed in a public notice issued by the Commissioner and only understatement penalties as defined in Section 221 may be lodged in addition to any interest due.
- h) Sections 214 and 215 of the TAACT outline the procedure for raising penalties.

2.4 Objection or appeal

- a) In terms of Chapter 9 of the TAACT, in cases where clients are aggrieved with any decision taken, they may submit a Notice of Objection (NOO) using the ADR1 which is available from the SARS website (www.sars.gov.za), the nearest Branch Office or by calling 0800 00 7277. The client has thirty (30) days from the date the decision was taken in which to do this.
- b) The client's obligation to pay any amount due is not suspended by any objection or appeal. However, the SARS will consider a motivated application for the suspension of payment pending the finalisation of an objection or appeal as stipulated in the TAACT.
- c) Chapter 9 further details, in an escalating manner, the levels of dispute resolution and litigation which may be pursued.

2.5 Interest

- a) Interest is payable on any outstanding amount, at a rate which the Minister of Finance determines in terms of Section 80(1)(b) of the Public Finance Management Act, 1999.
- b) Interest on any outstanding amount will be calculated by the Commissioner and a Notice of Assessment DL 243 will be issued, accompanied by a CEB01.

2.6 Election procedure for producers and beneficiators

- a) Notwithstanding Section 2(1) of the Diamond Export Levy Act, any Producer or Diamond Beneficiator may elect pursuant to Section 6 of that Act, in respect of an assessment period, that any person purchasing an unpolished diamond at a DEEC from that Producer or Diamond Beneficiator during that assessment period is not subject to the levy in respect of that diamond.
- b) In order for the election described in paragraph (a) 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 applies.
- c) The election described in paragraph (a) is deemed to be immediately granted upon submission as described in paragraph (b).

2.7 Assessments

- a) Chapter 8 of the TAACT deals with the manner of raising Assessments.
- b) In terms of Section 99 of the TAACT, an assessment may not be made in terms of Chapter 8:
 - i) Three years after the date of assessment of an original assessment by SARS;
 - ii) In the case of self-assessment for which a return is required, five (5) years after the date of assessment of an original assessment –
 - A) By way of self-assessment by the taxpayer; or
 - B) If no return is received, by SARS;
 - iii) In the case of a self-assessment for which no return is required, after the expiration of five (5) years from the -
 - A) Date of the last payment of the tax for the tax period; or
 - B) Effective date, if no payment was made in respect of the tax for the tax period;
 - iv) In the case of -
 - A) An additional assessment if the —
 - I) Amount which should have been assessed to tax under the preceding assessment was, in accordance with the practice generally prevailing at the date of the preceding assessment, not assessed to tax; or
 - II) Full amount of tax which should have been assessed under the preceding assessment was, in accordance with the practice, not assessed;
 - B) A reduced assessment, if the preceding assessment was made in accordance with the practice generally prevailing at the date of that assessment; or
 - C) A tax for which no return is required, if the payment was made in accordance with the practice generally prevailing at the date of that payment.
 - v) In respect of a dispute that has been resolved under Chapter 9.
- c) This does not apply to the extent that:
 - i) In the case of assessment by the SARS, the fact that the full amount of tax chargeable was not assessed, was due to -
 - A) Fraud;
 - B) Misrepresentation; or
 - C) Non-disclosure of material facts.
 - ii) In the case of self-assessment, the fact that the full amount of tax chargeable was not assessed, was due to –
 - A) Fraud;
 - B) Intentional or negligent misrepresentation;
 - C) Intentional or negligent non-disclosure of material facts; or

- D) The failure to submit a return or, if no return is required, the failure to make the required payment of tax.
- iii) The SARS and the taxpayer so agree prior to the expiry of the limitations period.

3 RELATED INFORMATION

3.1 Legislation

| TYPE OF REFERENCE | REFERENCE |
|---------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Legislation and Rules administered by SARS: | Customs and Excise Act. No. 91 of 1964: Section 59A and 119A Customs and Excise Rules: Rule 59A and 119A.R101A(10)(d) Value Added Tax Act No. 89 of 1991 Tax Administration Act, 2011 |
| Other Legislation: | Diamond Export Levy (Administration) Act No. 14 of 2007: Sections 1 to 21 Diamond Export Levy (Administration) Act No. 14 of 2007: Rules 1.01 – 15.01 Diamond Export Levy Act No. 15 of 2007: Sections 1 to 15 Diamond Export Levy Act No. 15 of 2007: Rules 1.01 – 11.01 Diamonds Act No. 56 of 1986: Sections 26€ and (h), 48(A), 56, 59B, 61(2), 64A, 69B and 74 Public Finance Management Act, 1999 - Section 80(1)(b) |
| International Instruments: | None |

3.2 Cross References

| DOCUMENT # | DOCUMENT TITLE |
|---------------|-----------------------------------------------------------------------------|
| BP-02 | Customs and Excise Payments - External Policy |
| FIN-AM-03 | Customs and Excise eAccount on eFiling – External Manual |
| SE-AM-19-M01 | Declaration and Return Submission via eFiling – External Manual |
| SE-AM-21 | Prescribed Payment Terms/Periods – External Policy |
| SE-CL-12 | Submission of Accounts>Returns – External Policy |
| SE-DL-03-CM01 | DL 163 Diamond Export Levy Return – Completion Manual |
| SE-FS-09-G01 | Introduction to Excise Duties Levies and Air Passenger Tax – External Guide |
| SE-FS-19 | Refunds - External Directive |
| SE-FS-21 | Registration - External Standard |

3.3 Quality Records

| Number | Title |
|--------|-----------------------------|
| DL1 | Election Declaration |
| DL1(A) | Proof of Election |
| EXD 01 | Excise Duty and Levy return |

4 DEFINITIONS AND ACRONYMS

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|----------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Assessment period | The calendar months (six) in which levy should be assessed. |
| Beneficiator | A person who holds a license to polish diamonds for the purpose of business or trade and to set unpolished diamond in tools, implements or other articles or to crush or to alter those diamonds for the purpose of such setting or for the purpose of trade. |
| Clearance Declaration | Applicable SAD form (e.g. SAD 500, 501, 502, 503, 504, 505, 506, etc.) or CD 1 (Customs Declaration). |
| Controller/Branch Manager | The officer designated by the Commissioner to be the Controller/Branch Manager of Customs and Excise in respect of that area or matter and includes an officer acting under the control or direction of any officer so designated by the Commissioner. |
| Dealer | The holder of a diamond dealer's licence entitling the holder to carry on business as a buyer, seller, importer or exporter of unpolished diamond(s). |
| Direct Levy payer | A person who does not qualify for registration under Section 2(1) of the Diamond Export Levy (Administration) Act or a person contemplated in Section 5(1A) of that |

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| | Act. |
| Export | Removing any unpolished diamond from South Africa. |
| Import | Bringing any unpolished diamond into South Africa. |
| Kimberley Process Certificate | A forgery resistant document in a particular format which identifies a consignment of unpolished diamonds as being in compliance with the requirements of the Kimberley Process Certification Scheme, and which in relation to export, is issued and validated by the board and in relation to imports is issued and validated by the exporting authority of a Participant. |
| Levy | The levy payable when a clearance declaration has been delivered for export in respect of unpolished diamond(s). |
| Producer | Any person entitled to win or recover diamonds in terms of Sections 19, 25 and 27 of the Mineral and Petroleum Resources Development Act. |
| Purchase | In relation to an unpolished diamond, means to purchase the unpolished diamond, to deal in it or to obtain it by way of barter, pledge or any like manner. |
| Return Levy payers | A registered person who makes payment of the levy on the basis of a periodic return as contemplated in Section 5(1) of the Diamond Export Levy (Administration) Act. |
| Policy | Used to convey the policy mandated by legislation and the sequential steps to be followed. |
| TAACT | Tax Administration Act |
| Unpolished Diamonds | A diamond in its natural state or a synthetic diamond which has after the production thereof not been altered in any manner and includes diamond powder, a crushed diamond, a fragment and a partly processed diamond. |

5 DOCUMENT MANAGEMENT

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|------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Policy Owner | Executive: Excise Audit Enforcement |
| Detail of change from previous revision | <p>Point (a) has been inserted under paragraph 2 to make it clear that should the policy be in conflict with any provisions of the legislation, the applicable Act shall take precedence;</p> <p>The paragraph 2.3 regarding penalties has been amended to make it clear that penalties must be imposed in terms of the TAACT;</p> <p>Paragraphs 2.4 and 2.5 have been added to clarify the interest aspect;</p> <p>Document owner has been changed;</p> <p>Changed nomenclature from standard to policy; and</p> <p>Q-code changed from ECS-TM-03 to GC-TM-03.</p> |
| Template number and revision | GC-TM-03 - Rev 9 |