

3. Interpretation

(1) In these regulations, unless the contrary intention appears —

“above zero profit”, in relation to a year, means the amount (if any) by which the sales value for that year exceeds the allowable deductions for that year;

“allowable capital expenditure” means expenditure of a capital nature properly incurred by the tenement holder being —

- (a) expenditure on plant and equipment owned by the tenement holder and used by the tenement holder for diamond mining and recovery within the Ellendale mining lease;
- (b) expenditure on buildings, plant and equipment owned by the tenement holder and used by the tenement holder for sorting rough diamonds in the State;
- (c) expenditure on site preparation, mine development and buildings and other improvements within the Ellendale mining lease; and
- (d) such other expenditure as the Minister may determine to be reasonable and necessary for the diamond mining, recovery and sorting operations of the tenement holder within the Ellendale mining lease,

and, in the case of any year beginning after 30 June 2005, also means the purchase price paid under the sale agreement for the Ellendale mining area and Ellendale Information, as defined in the sale agreement, being the purchase price set out in item 2 of Schedule 1 in the sale agreement;

“allowable deductions” means —

- (a) operating costs properly incurred by the tenement holder (excluding those cost provisions not allowed under the *Income Tax Assessment Act 1997* of the Commonwealth) and directly attributable to the mining, recovery and sorting of rough diamonds from the Ellendale mining lease and such other costs as the tenement holder demonstrates, to the reasonable satisfaction of the Minister, are reasonably and necessarily incurred by the tenement holder in connection with that mining, recovery and sorting;
- (b) such apportionment as the Minister may approve of costs reasonably attributable to, or reasonably and necessarily incurred by, the tenement holder but not wholly incurred in connection with or applicable to the mining, recovery, sorting and marketing of rough diamonds from the Ellendale mining lease;
- (c) direct marketing and selling expenses properly incurred by the tenement holder in connection with and prior to the sale of sorted rough diamonds from the Ellendale mining lease and such other expenses which the tenement holder demonstrates to the reasonable satisfaction of the Minister are reasonable and necessary in connection with that sale;
- (d) transport and insurance costs relating to rough diamonds from the Ellendale mining lease properly incurred by the tenement holder prior to the sale, transfer, disposal or processing of those diamonds;

- (e) expenditure on exploration for diamonds within the Ellendale mining lease —
 - (i) reasonably incurred by the tenement holder before the sale date and approved by the Minister for the purposes of this definition; or
 - (ii) reasonably incurred by the tenement holder after the sale date;
- (f) the value of unsold sorted rough diamonds from the Ellendale mining lease which the tenement holder had on hand at the beginning of a year less the value of unsold sorted rough diamonds from that tenement which the tenement holder has on hand at the end of that year;
- (g) depreciation of allowable capital expenditure; and
- (h) actual interest costs and borrowing expenses incurred by the tenement holder on such borrowings as the Minister approves for the purposes of this definition on the basis of information provided by the tenement holder with respect to the financing of its operations and the repayment of loans,

but does not include —

- (i) royalties, except where payable under a written law other than the Act or the *Mining Regulations 1981*;
- (j) taxes on or affecting income or profits; or
- (k) any development allowance under the *Income Tax Assessment Act 1936* of the Commonwealth;

“allowable f.o.b. revenue costs” means the following costs directly incurred in connection with the sale, transfer or disposal of sorted rough diamonds from the Ellendale mining lease to the extent that those costs are reasonably and necessarily incurred and paid by the tenement holder —

- (a) insurance and freight ex Perth;
- (b) selling and marketing expenses;
- (c) such other costs and charges as the Minister considers reasonable in respect of any shipment or sale;

“depreciated value” means the cost to the tenement holder of the assets on which allowable capital expenditure is incurred less the total amount deducted from that cost by way of depreciation under regulation 8;

“Ellendale mining lease” means mining lease number 04/372;

“f.o.b. revenue”, in relation to a year, means the sales value for that year less the allowable f.o.b. revenue costs for that year;

“offset amount” means the amount or amounts which the tenement holder may be entitled to offset against future royalty payments under regulation 7;

“processing” means all or any of the following activities carried out in relation to sorted rough diamonds —

- (a) the physical and chemical treatment of diamonds;
- (b) the cutting and polishing of diamonds;

- (c) all other processes relating to, and treatment of, diamonds which increase their market value,

but does not include the sorting of rough diamonds;

“sale agreement” means the agreement dated 5 September 2001 and made between Argyle Diamond Mines Pty Limited, Capricorn Diamonds Limited, Ashton Argyle Holdings Pty Limited, AML Nominees Limited and Kimberley Diamond Company NL;

“sale date” means the sale date as defined in clause 4 of the second supplementary agreement within the meaning of the *Diamond (Argyle Diamond Mines Joint Venture) Agreement Act 1981*;

“sales value” means —

- (a) the greater of —

- (i) the gross sales revenue from the sale, transfer or disposal by the tenement holder on an arms-length basis of sorted rough diamonds from the Ellendale mining lease; and
- (ii) the fair and reasonable market value on an arms-length basis of sorted rough diamonds from the Ellendale mining lease sold, transferred or disposed of by the tenement holder as determined by the Minister after consultation with the tenement holder;

and

- (b) in respect of sorted rough diamonds processed by the tenement holder, the fair and reasonable market value prior to processing as determined by the Minister after consultation with the tenement holder, having regard to any current sales on an arms-length basis by the tenement holder of comparable categories of sorted rough diamonds and, where sorted rough diamonds are processed in the State by the tenement holder, having regard to the allowable f.o.b. revenue costs;

“tenement holder” means the holder of the Ellendale mining lease;

“year” means a financial year.

- (2) For the purposes of paragraph (f) of the definition of “allowable deductions” in subregulation (1) —

“value”, in relation to unsold sorted rough diamonds, means an amount equal to the direct cost of production of the diamonds (excluding depreciation, overheads, interest and financing costs).

[Regulation 3 amended in Gazette 11 Feb 2005 p. 696; 31 May 2005 p. 2421-2.]