

[LEGAL NOTICE NO. 52]

INCOME TAX ACT 2015

Income Tax (Modernisation of Buildings Incentives) (Amendment) Regulations 2019

IN exercise of the powers conferred on me by section 25A of the Income Tax Act 2015, I hereby make these Regulations—

Short title and commencement

1.—(1) These Regulations may be cited as the Income Tax (Modernisation of Buildings Incentives) (Amendment) Regulations 2019.

(2) These Regulations come into force on 1 August 2019.

(3) In these Regulations, the Income Tax (Modernisation of Buildings Incentives) Regulations 2018 is referred to as the “Principal Regulations”.

Regulation 4 amended

2. Regulation 4(1) of the Principal Regulations is amended by deleting “\$1 million” and substituting “\$250,000”.

Regulation 6 amended

3. Regulation 6(2) of the Principal Regulations is amended by deleting paragraph (b).

Made this 31st day of July 2019.

A. SAYED-KHAIYUM

Attorney-General and Minister for Economy

[LEGAL NOTICE NO. 53]

INCOME TAX ACT 2015

Income Tax (Allowances for Depreciation and Improvements) Regulations 2019

REGULATION

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IN exercise of the powers conferred on me by section 142 of the Income Tax Act 2015, I hereby make these Regulations—

PART 1—PRELIMINARY

Short title and commencement

1.—(1) These Regulations may be cited as the Income Tax (Allowances for Depreciation and Improvements) Regulations 2019.

(2) These Regulations come into force on the date of publication, except for—

- (a) regulation 11(2)(c) which is deemed to have come into force on 1 August 2017; and
- (b) regulation 11(2)(d) which is deemed to have come into force on 1 August 2018.

Interpretation

2. In these Regulations, unless the context otherwise requires—

“agriculture” includes copra planting, silviculture, dairy farming, fruit growing, sugar cane growing, animal husbandry, poultry keeping, grazing and market gardening;

“commercial” means generally concerned with commerce and includes wholesale and retail trading, hotels, offices and the means of distribution, transport and exchange, but does not include industrial undertakings or properties let for residential purposes;

“industrial” means generally concerned with mills, factories or other similar premises in which the manufacture or processing of raw or partly manufactured materials is carried out and includes mining, land development and road development; and

“Information Communications Technology business” means services provided by a person which are information communications technology enabled such as software development, call centres, customer contact centres, engineering and design, research and development, animation and content creation, distance learning, market research, travel services, finance and accounting services, human resource services, legal services, compliance and risk services or other administration services.

PART 2—ALLOWANCE FOR CAPITAL EXPENDITURE RELATING TO FUEL ECONOMY AND ALTERNATIVE SOURCES OF ENERGY

Minister may approve allowances

3.—(1) For the purposes of encouraging economies in the use of fuel oil and its derivatives, the Minister may, on application by a taxpayer and subject to such conditions as he or she thinks fit, approve the following allowances for depreciation in respect of capital expenditure—

- (a) an allowance of 100% of the expenditure incurred in the adaptation of buildings, plant and machinery presently used in a trade or business where such expenditure is considered to be expedient for the purpose of reducing the consumption of electricity and its derivatives or fuel oil and its derivatives, whereby such allowance is a substitute for any other allowance for depreciation;
- (b) an initial allowance of 50% of the expenditure incurred for plant and machinery purchased to replace plant and machinery presently used in any trade or business considered to be expedient for the purpose of economising the consumption of electricity; or
- (c) either—
 - (i) a fuel economy investment allowance of up to 40% of the expenditure incurred for plant and machinery purchased to replace plant and machinery used in a trade or business, and using an alternative energy to electricity and its derivatives or fuel oil and its derivatives; or

- (ii) a fuel economy investment allowance of 40% of the expenditure incurred for an asset used in a trade or business which generates energy from a source of energy which is indigenous to and is produced in Fiji,

provided that the fuel economy investment allowance, which is in addition to the initial and annual allowances provided for under these Regulations, must not be approved unless the expenditure is deemed to be expedient for the economic benefit of Fiji and is capable of achieving substantial savings in foreign exchange.

Approved allowances

4.—(1) The depreciation and initial allowances referred to in regulation 3 must be deducted by the taxpayer from the gross income for the tax year in which the expenditure is incurred and must also be deducted in calculating the written down value of any asset in respect of which the allowances have been granted.

(2) The fuel economy investment allowance referred to in regulation 3 must be deducted by the taxpayer from the gross income for the tax year in which the expenditure is incurred but must not be deducted in calculating the written down value of any asset in respect of which the allowance has been granted, provided that, in the event of a sale of any such asset within 5 years of the end of the tax year in which the asset was purchased, the amount of the fuel economy investment allowance must be added back to the gross income of the trade or business for the tax year in which such asset is sold.

Approved allowances deemed to be depreciation

5. It is declared that, for the purposes of section 31 of the Act, any allowance approved under this Part, other than the fuel economy investment allowance, is deemed to be depreciation.

PART 3—ALLOWANCE FOR AGRICULTURAL IMPROVEMENTS

Allowance in respect of land improvements

6.—(1) Subject to subregulation (2), the CEO may, for the purpose of arriving at the gross income of a taxpayer for any tax year, allow any taxpayer engaged in any agricultural pursuit a deduction in respect of any sum spent in that tax year by the taxpayer on capital improvements to land if the sum is spent on—

- (a) the destruction, clearing and removal of timber indigenous to the land;
 - (b) the destruction of weed or plant growth detrimental to the land;
 - (c) the preparation of the land for agriculture;
 - (d) the planting of trees or crops upon the land for the purpose of deriving income;
 - (e) the draining of swamp or low lying lands;
 - (f) combating soil erosion;
 - (g) the construction of levee banks or similar improvements having like uses;
- or

- (h) the construction of any work, whether or not included in paragraphs (a) to (g),

which the taxpayer is required to do on the land under section 9 of the Land Conservation and Improvement Act 1953.

(2) The taxpayer may opt to have the expenditure allowed under subregulation (1) during the tax year in which the expenditure is incurred and the next succeeding 4 tax years of income.

(3) The allowances under this Part must not exceed the total allowable expenditure incurred.

Allowance in respect of buildings

7. Notwithstanding the other provisions of this Part, if the CEO is satisfied that the buildings or other construction specified in regulation 8 will be used wholly and exclusively for the agricultural pursuits of the taxpayer, the CEO may, for the purpose of arriving at the gross income of the taxpayer for any tax year, allow the taxpayer a deduction in respect of any sum spent on the buildings or construction—

- (a) in the tax year in which the expenditure is incurred; or
- (b) at the option of the taxpayer, in that tax year and the next succeeding 4 tax years of income,

provided that the total amount of the deductions allowed does not exceed the total allowable expenditure incurred.

Buildings qualifying for allowance

8. For the purpose of regulation 7, the following buildings or construction qualify for the allowance—

- (a) any agricultural building, excluding a dwelling house;
- (b) any dwelling house provided for an employee provided that the cost of any single dwelling house does not exceed \$10,000;
- (c) the cost of fencing;
- (d) the cost of a water storage scheme excluding a water storage scheme constructed solely or mainly for the purpose of supplying the taxpayer's dwelling house or the employee's dwelling house or both; and
- (e) the cost of any irrigation scheme.

Allowance as alternative to depreciation

9. The write-off of capital expenditure under this Part may be claimed and allowed as an alternative to any other depreciation allowances provided under these Regulations.

PART 4—ACCELERATED ALLOWANCE FOR BUILDINGS

Interpretation

10. In this Part, unless the context otherwise requires—

“capital expenditure”, in relation to a building to which this Part applies, does not include—

- (a) the cost value of the land;

(b) expenditure incurred for any preparation of the site enabling the erection of the building to commence; or

(c) the cost of any plant and machinery installed in a building;

“independent building contractor” means a building contractor not under the control of the taxpayer;

“multi-storey and multi-unit residential building” means a residential block of flats consisting of at least 2 floors and 6 units; and

“prescribed years” means any 5 of the 8 years of income consisting of the tax year in which the building is completed and the 7 immediately succeeding years.

Application for write-off of capital expenditure

11.—(1) Notwithstanding the depreciation allowance for buildings prescribed in the Income Tax (Depreciation Rates) Regulations 2016, a taxpayer may claim a write-off of capital expenditure in respect of the capital expenditure incurred for the construction of a building to which this Part applies.

(2) This Part applies to—

(a) buildings which are used for commercial or industrial purposes, the erection of which commenced on or after 1 January 1999 and completed on or before 31 December 2018;

(b) buildings which are not designed to be used as a hotel or for residential purposes, the erection of which commenced on or after 1 January 1999 and completed on or before 31 December 2018;

(c) buildings which are used for an Information Communications Technology business or agriculture, fisheries and forestry, the erection of which commenced on or after 1 August 2017 and completed on or before 31 December 2028; and

(d) buildings which are used for greenhouse and nursery buildings, research labs and pack houses, the erection of which commenced on or after 1 August 2018 and completed on or before 31 December 2028.

(3) Subregulation (2)(b) does not apply to a multi-storey and multi-unit residential building.

(4) For the avoidance of doubt, if the erection of a building has not been completed on—

(a) 31 December 2018 for the purposes of subregulation (2)(a);

(b) 31 December 2018 for the purposes of subregulation (2)(b); or

(c) 31 December 2028 for the purposes of subregulation (2)(c) and (d),

the cost or value, whichever is less, of the work done at that date will be treated as the capital expenditure.

(5) For the purpose of subregulation (4), the cost or value must be certified by an independent qualified valuer registered in Fiji.

Calculation of write-off

12.—(1) Subject to this Part, the write-off for the purposes of regulation 11 is to be calculated in accordance with this regulation.

(2) A taxpayer may claim a deduction in calculating gross income arising from—

- (a) a new trade or business established in the building;
- (b) an existing trade or business established in the building; or
- (c) the letting or occupation of the building.

(3) Subject to subregulation (7), the amount of deduction under this regulation in a year of income is 20% of the capital expenditure incurred by the taxpayer on the erection of the building.

(4) A deduction may be claimed in any of the prescribed years.

(5) Subject to subregulation (2), a taxpayer is not permitted to set off a deduction under this Part against income in that tax year from any other trade, business or employment.

(6) A taxpayer is not permitted to carry forward any loss resulting from a deduction allowed under this Part as a deduction against any other trade, business or employment.

(7) A taxpayer may claim in any prescribed year of income an amount less than the amount of the deduction set out in subregulation (3).

(8) If an amount of capital expenditure is not written off at the end of the last prescribed year, that amount of capital expenditure must be available for write-off in accordance with the normal depreciation rules under section 31 of the Act.

(9) If subregulation (8) applies, depreciation must be based on the written down value at the end of the last prescribed year.

(10) The aggregate amount of capital expenditure which a taxpayer can claim, in respect to any number of buildings, must not exceed \$70 million or the cost, whichever is less.

(11) The total depreciation written off under these Regulations must not exceed the amount of the capital expenditure incurred by the taxpayer on the erection of the building in respect of which the allowance has been claimed.

Conditions

13.—(1) Subject to regulation 14, a taxpayer does not qualify for an allowance under this Part unless the building is erected in accordance with subregulation (2) or (3).

(2) A building may be erected by an independent building contractor under a general building contract.

(3) If a building is not erected by an independent building contractor under a general building contract—

- (a) the cost or value of it must be certified by an independent qualified valuer registered in Fiji; and
- (b) the cost of construction of the building must be approved by the CEO.

Independent building contractors controlled by non-resident

14. If an independent building contractor is under the direct or indirect control of a non-resident, the independent building contractor must have had at least 10 employees from Fiji between 1 January 1999 and 31 December 2028.

Sale of shares in company with qualifying building

15. If—

- (a) shares in a controlled company are sold or transferred, directly or indirectly; and
- (b) that company has as its principal asset a building which qualifies or has qualified for an allowance under this Part,

a proportion, determined by the CEO, of the consideration received or recoverable for the sale of the shares is deemed to be consideration for the building or part of the building.

Consequences of sale of shares

16. If regulation 15 applies, the vendor of the share is deemed to be the owner of the building or part of the building and Division 5 of Part 2 of the Act applies.

Sale of interest in partnership building

17. If—

- (a) an interest in a partnership is sold, directly or indirectly; and
- (b) that partnership has as its principal asset a building which qualifies or has qualified for an allowance under this Part,

a proportion, determined by the CEO, of the consideration received or recoverable for the sale of the interest is deemed to be consideration for the building or part of the building.

Consequences of sale of interest

18. If regulation 17 applies, the partner who has sold the interest in the partnership is deemed to be the owner of the building or part of the building and Division 5 of Part 2 of the Act applies.

Written-off amounts deemed to be depreciation

19. For the purposes of section 31 of the Act, an amount written off under this Part is deemed to be depreciation.

Allowance as an alternative to other depreciation allowances

20. The allowance permitted under this Part is an alternative to any other depreciation allowance provided under section 31 of the Act.

**PART 5—ACCELERATED ALLOWANCE FOR RENEWABLE
ENERGY PLANT AND WATER STORAGE FACILITY**

Interpretation

21.—(1) For the purposes of this Part—

- “BRAS” means Broadband Remote Access Server;
- “CDMA” means Code Division Multiple Access;
- “DNN” means Deep Neural Network;

“DSLAM” means Digital Subscriber Line Access Multiplexer;

“EVDO” means Evolution Data Optimised;

“IP” means Internet Protocol;

“IPPABX” means Internet Protocol Private Branch Exchange;

“LAN” means Local Area Network;

“NGN” means to New Generation Network;

“renewable energy plant” refers to biofuel generators, solar water pumps, hydropower systems or those that are based on the following wind, wave and solar technology—

- (a) biofuel generator that is solely operated by biofuel;
- (b) solar water pumps consisting of—
 - (i) solar panels Wind Energy Generation System (WEGS) assemblies;
 - (ii) hydraulic pump; and
 - (iii) inverter;
- (c) hydro power system consisting of—
 - (i) turbine;
 - (ii) generator containing electrical alternator;
 - (iii) pen stock;
 - (iv) control system containing parts such as switch board and electrical accessories;
 - (v) data loggers;
 - (vi) current meters; and
 - (vii) transformers;
- (d) wind technology (such as wind monitoring and wind farms) consisting of—
 - (i) tower with accessories;
 - (ii) wind turbine;
 - (iii) control system;
 - (iv) data loggers;
 - (v) pyranometer;
 - (vi) anemometer;
 - (vii) wind direction vane; and
 - (viii) sensor cables;

- (e) wave technology consisting of—
 - (i) wave energy generating system;
 - (ii) wave sensor or gauge;
 - (iii) raft assembly;
 - (iv) power transformer;
 - (v) tower and beacon; and
 - (vi) reaction plane assembly;
- (f) solar technology (such as a solar home system) consisting of—
 - (i) solar panels;
 - (ii) double ended lights;
 - (iii) charge, discharge, controller;
 - (iv) prepayment meter;
 - (v) switchers;
 - (vi) inverter;
 - (vii) deep cycle battery; and
 - (viii) electrical accessories;

“SDH” means Synchronous Digital Hierarchy;

“UPS” means Uninterruptable Power Supply; and

“water storage facility” means any storage facility that has the capacity to store over 3,785.5 litres of water.

- (2) An application for a write-off may only be made up to 31 December 2028.

Renewable energy plant and water storage facility

22. Notwithstanding any provision under these Regulations, a taxpayer may apply to claim 100% write-off in the tax year of expenditure in respect of the capital expenditure incurred for the installation of a renewable energy plant or water storage facility.

**PART 6—ACCELERATED ALLOWANCE FOR INFRASTRUCTURE IN FIXED
LINE NEW GENERATION NETWORK**

Infrastructure in fixed line NGN

23.—(1) Notwithstanding any provision under these Regulations, a taxpayer may apply to claim 100% write-off in the tax year of expenditure, from 2009 to 2028, in respect of the capital expenditure incurred for the installation of infrastructure in a fixed line NGN facility.

- (2) For the purposes of this Part, “fixed line NGN” means—

- (a) fibre optic cables and electronic equipment attached to fibre optic cables, including the cost of incidental installation materials, ducts and cost of civil works;

- (b) NGN, broadband or data distribution systems including head end equipment;
- (c) IP based wireless access systems including CDMA, EVDO base stations and cards used for providing customer access for NGN, broadband and data services;
- (d) equipment, development and acquisition cost of content and platforms that utilise NGN, broadband or data services;
- (e) operational support systems for planning, managing, provisioning and monitoring networks that provide NGN, broadband or data services;
- (f) business support systems that are used for billing and customer support of network services that provide NGN, broadband or data services;
- (g) LAN switches, routers, soft switches, DNN networks, DSLAM, BRAS, media gateways and multi access devices and cabinets, racks, service and applications platforms and equipment that provide switching, routing and application functionality for NGN, broadband or data services;
- (h) transport multiplexers including fibre optic and SDH microwave equipment, mux terminal blocks, and broadband wireless access technologies and terminal equipment;
- (i) undersea fibre optic cables enabling the provision of NGN, broadband or data services within Fiji or internationally, electronics attached to the cables, cost and civil works including installation, landing stations and international bandwidth capacity of cable and satellite;
- (j) equipment, public access terminals and customer premises equipment including IPPABXs, applications software and terminals customers utilise to access NGN, broadband or data services and applications on the network;
- (k) UPS, rectifiers, for NGN, broadband and data network equipment and power equipment for cable landing stations;
- (l) test equipment, tools, test labs and demonstration facilities for NGN, broadband and data equipment; and
- (m) equipment and civil works and power for internet data centres including storage area networks.

Application for write off for manufacturing purposes

24.—(1) Notwithstanding any provision under these Regulations, a taxpayer may apply to claim 100% write-off in the tax year of expenditure, in respect of the capital expenditure incurred for the purchase of new plant and machinery, for manufacturing purposes.

(2) An application for a write-off may only be made up to 31 December 2028.

PART 7—MISCELLANEOUS

Revocation

25. The Income Tax (Allowances for Depreciation and Improvements) Instructions 1998 is revoked.

Consequential Amendments

26. The Income Tax (Film-making and Audio-visual Incentives) Regulations 2016 is amended in regulations 71(6) and 80F(e) and (f) by deleting “Income Tax (Allowances for Depreciation and Improvements) Instructions 1998” and substituting “Income Tax (Allowances for Depreciation and Improvements) Regulations 2019”.

Made this 31st day of July 2019.

A. SAYED-KHAIYUM
Attorney-General and Minister for Economy

[LEGAL NOTICE NO. 54]

INCOME TAX ACT 2015

Income Tax (Depreciation Rates) (Amendment) Regulations 2019

IN exercise of the powers conferred on me by section 142 of the Income Tax Act 2015, I hereby make these Regulations—

Short title and commencement

1.—(1) These Regulations may be cited as the Income Tax (Depreciation Rates) (Amendment) Regulations 2019.

(2) These Regulations come into force on the date of publication in the Gazette.

Regulation 4 inserted

2. The Income Tax (Depreciation Rates) Regulations 2016 is amended after regulation 3 by inserting the following new regulation—

“100% write-off expenditure

4.—(1) Notwithstanding the provisions of these Regulations, where the cost of a depreciable asset is \$1,000 or less, a taxpayer may deduct the full cost of the asset in the tax year it was acquired.

(2) A deduction under this regulation must not be allowed unless the taxpayer can demonstrate that the asset—

- (a) is regarded as a whole;
- (b) is capable of being separately identified; and
- (c) has a separate function.

(3) Where a taxpayer applies the diminishing value method and the written down value of an asset has reached 5% or less of the cost of the asset at the end of a tax year, the taxpayer must deduct the equivalent sum in that tax year.”.

Made this 31st day of July 2019.

A. SAYED-KHAIYUM
Attorney-General and Minister for Economy