

[LEGAL NOTICE NO. 32]

INCOME TAX ACT 2015

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## **Income Tax (Allowances for Depreciation and Improvements) (Amendment) Regulations 2020**

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 (Allowances for Depreciation and Improvements) (Amendment) Regulations 2020.

(2) These Regulations come into force on 1 April 2020.

(3) In these Regulations, the Income Tax (Allowances for Depreciation and Improvements) Regulations 2019 is referred to as the “Principal Regulations”.

*New Part 4, Division 1 heading inserted*

2. The Principal Regulations are amended by after the heading of Part 4 by inserting the new Division heading “Division 1—Preliminary”.

*Regulation 10 amended*

3. Regulation 10 of the Principal Regulations is amended by inserting the following new definitions—

““building construction project” means a project for the construction of a building as provided under regulation 11(2)(e);”;

““company” means a company registered under the Companies Act 2015;”;

““Minister” means the Minister responsible for finance;”.

*New Part 4, Division 2 heading inserted*

4. The Principal Regulations are amended after regulation 10 by inserting the new Division heading “Division 2—Application of this Part”.

*Regulation 11 amended*

5. Regulation 11(2) of the Principal Regulations is amended by—

(a) in paragraph (c), deleting “and”;

(b) in paragraph (d), deleting “.” and substituting “; and”;

(c) after paragraph (d), inserting the following new paragraph—

“(e) buildings which are used for commercial or industrial purposes, including multi-storey and multi-unit residential buildings provided that—

(i) the erection of such building commences on or after 1 April 2020; and

(ii) a provisional and final approval is granted for such building under Division 3.”.

*New Part 4, Division 3 inserted*

6. The Principal Regulations are amended after regulation 11 by inserting the following new Division—

*“Division 3—Commercial or industrial buildings*

*Applications*

11A.—(1) A taxpayer that seeks to claim a write-off of capital expenditure for buildings referred to in regulation 11(2)(e) must apply in writing to the CEO for provisional approval of the building construction project.

(2) The application must contain the following information—

(a) the name and address of the taxpayer;

- (b) if the taxpayer is a company, the registered office of the company and the names of all directors and shareholders of the company together, including shareholdings of the directors and shareholders;
  - (c) a recent statement of all assets and liabilities of the taxpayer;
  - (d) evidence of the taxpayer's ability to complete the building construction project; and
  - (e) estimates of the projected income from the new building.
- (2) The CEO may—
- (a) require the applicant to provide other information he or she may consider necessary in relation to the application; or
  - (b) prescribe particular requirements applicable to any particular area of Fiji.

*Provisional approval*

- 11B.—(1) The CEO may—
- (a) reject the application; or
  - (b) grant provisional approval, with or without any conditions.
- (2) The CEO must not grant provisional approval under subregulation (1) unless he or she is satisfied that—
- (a) the application is for an investment in a building construction project;
  - (b) the taxpayer intends to complete and is capable of completing the building construction project.
- (3) When considering an application the CEO must take into account the following matters—
- (a) the assets and liabilities of the taxpayer;
  - (b) the nature and extent of the investment;
  - (c) the capability of the taxpayer to complete the building construction project; and
  - (d) such other matters as the CEO may consider relevant.
- (4) If the CEO grants provisional approval he or she must refer the taxpayer to the Building Permits Evaluation Committee established under section 4(1) of the Regulation of Building Permits Act 2017.
- (5) The decision of the CEO under this regulation is final.
- (6) Notwithstanding subregulation (5), a person whose application (including partial rejected application) has been rejected may make a new application or amend and resubmit the original application.

(7) If a taxpayer has been granted provisional approval, the taxpayer must commence the erection of the building construction project within 12 months from the date on which the provisional approval is granted.

*Final approval*

11C.—(1) If a taxpayer has been granted provisional approval and has completed the building construction project, the taxpayer may apply to the Minister for final approval.

(2) An application under subregulation (1) must be made in writing and supported by the following—

- (a) fully audited final accounts showing the total cost of the project; and
- (b) a completion certificate from the local authority.

(3) Upon receiving an application under subregulation (2), the Minister may—

- (a) reject the application; or
- (b) give final approval to the application, with or without any conditions.

(4) Subject to regulation 11D, no approval must be granted under this regulation if the Minister is satisfied that the taxpayer has failed to complete the project or has failed to comply with any condition upon which provisional approval was granted.

(5) The Minister must, in writing, notify the applicant and the CEO of the decision to reject or grant the application.

*Extension of time*

11D. If an applicant to whom provisional approval has been granted is unable to commence the erection of the building construction project within the period specified in regulation 11B(7) due to unforeseen circumstances or some other act beyond the control of the applicant, the applicant may apply in writing to the Minister to extend such period.

*New Part 4, Division 4 heading inserted*

7. The Principal Regulations are amended after regulation 11D by inserting the new Division heading “Division 4—Calculations”.

*Regulation 12 amended*

8. Regulation 12(3) of the Principal Regulations is amended by deleting “is 20% of the capital expenditure incurred by the taxpayer on the erection of the building” and substituting the following—

“is—

- (a) for buildings referred to regulation 11(2)(a) and (b), 20%; and
- (b) for buildings referred to in regulation 11(2)(c) to (e), 100%,

of the capital expenditure incurred by the taxpayer on the erection of the building”.

*New Part 4, Division 5 heading inserted*

9. The Principal Regulations are amended after regulation 12 by inserting the new Division heading “Division 5—Other conditions”.

*New Part 4, Division 6 heading inserted*

10. The Principal Regulations are amended after regulation 18 by inserting the new Division heading “Division 6—Miscellaneous”.

Made this 30th day of March 2020.

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