

[LEGAL NOTICE NO. 64]

INCOME TAX ACT 2015

Income Tax (Modernisation of Buildings Incentives) Regulations 2018

IN exercise of the powers conferred on me by section 25A 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 (Modernisation of Buildings Incentives) Regulations 2018.

(2) These Regulations come into force on 1 August 2018.

Interpretation

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

“applicant” means a person who applies for the investment allowance under Part 2;

“application” means the application for the investment allowance under Part 2;

“building” means any building used for a commercial purpose within a town or city;

“extension” means any additional feature to an existing building;

“final approval” means the approval granted by the Minister under regulation 9;

“project” means the exterior extension or redevelopment and renovation of a building;

“provisional approval” means the approval granted by the CEO under regulation 7; and

“redevelopment and renovation” means any substantial construction works (which the estimated cost per square metre of floor area is determined under regulation 4(5)) of an existing building (excluding the interior furnishings, furniture and fittings) which —

(a) have the effect of restoring the building to a sound and new state: or

(b) reconstruct, remodel, alter or upgrade the exterior of a building.

Objective

3. The purpose of these Regulations is to provide certainty about the way these Regulations are to be applied and to encourage the modernisation of buildings by the provision of financial inducements.

PART 2—MODERNISATION OF BUILDINGS INCENTIVE

Investment allowance

4.—(1) Subject to subregulation (3), a person is entitled to, for a capital investment above \$1 million, the following allowance—

- (a) an amount of taxable income equal to 25% of the total capital expenditure incurred in the project, but less the cost of any land acquired for the project, is not chargeable to tax; and
- (b) so much of the amount not charged to tax under subregulation (1)(a) and which cannot be set off against the taxable income of the applicant for the first year of income after the commencement of operation or after the completion of the project must be carried forward and be set off against the taxable income of the next successive fiscal years of income until the amount is wholly set off.

(2) Notwithstanding subregulation (1), a person who has claimed an investment allowance under this regulation may claim depreciation under the Act and, for such purpose, the investment allowance must not be taken into account.

(3) In the case of Fijian residents or non-residents, the investment allowance may only be given if there is no shift of tax revenue to other countries.

(4) Subject to this Part, if—

- (a) a project has been completed; and
- (b) an investment allowance under this regulation exceeds the taxable income of the applicant; or
- (c) the taxable income from the applicant for the period ended on the next year of income after the project has been completed,

the balance must be carried forward and set off against the taxable income of the applicant for the next successive years of income.

(5) For the purpose of the definition of “redevelopment and renovation” in regulation 2, the Minister may prescribe the cost per square metre of not less than 40% of the estimated cost per square metre of the floor area of the building.

(6) The capital expenditure allowable under redevelopment and renovation shall be given to a building that is more than 5 years old.

Procedure on sale of building

5. If the building has been sold and the investment allowance in respect of such building has in accordance with regulation 8, been wholly or partly set off against income, the like consequences shall ensue as respects both the vendor and the purchaser with regard to section 34 of the Act, as would have ensued if the transaction were the sale and purchase of depreciable property in the normal course of events.

Power to approve applications

6.—(1) The Minister or CEO, as applicable, may—

- (a) reject the application;
- (b) approve the application, with or without any condition; or

- (c) approve a part of the application, with or without any condition, and reject other parts of such application.

(2) The Minister or CEO, as applicable, must take into account the following matters when determining an application under subregulation (1)—

- (a) the building must be more than 5 years old;
- (b) the building must be within the municipal boundaries under the Local Government Act 1972;
- (c) the building must not be a hotel or an apartment;
- (d) the project must exclude the interior furnishings, furniture and fittings of the building;
- (e) the project must include the use of green technology or technology that mitigates the adverse effects of human activities on the environment;
- (f) the project must include the installation of lighting on the exterior of the building that improves street visibility at night; and
- (g) the project must provide some form of building access for persons living with disabilities.

(3) The decision of the Minister or CEO, as applicable, under this regulation is final.

(4) Notwithstanding subregulation (3), a person whose application, including partial rejected application, has been rejected may make a new application or amend and resubmit the original application.

Application for provisional approval

7. A person wishing to carry out a project may apply in writing to the CEO for approval of the proposed project, and such application must set out the following matters—

- (a) the name and details of the person;
- (b) a current statement of all assets and liabilities of the person;
- (c) the location and description of the building;
- (d) a sketch plan showing the proposed project;
- (e) the estimated cost of the project;
- (f) if the project is to be carried out in stages, a description and the estimated cost, of each stage and details of the proposed timetable;
- (g) details of the proposed method of financing the project; and
- (h) any other information the CEO may require.

Completion of project

8.—(1) Any applicant who has been granted provisional approval on or after 1 August 2018 must complete the project within 24 months from the date of provisional approval.

(2) Subject to the other provisions of this regulation, where an applicant has been granted provisional approval and has completed the project, the applicant may apply to the Minister for final approval.

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

- (a) fully audited final accounts showing the total cost of the project;
- (b) a completion certificate from the local authority; and
- (c) a final plan showing the site, layout and surrounding areas of the proposed project.

(4) Subject to regulation 9, the Minister must refuse to grant final approval if the applicant has failed to complete the project or has failed to comply with any condition upon which provisional approval was granted.

Final approval if completed

9.—(1) An application for final approval must not be granted unless—

- (a) the Minister is satisfied that the applicant has in all respects completed the requirements of the project; and
- (b) the project is fully completed.

(2) The Minister must notify the CEO in writing of the decision made under subregulation (1).

Extension of time for completion

10. If an applicant to whom the provisional approval has been granted is unable to complete the project within the period specified in regulation 8(1) 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 the time by which the project must be completed.

Applicability of the investment allowance

11.—(1) The investment allowance shall cease to apply from 1 August 2020.

(2) If the Minister or CEO has granted a provisional or final approval in relation to a project, the applicant is only entitled once, in relation to the project, to the investment allowance.

Revocation of the investment allowance

12. The Minister or CEO, as applicable, may revoke the investment allowance if the applicant has—

- (a) breached any condition of provisional or final approval;
- (b) failed to comply with any of the requirements of the Act or these Regulations;
or
- (c) been convicted of an offence under any written law relating to taxation, customs or excise.

Specification of particular requirements

13. The Minister may prescribe particular requirements under these Regulations applicable to any particular area of Fiji.

Made this 31st day of July 2018.

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