

[LEGAL NOTICE NO. 7]

INCOME TAX ACT 2015
(ACT NO. 32 OF 2015)

Income Tax (Maritime Vessels Investment Allowance) Regulations 2016

In exercise of the powers conferred upon me under section 142(1) of the Income Tax Act 2015, I hereby make these Regulations—

Short title and commencement

1.—(1) The Regulations may be cited as the Income Tax (Maritime Vessels Investment Allowance) Regulations 2016.

(2) These Regulations shall come into force on 1 January 2016.

Interpretation

2. In these Regulations, unless the contrary intention appears—

“eligible vessel”, means a sea-going vessel that has been, is being or is to be built in Fiji by or on behalf of that person at a cost of not less than \$250,000;

“investment allowance” means the maritime vessels investment allowance referred to in regulation 5(1);

“Maritime Safety Authority of Fiji” means Maritime Safety Authority of Fiji, established under the Maritime Safety Authority of Fiji Decree 2009;

“MSAF Approved Plan” means a vessel plan that bears the official seal of the Maritime Safety Authority of Fiji;

“primary allowance period” in relation to a person who is certified under regulation 5(1) to be entitled to the investment allowance in respect of a vessel, means the 5 fiscal years of that person commencing with the fiscal year in which the vessel is completed in accordance with the relevant provisional approval;

“provisional approval” means an approval in principle given by the Minister under regulation 4;

“relevant area”, in relation to a vessel that is the subject of an application under regulation 4 or a provisional approval, means the area over which it is proposed in the application or the provisional approval, as the case requires, that the vessel be used; and

“Minister” means the Minister responsible for Finance.

Applications for investment allowance

3.—(1) In order to obtain the benefit of the maritime vessels investment allowance, a person who proposes to use an eligible vessel in Fiji may apply in writing to the Minister.

(2) An application under subregulation (1) shall—

- (a) contain—
 - (i) the information specified in subregulation (3);
 - (ii) particulars of the relevant area;
 - (iii) particulars of the method of financing the construction, refurbishment or renovation of the vessel; and
 - (iv) such other information as may be required by the Minister; and
- (b) be accompanied by—
 - (i) a MSAF Approved plan of the vessel; and
 - (ii) such other documents as may be required by the Minister.

(3) Investment allowance on refurbishment or renovation under subregulation (2) shall only be applicable to a vessel that is wholly or principally engaged in the carriage of tourists within Fiji and providing accommodation for more than three nights.

(4) For the purpose of subregulation (3), “refurbishment or renovation” means those construction works of a substantial nature carried out in or upon an existing vessel which have the effect of restoring the vessel to a sound and new state and/or which reconstruct, remodel, alter, upgrade or amend the interior of an existing vessel, but not confined to the repainting or redecorating of an existing vessel.

(5) The capital expenditure allowable under subregulation (2) shall be given—

- (a) only to the eligible vessels stated in subregulation (3); and
- (b) which has been in operation for a period of not less than 5 years.

(6) The information referred to in subregulation (2)(a)(i) is the following information in relation to the vessel—

- (a) its overall size, including its length and beam;
- (b) its tonnage;
- (c) a description of its main propulsion system, with the following particulars—
 - (i) whether single or twin screw or otherwise;
 - (ii) name, model and horse-power rating of main engine or engines;
- (d) its estimated (or, where known, actual) fuel consumption per hour;
- (e) its estimated (or, where known, actual) service speed in knots;
- (f) its passenger capacity, with the following particulars—
 - (i) the number of suites;
 - (ii) the number of twin cabins;
 - (iii) the number of single cabins;
 - (iv) the overall seating capacity otherwise than in suites, cabins and dining rooms;

- (v) the dining room capacity;
- (vi) the number of toilets, showers and similar facilities;
- (vii) any other amenities;
- (g) its construction (whether steel, timber or otherwise);
- (h) its total estimated (or, where known, actual) cost;
- (i) the name of its builder.

Approval

4.—(1) The Minister, upon receipt of an application under regulation 3, shall consider the application and refer it, together with his or her recommendations in relation to it, to the Minister responsible for , before giving written notice to—

- (a) reject the application;
- (b) give provisional approval to the application, with or without any condition as he or she considers reasonable; or
- (c) give provisional approval to a part, and reject the remainder, of the application, imposing such conditions in relation to his or her partial provisional approval as he or she considers reasonable.

(2) In arriving at his or her decision under subregulation (1), the Minister shall take into consideration the following matters, that is to say—

- (a) the requirements for such a vessel in the relevant area;
- (b) whether the vessel is likely to make an adequate contribution to the meeting of those requirements in the relevant area;
- (c) whether the vessel is or is to be of suitable size and standard for operations in the relevant area;
- (d) whether the facilities proposed to be provided in the vessel would be adequate for the comfort and safety of passengers, but shall, in all other respects, exercise his or her own discretion.

(3) Without prejudice to his or her powers under subregulations (1) and (2), the Minister may specify particular requirements applicable to any particular area of operation in Fiji.

(4) The decision of the Minister under subregulation (1) shall be final but, in case of rejection (whether total or partial), shall not preclude the applicant from submitting a fresh application or amending his or her original application.

Allowance

5.—(1) Where—

- (a) the construction of a vessel is completed in accordance with provisional approval granted to a person; and
- (b) the Minister is satisfied that it is expedient for the economic development of Fiji that that person should be entitled to a maritime vessels investment allowance in respect of that vessel,

the Minister may, either by order or by written direction to the CEO, certify that person, upon such conditions as he or she thinks fit, to be entitled to a maritime vessels investment allowance in respect of that vessel.

(2) Subject to subregulations (3), (4) and (5) and regulation 8, the investment allowance in respect of a vessel is a deduction from total income arising from the use of that vessel in accordance with the conditions (if any) referred to in subregulation (1), for maritime operations over the primary allowance period of amounts not exceeding in the aggregate an amount equal to 55% of the total capital expenditure incurred in the construction of the vessel, as approved by the Minister.

(3) Where, at the expiration of the primary allowance period, any part of the investment allowance in respect of the vessel has not been claimed, the owner of the vessel may set off against total income derived by him or her in succeeding fiscal years from other vessels operated by him or her, amounts not exceeding in the aggregate the amount of that unclaimed part of the investment allowance.

(4) Where income is derived by the owner of the vessel from the use of other vessels, the profit in respect of the first-mentioned vessel shall be deemed to be—

- (a) except where item (b) applies, an amount that bears to the total profit derived by him or her from the use of all such vessels the same proportion as the gross income derived by him or her from the first-mentioned vessel bears to the total gross income derived by him or her from the use of vessels; or
- (b) where the CEO so directs, an amount ascertained on such other basis as the CEO may determine.

(5) Where the owner of the vessel is a company, no deduction from total income by way of investment allowance shall be allowed in relation to a fiscal year of that company if the CEO is satisfied that, in that year, the shareholders of the company are not substantially the same as on the date on which the provisional approval was granted unless prior approval from the Minister for the changes of shareholders has been obtained.

(6) For the purposes of this regulation, the shareholders of a company at any date shall be deemed not to be substantially the same as the shareholders on any other date unless, on both those dates, not less than 30 per cent of the voting power in and the right to receive dividends from the company was held by or on behalf of the same persons, nor unless, on both those dates, not less than 30 per cent of the nominal value of the allotted shares in the company were held by or on behalf of the same persons.

(7) Shares in a company held by or on behalf of another company shall be deemed to be held by the shareholders of the last-mentioned company and shares held by or on behalf of the trustee of the estate of a deceased shareholder, or by or on behalf of the persons entitled to those shares as beneficiaries in the estate of a deceased shareholder, shall be deemed to be held by that deceased shareholder.

Depreciation

6. Nothing in regulation 5 shall be taken to prevent a person who is entitled to an investment allowance in relation to a vessel from claiming depreciation under this Act in relation to that vessel and, for that purpose, the investment allowance shall not be deducted in calculating the prime cost of that vessel.

Recoupment

7.—(1) If, before the expiration of the primary allowance period, the vessel is sold, transferred, lost, destroyed or otherwise disposed of, the amount of any proceeds shall be taken, for the purposes of ascertaining the total income of its owner, to be an amount to which section 17 of the Act applies, but that amount shall not exceed an amount equal to the aggregate of the deductions from total income by way of investment allowance which have been allowed previously.

(2) For the purposes of subregulation (1), the reference in that subregulation to the proceeds in relation to the sale, transfer, loss, destruction or other disposal of a vessel shall, without limiting the generality of that reference, be taken to include, in particular—

- (a) the market value of any consideration received otherwise than in cash; and
- (b) any moneys received—
 - (i) under any policy of insurance;
 - (ii) by way of indemnity;
 - (iii) by way of damages; or
 - (iv) in settlement of any claim, in relation to that sale, transfer, loss, destruction or other disposal.

(3) If, during the primary allowance period, the nature of the use of the vessel changes substantially, an amount equal to the aggregate of deductions from total income by way of investment allowance already allowed shall be taken, for the purposes of ascertaining the total income of its owner, to be an amount to which section 17 of the Act applies in the year in which the change occurred.

(4) Subregulations (1) and (3) shall not be taken to affect the operation of the Income Tax Allowance for Depreciation and Improvement Instructions 1998, in respect of any balancing charge arising in respect of the vessel.

(5) The Minister may, where he or she considers it warranted, upon application by the owner of a vessel, direct that an amount that, in accordance with subregulation (1) or (3), is to be taken to be an amount to which section 17 of the Act applies be reduced to such extent as he or she deems fit.

Application to certain vessels

8. These Regulations shall apply in relation to an eligible vessel the construction of which commenced before 1 January 2016 subject to such modifications and adaptations as the Minister directs, either generally by order or, in a particular case, by written direction to the applicant for the allowance.

Made this 1st day of January 2016.

F. S. KOYA
Acting Minister for Finance