



**THE INCOME TAX (DEPRECIATION DETERMINATIONS)  
REGULATIONS 1993**

---

THOMAS EICHELBAUM, Administrator of the Government

**ORDER IN COUNCIL**

At Wellington this 5th day of July 1993

Present:

THE HON. DOUG KIDD PRESIDING IN COUNCIL

PURSUANT to section 433 of the Income Tax Act 1976, His Excellency the Administrator of the Government, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

---

ANALYSIS

- |  |   |
|--|---|
| <ol style="list-style-type: none"> <li>1. Title, commencement, and application</li> <li>2. Interpretation</li> <li>3. Applications for depreciation determinations</li> <li>4. Further information to be provided</li> <li>5. Application may be withdrawn or amended</li> </ol> | <ol style="list-style-type: none"> <li>6. Commissioner to prepare draft determination in certain cases</li> <li>7. Applicant or Commissioner may require holding of conference</li> <li>8. Procedure at conference</li> <li>9. Fees</li> <li>10. Payment of fees</li> <li>11. Waiver of fees</li> <li>12. Fees inclusive of goods and services tax</li> </ol> |
|--|---|
-

## REGULATIONS

**1. Title, commencement, and application**—(1) These regulations may be cited as the Income Tax (Depreciation Determinations) Regulations 1993.

(2) These regulations shall come into force on the 28th day after the date of their notification in the *Gazette*, and shall apply in respect of any application for a depreciation determination made on or after that day.

**2. Interpretation**—In these regulations, unless the context otherwise requires,—

“The Act” means the Income Tax Act 1976:

“Applicant” means a person who applies for a depreciation determination:

“Application” means an application for a depreciation determination:  
“Depreciation determination” means—

(a) A determination by the Commissioner under section 108i of the Act to allow a taxpayer to apply a special or a provisional economic rate of depreciation in respect of any depreciable property; or

(b) A determination by the Commissioner under section 108j(6) of the Act to allow in respect of any depreciable property a maximum pooling value greater than that currently available to a taxpayer; or

(c) A determination by the Commissioner under section 108k of the Act allowing a taxpayer to deduct the remaining adjusted tax value of any depreciable property.

Other expressions used in these regulations have the same meanings as in the Income Tax Act 1976.

**3. Applications for depreciation determinations**—(1) Every application for a depreciation determination shall—

(a) Be made on a form or forms approved for the relevant application by the Commissioner, and contain such information as may be required for completion of the approved form or forms; and

(b) Be accompanied by such further information or evidence as may be required or indicated on the approved form; and

(c) Except in the case of an application for a determination of a provisional rate under section 108i of the Act, be accompanied by the initial application fee prescribed by regulation 9 (1) (a) of these regulations.

(2) Without limiting the generality of subclause (1) (b) of this regulation, an application under section 108i of the Act for a special or provisional rate of depreciation shall be accompanied by the following information:

(a) The depreciation rate that the applicant uses for financial reporting purposes for the property in respect of which the application is made:

(b) Where the taxpayer has used that property or property of that type previously, details of the useful life of such property and its residual value:

(c) Any relevant information the applicant has in relation to the property from a manufacturer, valuer, engineer, architect, or any other person as to the estimated useful life or estimated residual value of the property.

**4. Further information to be provided**—An applicant shall furnish to the Commissioner such further information as the Commissioner may from time to time reasonably request for the purpose of determining the application.

**5. Application may be withdrawn or amended**—An applicant may at any time, by notice in writing to the Commissioner, withdraw or amend an application.

**6. Commissioner to prepare draft determination in certain cases**—(1) Where the Commissioner considers it appropriate to issue a determination in response to an application for—

(a) A special or provisional rate of depreciation under section 108i of the Act; or

(b) A higher maximum pooling value under section 108j (6) of the Act,—the Commissioner shall first prepare a draft determination.

(2) The Commissioner shall send a copy of the draft determination to the applicant, together with—

(a) A brief statement of the reasons for the terms of the draft determination; and

(b) Notification of a date by which the applicant should indicate to the Commissioner whether or not the applicant wishes the Commissioner to hold a conference in relation to the draft determination, such date to be not less than 10 working days after the day on which the copy of the draft determination is sent to the applicant.

**7. Applicant or Commissioner may require holding of conference**—(1) If—

(a) The applicant notifies the Commissioner in writing by the date for response specified under regulation 6 (2) (b) of these regulations that the applicant wishes the Commissioner to hold a conference in relation to the draft determination; or

(b) The Commissioner determines to hold a conference in any event,—the Commissioner shall appoint a date, time, and place for the conference and notify the applicant accordingly.

(2) The date of the conference shall be not less than 20 working days after the date for response specified under regulation 6 (2) (b) of these regulations, unless the applicant otherwise agrees.

(3) If the applicant notifies the Commissioner that the applicant does not wish a conference to be held, or fails to give any notification at all by the date for response specified under regulation 6 (2) (b) of these regulations, the Commissioner may proceed to make the determination at any time after the earlier of—

(a) The date the notice is given by the applicant; or

(b) The date for response specified under regulation 6 (2) (b) of these regulations.

**8. Procedure at conference**—(1) At every conference called under regulation 7 of these regulations the following persons are entitled to be present and to participate both personally and through a representative:

(a) The Commissioner;

(b) The applicant;

(c) Any person nominated by the Commissioner or by the applicant;— but no other person is entitled to be present.

(2) At every such conference the Commissioner shall provide for as little formality and technicality as the requirements of these regulations and a proper consideration of the application permits.

(3) The Commissioner shall cause such record of a conference to be made as is sufficient to set out the matters raised by the persons participating in the conference.

(4) The Commissioner or representative of the Commissioner attending the conference may terminate the conference when he or she is of the opinion that a reasonable opportunity has been given for the expression of the views of the persons participating in the conference.

(5) The Commissioner shall have regard to all matters raised at the conference, and may at any time after the conference make a determination in respect of the application.

**9. Fees—**(1) An applicant is liable to pay the following fees in respect of any application for a depreciation determination other than an application for determination of a provisional rate under section 1081 of the Act:

(a) An initial fee of \$50 to be paid at the time the application is lodged:

(b) A processing fee at the rate of \$30 per hour for every hour (or part hour), beyond the first 2 hours, spent in departmental processing of the application (such processing time to include time spent by the Commissioner or representatives of the Commissioner in attending a conference, but not the time of consultants referred to in paragraph (c) or paragraph (d) of this subclause):

(c) A departmental consultation reimbursement fee equal to the lesser of—

(i) The amount of fees paid by the Department to consultants such as valuers, engineers, and architects in obtaining advice as to the estimated useful life or estimated residual value of the property to which the application relates (not being fees to which paragraph (d) of this subclause applies); or

(ii) \$300:

(d) An additional consultation reimbursement fee, equal to the amount of fees paid by the Department to the relevant consultant, in any case where—

(i) The applicant, in writing to the Commissioner, requests that a consultant carry out further work; or

(ii) The applicant requests a conference, and a consultant paid by the Department attends the conference on the nomination of either the applicant or the Commissioner.

(2) Where, following a request by an applicant for a conference or for further work to be done by a consultant, it appears that an additional consultation reimbursement fee will become payable by the applicant under subclause (1) (d) of this regulation, the Commissioner shall advise the applicant of the fees likely to be incurred as a result of the request with a view to ascertaining whether or not the applicant wishes to pursue the application.

(3) Before engaging a consultant the Commissioner shall have regard to any information of the kind referred to in regulation 3 (2) (c) of these regulations that is provided by the applicant, and the Commissioner shall not unreasonably require advice from a consultant if the Commissioner

considers that such information is sufficient to determine an appropriate rate of depreciation.

(4) The Commissioner shall ensure as far as is reasonably practicable that every effort is made to minimise the fees to which a taxpayer is liable in respect of an application for a depreciation determination.

**10. Payment of fees**—(1) Where the Commissioner determines to proceed to the making of a final determination, the Commissioner shall inform the applicant of that fact and at the same time shall advise the applicant of the fees payable by the applicant under paragraphs (b) to (d) of regulation 9 (1) of these regulations.

(2) Where an application is withdrawn the Commissioner shall advise the applicant of the fees payable under paragraphs (b) to (d) of regulation 9 (1) of these regulations for processing or consultation work done before the Commissioner received notice of the withdrawal.

**11. Waiver of fees**—The Commissioner may in exceptional circumstances waive in whole or in part any fee payable by an applicant under these regulations.

**12. Fees inclusive of goods and services tax**—The fees payable by an applicant under these regulations are inclusive of any goods and services tax payable under the Goods and Services Tax Act 1985.

MARIE SHROFF,  
Clerk of the Executive Council.

---

#### EXPLANATORY NOTE

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations, which come into force on the 28th day after the date of their notification in the *Gazette*, provide for various matters in relation to applications for determinations under the new depreciation regime introduced in the Income Tax Amendment Act 1993.

*Regulation 3* specifies the manner in which applications are to be made.

*Regulation 4* provides for further information to be provided by an applicant, where the Commissioner reasonably requests it for the purpose of determining the application.

*Regulation 5* provides that applications may be withdrawn or amended.

*Regulation 6* provides for the Commissioner to issue draft determinations in the case of applications for special or provisional rates of depreciation or for a higher maximum pooling value.

*Regulations 7 and 8* provide for a conference to be held on a draft determination if the applicant or Commissioner so requires, and set out notice requirements and procedural matters in relation to such conferences.

*Regulation 9* sets out the fees payable in respect of applications for depreciation determinations. No fee is payable in respect of an application for a provisional rate of depreciation.

The various fees are—

(a) An initial application fee of \$50:

- (b) A departmental processing fee of \$30 per hour for each hour beyond the first 2 spent by the Department in processing the application:
- (c) A fee, up to a maximum of \$300, to reimburse the amount of fees paid by the Department to consultants such as valuers, engineers, and architects in obtaining advice as to the estimated useful life or residual value of the property to which the application relates:
- (d) An additional reimbursement fee, not subject to the \$300 limit, where the applicant specifically requests that a consultant carry out further work, or requests a conference at which a consultant paid by the Department attends.

*Subclauses (2) to (4)* require the Commissioner to ensure that fees are kept at a reasonable level and that the applicant is aware of the likely level of fees.

*Clause 10* provides for an applicant to be advised of the total fees payable.

*Clause 11* provides for waiver of fees in exceptional cases.

*Clause 12* provides that fees payable by an applicant are inclusive of goods and services tax.

---

Issued under the authority of the Acts and Regulations Publication Act 1989.  
Date of notification in *Gazette*: 8 July 1993.  
These regulations are administered in the Inland Revenue Department.