

**Reprint
as at 2 November 2012**



**Income Tax (Depreciation
Determinations) Regulations 1993**
(SR 1993/232)

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.

Contents

		Page
1	Title, commencement, and application	2
2	Interpretation	2
3	Applications for depreciation determinations	3

Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

These regulations are administered by the Inland Revenue Department.

4	Further information to be provided	4
5	Application may be withdrawn or amended	4
6	Commissioner to prepare draft determination in certain cases	4
7	Applicant or Commissioner may require holding of conference	5
8	Procedure at conference	5
9	Fees	6
10	Payment of fees	8
11	Waiver of fees	9
12	Fees inclusive of goods and services tax <i>[Revoked]</i>	9

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 Tax Administration Act 1994

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 91AAG of the Act to allow a person to apply a special or a provisional rate of depreciation in respect of any depreciable property; or
- (b) a determination by the Commissioner under section 91AAL of the Act to allow in respect of any depreciable property a maximum pooling value greater than that currently available to a person.

Other expressions used in these regulations have the same meanings as in the Income Tax Act 2007.

Regulation 2: amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Regulation 2 **the Act**: amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Regulation 2 **depreciation determination**: substituted, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Regulation 2 **depreciation determination** paragraph (a): amended, on 6 October 2009 (applying for the 2005–06 and later income years), by section 864(1)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Regulation 2 **depreciation determination** paragraph (b): amended, on 6 October 2009 (applying for the 2005–06 and later income years), by section 864(2)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

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 91AAG of the Act, be accompanied by the initial application fee prescribed by regulation 9(1)(a).
- (2) Without limiting the generality of subclause (1)(b), an application under section 91AAG 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.

Regulation 3(1)(c): amended, on 6 October 2009 (applying for the 2005–06 and later income years), by section 864(1)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Regulation 3(2): amended, on 6 October 2009 (applying for the 2005–06 and later income years), by section 864(1)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

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 91AAG of the Act; or
 - (b) a higher maximum pooling value under section 91AAL 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.

Regulation 6(1)(a): substituted, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Regulation 6(1)(a): amended, on 6 October 2009 (applying for the 2005–06 and later income years), by section 864(1)(c) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Regulation 6(1)(b): substituted, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Regulation 6(1)(b): amended, on 6 October 2009 (applying for the 2005–06 and later income years), by section 864(2)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

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) 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), 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), 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).

8 Procedure at conference

- (1) At every conference called under regulation 7 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 91AAG of the Act:
 - (a) an initial fee of \$150 plus any GST to be paid at the time the application is lodged;
 - (b) a processing fee at the rate of \$75 plus any GST 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));
 - (c) a departmental consultation reimbursement fee equal to the amount of fees, less GST, paid by the Commissioner 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) applies), plus any GST:
- (d) an additional consultation reimbursement fee, equal to the amount of fees, less GST, paid by the Commissioner to the relevant consultant, plus any GST, where the applicant—
 - (i) requests, in writing to the Commissioner, that a consultant carry out further work on the application:
 - (ii) requests a conference on the application and a consultant paid by the Commissioner attends the conference on the nomination of either the applicant or the Commissioner.
- (1B) An applicant for a determination of a provisional rate under section 91AAG of the Act is liable to pay for the application an additional consultation reimbursement fee equal to the amount of fees, less GST, paid by the Commissioner to the relevant consultant, plus any GST, if—
- (a) the Commissioner declines to issue a determination, or issues a determination that is unfavourable to the applicant; and
 - (b) the applicant, after the Commissioner's decision,—
 - (i) requests, in writing to the Commissioner, that a consultant carry out further work on the application but the further work does not cause the Commissioner to issue a determination favourable to the applicant:
 - (ii) requests a conference on the application and a consultant paid by the Commissioner attends the conference on the nomination of either the applicant or the Commissioner but the conference does not cause the Commissioner to issue a determination favourable to the applicant.
- (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) or (1B), 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) 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.

Regulation 9(1): amended, on 6 October 2009 (applying for the 2005–06 and later income years), by section 864(1)(d) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Regulation 9(1)(a): amended, on 2 November 2012, by section 257(1) of the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012 (2012 No 88).

Regulation 9(1)(b): amended, on 2 November 2012, by section 257(2) of the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012 (2012 No 88).

Regulation 9(1)(c): replaced, on 2 November 2012, by section 257(3) of the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012 (2012 No 88).

Regulation 9(1)(d): replaced, on 2 November 2012, by section 257(3) of the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012 (2012 No 88).

Regulation 9(1B): inserted, on 2 November 2012, by section 257(4) of the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012 (2012 No 88).

Regulation 9(2): amended, on 2 November 2012, by section 257(5) of the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012 (2012 No 88).

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 regulation 9(1)(b) to (d) or (1B).
- (2) Where an application is withdrawn the Commissioner shall advise the applicant of the fees payable under regulation 9(1)(b)

to (d) or (1B) for processing or consultation work done before the Commissioner received notice of the withdrawal.

Regulation 10(1): amended, on 2 November 2012, by section 258(1) of the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012 (2012 No 88).

Regulation 10(2): amended, on 2 November 2012, by section 258(2) of the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012 (2012 No 88).

11 Waiver of fees

The Commissioner may waive all or part of a fee payable under these regulations if the Commissioner considers it is fair and reasonable in the circumstances to do so, having regard to the nature of the issue that is the subject of the application, the level of skill and experience required in the consideration of the application, the fees paid by the Commissioner to consultants in the application, and any other relevant factors.

Regulation 11: replaced, on 2 November 2012, by section 259 of the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012 (2012 No 88).

12 Fees inclusive of goods and services tax

[Revoked]

Regulation 12: revoked, on 2 November 2012, by section 260 of the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012 (2012 No 88).

Marie Shroff,
Clerk of the Executive Council.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 8 July 1993.

Contents

- 1 General
 - 2 Status of reprints
 - 3 How reprints are prepared
 - 4 Changes made under section 17C of the Acts and Regulations Publication Act 1989
 - 5 List of amendments incorporated in this reprint (most recent first)
-

Notes**1 General**

This is a reprint of the Income Tax (Depreciation Determinations) Regulations 1993. The reprint incorporates all the amendments to the regulations as at 2 November 2012, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, see <http://www.pco.parliament.govt.nz/reprints/>.

2 Status of reprints

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 How reprints are prepared

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and provisions that are repealed or revoked

are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 Changes made under section 17C of the Acts and Regulations Publication Act 1989

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

5 *List of amendments incorporated in this reprint (most recent first)*

Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012 (2012 No 88): sections 257–260

Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34): section 864

Income Tax Act 2007 (2007 No 97): section ZA 2(1)

Income Tax Act 2004 (2004 No 35): section YA 2
