

Income Tax (Warehouse Construction Incentives) Regulations 2019

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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 (Warehouse Construction Incentives) Regulations 2019.
- (2) These Regulations come into force on 1 August 2019.

Laws to be read together

2. These Regulations shall *inter alia* be read together in conjunction with the—
 - (a) Customs Act 1986 and the Customs Tariff Act 1986 in so far as it relates to customs and duties;
 - (b) Excise Act 1986 in so far as it relates to excise; and
 - (c) Value Added Tax Act 1991.

Interpretation

3. In these Regulations, unless the context otherwise requires—
 - “company” means a company registered under the Companies Act 2015;
 - “consultant fees” includes salaries, allowances, per diem and incidental expenses, food and accommodation, and any other fees that directly or indirectly relate to the warehouse investment, paid or provided to a consultant;
 - “exempt goods” means raw materials, plant machinery and equipment (including spare parts) required for the establishment of a warehouse business;
 - “Minister” means the Minister responsible for finance;
 - “project” means the construction of a warehouse;
 - “warehouse” means a storage space, place or a building used for the storage of goods or facilities;
 - “warehouse business” means a company engaged in the business of hiring out or renting out a warehouse;

“warehouse business investment” means a project with capital investment (including the cost of support infrastructure and consultant fees but excluding the cost of land) over \$250, 000 and the project commences on or after 1 August 2019 and the warehouse is completed within 24 months from the date the provisional approval is granted;

“warehouse business investment package” means the incentives under Part 2;

“warehouse construction investment” means a project with capital investment (including the cost of support infrastructure and consultant fees but excluding the cost of land) over \$1 million and the project commences on or after 1 August 2019 and the warehouse is completed within 24 months from the date the provisional approval is granted; and

“warehouse construction investment package” means the incentives under Part 3.

Objective

4. The purpose of these Regulations is to encourage the construction of warehouses by the provision of financial inducements.

PART 2—WAREHOUSE BUSINESS INVESTMENT PACKAGE

Power to grant warehouse business investment package

5. The Minister or CEO, as applicable, may grant or refuse to grant a warehouse business investment package to a company which has completed the construction of a warehouse and has complied with this Part.

Provisional approval

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

- (a) reject the application for provisional approval for a warehouse business investment package; or
- (b) grant provisional approval to such application, with or without any condition.

(2) The Minister or CEO, as applicable, must not grant provisional approval under subregulation (1) unless he or she is satisfied that—

- (a) the application is for a warehouse business investment;
- (b) the company intends to complete and is capable of completing such warehouse business investment; and
- (c) the warehouse business investment will benefit the economic development of Fiji.

(3) When considering an application for a warehouse business investment package under subregulation (1), the Minister or CEO, as applicable, must take into account the following matters—

- (a) the assets and liabilities of the company;
- (b) the nature and extent of the warehouse business investment;

- (c) such other matters as the Minister or CEO may consider relevant to the desirability or otherwise of the warehouse business investment for Fiji and the capability of the company to complete it.

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

(5) Notwithstanding subregulation (4), 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 warehouse business investment

7.—(1) A company (“applicant”) may, in writing, apply to the CEO for provisional approval to carry out a warehouse business investment, setting out the following—

- (a) the name and registered office of the company;
- (b) 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 company;
- (d) evidence of the company’s ability to complete the warehouse business investment; and
- (e) estimates of the projected income from the new warehouse.

(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 on the warehouse business investment.

Effect of provisional approval

8.—(1) When a provisional approval is granted, all exempt goods imported within the period specified in the definition of “warehouse business investment” under regulation 3, by or on behalf of the company and used in the carrying out of the warehouse business investment, are exempt from all duties payable in respect of their importation.

(2) Before exempt goods are allowed to be imported by a company, it is a condition of importation that the company must first provide proof that such goods cannot be produced locally to the satisfaction of the Minister, who will decide whether such goods are to be imported.

(3) Nothing in this regulation applies to any tax payable under the Value Added Tax Act 1991.

Completion of warehouse business investment project

9.—(1) If a company has been granted provisional approval, the company must complete the warehouse business investment within 24 months from the date on which the provisional approval is granted.

(2) Subject to the other provisions of this regulation, where a company has been granted provisional approval and has completed the project, the company 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; and
- (b) a completion certificate from the local authority.

(4) 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 condition.

(5) Subject to regulations 10 and 11, no approval must be granted under this regulation if the Minister is satisfied that the company has failed to complete the project or has failed to comply with any condition upon which provisional approval was granted.

(6) If an application for final approval is rejected, the duties exempted under this Part immediately become due and payable by the company.

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

Extension of time for completion

10.—(1) If a company to which provisional approval has been granted is unable to complete the warehouse business investment within the period specified in the definition of “warehouse business investment” in regulation 3 due to unforeseen circumstances or some other act beyond the control of the company, the company may apply in writing to the Minister to extend the time by which the warehouse business investment must be completed.

(2) If the Minister extends the time under subregulation (1), the company continues to enjoy the duty free concession provided for by regulation 8 during the extended period.

Final approval if completed

11. An application for final approval shall not be granted unless—

- (a) the Minister is satisfied that the company has in all respects completed the requirements of a warehouse business investment; and
- (b) the warehouse is fully operational.

Effect of final approval

12. Notwithstanding anything contained in these Regulations, if the Minister gives final approval to the application, the income of the company will be exempt from tax—

- (a) in the case of a capital investment from \$250,000 to \$1,000,000, for a period of 5 consecutive fiscal years;
- (b) in the case of a capital investment from \$1,000,001 to \$2,000,000, for a period of 7 consecutive fiscal years; and
- (c) in the case of a capital investment of more than \$2,000,000, for a period of 13 consecutive fiscal years.

Revocation of warehouse business investment package

13. The Minister may revoke any warehouse business investment package if the company or owner has—

- (a) breached any condition of provisional or final approval;

- (b) failed to comply with any of the requirements of these Regulations; or
- (c) been convicted of an offence under these Regulations or any other written law relating to taxation, customs or excise.

PART 3—WAREHOUSE CONSTRUCTION INVESTMENT PACKAGE

Investment allowance

14.—(1) Subject to subregulation (3), a person is entitled to the following allowance—

- (a) for a capital investment above \$1,000,000 to \$2,000,000, an amount of taxable income equal to 50% 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;
- (b) for a capital investment above \$2,000,000, an amount of taxable income equal to 100% 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
- (c) so much of the amount not charged to tax under subregulation (1)(a) and (b) 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 shall 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.

Power to approve applications

15.—(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 assets and liabilities of the company;
- (b) the nature and extent of the warehouse construction investment project;
- (c) such other matters as the Minister may consider relevant to the desirability or otherwise of the warehouse construction investment project for Fiji and the capability of the company to complete it.

(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

16. 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 intended location and description of the project;
- (d) a sketch plan showing the 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

17.—(1) Any applicant who has been granted provisional approval on or after 1 August 2019 shall 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 18, the Minister shall 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

18.—(1) An application for final approval shall 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

19. If an applicant to whom provisional approval has been granted is unable to complete the project within the period specified in regulation 17 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.

Procedure on sale of warehouse

20. If the warehouse has been sold and the investment allowance in respect of such warehouse has in accordance with regulation 17, 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.

PART 4—MISCELLANEOUS

Applicability of incentives

21.—(1) A company is entitled to an investment package under either Part 2 or Part 3 for the same project, but not both.

(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 package

22. The Minister or CEO, as applicable, may revoke any Part 2 or Part 3 investment 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

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

Made this 31st day of July 2019.

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