
[LEGAL NOTICE NO. 78]

INCOME TAX ACT 2015

Income Tax (ICT Infrastructure Investment Incentives) Regulations 2021

IN exercise of the powers conferred on me by section 142 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 (ICT Infrastructure Investment Incentives) Regulations 2021.

(2) These Regulations are deemed to have come into force on 1 August 2021.

Interpretation

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

“capital goods” means raw materials, capital equipment, plant, machinery, spare parts and any other goods employed in the production of other goods but does not include furniture or motor vehicles;

“company” means a company registered under the Companies Act 2015;

“final approval” means the approval granted by the Minister under regulation 8;

“ICT” means information and communications technology;

“ICT business” means a business providing services which are ICT enabled such as software development, call centres, customer contact centres, engineering and design, research and development, animation and content creation, distance learning, market research, travel services, finance and accounting services, human resource services, legal services, compliance

and risk services or other administration services, but does not include an internet café or any retail or wholesale of information technology products or the repair, sale or service of any such products;

“ICT infrastructure investment incentive” means the duty exemption under regulation 5 and the exemption of tax on income under regulation 9 for an investment in ICT infrastructure on or after 1 August 2021;

“ICT infrastructure” means any form of infrastructure to be used by an ICT business;

“Minister” means the Minister responsible for finance;

“provisional approval” means the approval granted by the CEO under regulation 4; and

“project” means a project on or after 1 August 2021 for the establishment, development or construction of ICT infrastructure with an investment that meets the minimum investment threshold provided under regulation 9.

PART 2—ICT INFRASTRUCTURE INVESTMENT INCENTIVE

Application for provisional approval

3.—(1) A company (“applicant”) may apply in writing to the CEO for provisional approval of the proposed project.

(2) The application must set out and be supported by the following—

- (a) the name and registered office of the company;
- (b) the names of all directors and shareholders of the company, including the percentage of ownership of shares in the company;
- (c) a current statement of all assets and liabilities of the company;
- (d) the location and description of the proposed project;
- (e) a sketch plan showing the project;
- (f) the estimated cost of the project;
- (g) 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;
- (h) evidence of the company’s ability to undertake the project;
- (i) details of the proposed method of financing the project;
- (j) estimates of the projected income from the project; and
- (k) any other information the CEO may require.

Power to approve applications

4.—(1) The CEO may—

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

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

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

- (a) the ability of the applicant to undertake the project;
- (b) the assets and liabilities of the applicant;
- (c) the nature and extent of the project;
- (d) the potential contribution of the project to the economy; and
- (e) such other matters the CEO may consider relevant to the desirability of the project and the capability of the applicant to complete it.

(3) An applicant whose application has been rejected, including a partially rejected application, may—

- (a) make a new application to the CEO;
- (b) amend and resubmit the original application to the CEO; or
- (c) appeal the decision of the CEO to the Minister.

Effect of provisional approval

5.—(1) When provisional approval is granted, all capital goods, imported by or on behalf of the applicant and used in the carrying out of the project, are exempt from all duties payable in respect of their importation under concession code 303 of Schedule 2 to the Customs Tariff Act 1986.

(2) Before capital goods are imported by the applicant, it is a condition of importation that the applicant must first provide proof that such goods cannot be produced locally to the satisfaction of the CEO, who decides 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 project

6.—(1) An applicant that has been granted provisional approval must complete the project within 24 months from the date on which the provisional approval was granted.

(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 be supported by the following—

- (a) copies of invoices and a schedule of expenditure relating to the project;
- (b) an approved plan showing the site, layout and surrounding areas of the project;
- (c) if applicable, a certificate of completion and permit to occupy issued by a building surveyor in accordance with the Public Health (Building) Regulations 1959; and

- (d) if the project is to be leased, used by or rented out to some other person, proof of a valid legal agreement to that effect.

(4) Subject to regulation 8, 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.

Extension of time for completion

7.—(1) If a company to which provisional approval has been granted is unable to complete the project within the period provided in regulation 6(1) due to unforeseen circumstances or some other act or circumstances beyond the control of the company, the company may apply in writing to the Minister to extend the time by which the project must be completed.

(2) The application must be made within 30 days before the end of the time period provided in regulation 6(1).

(3) If the Minister extends the time under subregulation (1), the company continues to enjoy the duty free concession provided by regulation 5 during the extended period.

Final approval if completed

8.—(1) An application for final approval may only be granted if—

- (a) the applicant produces the documents required under regulation 6(3), and the Minister is satisfied that the documents confirm the matters to which they relate;
- (b) if applicable, the applicant produces a certificate of completion and permit to occupy issued by a building surveyor in accordance with the Public Health (Building) Regulations 1959;
- (c) the Minister is satisfied that the applicant has in all respects completed the requirements of the project; and
- (d) the project is fully completed.

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

Effect of final approval

9.—(1) From the first day of the use of the ICT infrastructure for commercial purposes or such other date as the Minister may specify, final approval entitles a company to the following tax exemption on the income from the completed project—

- (a) in the case of a capital investment from \$2,000,000 to \$5,000,000, for a period of 10 consecutive fiscal years;
- (b) in the case of a capital investment from \$5,000,001 to \$10,000,000, for a period of 15 consecutive fiscal years;
- (c) in the case of a capital investment of more than \$10,000,000, for a period of 20 consecutive fiscal years.

(2) For each fiscal year within the time period in subregulation (1), the applicable tax exemption applies only if at least 90% of the applicant's income derived from the project within that fiscal year is from an ICT business.

(3) If the project is the development of units to be sold as unit titles to an ICT business, including a Business Process Outsourcing (BPO) company, the proceeds from the sale are also exempt from income tax.

Revocation of ICT infrastructure investment incentive

10. The Minister may revoke the ICT infrastructure investment incentive if the applicant—

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

and any tax or duty foregone is payable.

Transferability of package

11. If the company in respect of which an ICT infrastructure investment incentive package has been granted is sold or is to be sold, the purchaser or prospective purchaser may apply in writing to the Minister for the transfer to it of any remaining benefits of the ICT infrastructure investment incentive.

Specification of particular requirements

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

Made this 3rd day of August 2021.

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