

[LEGAL NOTICE NO. 97]

INCOME TAX ACT 2015

Income Tax (Residential Housing Development Package) (Amendment) Regulations 2022

IN exercise of the powers conferred on me by section 142 of the Income Tax Act 2015, I hereby make these Regulations—

Short title and commencement

1.—(1) These Regulations may be cited as the Income Tax (Residential Housing Development Package) (Amendment) Regulations 2022.

(2) These Regulations come into force on 1 August 2022.

(3) In these Regulations, the Income Tax (Residential Housing Development Package) Regulations 2016 is referred to as the “Principal Regulations”.

Regulation 2 amended

2. Regulation 2 of the Principal Regulations is amended after the definition of “Minister” by inserting the following new definitions—

““new residential housing development investment” means a project with capital investment (including the cost of support infrastructure and overseas consultant fees but excluding the cost of land) over \$5,000,000 with at least 10 residential housing units and the project commences on or after 1 August 2022 and the building is completed within 24 months from the date the provisional approval was granted;

“new residential housing development investment package” means the various exemptions and concessions given under Part 4;”.

Regulation 4 amended

3. Regulation 4(3)(d) of the Principal Regulations is amended by deleting “Housing Authority” and substituting “local authority”.

Regulation 9 amended

4. The Principal Regulations are amended by deleting regulation 9 and substituting the following—

“Final approval if completed

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

- (a) the Minister is satisfied that the company has satisfactorily complied with any conditions set out under the provisional approval;
- (b) the Minister is satisfied that the company has in all respects completed the requirements under this Part; and
- (c) the residential units are fully completed.”.

Part 4 inserted

5. The Principal Regulations are amended after regulation 12 by inserting the following new Part—

“PART 4—NEW RESIDENTIAL HOUSING DEVELOPMENT
INVESTMENT PACKAGE

Power to grant new residential housing development investment package

13. The Minister may grant or refuse to grant a new residential housing development investment package to a company, which has completed a new residential housing development investment and has complied with this part.

Provisional approval

14.—(1) The Minister may, after consulting the Minister responsible for housing—

- (a) reject the application for provisional approval for a new residential housing development investment; or
- (b) grant provisional approval to such application, with or without any condition.

(2) The Minister shall not grant provisional approval under subregulation (1) unless the Minister is satisfied that—

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

(3) When considering an application for a new residential housing development investment under subregulation (1), the Minister shall take into account the following matters—

- (a) the assets and liabilities of the company;
- (b) the nature and extent of the new residential housing development investment;
- (c) the requirements for residential housing development in the area concerned;
- (d) whether the residential housing development complies with the local authority requirements;
- (e) whether the new residential housing development investment will adequately contribute to the area concerned;
- (f) whether the proposed residential housing development is of a suitable size and standard for the area concerned;
- (g) whether adequate amenities would be provided as part of the proposed residential housing development; and

- (h) such other matters as the Minister may consider relevant to the desirability or otherwise of the new residential housing development investment for Fiji and the capability of the company to complete it.

(4) The decision of the Minister 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.

Effect of provisional approval

15.—(1) When a provisional approval is granted, all capital goods, imported within the period specified in the definition of “new residential housing development investment” under regulation 2, by or on behalf of the company and used in the carrying out of the new residential housing development investment, shall be exempt from all duties payable in respect of their importation.

(2) Before capital 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 shall decide whether such goods are to be imported.

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

(4) For the purposes of this regulation, capital equipment, plant and machinery does not include kitchenware, raw materials, furniture and fittings and other prescribed goods.

Application for new residential housing development investment

16.—(1) A company (“applicant”) may, in writing, apply to the Minister for provisional approval to carry out a new residential housing development 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, including shareholdings of the directors and shareholders;
- (c) a recent statement of all assets and liabilities of the company;
- (d) the location and description of the residential housing development site;
- (e) the number and description of residential units in the residential housing development;
- (f) the number and description of proposed rooms, beds and the toilet facilities in a residential unit;
- (g) the detailed description of all proposed amenities, such as swimming pools, tennis courts, fitness centres and recreation facilities;
- (h) a sketch plan showing sufficient detail of the site and layout of the proposed residential housing development and its amenities;
- (i) an estimate of the total cost of the new residential housing development investment;

- (j) the description and an estimate of the cost of each individual stage of construction and details of the proposed timetable for completion of the new residential housing development investment;
- (k) details of the proposed method of financing the new residential housing development investment;
- (l) evidence of the company's ability to complete the new residential housing development investment;
- (m) estimates of the projected income from the residential housing development; and
- (n) the nature and extent of the residential housing development.

(2) The applicant must also send a copy of the application together with supporting documents to the Minister responsible for housing.

(3) The Minister may—

- (a) require the applicant to provide other information as he or she may consider necessary in relation to the application; or
- (b) prescribe particular requirements applicable to any particular area of Fiji on new residential housing development investment package.

Completion of new residential housing development investment

17.—(1) If a company has been granted provisional approval, the company shall complete the project within 24 months from the date of which the provisional approval was 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) shall 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 residential housing development.

(4) Upon receiving an application under subregulation (2), the Minister may, after consulting with the Minister responsible for housing—

- (a) reject the application; or
- (b) give final approval to the application, with or without any condition.

(5) Subject to regulations 18 and 19, no approval shall be granted under this regulation if the Minister is satisfied that the company has failed to complete the new residential housing development investment 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 following persons of the decision to reject or grant the application—

- (a) the applicant;
- (b) the Minister responsible for housing; and
- (c) the CEO.

Extension of time for completion

18.—(1) If a company to which provisional approval has been granted is unable to complete a new residential housing development investment within the period specified in the definition of “new residential housing development investment” in regulation 2 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 residential housing development must be completed.

(2) If the Minister extends the time under subregulation (1), the company shall continue to enjoy the duty free concession provided for by regulation 15 during the extended period.

Final approval if completed

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

- (a) the Minister is satisfied that the company has satisfactorily complied with any conditions set out under the provisional approval;
- (b) the Minister is satisfied that the company has in all respects completed the requirements under this Part; and
- (c) the residential units are fully completed.

Effect of final approval

20. 50% of the income derived by the company from the sale of residential units under this Part shall be exempt from income tax.

Revocation of package

21. The Minister may revoke any new residential housing development investment 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.”.

Made this 29th day of July 2022.

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