

INCOME TAX ACT 2015
(ACT NO. 32 OF 2015)

**Income Tax (Residential Housing Development
Package) Regulations 2016**

IN exercise of the powers conferred on me by section 142(1) of the Income Tax Act 2015,
I hereby make these Regulations—

PART 1—GENERAL

Short title and commencement

- 1.—(1) These Regulations may be cited as the Income Tax (Residential Housing Development Package) Regulations 2016.
- (2) These Regulations shall come into force on 1 January 2016.

Interpretation

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

“capital goods” for the purpose of regulation 5, means capital equipment, plant, machinery 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;

“consultant fees” includes salaries, allowances, *per diem* and incidental expenses, food and accommodation, and any other fees that directly or indirectly relate to the residential housing development investment, paid or provided to a local or an overseas consultant;

“Minister” means the Minister responsible for Finance;

“owner” means the owner of a residential housing development who has been granted an approval under Part 2;

“project” means the construction of a new building for residential purposes;

“provisional approval” means a provisional approval granted under Part 2;

“residential housing development” means the development of buildings for residential purposes, including the sub-division of residential lots;

“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 \$2,000,000 with at least 20 residential housing units and the project commences on or after 1 January 2016 and the building is completed 24 months from the date the provisional approval was granted;

“residential housing development investment package” means the various exemptions, concessions and subsidies given under a residential housing development investment.

PART 2—RESIDENTIAL HOUSING DEVELOPMENT INVESTMENT PACKAGE

Power to grant residential housing development investment package

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

Provisional approval

4.—(1) The Minister may, after consulting the Minister responsible for Housing—

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

(3) When considering an application for 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 residential housing development investment;
- (c) the requirements for residential housing development in the area concerned;
- (d) whether the residential housing development complies with the Housing Authority requirements;
- (e) whether the 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;
- (h) such other matters as the Minister may consider relevant to the desirability or otherwise of the 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

5.—(1) When a provisional approval is granted, all capital goods, imported within the period specified in the definition of “residential housing development investment” under regulation 2, by or on behalf of the company and used in the carrying out of the 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 Decree 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 residential housing development investment

6.—(1) A company (“applicant”) may, in writing, apply to the Minister for provisional approval to carry out a 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 together, 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 and 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 in sufficient detail the site and layout of the proposed residential housing development and its amenities;
- (i) an estimate of the total cost of the 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 residential housing development investment;
- (k) details of the proposed method of financing the residential housing development investment;
- (l) evidence of the company’s ability to complete the residential housing development investment;
- (m) estimates of the projected income from the new residential housing development;
- (n) the nature and extent of residential housing development investment.

(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 he or she may consider necessary in relation to the application; or
- (b) prescribe particular requirements applicable to any particular area of Fiji on residential housing development investment package.

Completion of residential housing development investment

7.—(1) If a company who 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 8 and 9, no approval shall be granted under this regulation if the Minister is satisfied that the company has failed to complete the 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

8.—(1) If a company to which provisional approval has been granted is unable to complete its residential housing development investment within the period specified in the definition of “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 5 during the extended period.

Final approval if completed

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

- (a) the Minister, after consulting the Minister responsible for Housing, is satisfied that the company has in all respects completed the requirements of a short life investment; and
- (b) the hotel is fully completed.

Effect of final approval

10.—(1) Notwithstanding anything contained in these Regulations, the income of the company shall be exempt from tax on developer profits derived from the sale of residential units.

(2) Where the owner has—

- (a) been granted provisional approval; and
- (b) completed the project in accordance with the provisional approval,

he or she shall be granted a subsidy up to a maximum rate of—

- (i) 5% of the total capital expenditure incurred in the residential housing development provided that the capital expenditure is not less than \$2,000,000 and not more than \$10,000,000; and
- (ii) 7% of the total capital expenditure incurred in the residential housing development provided that the capital expenditure is more than \$10,000,000.

Revocation of package

11. The Minister may revoke any residential housing development investment if the company or owner has—

- (a) breached any condition of provisional or final approval; or
- (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 1st day of January 2016.

F. S. KOYA
Acting Minister for Finance