FIJI REVENUE AND CUSTOMS SERVICE

INCOME TAX ACT 2015

Revised up to 1st August 2023 [with Legislative History]

DISCLAIMER

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Table of Amendments

Income Tax Act 2015 (No 32 of 2015)[1] commenced on 1 January 2016 except section 9 and Part 6 which commence on the date notified by Minister in the Gazette, as amended by:

Amending Legislation	Date of Commencement
Public Service (Amendment) Act 2016 (No 2 of 2016)	16 February 2016
Income Tax (Budget Amendment) Act 2016 (No 27 of 2016)	1 August 2016
Revised Edition of the Laws (Consequential Amendments) Act 2016 (No 31 of 2016)	1 December 2016
Income Tax (Amendment) Act 2017 (No 15 of 2017)	1 January 2016
Income Tax (Budget Amendment) Act 2017 (No 26 of 2017)	1 August 2017
Fiji Revenue and Customs Authority (Budget Amendment) Act 2017 (No 38 of 2017)	1 August 2017
Accident Compensation Act 2017 (No 40 of 2017)	ss 1-17, 30, 32, 34-36: 15 August 2017; remainder: 1 January 2018
Income Tax (Budget Amendment) Act 2018 (No 14 of 2018)	1 August 2018
Public Health (Budget Amendment) Act 2018 (No 31 of 2018)	1 August 2018

[1] This was rectified by the Rectification of Errors Order 2015 (LN 106 of 2015).

Income Tax (Budget Amendment) Act 2019 (No 9 of 2019)	1 August 2018 except s2 and 3 effective from 1 January 2020; s4 effective from 1 January 2016
Income Tax (COVID-19 Response) (Amendment) Act 2020 (No 3 of 2020)	1 April 2020
Income Tax (Budget Amendment) Act 2020 [No. 14 Of 2020)	1 August 2020
Income Tax (Budget Amendment) Act 2020 [No. 28 Of 2021)	1 August 2021
Income Tax (Amendment) (No. 2) Act 2021 (No. 35 of 2021)	1 August 2021
Income Tax (Revised Budget Amendment) Act 2022 (No 7 of 2022)	1 April 2022
Environment and Climate Adaptation Levy (Revised Budget Amendment) Act 2022 (No 10 of 2022)	1 April 2022
Income Tax (Budget Amendment) (No. 2) Act 2022 (No 29 of 2022)	1 August 2022
Income Tax (Budget Amendment) (No.5) Act 2023	1 August 2023

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PART 1 PRELIMINARY
(Sections 1–7)

[Section 1] Short Title and Commencement

(1) This Act may be cited as the Income Tax Act 2015.
(2) Subject to subsection (3), this Act shall come into force on 1 January 2016 and shall apply to tax years commencing on or after the commencement date.
(3) Section 9 and Part 6 shall come into force on the date appointed by the Minister by notice published in the Gazette.

[Section 2] Interpretation

In this Act, unless the context otherwise requires—

acquisition	in relation to an asset, has the meaning in section 83;
amortisation deduction	means a deduction allowed under section 35;
amount	includes an amount in kind;
approved form	has the meaning in the Tax Administration Act 2009;
approved fund	has the meaning in section 3;
arm's length transaction	means a transaction between persons dealing at arm's length with each other;
asset	includes a capital asset, depreciable asset, intangible asset, or trading stock;
associate	has the meaning in section 4;
business	includes— a) trade, commerce, agriculture, manufacture, profession or vocation, but does not include employment; b) a venture or concern in the nature of a trade, commerce, agriculture or manufacture; or c) a profit-making undertaking or scheme not covered by paragraphs (a) or (b);
business income	has the meaning in section 17;
business intangible	means— a) an intangible asset within paragraphs (a), (b), or (c) of the definition of "intangible asset" that has a limited

useful life and is wholly or partly used to derive taxable business income;

b) a fine, premium, or other capital amount paid or payable upon the grant or transfer of a lease of land or a structural improvement to land, or expenditure incurred pursuant to an obligation to effect improvements to land or a structural improvement to land, if the land or structural improvement is wholly or partly used to derive taxable business income;

c) an expenditure incurred to derive taxable business income that provides an advantage or benefit for a period of more than one year, other than expenditure incurred to acquire tangible personal or real property, or an intangible asset; or

d) pre-commencement expenditure;

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capital asset means—

a) real property, a structural improvement to real property, an interest in real property or an interest in a structural improvement to real property, and includes the following—
   i. a lease of real property;
   ii. a lease of a structural improvement to real property; or
   iii. an exploration, prospecting, development or similar right relating to real property;
   iv. information relating to a right referred to in subparagraph (iii);

b) a ship or boat;

c) a yacht;

d) a membership interest in a company, security or other financial asset;

e) an intangible asset;

f) an interest in a partnership or trust;

g) an airplane, helicopter or other aircraft;

h) an option, right or other interest in an asset referred to in the foregoing paragraphs,

but does not include an asset that is trading stock or a business intangible;

[def am Act 27 of 2016 s 2, effective 1 August 2016; def amnd Act 14 of 2020 s2, effective 1 August 2020]

Legislative History:
Act 14 of 2020 - Prior to 1 August 2020 – proviso read as: "but does not include an asset that is trading stock, a depreciable asset or a business intangible"
Act 27 of 2016 - Prior to 1 August 2016 – (b) a vessel of over a 100 tonnage

capital gain	has the meaning in section 66;
Capital Gains Tax	means the Capital Gains Tax imposed under section 65;
CEO	means the chief executive officer of the Fiji Revenue and Customs Service appointed under section 27 of the Fiji Revenue and Customs Service Act 1998

[def am Act 38 of 2017 s 7, effective 1 August 2017]

Legislative History:
Act 38 of 2017 - Prior to 1 August 2017 – Fiji Revenue and Customs Service was read as "Fiji Revenue and Customs Authority"

chargeable income	has the meaning in section 13;
commencement date	means the date specified in section 1(2);
company	means— a) a body or association of persons corporate or unincorporated, including a statutory corporation and a company created by charter, but not including a partnership; b) a foreign association of persons, other than a partnership, that the CEO has declared to be a company for the purposes of this Act; or c) a trust approved as a managed investment scheme under the Companies Act 2015 and includes a unit trust to which section 743 of the Companies Act 2015 applies;
consideration	in relation to an asset, has the meaning in section 86;
cost	in relation to an asset, has the meaning in section 85;
Credit Card Levy	

[def rep Act 27 of 2016 s 2, effective 1 August 2016]

Legislative History:
Prior to 1 August 2016 (Act 27 of 2016) – "Credit Card Levy" means the Credit Card Levy imposed under section 99;

de facto spouse	in relation to an individual, means an individual not of the same sex, who lives with the first mentioned individual as spouses on a genuine domestic basis although not legally married to each other;
depreciable asset	means any tangible personal property or structural improvement to real property that— a) has a useful life exceeding one year; b) is likely to lose value as a result of normal wear and tear, or obsolescence; and c) is used wholly or partly to derive income included in gross income;
depreciation deduction	means a deduction allowed under section 31;
derived	means— a) in the case of Income Tax, received or the arising of the right to receive as determined under section 37; or

b) in the case of any other tax imposed under this Act, received;

disposal	in relation to an asset, has the meaning in section 84;
dividend	in relation to a company, means— a) a distribution of profits by a company to a member of the company, and includes an entitlement to income or capital profits of a unit trust; b) the capitalisation of profits by the company, whether by way of a bonus share, bonus unit, or bonus debenture issue, or increase in the amount paid-up on a membership interest, or otherwise involving a credit of profits to a share or trust capital account, but does not include a bonus share, bonus unit, or bonus debenture paid out of a share or unit premium account; c) an amount returned to a member of the company in respect of a membership interest in the company on a partial reduction in capital to the extent that the amount returned exceeds the amount by which the nominal value of the membership interest was reduced; d) an amount returned to a member of the company on redemption or cancellation of a membership interest in the company, including on liquidation, dissolution or termination of the company, to the extent the amount distributed exceeds the nominal value of the membership interest; e) in the case of a reconstruction, reorganisation or amalgamation of the company, an amount paid to a member of the company in respect of a membership interest in the company in excess of the nominal value of the membership interest before the reconstruction, reorganisation or amalgamation; or f) the amount of any loan or advance, payment for an asset or service, value of any asset or service provided or any debt obligation released, by the company to, or in favour of, a member of the company or an associate of a member to the extent to which the transaction is, in substance, a distribution of profits; [def am Act 27 of 2016 s 2, effective 1 August 2016]

Legislative History:
Act 27 of 2016 - Prior to 1 August 2016 – (f) read as: "the amount of any loan, payment for an asset or service, value of any asset or service provided or any debt obligation released, by the company to, or in favour of, a member of the company or an associate of a member to the extent to which the transaction is, in substance, a distribution of profits;
Act 27 of 2016 inserted "or advance" after the word "loan"

employee	means an individual engaged in employment;
employer	means a person who engages or remunerates an employee;

employment	includes— a) a directorship or other office in the management of a company; b) a position entitling the holder to a fixed or ascertainable remuneration; or c) the holding or acting in any public office;
employment income	has the meaning in section 15;
executor	in relation to a deceased estate, includes any person appointed under the laws of intestacy to administer the estate;
exempt capital gain	has the meaning in section 67;
exempt fringe benefit	has the meaning in section 71;
exempt income	has the meaning in section 20;
fair market value	has the meaning in section 5;
Fiji asset	means— a) an asset referred to in paragraph (a) of the definition of "capital asset", if the real property is located in Fiji; b) a membership interest in a company, or an interest in a partnership or trust, if the assets of the company, partnership or trust consist solely or principally of Fiji assets under paragraph (a) held by the company, partnership or trust, directly or indirectly, through one or more interposed persons; c) a capital asset of a permanent establishment in Fiji; d) a membership interest, security or other financial asset issued by a resident person; e) an interest in a resident partnership or resident trust; or f) an option, right or other interest in an asset referred to in the foregoing paragraphs;
Fijian citizen	means an individual who is a citizen under the Citizenship of Fiji Act 2009;
Fiji National Provident Fund	means the Fiji National Provident Fund established under the Fiji National Provident Fund Act 1966 and continued under the Fiji National Provident Fund Act 2011;
financial institution	means any person carrying on the business of receiving funds from the public or from members through the acceptance of money deposits repayable upon demand, after a fixed period, or after notice, or any similar operation through the sale or placement of bonds, certificates, notes or other securities, and the use of such funds either in whole or part for loans, investments or any other operation authorised either by law or by customary banking practices, for the account and at the risk

	of the person doing such business, and includes an insurance company;
foreign-source income	means an amount to the extent to which it is not derived from sources in Fiji;
fringe benefit	has the meaning in section 72;
Fringe Benefits Tax	means the Fringe Benefits Tax imposed under section 69;
fringe benefits taxable amount	has the meaning in section 70;
generally accepted accounting principles	means the accounting standards issued or recommended by the Fiji Institute of Accountants under the Fiji Institute of Chartered Accountants Act 2021 and subsidiary rules from time to time in force, and in regulations made under the Companies Act 2015 and published in the Gazette, and the standards or rules are approved by the CEO;

Legislative History:

Act 5 of 2023 - Prior to 1st January 2024 – generally accepted accounting principles read as: "means the accounting standards issued or recommended by the Fiji Institute of Accountants under the Fiji Institute of Accountants Act 1971 and subsidiary rules from time to time in force, and in regulations made under the Companies Act 2015 and published in the Gazette, and the standards or rules are approved by the CEO;

Act 5 of 2023- deleted the word "Fiji Institute of Accountants Act 1971"and substituted with the word "Fiji Institute of Charted Accountants Act 2021".

Government	means the Government of the Republic of Fiji;
gross income	has the meaning in section 14;
gross turnover	in relation to a person carrying on a business for a period, means the total business income derived by the person from carrying on the business for the period without deduction of expenditures or losses, but not including the following— a) exempt income; b) an amount subject to taxation under section 10, 11, or 65; c) an amount subject to withholding tax under section 112;
income	means employment income, business income, property income, income referred to in section 14(1)(b) or (d), and deposits referred to in section 14(1)(c);
Income Tax	means the income tax imposed under section 8;
intangible asset	means— a) a copyright, patent, design or model, plan, secret formula or process, trademark or other like property or right;

	b) a contractual right, including arising as a result of a prepayment of expenditure, with a benefit for a period of more than one year; c) a customer list, distribution channel, or unique name, symbol or picture, or other marketing intangible; or d) goodwill;
interest	means— a) an amount, described as interest, discount, premium or otherwise, whether periodical or a lump sum, as consideration for the use of money or being given time to pay; b) an amount that is functionally equivalent to an amount referred to in paragraph (a); c) any amount treated as interest under section 41; or d) a commitment, guarantee, service or similar fee payable in respect of a debt or other instrument or agreement giving rise to interest under paragraphs (a), (b) or (c);
international organisation	means an organisation, the members of which are sovereign powers or governments of sovereign powers;
international traffic	in relation to a ship, means any operation of the ship except as between 2 places in Fiji;
know-how	means any scientific, technical, commercial or industrial information, techniques, knowledge, experience or skill likely to assist in— a) the carrying on of a business, b) the manufacture or processing of goods or materials; c) the working of a mine, oil well or other source of mineral deposits, including searching for, discovery or testing of deposits, or the winning of access thereto; or d) the carrying out of any agricultural, forestry or fishing operations;
liaison office	means an office, the sole activity of which is representation;
life insurance business	has the meaning in section 2 of the Insurance Act 1998;
life policy	has the meaning in section 2 of the Insurance Act 1998;
management fee	means an amount as consideration for the rendering of any managerial service, but does not include employment income;
member	in relation to a company, means a person that has a membership interest in the company, including a shareholder or a holder of an interest in a trust referred to in paragraph (c) of the definition of "company";

membership interest	in relation to a company, means an ownership interest in the company, including an interest in a trust referred to in paragraph (c) of the definition of "company";
Minister	means the Minister responsible for finance;
natural resource amount	means— a) an amount, including a premium or like amount, as consideration for the right to take minerals or a living or non-living resource from land or sea; or b) an amount calculated in whole or part by reference to the quantity or value of minerals or a living or non-living resource taken from land or sea;
net loss	has the meaning in section 30;
non-approved fund	means a retirement fund other than the Fiji National Provident Fund or an approved fund;
non-profit organisation	means an organisation that satisfies the following conditions— a) the organisation is— i. an institution, body of persons or irrevocable trust established solely for the relief of poverty or distress of the public, or for the advancement of education or religion; ii. a body of persons established solely for the purpose of controlling or furthering an amateur sport or game; iii. a trade union registered under the provisions of the Employment Relations Act 2007 or an industrial association registered under the provisions of the Industrial Associations Act 1941; or iv. a club, society or association organised and operated solely for social welfare, civic management, pleasure or recreation, or any other purpose except pecuniary profit; b) no part of the income or other funds of the organisation is used or are available for use for the pecuniary profit of a proprietor or member of the organisation; c) the CEO has certified that the organisation is a non-profit organisation under the Regulations;
Non-resident International Shipping Income Tax	means the non-resident international shipping income tax imposed under section 11;
non-resident person	means a person who is not a resident person;

non-resident trust	means a trust that is not a resident trust;
Non-resident Withholding Tax	means the non-resident withholding tax imposed under section 10;
permanent establishment	means a fixed place of business through which the business of a person is wholly or partly carried on, and includes the following— (a) a place of management, branch, office, factory, warehouse or workshop, but does not include a liaison office; (b) a mine site, oil or gas well, quarry, or other place of exploration for, or extraction of natural resources; (c) a building site, construction, assembly or installation project, or supervisory activities connected with such site or project, but only if the site, project, or activities continue for more than 6 months; (d) the furnishing of services by the person, including consultancy services, including through employees or other personnel engaged by the person for such purpose, but only if activities of that nature continue for the same or a connected project by the person or an associate for a period or periods aggregating more than 6 months in any 12-month period; (e) a person, other than an agent of independent status, acting on behalf of another person (referred to as the "principal"), if the first-mentioned person— (i) regularly negotiates contracts on behalf of the principal; or (ii) habitually maintains a stock of trading stock from which the person regularly delivers trading stock on behalf of the principal; (f) substantial equipment used for more than 6 months within a 12-month period or installed by, for or under contract with the person; (g) carries on activities, including the operation of substantial equipment, in the exploration for or exploitation of natural resources or standing timber for a period or periods exceeding in the aggregate 90 days in any 12-month period, for or under contract with a person.

Legislative History:
Act 14 of 2020 – Prior to 1st August 2020 – definition read as:
"permanent establishment" means a place of business through which the business of a person is wholly or partly carried on, and includes the following—

(a) a place of management, branch, office, factory, warehouse or workshop, but does not include a liaison office;

(b) a mine site, oil or gas well, quarry, or other place of exploration for, or extraction of natural resources;

(c) a building site, construction, assembly or installation project, or supervisory activities connected with such site or project, but only if the site, project, or activities continue for more than 6 months;

(d) the furnishing of services by the person, including consultancy services, including through employees or other personnel engaged by the person for such purpose, but only if activities of that nature continue for the same or a connected project by the person or an associate for a period or periods aggregating more than 6 months in any twelve-month period;

(e) a person, other than an agent of independent status, acting on behalf of another person (referred to as the "principal"), if the first-mentioned person—

i. regularly negotiates contracts on behalf of the principal; or
ii. habitually maintains a stock of trading stock from which the person regularly delivers trading stock on behalf of the principal;

(f) substantial equipment used for more than 6 months within a twelve-month period or installed by, for or under contract with the person;

(g) carries on activities, including the operation of substantial equipment, in the exploration for or exploitation of natural resources or standing timber for a period or periods exceeding in the aggregate 90 days in any twelve-month period, for or under contract with a person;

but, notwithstanding the above, does not include the business of a person that enters into a contractual arrangement, including with respect to matters prescribed in paragraphs (a) to (g), solely with—

i. the Government; or
ii. persons in which the Government has an interest, where the Minister is satisfied that the contractual arrangement will contribute to an identifiable benefit to Fiji following an application made pursuant to section 7(5) and the Minister has notified the CEO in writing that such business is deemed not to be a permanent establishment under this Act

Act 15 of 2017 – Prior to 1st January 2016 (LN 22 of 2017) – definition read as:

"permanent establishment" means a fixed place of business through which the business of a person is wholly or partly carried on, and includes the following—

(a) a place of management, branch, office, factory, warehouse or workshop, but does not include a liaison office;

(b) a mine site, oil or gas well, quarry, or other place of exploration for, or extraction of natural resources;

(c) a building site, construction, assembly or installation project, or supervisory activities connected with such site or project, but only if the site, project, or activities continue for more than 6 months;

(d) the furnishing of services by the person, including consultancy services, including through employees or other personnel engaged by the person for such purpose, but only if activities of that nature continue for the same or a connected project by the person or an associate for a period or periods aggregating more than 6 months in any twelve-month period;

(e) a person, other than an agent of independent status, acting on behalf of another person (referred to as the "principal"), if the first-mentioned person—

i. regularly negotiates contracts on behalf of the principal; or
ii. habitually maintains a stock of trading stock from which the person regularly delivers trading stock on behalf of the principal;

(f) substantial equipment used for more than 6 months within a twelve-month period or installed by, for or under contract with the person;

(g) carries on activities, including the operation of substantial equipment, in the exploration for or exploitation of natural resources or standing timber for a period or periods exceeding in the aggregate 90 days in any twelve-month period, for or under contract with a person;

Act 27 of 2016 – Prior to 1 August 2016 – (d) and (e) read as -

(d) the furnishing of services by the person, including consultancy services, through employees or other personnel engaged by the person for such purpose, but only if activities of that nature continue for the same or a connected project for a period or periods aggregating more than 6 months in any twelve-month period;

(e) a person, other than an agent of independent status, acting on behalf of another person (referred to as the "principal"), if the firstmentioned person—

i. has and habitually exercises an authority to conclude contracts on behalf of the principal; or

ii. habitually maintains a stock of trading stock from which the person regularly delivers trading stock on behalf of the principal;

permanent resident	means an individual who is a permanent resident of Fiji under regulation 51 of the Immigration Regulations 2007;
person	means an individual, company, partnership, trust, government, political subdivision of a government, or international organisation;
pre-commencement expenditure	means any expenditure incurred by a person before the commencement of a business if the income to be derived by the person will be wholly and exclusively included in taxable business income, other than expenditure incurred in acquiring real property, a depreciable asset, an intangible asset, or a business intangible within paragraphs (a) to (c) of the definition of "business intangible";
prescribed	means prescribed in the regulations;
Presumptive Income Tax	means the presumptive income tax imposed under section 9;
property income	has the meaning in section 18;
provide	in relation to a fringe benefit, includes allow, confer, give, grant, transfer or perform;
quarter	means a period of 3 months ending on 31 March, 30 June, 30 September or 31 December;
received	in relation to a person, includes— a) applied on behalf of the person either at the instruction of the person or under any law; b) reinvested, accumulated or capitalised for the benefit of the person; c) credited to an account, or carried to any reserve, or a sinking or insurance fund for the benefit of the person; or d) made available to the person;
redundancy payment	means a bona fide lump sum payment, other than a retiring allowance— a) made to an employee on termination of the employment of the employee when the termination is wholly or mainly due to the fact that the position filled by the employee is, or will become, superfluous to the needs of the employer; or

b) made to an individual who is a seasonal worker when the individual's usual seasonal employment is unavailable wholly or mainly due to the fact that the individual's position or usual position is, or will become, superfluous to the needs of the employer, but does not include the following—

i. a payment relating solely to a seasonal layoff;
ii. a payment contingent on the completion of either a fixed term contract or a contract to complete specified work;
iii. a payment in lieu of a notice of termination of employment;
iv. a payment that, if it were not made on termination of employment, would constitute monetary remuneration of the employee;
v. a payment made by a company to a director pursuant to its articles of association;
vi. a payment that is excessively large in relation to the earnings and length of service of the employee;

relative	in relation to an individual, means— a) an ancestor, a descendant of any of the grandparents, or an adopted child, of the individual; b) an ancestor, a descendant of any of the grandparents, or an adopted child of a spouse of the individual; or c) a spouse of the individual or of any person specified in paragraph (a) or (b);
remote area	means an area that is 15 or more kilometers from a town or city;

Legislative History:
Act 31 of 2018 – Prior to 1st August 2018 – definition read as –
means an area that is fifteen or more kilometres from a rural local authority, town, or city

rent	means— a) any consideration for the use or occupation of, or the right to use or occupy any land or building, including any premium, fine or like amount, but not including a natural resource amount; b) the fair market value of any improvement to land or a building made under an agreement for the use or occupation of, or the right to use or occupy the land or building, or by virtue of the cessation of such right; or c) an amount in lieu of undertaking an improvement referred to in paragraph (b);
resident company	means a company—

	a) that is incorporated, formed or settled in Fiji; or b) that has any part of its central management and control located in Fiji;
resident individual	has the meaning in section 6;
resident partnership	means a partnership— a) that is formed in Fiji; or b) that has any part of its central management and control located in Fiji;
resident person	means a resident individual, resident partnership, resident trust, resident company, the Government and a political subdivision of the Government;
resident trust	means a trust— a) that was settled or established in Fiji; b) that is the estate of a deceased resident individual; or c) in respect of which a trustee is a resident person;
retirement fund	means a fund established for the payment of benefits on retirement, permanent disability or death of a member of the fund;
royalty	means an amount, however described, whether periodical or a lump sum, as consideration for— a) the use of, or right to use any copyright, patent, design or model, plan, secret formula or process, trademark, or other like property or right; b) the use of or right to use any industrial, agricultural, commercial or scientific equipment; c) the supply of any scientific, technical, commercial or industrial information, techniques, knowledge, experience or skill, including know-how; d) the use of, or right to use motion picture films, videotapes, compact discs, digital video discs, video compact discs, or similar items in connection with television, radio or internet broadcasting; e) the use of, or right to use visual images or sounds, or both, transmitted by satellite, cable, optic fibre or similar technology in connection with television, radio or internet broadcasting; f) the receipt of, or right to receive visual images or sounds, or both, transmitted by satellite, cable, optic fibre or similar technology in connection with television, radio or internet broadcasting; g) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any property, right,

	knowledge, information or equipment referred to in paragraphs (a) to (f); or h) any forbearance in respect of the use or right to use any property, right, knowledge, information, equipment or assistance referred to in paragraphs (a) to (g);
short-term insurance business	means any insurance business other than life insurance business;
Social Responsibility Tax	

Legislative History
Act 10 of 2022 – from 1 April 2022 – definition amended by deleting ", a portion of which is the Environment and Climate Adaptation Levy payable under Part 4 of the Environment and Climate Adaptation Levy Act 2015";

Definition read as:
means the social responsibility tax imposed under section 8, a portion of which is the Environment and Climate Adaptation Levy payable under Part 4 of the Environment and Climate Adaptation Levy Act 2015;

Act 26 of 2017 – Prior to 1st August 2017 – read as:
means the Social Responsibility Tax imposed under section 8

Act No. 5 of 2023 – deleting definition of Social Responsibility Tax

sources in Fiji	has the meaning in section 7;
spouse	in relation to an individual, means an individual who is legally married to the first mentioned individual, and includes a de facto spouse;
structural improvement	in relation to real property, includes any building, road, driveway, car park, pipeline, bridge, tunnel, airport runway, canal, dock, wharf, retaining wall, fence, power lines, water or sewerage pipes, drainage, landscaping, or dam;
tax	means a tax or levy imposed under this Act;
tax year	means the calendar year and includes a substituted tax year and transitional tax year under section 36;
taxable business income	means business income included in gross income;
taxable foreign-source income	means foreign-source income included in gross income;
Telecommunications Levy	means the telecommunications levy imposed under section 98;
temporary resident	means an individual who is a resident individual solely or mainly for the purposes of engaging in employment in Fiji under a contract of employment of not more than 3 years, but not including a Fijian citizen or permanent resident of Fiji;
third party arranger	means a third party under an arrangement with the employer or an associate of the employer;

Third Party Insurance Levy

[definition repealed Act 40 of 2017 s 37, effective 1 January 2018]

Legislative History:
Act 40 of 2017 – Prior to 1st January 2018 – definition read as:
means the Third Party Insurance Levy imposed under section 100

trading stock	includes— a) any property produced, manufactured, purchased or otherwise acquired for manufacture, production, sale or exchange; b) any materials or consumables used in the production or manufacturing process; or c) livestock, other than animals used as beasts of burden or working beasts;
trust	has the meaning in section 2 of the Trustee Act 1966 and includes the following— a) the estate of a deceased person; b) an entity, other than a partnership or company, created outside Fiji that has legal characteristics substantially similar to those of a trust settled or created in Fiji, but does not include a trust referred to in paragraph (c) of the definition of "company";
trustee	has the meaning in the Trustee Act 1966 and includes the following— a) the executor of the estate of a deceased person; b) a person who owes a fiduciary responsibility to an entity treated as a trust under paragraph (b) of the definition of "trust", but does not include a trustee of a trust referred to in paragraph (c) of the definition of "company";
underlying ownership	in relation to a company, means a membership interest in the company held, directly or indirectly through an interposed person or persons, by an individual or by a person not ultimately owned by individuals; and
use	in relation to a depreciable asset or business intangible, includes available for use and held.

[Section 3] Approved Fund

[subs (4) am Act 27 of 2016 s 3, effective 1 August 2016; Act 5 of 2023, s1(2)(b), 1 January 2024]

(1) An employer-provided fund is an approved fund if the following conditions are satisfied—

a) the fund is established under irrevocable trusts by an employer solely for either or both of the following purposes—
    i. the provision of benefits to members of the fund in the event of the retirement or permanent disability of the member;
    ii. the provision of benefits to dependants of a member in the event of the death of the member;
b) membership of the fund is confined to employees of the employer or employees of an associate of the employer;
c) the fund is authorised to accept contributions only from the employer, associates of the employer or members of the fund;
d) the rights of members and dependants to receive benefits from the fund are fully secured and members are fully informed of those rights;
e) the retirement ages specified for members are not less than those applicable under regulation 14 of the Civil Service (General) Regulations 1999;
f) the benefits to which members or dependants are entitled are not excessive having regard to—
    i. the remuneration paid to the member;
    ii. the period of service; and
    iii. any other benefits that may be provided to the member or dependant of the member by the employer or an associate of the employer;
g) The total cost of in-house assets of the fund does not exceed, at any time, 10% of the cost of all assets of the fund;
h) the fund is not permitted, under the governing rules of the fund, to lend monies to members or dependants of members;
i) the amount of the fund is not in excess of the amount necessary to provide benefits having regard to contributions reasonably expected to be made to, and income reasonably expected to be earned by, the fund in succeeding years;
j) the CEO has certified in accordance with the regulations that the fund is an approved fund.

[subs (1) amended by Act 2 of 2016 s 20, effective 16 February 2016]

Legislative History:
Act 2 of 2016 – prior to 16th February 2016 –
references to "civil service" was made as "public service"

(2) The CEO may certify an employer-provided fund to be an approved fund even though the conditions in subsection (1) have not been fully complied with, provided that there has been substantial compliance with those conditions.

(3) In this section—

benefits means an annuity, pension or lump sum paid by a fund to a member;

dependant in relation to a member of a fund, means the spouse and any child under the age of 18 years, of the member;

employer-provided fund means a retirement fund created by an employer or an associate of an employer for the benefit of employees or, in the case of the death of an employee, for the benefit of dependants of employees;

in-house asset in relation to a fund, means an asset of the fund that is a loan to, or investment in the employer who established the fund or an associate of the employer but, in the case of a public sector fund, does not include an interest in securities issued by the Government; and

public sector fund means a fund established by the Government or a political subdivision of the Government.

[Section 4] Associate

(1) Subject to subsection (2), 2 persons are associates if the relationship between the 2 persons is such that one person may reasonably be expected to act in accordance with directions, requests, suggestions or wishes of the other person, or both persons may reasonably be expected to act in accordance with the directions, requests, suggestions or wishes of a third person.

(2) Two persons are not associates solely by reason of the fact that one person is an employee or client of the other, or both persons are employees or clients of a third person.

(3) Without limiting the generality of subsection (1), the following are treated as associates—

a) an individual and a relative of the individual, except if the CEO is satisfied that neither person may reasonably be expected to act in accordance with the directions, requests, suggestions or wishes of the other;
b) a partner in a partnership and the partnership, if the partner, either alone or together with an associate or associates under another application of this section, controls more than 50% of the rights to income or capital of the partnership;
c) a trust and a person who benefits under the trust or who may benefit under the trust through the exercise of a power of appointment or otherwise;
d) a member of a company and the company, if the member, either alone or together with an associate or associates under another application of this section, controls either directly or through one or more interposed persons—
    i. more than 50% of the voting power in the company;
    ii. more than 50% of the rights to dividends; or
    iii. more than 50% of the rights to capital;

e) two companies, if a person, either alone or together with an associate or associates under another application of this section, controls either directly or through one or more interposed persons—
   i. More than 50% of the voting power in both companies;
   ii. more than 50% of the rights to dividends in both companies; or
   iii. more than 50% of the rights to capital in both companies.

(4) In applying subsection (3)(b), (d) or (e), holdings that are attributable to a person from an associate are not reattributed to another associate.

[Section 5] Fair Market Value

[Act No. 5 of 2023, s1(2)(b), 1 January 2024]

(1) The fair market value of an asset, property, service or benefit at a particular time is the ordinary open market value of the asset, property, service or benefit at that time.

(2) If it is not possible to determine the fair market value of an asset, property, service or benefit at a particular time under subsection (1), the fair market value is the consideration of a similar asset, property, service or benefit would ordinarily fetch in the open market at that time, adjusted to take account of the differences between the similar asset, property, service, or benefit and the actual asset, property, service or benefit.

(3) For the purposes of subsection (2), an asset, property, service or benefit is similar to another asset, property, service or benefit, as the case may be, if it is the same as, or closely resembles, the other asset, property, service or benefit in character, quality, quantity, functionality, materials or reputation.

(4) If the fair market value of an asset, property, service or benefit cannot be determined under subsection (1) or (2), the fair market value is the amount determined by the CEO provided that the valuation is consistent with generally accepted valuation principles.

(5) This section is subject to sections 63 and 85(11)–(14).

[Section 6] Resident Individual

[Act No. 5 of 2023, s1(2)(b), 1 January 2024]

(1) Subject to subsections (2) and (3), an individual is a resident individual if the individual—

a) resides in Fiji;
b) is domiciled in Fiji unless the individual has a permanent place of abode outside Fiji;
c) is present in Fiji for a period of, or periods amounting in aggregate to, 183 days in any 12-month period; or
d) is an employee of the Government posted abroad.

(2) An individual who is a resident individual under subsection (1) in relation to a tax year, in this section referred to as the "current tax year", but who was not a resident individual for the preceding tax year is treated as a resident individual in the current tax year only for the period commencing on the day on which the individual was first present in Fiji.

(3) An individual who is a resident individual under subsection (1) for the current tax year but who is not a resident individual for the following tax year is treated as a resident individual in the current tax year only for the period ending on the last day on which the individual was present in Fiji.

[Section 7] Sources in Fiji

[Act No. 5 of 2023, s1(2)(b), 1 July 2023]

(1) Employment income is derived from sources in Fiji—

a) to the extent to which it is derived in respect of employment exercised in Fiji, wherever paid; or
b) if it is paid by, or on behalf of, the Government, wherever the employment is exercised.

(2) Business income derived by a resident person is derived from sources in Fiji except to the extent that it is attributable to a business carried on by the person through a permanent establishment outside Fiji.

(3) Business income derived by a non-resident person is derived from sources in Fiji to the extent to which it is directly or indirectly attributable to—

a) a business carried on by the person through a permanent establishment in Fiji;
b) sales in Fiji of goods or merchandise of the same or similar kind as those sold by the person through a permanent establishment in Fiji; or
c) any other business activity carried on in Fiji of the same or similar kind as that carried on by the person through a permanent establishment in Fiji.

(4) Notwithstanding subsections (2) and (3), the following are derived from sources in Fiji—

a) a dividend paid by a resident company or a dividend deemed under this Act;
b) rent from the lease of real property in Fiji;
c) a gain arising on the disposal of a Fiji asset;
d) a natural resource amount if it relates to the taking of minerals or a living or non-living resource from land in, or from the territorial waters of, Fiji;
e) an insurance premium in respect of the insurance of a risk in Fiji;
f) income included in gross income under section 16 if the employment giving rise to benefits under the employee share scheme is exercised in Fiji; or

g) interest, a royalty, management fee, fee for the provision of professional or other independent services, pension, charge or annuity if it is paid by a—
   i. resident person, other than as an expenditure of a business carried on by the person outside Fiji through a permanent establishment; or
   ii. non-resident person as an expenditure of business carried on by the person through a permanent establishment in Fiji.

[subs (4) am Act 27 of 2016 s 3, effective 1 August 2016]

Legislative History:
Act 27 of 2016 – Prior to 1st August 2016 – Section (7)(4)(a) read as:
a dividend paid by a resident company

(5)

[subs (5) insrt Act 15 of 2017 s 3, effective 1 January 2016; repealed with effect from 1st August 2020, sub (5) deleted by Act 14 of 2020 s3, effective 1 August 2020]

Legislative History:
Act 17 of 2020 – Prior to 1 August 2020 - Section 7(5) read as:
(5) For the purposes of the definition of "permanent establishment", a person seeking for the person's business to be deemed not to be a permanent establishment must—
(a) make an application in writing to the Minister;
(b) set out in the application the details of the contractual arrangement with the Government or persons in which the Government has an interest;
(c) state in the application that the person will only enter into contractual arrangements with the Government or persons in which the Government has an interest;
(d) outline in the application the benefit to Fiji of the contractual arrangement with the Government or persons in which the Government has an interest; and
(e) provide any further information or a declaration or undertaking as required by the Minister.

Act 15 of 2017 –1st January 2016 onwards – Section 7(5) was inserted

PART 2 INCOME TAX
(Sections 8–63)

DIVISION 1 IMPOSITION OF TAX
(Sections 8–12)

[Section 8] Imposition of Income Tax

[Act No. 5 of 2023, s1(2)(b), 1 January 2024]

(1) Subject to this Act, a tax to be known as "Income Tax" is imposed for each tax year at the rate or rates prescribed by Regulations made under this Act on a person who has chargeable income for the year.

(2) The Income Tax imposed under subsection (1) for a tax year is computed by applying the rate or rates of Income Tax applicable to the person prescribed by Regulations made under this Act to the chargeable income of the person for the year, with any tax credits allowed to the person for the year, subtracted from the resulting amount.

[subs (2) am Act 5 of 2023 s 3, effective 1st January 2024]

Legislative History:

Act 05 of 2023 – prior to 1st January 2024 –

Heading of the section "Imposition of Income Tax and Social Responsibility Tax"

Deleting subsections (2) and (3)

(2) In addition to the Income Tax imposed under subsection (1) and subject to this Act, a tax to be known as the "Social Responsibility Tax" is imposed for each tax year at the rate prescribed by Regulations made under this Act on an individual, including an employee, who is liable for Income Tax for the tax year.

(3) The Income Tax and Social Responsibility Tax imposed under subsections (1) and (2) for a tax year are computed by applying the rate or rates of Income Tax and Social Responsibility Tax applicable to the person prescribed by Regulations made under this Act to the chargeable income of the person for the year, with any tax credits allowed to the person for the year subtracted from the resulting amount.

Act 05 of 2023 –1st January 2024 onwards – deleting "and Social Responsibility Tax" in the heading.

and replacing (2) and (3) with

"(2) The Income Tax imposed under subsection (1) for a tax year is computed by applying the rate or rates of Income Tax applicable to the person prescribed by Regulations made under this Act to the chargeable income of the person for the year, with any tax credits allowed to the person for the year, subtracted from the resulting amount."

(3)

[subs (2)and (3) am Act 5 of 2023 s 3, effective 1 August 2023]

(4) If a person is allowed more than one tax credit for a tax year, the credits are applied in the following order—

a) the foreign tax credit allowed under section 60;

b) the tax credits allowed under sections 53(4), 110, and 124.

(5) Instead of taxation under subsection (1), certain classes of income, including the income of certain classes of persons, may be subject to—

a) tax as provided in section 9, 10 or 11; or
b) withholding of tax as a final tax as provided in section 125.

(6) If, for a tax year, an individual has both chargeable income and employment income to which section 125 applies, the Income Tax payable on the chargeable income is computed according to the following formula—

A - B

where—

A is the amount of Income Tax that would be payable on an amount of chargeable income equal to the aggregate of the individual's chargeable income and employment income to which section 125 applies for the year; and

B is the amount of Income Tax that would be payable on an amount of chargeable income equal to the individual's employment income to which section 125 applies for the year.

(7)
[delete subsection (7) Act 5 of 2023 s3(c), effective 1 August 202]

(8)
[delete subsection (8) Act 5 of 2023 s3(c) , effective 1 August 2023]

Legislative History:
Act 05 of 2023 – prior to 1st January 2024 –
(7) The reference to "Income Tax" in subsection (6) includes the Social Responsibility Tax.
(8) Notwithstanding subsection (2), Social Responsibility Tax is not payable on the portion of chargeable income derived from a one-off payment or receipt prescribed by regulations.

Act 05 of 2023 –1st January 2024 onwards – Deleting subsections (7) and (8)

[Section 9] Imposition of Presumptive Income Tax

[Act No. 5 of 2023, s1(2)(b), 1 January 2024]

(1) Subject to this Act, a tax to be known as "Presumptive Income Tax" is imposed for each quarter at the rate prescribed by Regulations made under this Act on an individual conducting a business who satisfies the following conditions—

a) the business is conducted solely in Fiji;

b) the individual is not registered or liable to be registered for the purposes of the Value Added Tax Act 1991;
c) the individual's annual gross turnover is less than $100,000.

(2) The Presumptive Income Tax imposed under subsection (1) for a quarter is computed by applying the rate of tax applicable to the individual prescribed by Regulations made under this Act to the gross turnover of the individual for the quarter.

(3) If the annual gross turnover of an individual to whom subsection (1) applies is $25,000 or more, the individual may apply, in writing, to the CEO for section 8 to apply instead of this section.

(4) If the CEO is satisfied that an individual who has lodged an application under subsection (3) will keep proper records, the CEO may grant the application subject to such conditions as the CEO may specify by notice in writing to the applicant.

(5) A person to whom subsection (1) applies is subject to the Presumptive Income Tax in the first quarter in which the Presumptive Income Tax applies despite being subject to the Income Tax for the period prior to the application of the Presumptive Income Tax unless the CEO has granted the person permission under subsection (4) for the Income Tax to apply to the person.

[Section 10] Imposition of Non-resident Withholding Tax on Non-Resident Payments

[Act No. 5 of 2023, s1(2)(b), 1 January 2024]

(1) Subject to this Act, a tax to be known as "Non-resident Withholding Tax" is imposed at the rate prescribed by Regulations made under this Act on a non-resident person who has derived an interest, royalty, insurance premium, management fee, natural resource amount or fee for the provision of professional or other independent services from sources in Fiji.

[subs (1) am Act 26 of 2017 s 4, effective 1 August 2017]

Legislative History:
Act 26 of 2017 – 1st August 2017 – Section 10(1) read as –
Subject to this Act, a tax to be known as "Non-resident Withholding Tax" is imposed at the rate prescribed by Regulations made under this Act on a non-resident person who has derived a ***dividend****, interest, royalty, insurance premium, management fee, natural resource amount or fee for the provision of professional or other independent services from sources in Fiji*

Act 5 of 2023 – deleting subsection (8) – 1st August 2023

(2) The tax imposed under subsection (1) is computed by applying the rate prescribed by Regulations made under this Act to the gross amount of the interest, royalty, insurance premium, management fee, natural resource amount or fee for the provision of professional or other independent services.

[subs (2) am Act 26 of 2017 s 4, effective 1 August 2017]

Legislative History:
Act 26 of 2017 – 1st August 2017 – Section 10(2) read as –

*(2) The tax imposed under subsection (1) is computed by applying the rate prescribed by Regulations made under this Act to the gross amount of the **dividend**, interest, royalty, insurance premium, management fee, natural resource amount or fee for the provision of professional or other independent services.*

(2A)

[subs (2A) insrt Act 27 of 2016 s 4, effective 1 August 2016; repealed with effect from 1st August 2020]

Legislative History:
Act 14 of 2020 – Prior to 1st August 2020 – Section 10(2A) read as –
(2A) The gross amount in relation to the provision of professional services includes the following—
(a) accommodation provided or reimbursed;
(b) airfare;
(c) transport;
(d) allowances.

Act 27 of 2016 – from 1 August 2016 – Section 10(2A) inserted

(3) This section does not apply to the following—

a) [repealed]
b) any interest if the debt claim or other instrument or agreement giving rise to the interest is effectively connected with a permanent establishment in Fiji of the non-resident person;
c) any royalty or natural resource amount if the property, right or supply giving rise to the royalty or natural resource amount is effectively connected with a permanent establishment in Fiji of the non-resident person;
d) any insurance premium, management fee or fee for the provision of professional or other independent services if the services giving rise to the premium or fee are rendered through a permanent establishment in Fiji of the non-resident person;
e) any interest, royalty, insurance premium, management fee, natural resource amount or fee for the provision of professional or other independent services that is exempt income of the non-resident person.

[subs (3) am Act 26 of 2017 s 4, effective 1 August 2017]

Legislative History:
Act 26 of 2017 – Prior to 1st August 2017 – Section 10(3)(a) read as –
(a) any dividend if the holding giving rise to the dividend is effectively connected with a permanent establishment in Fiji of the non-resident person;

Act 26 of 2017 – Prior to 1st August 2017 – Section 10(3)(e) read as –
(e) any dividend, interest, royalty, insurance premium, management fee, natural resource amount or fee for the provision of professional or other independent services that is exempt income of the non-resident person.

(4) Any interest, royalty, insurance premium, management fee, natural resource amount or fee for the provision of professional or other independent services described in subsection (3)(a), (b), (c) or (d) is treated as income attributable to the permanent establishment and is taxable under section 8.

[subs (4) am Act 26 of 2017 s 4, effective 1 August 2017]

Legislative History:

Act 26 of 2017 – Prior to 1st August 2017 – Section 10(4) read as –
(4) Any dividend, interest, royalty, insurance premium, management fee, natural resource amount or fee for the provision of professional or other independent services described in subsection (3)(a), (b), (c) or (d) is treated as income attributable to the permanent establishment and is taxable under section 8.

(5) The tax payable by a non-resident person under this section is discharged if the tax has been withheld from the payment of the income under section 113 and paid to the CEO under section 117.

(6) For the purposes of this section, section 7, and Subdivision 4 of Division 2 of Part 9—

a) a permanent establishment in Fiji of a non-resident company and the rest of the company are treated as separate persons;
b) the permanent establishment is treated as a resident company and the rest of the company (referred to as the "head office company") is treated as a non-resident company; and
c) the after-tax earnings of the permanent establishment as determined according to generally accepted accounting principles paid or credited in favour of the head office company is treated as a dividend derived by the head office company and paid by the permanent establishment.

(7) If subsection (6) applies, section 12 applies only to the after-tax earnings of a permanent establishment treated as a dividend under subsection (6)(c).

(8)
[delete Act 5 of 2023 s 4, effective 1 August 2023]

Legislative History:
Act 05 of 2023 – Prior to 1st August 2023 – Section 10(8) read as –
(8) If a non-resident person provides professional or other independent services, or leases equipment, to a resident person or a permanent establishment in Fiji of a non-resident person (referred to as the "recipient") and the fee for the services or lease rental is paid to the non-resident person by a non-resident associate of the recipient, this section applies to any recharge of the fee or rental by the associate to the recipient as if the associate provided the services or leased the equipment to the recipient.

Act 05 of 2023 – from 1 August 2023 – deleted Section 10 (8).

(9) Subject to subsection (10), the Minister may exempt or reduce tax rate for tax payable under this section on the income of the qualifying employees under any regulations which are made under this Act for film incentives, who are residents of countries that do not have double tax agreements with Fiji.

(10) The Minister may by notice in writing to the CEO, direct that tax payable under this section be exempt or be paid at such reduced rate as specified in the notice.

(11) In this section, "insurance premium" includes a premium relating to reinsurance and any other amount payable in respect of the offshore placement of insurance, but does not include a premium payable under a life policy.

[Section 11] Imposition of Non-resident International Shipping Income Tax
[Act No. 5 of 2023, s1(2)(b), 1 January 2024]

(1) Subject to this Act, a tax to be known as "Non-resident International Shipping Income Tax" is imposed at the rate prescribed by Regulations made under this Act on a non-resident person operating a ship in international traffic.

(2) The tax imposed under subsection (1) is computed by applying the rate prescribed by Regulations made under this Act to the gross amount derived by the non-resident person for the carriage of passengers, livestock, mail, merchandise or goods embarked or loaded in Fiji.

(3) This section does not apply to the following—

a) an amount that is exempt income;
b) an amount derived in respect of a passenger who is in Fiji solely as a result of being in transit between 2 places outside Fiji;
c) the transhipment of livestock, mail, merchandise or goods.

(4) The tax payable under this section is discharged if the tax has been paid in accordance with section 109.

[Section 12] General Provisions Relating to Taxes Imposed under Sections 9, 10 and 11

Subject to this Act, the tax imposed under sections 9, 10, and 11 on a person is a final tax on the income in respect of which it is imposed and—

a) the income is not included in gross income in computing the chargeable income of the person for any tax year;
b) no deduction is allowed under this Act in computing the chargeable income of the person for any tax year for any expenditure or loss incurred by the person in deriving the income;
c) the amount on which tax is imposed under section 9, 10 or 11 is not reduced by a deduction allowed under this Act including for any loss carried forward; and
d) the tax payable by the person under section 9, 10 or 11 is not reduced by any tax credits allowed under this Act.

DIVISION 2 CHARGEABLE INCOME
(Section 13)

[Section 13] Chargeable income

The chargeable income of a person for a tax year is the gross income of the person for the year reduced by the total amount of deductions allowed to the person for the year.

DIVISION 3 GROSS INCOME

(Sections 14–20A)

[Sections 14] Income included in Gross Income

(1) Subject to this Act, the gross income of a person for a tax year is the total of the following—

a) employment income, business income and property income derived by the person during the year;
b) income according to ordinary concepts, other than income referred to in paragraph (a), derived by the person during the year;
c) unexplained and unidentified deposits during the year in any bank account if the deposit can be sourced to the person;
d) income that a section of this Act includes in the gross income of the person for the year; and
e) forfeited deposits and instalments on capital assets.

[subs (1) am Act 27 of 2016 s 5, effective 1 August 2016]

Legislative History:
Act 27 of 2016 – from 1st August 2016 – Section 14(1)(e) inserted

(2) Income is not included in gross income if it is—

a) exempt income; or
b) subject to tax under section 9, 10, or 11.

(3) Subject to this Act—

a) the gross income of a resident person includes income derived from all sources within and outside Fiji; and
b) the gross income of a non-resident person includes only income derived from sources in Fiji.

[Section 15] Employment Income

(1) The following are employment income—

a) salary, wages or other remuneration derived by an employee in respect of employment, including leave pay, payment in lieu of leave, overtime pay, bonus, commission, fees, gratuity or work condition supplements;
b) the value of a fringe benefit, other than an exempt fringe benefit, derived by an employee in respect of employment that is not subject to tax under the Fringe Benefits Tax;
c) the amount of any allowance derived by an employee in respect of employment, including a cost of living, subsistence, rent, utilities, education, entertainment, meeting or travel allowance, but not including any allowance to the extent expended in the performance of the employee's duties of employment;
d) the amount of any expenditure incurred by an employee that is reimbursed by the employer, other than expenditure to the extent incurred on behalf of the employer in the performance of the employee's duties of employment;
e) an amount derived by an employee as consideration for—
    i. the agreement by the employee to enter into employment;
    ii. the employee to agree to any conditions of employment or any changes to the employee's conditions of employment; or
    iii. the agreement of the employee to accept a restrictive covenant in respect of any past, present or prospective employment;
f) an amount derived by an employee on termination of employment, whether paid voluntarily or under an agreement, including a redundancy payment or other compensation for loss of employment and golden handshake payments;
g) any pension, annuity or supplement to a pension or annuity derived by an employee in respect of employment, including a past employment;
h) the amount of any loan, payment for an asset or services, value of any asset or services provided, or any debt obligation released, by the company to, or in favour of, a member of the company or an associate of a member to the extent to which the transaction is, in substance, remuneration for services provided in any capacity to the company by the member.

(2) The value of a fringe benefit included in employment income under subsection (1)(b) or an amount referred to in subsection (1)(h) is determined under Division 2 of Part 4.

(3) An amount or benefit is derived by an employee in respect of employment regardless of whether it is paid or provided by—

a) the employer of the employee;
b) an associate of the employer; or

c) third party arranger.

(4) An amount or benefit is derived by an employee even though it is paid or provided to an associate of the employee by the employer of the employee, an associate of the employer or a third party arranger.

(5) In this section, "work condition supplements" includes an additional amount paid as compensation for difficult, unpleasant or dangerous work conditions.

[Section 16] Employee Share Scheme Benefits

(1) The value of a right or option to acquire shares granted to an employee under an employee share scheme is not included in gross income.

(2) Subject to subsection (3), if an employee is allotted shares under an employee share scheme, including shares allotted as a result of the exercise of an option or right to acquire the shares, the fair market value of the shares at the date of allotment reduced by the employee's contribution for the shares is income included in the gross income of the employee for the tax year in which the benefit is derived as determined under subsection (6).

(3) If shares allotted to an employee under an employee share scheme are subject to a restriction on the transfer of the shares—

a) income is included in the gross income of the employee under subsection (2) on the earlier of—
   i. the time the employee is able to freely transfer the shares; or
   ii. the time the employee disposes of the shares; and
b) the amount of income included in gross income is the fair market value of the shares at the time the employee is able to freely transfer the shares or disposes of the shares, as the case may be, reduced by the employee's contribution for the shares.

(4) For the purposes of this Act, if subsection (2) or (3) applies, the cost of the shares to the employee is the sum of the employee's contribution for the shares and the amount included in gross income under this section.

(5) A gain derived on the disposal by an employee of a right or option to acquire shares under an employee share scheme is income included in the gross income of the employee for the tax year in which the disposal occurs.

(6) Income under this section is derived by an employee—

a) in the case of an amount under subsection (2), at the time the shares are allotted to the employee in accordance with the rules governing the employee share scheme;
b) in the case of an amount under subsection (3), at the time determined under subsection (3)(a); or
c) in the case of an amount under subsection (5), at the time of disposal of the right or option by the employee.

(7) In this section—

employee share scheme means an agreement or arrangement under which a company that is an employer may allot shares in the company to—

a) an employee of the company or an employee of a company that is an associate of the first mentioned company; or
b) the trustee of a trust and under the trust deed the trustee may transfer the shares to an employee of the company or an employee of a company that is an associate of the first mentioned company; and

employee's contribution in relation to shares allotted to an employee under an employee share scheme, means the sum of the consideration, if any, given by the employee—

a) for the shares; and
b) for the grant of any right or option to acquire the shares.

[Section 17] Business Income

(1) The following are included in the business income of a person conducting a business—

a) the gross proceeds from the conduct of the business, including the consideration for the disposal of trading stock and the gross fees from the provision of services;
b) the gross revenue from the investment of the capital of the business, including dividends, interest, royalties and rents;
c) the net gain from—
    i. the conduct of a venture or concern in the nature of a trade, commerce, agriculture or manufacture;
    ii. the carrying on or carrying out of a profit-making undertaking or scheme; or
    iii. the disposal of an asset, other than trading stock or an asset subject to subparagraph (i) or (ii), held on revenue account by a person in carrying on a business;
d) any other income according to ordinary concepts from the conduct of a business;
e) any other income that a section of this Act deems to be business income; and

f) any commercial debt between associates that is forgiven.

[subs (1) am Act 27 of 2016 s 6, effective 1 August 2016]

Legislative History:
Act 27 of 2016 – from 1st August 2016 – Section 17(1)(f) inserted

(1A) For the purpose of subsection (1)(f)—

commercial debt means a debt where—

a) the whole or any part of interest, or of an amount in the nature of interest, paid or payable in respect of the debt may be deducted by the debtor from business income; or
b) interest, or an amount in the nature of interest, is not payable in respect of the debt but, had interest or such an amount been payable, the whole or any part of the interest or amount may be deducted by the debtor from business income; and

forgiven, in the case of a commercial debt, means a debt—

a) where—
    i. the debtor's obligation to pay the debt is released or waived, or is otherwise extinguished other than by repaying the debt in full; or
    ii. the period within which the creditor is entitled to sue for the recovery of the debt ends, as a result of the operation of the Limitation Act (Cap 35), without the debt having been paid; and
b) in the case of paragraph (a)(i), where—
    i. the debtor and creditor in relation to a debt enter into an agreement or arrangement, whether or not enforceable by legal proceedings;
    ii. under the agreement or arrangement, the debtor's obligation to pay the whole or a part of the debt is to cease at a particular future time; and
    iii. the cessation of the obligation is to occur without the debtor incurring any financial or other obligation, other than an obligation that, having regard to the debtor's circumstances, is of a nominal or insignificant amount or kind,

the debt or part of the debt is taken to be forgiven when the agreement or arrangement is entered into.

Legislative History:
Act 27 of 2016 – from 1st August 2016 – Section 17(1A) inserted

(1B) Notwithstanding subsection (1)(f), any commercial debt between associates that is—
a) incurred on or before 31 December 2022; and
b) forgiven on and from 1 April 2020 to 31 December 2023,
is not included in the business income of a person conducting a business.

Legislative History:
Act 7 of 2022 – prior to 1st April 2022 – Section 17(1B) read as -
(1B) Notwithstanding subsection (1)(f), any commercial debt between associates that is—
a) incurred on or before 31 December 2021; and
b) forgiven on and from 1 April 2020 to 31 December 2022,
is not included in the business income of a person conducting a business.

Act 28 of 2021 – Prior to 1st August 2021 – Section 17(1B) read as –
(1B) Notwithstanding subsection (1)(f), any commercial debt between associates that is—
(a) incurred on or before 31 December 2020; and
(b) forgiven on and from 1 April 2020 to 31 December 2021,
is not included in the business income of a person conducting a business.

Act 14 of 2020 – Prior to 1st August 2020 – Section 17(1B) read as –
(1B) Notwithstanding subsection (1)(f), any commercial debt between associates that is—
(a) incurred on or before 26 March 2020; and
(b) forgiven on and from 1 April 2020 to 31 December 2020,
is not included in the business income of a person conducting a business.

Act 3 of 2020 – From 1st April 2020 – Section 17(1B) inserted

(2) For the purposes of subsection (1)(c)(i) and (ii), and subject to subsection (3), the net gain arising from the conduct of a venture or concern in the nature of a trade, commerce, agriculture or manufacture, or in carrying on or carrying out of a profit-making undertaking or scheme is the amount by which the gross proceeds derived by the person from the venture, concern, undertaking or scheme exceed the expenditures or losses incurred in conducting the venture, concern, undertaking or scheme.

(3) An expenditure or loss is taken into account in computing the net gain under subsection (2) only if the expenditure or loss is allowed as a deduction under this Act (ignoring section 22(1)(c)).

(4) Subject to this Act, the net gain arising on disposal of an asset to which subsection (1)(c)(iii) applies is the consideration for the disposal reduced by the cost of the asset at the time of disposal.

[Section 18] Property Income

(1) Subject to subsection (2) and section 19, the following are included in the property income of a person—

a) a dividend, interest, royalty, rent, natural resource amount, or other amount arising from the provision, use or exploitation of property;
b) the net gain from the disposal of an asset that was acquired for the purpose of disposal at a profit;

c) a pension, charge or annuity, or any supplement to a pension, charge or annuity;
d) a benefit paid by a retirement fund.

(2) Property income does not include income that is business or employment income.

(3) The net gain arising on disposal of an asset to which subsection (1)(b) applies is the consideration for the disposal of the asset reduced by the cost of the asset at the time of disposal.

[Section 19] Purchased Annuities

(1) If an annuity was purchased by a person, the amount of the annuity included in the property income of the person is reduced by the capital component of the annuity.

(2) Subject to subsection (3), the capital component of an annuity is computed according to the following formula—

A-B/C

where—

A is the undeducted purchase price of the annuity;
B is the residual capital value of the annuity; and
C is the relevant number in relation to the annuity.

(3) If an annuity is derived by more than one person, the capital component of the annuity for a person deriving the annuity is computed according to the following formula—

Ax B/C

where—

A is the amount ascertained under subsection (2);
B is the amount of the annuity derived by the person; and
C is the total amount of the annuity derived by all persons entitled to the annuity.

(4) In this section—

life expectancy factor in relation to a person in relation to an annuity, means the number of whole years of the life expectancy of the person as ascertained under prescribed life tables at the time the first payment of the annuity occurs;

relevant number in relation to an annuity, means—

a) if the annuity is payable for a number of years, that number of years;
b) if the annuity is payable only during the lifetime of a person, the life expectancy factor of the person; or
c) in any other case, the number of years that the annuity is reasonably expected to be payable;

residual capital value in relation to an annuity, means the capital amount payable on termination of the annuity; and

undeducted purchase price in relation to an annuity, means so much of the purchase price of the annuity that has not been and will not be allowed as a deduction under this Act.

[Section 20] Exempt Income

(1) The Minister may prescribe by Regulations made under this Act amounts that are exempt income for the purposes of this Act.

(2) Subject to subsection (3), a provision in another law providing that an amount is exempt income does not have legal effect unless also provided for in this Act.

(3) Subsection (2) does not apply to a provision in another law that is in force at the commencement date of this Act.

[Section 20A] Deemed Dividend distribution

(Repealed)

[s 20A rep Act 26 of 2017 s 5, effective 1 August 2017]

Legislative History:
Act 26 of 2017 – Prior to 1st August 2017 – Section 20A read as-
20A.—(1) Subject to subsection (9), the whole or part of the net profit after tax, according to generally accepted accounting principles, of a resident company for the previous tax year which has not been distributed as dividends by the resident company

by the end of the sixth month after the end of the resident company's tax year, is deemed to have been distributed as dividends among the members as at the end of the sixth month after the end of the resident company's tax year, unless the resident company proves to the satisfaction of the CEO that the net profit after tax has been or will be reinvested by the resident company for the purposes of maintenance or development of the business of the resident company.

(2) Where subsection (1) applies to deem undistributed net profit after tax of the resident company to be distributed as dividends among the members, such dividends are subject to tax in accordance with the provisions of this Act and the resident company must, by the end of the seventh month after the end of the resident company's tax year, make the appropriate payment to the CEO as though the dividends were paid or credited to the members as at the end of the sixth month after the end of the resident company's tax year.

(3) In default of payment of the amount of tax due, the tax is recoverable from the resident company in the manner provided by the Tax Administration Decree 2009.

(4) The tax imposed under this section is a final tax on the amount on which the tax is imposed and no further tax is payable on a subsequent distribution of the undistributed amount as a dividend.

(5) Where a company is a member deemed under subsection (1) to have received a dividend, the amount of the dividend deemed to have been paid to the company is deemed to be part of the company's income for the purposes of calculating the net profit after tax of the company and the application of this section in respect to the undistributed net profit after tax of that company.

(6) Where any undistributed net profit after tax of a resident company has been deemed, to have been distributed as dividends to the members of that resident company, the resident company must, by the end of the seventh month after the end of the resident company's tax year furnish each member with a certificate setting forth the amount of the dividend deemed to have been distributed to that member and must send a copy of such certificate to the CEO and, in default of such certificate being furnished, the CEO may determine such amount.

(7) For the purposes of subsection (1), the onus of proof as to whether the failure to distribute the net profit after tax has been or will be reinvested by the resident company for the purposes of maintenance or development of the business of the resident company is, in all cases, on the resident company.

(8) For the purposes of this section, "member" means a person by whom or on whose behalf shares in the resident company are held at the end of the sixth month after the end of the resident company's tax year.

(9) This section does not apply to a resident company listed on the South Pacific Stock Exchange.

Act 27 of 2016 – From 1st August 2016 – Section 20A inserted

DIVISION 4 ALLOWABLE DEDUCTIONS
(Sections 21–30)

[Section 21] Allowable Deductions

(1) Subject to this Act, a person is allowed a deduction for a tax year for—

a) an expenditure or loss on revenue account to the extent incurred by the person during the tax year in deriving income included in gross income;
b) the cost of trading stock disposed of by the person during the year as determined under section 40;
c) the total amount of depreciation of the person's depreciable assets for the tax year as determined under section 31;
d) the total amount of amortisation of the person's business intangibles for the tax year as determined under section 35;
e) the net loss incurred by the person during the tax year from—
   i. the conduct of a venture or concern in the nature of a trade, commerce, agriculture or manufacture;
   ii. the carrying on or carrying out of a profit-making undertaking or scheme;
   iii. the disposal of an asset, other than trading stock or an asset subject to subparagraph (i) or (ii), held on revenue account; or
   iv. the disposal of an asset that was acquired for the purpose of disposal at a profit;
f) any expenditure to the extent incurred by the person during the tax year on the repair of property used to derive income included in gross income; or
g) any other expenditure or loss of the person that a section of this Act allows as a deduction for the tax year.

(2) For the purposes of subsection (1)(e)(i) and (ii), and subject to subsection (6), the net loss arising from a venture or concern in the nature of a trade, commerce, agriculture or manufacture, or in the carrying on or carrying out a profit-making undertaking or scheme is the amount by which the expenditures or losses incurred in conducting the venture, concern, undertaking or scheme exceed the gross proceeds derived by the person from the venture, concern, undertaking or scheme.

(3) An expenditure or loss is taken into account under subsection (5) only if the expenditure or loss is allowed as a deduction under this Act (ignoring section 22 (1)(c)).

(4) The net loss arising on disposal of an asset to which subsection (1)(e)(iii) or (iv) applies is the cost of the asset at the time of disposal reduced by the consideration for the disposal.

(5) A person is allowed a deduction for a net loss under subsection (1)(e) only if the person has notified the CEO, in writing, that the asset was acquired by the person with the purpose or intention of disposal for a profit.

(6) A person must lodge a notice under subsection (5) with the CEO within 7 days of acquiring the asset or within such further time as the CEO may allow.

[Section 22] Deduction not Allowed

(1) Except as provided in this Act, no deduction is allowed for the following—

a) an expenditure or loss to the extent to which it is of a domestic or private nature;
b) an expenditure or loss incurred by an employee in deriving employment income;
c) an expenditure or loss that is taken into account in computing a net gain included in business income under section 17(1)(c) or property income under section 18(1)(b), or a net loss allowed as a deduction under section 21(1)(e);
d) an expenditure or loss of a capital nature except as provided under this Act;
e) a dividend or other distribution of profits, an amount of capital withdrawn, or a sum employed or intended to be employed as capital;
f) an amount carried to a reserve fund, a provision for expected expenditures or losses, or an amount capitalised in any way;
g) an expenditure or loss to the extent recoverable or recovered under a contract of insurance, guarantee, surety or indemnity;
h) Income Tax or Capital Gains Tax payable in Fiji or elsewhere, including any penalty, additional tax, or interest payable in respect of Income Tax, Capital Gains Tax or fringe benefits tax due;
[subs (22)(1) am Act 5 of 2023 s 5, effective 1 August 2023]

Legislative History:
Act 05 of 2023 – Prior to 1st January 2024 – Section 22 (1) (h) read as –
(h)Income Tax, Social Responsibility Tax or Capital Gains Tax payable in Fiji or elsewhere, including any penalty, additional tax, or interest payable in respect of Income Tax, Social Responsibility Tax or Capital Gains Tax due;

Act 05 of 2023 – from 1 January 2024 – read as follows:-
(h) Income Tax or Capital Gains Tax payable in Fiji or elsewhere, including any penalty, additional tax, or interest payable in respect of Income Tax, Capital Gains Tax or fringe benefits tax due;

i) a fine or penalty imposed for violation of any law, or a rule or regulation made under a law;
j) a contribution made to a non-approved fund;
k) subject to subsection (3), an inducement paid or provided by a person to a public officer, including a foreign public officer, if the inducement is intended to influence the public officer to act or to fail to act, in his or her official capacity in order to—
    i. obtain or retain business for the person or an associate; or
    ii. obtain an improper advantage for the person or an associate in the conduct of business.

[sub 1(h) amend Act 14 of 2020 s6, effective 1 August 2020]]

Legislative History:
Act 14 of 2020 – Prior to 1st August 2020 – Section 22(1)(h) read as:
(h) Income Tax, Social Responsibility Tax, Capital Gains Tax or ***Fringe Benefits Tax*** *payable in Fiji or elsewhere, including any penalty, additional tax, or interest payable in respect of Income Tax, Social Responsibility Tax, Capital Gains Tax or Fringe Benefits Tax due;*

(2) If a person is allowed a deduction for a payment from which the person is required to withhold tax under Subdivision 4 of Division 2 of Part 9, the deduction is not allowed until the tax withheld has been paid to the CEO.

(3) Subsection (1)(k) does not apply to an inducement paid or provided by a person to a foreign public officer unless the person providing the inducement committed or would have committed an offence under the laws of the foreign country in which the public officer holds office.

(4) In this section—

foreign government means a government of a foreign country or territory;

foreign public officer means a public officer in respect of a foreign government;

government agency means a person or body that carried out a public function under the laws of Fiji or of a foreign country or territory;

inducement means money, the offering of an office or employment, or the provision of any other benefit; and

public officer includes—

a) a member or officer of the executive, judiciary or legislature of the Government or a foreign government;
b) an employee of the Government or a foreign government, a political subdivision of the Government or a foreign government, a government agency or an international organisation; or
c) a member of Parliament or a Minister of State.

[Section 23] Contribution to an Approved Fund or Fiji National Provident Fund

(1) Subject to subsection (2), an employer is allowed a deduction for the amount of a contribution paid by the employer in a tax year to the Fiji National Provident Fund or an approved fund in respect of an employee, other than by way of deduction from the salary or wages of the employee, or which is otherwise recovered from the employee.

(2) The total amount allowed as a deduction under subsection (1) for a tax year for an employer contribution to the Fiji National Provident Fund and an approved fund in respect of an employee is 100% of the employer contribution paid in respect of the employee for the tax year.
[sub(2) amended by Act 9 of 2019, section 2; effective 1 January 2020; sub 23(2) amended by Act 14 of 2020 s7, effective 1 August 2020]

Legislative History:

Act 14 of 2020 – Prior to 1 August 2020 –
*(2) The total amount allowed as a deduction under subsection (1) for a tax year for an employer contribution to the Fiji National Provident Fund and an approved fund in respect of an employee is limited to 100% of the employer **statutory** contribution paid in respect of the employee for the tax year.*

Act 9 of 2019 – Prior to 1st August 2019 – Section 23(2) read as:
*(2) The total amount allowed as a deduction under subsection (1) for a tax year for an employer contribution to the Fiji National Provident Fund and an approved fund in respect of an employee is limited to **50%** of the employer statutory contribution paid in respect of the employee for the tax year.*

[Section 24] Charitable Donations

(1) Subject to this section, a person is allowed a deduction for a cash donation made in a tax year to an approved academic or charitable institution.

(2) The total deduction allowed under subsection (1) for cash donations made by a person in a tax year must not exceed $100,000.

(3) A business is allowed a deduction for 150% of the full amount of a cash donation made in a tax year to a sporting entity recognised by the Fiji National Sports Commission.
[sub(3) amended by Act 9 of 2019, section 3; effective 1 January 2020; sub 24(4) amnd Act 14 of 2020 s8, effective 1 August 2020]

Legislative History:
Act 14 of 2020 – Prior to 1st August 2020 –
(3) A business is allowed a deduction for 150% of the full amount of a cash donation exceeding $15,000 made in a tax year to an approved sports fund established for the purposes of sports development in Fiji.

Act 9 of 2019 – Prior to 1st January 2020 –
(3) A business is allowed a deduction for 150% of the full amount of a cash donation exceeding $50,000 made in a tax year to an approved sports fund established for the purposes of sports development in Fiji.

(4) A person is allowed a deduction for 150% of the amount of a cash donation made in a tax year to the Fiji Heritage Foundation.

(5) A person is allowed a deduction for 200% of the amount of a cash donation exceeding $50,000 made in a tax year to the Poverty Relief Fund for Education.

(6) Subject to subsection (7), a person is allowed a deduction for—

a) 200% of the cost of new computers, laptops, and tablets donated to schools registered with the Ministry of Education and located in a remote area; or
b) 150% of the cost of new computers, laptops, and tablets donated to schools registered with the Ministry of Education and located in any other area.

(7) For the purposes of subsection (6)—

a) a deduction is allowed for a tax year only if the minimum cost incurred for the year on new computers, laptops, and tablets is $10,000; and
b) the maximum cost for a tax year is $100,000.

(8) A business is allowed a deduction for 150% of the amount of a cash donation with a minimum of $10,000 and a maximum of $100,000 made in a tax year to the Disaster Rehabilitation Fund.

(9) A company is allowed a deduction for 150% of the amount of a cash donation with a minimum of $100,000 and a maximum of $200,000 made in a tax year towards the hiring of international sporting coaches.

(10) A business is allowed a deduction for 150% of the amount of a cash donation not exceeding $50,000 made in a tax year towards any approved housing project by the Government for squatters.

(11) A business is allowed a deduction for 200% of the amount of cash donations with a minimum of $10,000 made in a tax year to the Farmers Disaster Relief Emergency Fund Account.

(12) No deduction is allowed under this section to reduce the employment income, or withholding tax as a final tax under section 125, of an employee.

(13) In this section—

approved academic institution means an academic institution approved by the CEO in accordance with the regulations;

approved charitable institution means a charitable institution approved by the CEO in accordance with the regulations; and

business means a company or an individual carrying on business as a sole trader.

[Section 25] Industry Incentives

(1) A person carrying on business is allowed a deduction for 150% of the amount contributed to Tourism Fiji in a tax year.

(2) A company is allowed a deduction for 150% of the prescribed costs incurred in a tax year in preparation for listing on the South Pacific Stock Exchange.

(3) A person is allowed a deduction for 150% of the expenditure, not exceeding $250,000, incurred in a tax year on marketing goods and services for export to South Pacific Island countries, excluding Australia and New Zealand.

(4) A person is allowed a deduction for 40% of the capital expenditure incurred by the person in a tax year in respect of an existing business of the person in Vanua Levu, other than a business to which the tax free region incentives apply.

(5) For the purpose of subsection (4), “capital expenditure” means expenditure of an amount not less than $50,000, excluding the cost of labour, incurred for the purpose of the extension or renovation of buildings located in Vanua Levu used in business.

(6) A financial institution is allowed a deduction for 150% of the direct capital expenditure incurred by the institution in rural banking programmes undertaken by the institution.

(7) A person engaged in value adding process using at least 50% of local content in a food processing, agriculture processing, fisheries or forestry business is allowed a deduction for the amount incurred in a tax year for investment and reinvestment in that business.

(8) A person exporting goods or services is allowed a deduction, representing a percentage of the export income, as set out in the following table—

Year of Assessment	Percentage of Export Income to be Deducted
2011	50%
2012	40%
2013	40%
2014	40%
2015	50%
2016	50%
Tax Year 2017	50%
Tax Year 2018	50%
Tax Year 2019	50%
Tax Year 2020	60%
Tax Year 2021	60%
Tax Year 2022	60%
Tax Year 2023	(a) in the case of the agriculture, fisheries or forestry industry – 90% (b) in any other industry – 60%
Tax Year 2024	(a) in the case of the agriculture fisheries or forestry industry – 90% (b) in any other industry – 60%

[subs (8) am Act 26 of 2017 s 6, effective 1 August 2017; [sub(3) amended by Act 9 of 2019, section 4; effective 1 January 2016, inserted by Act 3 of 2020, s 3, effective 1 April 2020, amended Act 28 of 2021 s3, effective 1 August 2021, amended Act 35 of 2021, s2, effective 1 August 2021]

Legislative History:

Act 35 of 2021 – from 1 August 2021-

Tax Year 2023	*(a) in the case of the agriculture, fisheries or forestry industry – 90%* *(b) in any other industry – 60%*
Tax Year 2024	*(a) in the case of the agriculture fisheries or forestry industry – 90%* *(b) in any other industry – 60%*

Act 28 of 2021 – from 1 August 2021-

Tax Year 2023	*(a) in the case of the agriculture or forestry industry – 90%* *(b) in any other industry – 60%*
Tax Year 2024	*(a) in the case of the agriculture or forestry industry – 90%* *(b) in any other industry – 60%*

Act 3 of 2020 – from 1 April 2020 –

Tax Year 2020	*60%*
Tax Year 2021	*60%*

Tax Year 2022	*60%*

Act 9 of 2019 – from 1 January 2016 –

Tax Year 2018	*50%*
Tax Year 2019	*50%*
Tax Year 2020	*50%*

Act 26 of 2017 – from 1 August 2017 –

Tax Year 2017	*50%*

(9) For the purposes of this section, "export income" means chargeable income derived by a person from the business of exporting goods or services, but excludes re-exports.
[subs (9) am Act 31 of 2016 s 102, effective 1 December 2016]

Legislative History:
Act 31 of 2016 – prior to 1st December 2016 – Section 25(9) read as-
(9) For the purposes of this section, "export income" means ***net profits*** *derived by a person from the business of exporting goods or services, but excludes re-exports.*

(10) The export income deduction under subsection (8) is only allowed if the CEO is satisfied that the export earnings have been remitted to Fiji.

(11) In subsection (7), "local content" includes material, labour and other matters prescribed.

(12) A person is allowed a deduction for 150% of the amount of expenses incurred in the Information Communications Technology start-ups involved in application design or software development.

(13) An Information Communications Technology training institution is allowed a deduction of 150% for the amount of expenses incurred.

(14) An employer is allowed a deduction for 50% of the expenditure on a uniform made in Fiji and supplied to an employee, provided that the costs of the uniform are not recovered from the employee.

(15) In determining chargeable income, the following deductions shall be allowed—

a) an amount, in accordance with instructions issued by the Minister under this paragraph for capital expenditure incurred on improvements to land use for agricultural or pastoral purposes, provided that—
   i. in computing what deduction, if any, shall be granted under this paragraph in respect of any asset which was acquired as a result of a transaction other than an arms-length transaction, such depreciation shall be computed as if the sale price realised by the vendor or disponor was the amount of the tax written-down value of the asset computed by deducting from its cost price to the vendor or disponor the initial and depreciation allowances which have been or would have been granted in respect thereof;
   ii. where any property of a taxpayer in respect of which an initial or depreciation allowance has been allowed or is allowable under this Act is disposed of, lost or destroyed at any time in the year of income, the depreciated value of the

property at that time, less the amount of any consideration receivable in respect of the disposal, loss or destruction shall, subject to the provisions of subparagraph (iii) be an allowable deduction;

iii. where any property referred to in subparagraph (ii) is disposed of by a transaction other than an arms-length transaction, no deduction shall be given, the sale price being treated as the value as written down by initial and depreciation allowances;

iv. for the purpose of this paragraph, the CEO may, where any property referred to in this proviso is sold together with other property at an inclusive price, determine the amount of the consideration attributable to such property;

b) such amount expended on prospecting for minerals in Fiji by a taxpayer who is a holder of a valid mining right, lease or tenement issued under the provisions of any enactment for the time being in force relating to mining, whether or not prospecting for minerals is connected with any business of the taxpayer, as the CEO may, in his or her discretion, allow, and which has not already been recouped from the sale of any mining right, lease or tenement; and, for the purpose of this subparagraph, such allowed expenditure shall, as the CEO in his or her discretion may direct, be treated either as an expense incurred in the year when it was incurred or as an expense to be spread over a number of years; and

c) in the case of profits derived from the sale of any minerals, timber or gravel or of a right in or right to work such minerals, timber or gravel, an amount equal to the cost of those minerals, timber or gravel or that right, save that, in respect of minerals, the deduction so allowed under this paragraph shall wholly exclude expenditure which may be claimed under paragraph (b) or under subsection (16).

[subs (15) am Act 31 of 2016 s 102, effective 1 December 2016]

Legislative History:
Act 31 of 2016 – prior to 1st December 2016 – Section 25(15) "total income" was replaced by "chargeable income"

(16) Notwithstanding subsection (15), any person engaged in mining who incurs in Fiji expenditure to which subsection (17) refers may, in each of any 5 of the 8 years immediately following the year in which such expenditure was incurred, or, if he or she prefers, out of the 8 years consisting of the year in which such expenditure was incurred and the 7 succeeding years, set off against his or her chargeable income one-fifth of the amount of such expenditure, provided that a deduction under section 31 or 35 shall not be allowed in addition to expenditure allowed under this subsection.

[subs (16) am Act 31 of 2016 s 102, effective 1 December 2016]

Legislative History:
Act 31 of 2016 – prior to 1st December 2016 – Section 25(16) read as-
(16) Notwithstanding subsection (15), any person engaged in mining who incurs in Fiji expenditure to which this section refers may, in each of any 5 of the 8 years immediately following the year in which such expenditure was incurred, or, if he or she prefers, out of the 8 years consisting of the year in which such expenditure was incurred and the 7 succeeding years, set off against his or

her total income one-fifth of the amount of such expenditure, provided that a deduction under subsection (15)(a) shall not be allowed in addition to expenditure allowed under this section.

(17) The expenditure to which subsection (16) refers is—

a) capital expenditure, not claimed under subsection (15)(b), incurred in the development of mines and the extraction, treatment, refinement and sale of minerals therefrom; and
b) expenditure incurred in the acquisition of any mining lease or tenement, provided that—
   i. where the CEO is of the opinion that the sum expended, whether in cash or by means of an issue of shares or otherwise, is excessive, having regard to the lease or tenement acquired and to the other circumstances of the case, he or she may make such adjustment with regard to such sum as, in his or her opinion, is just and reasonable;
   ii. this paragraph shall not apply in respect of a sale, transfer or assignment of any mining lease or tenement, if—
      A. any party or parties of the one part of the sale, transfer or assignment has or have the power (whether under the terms of the transaction or otherwise) to control directly or indirectly the entry into the transaction by, or the activities in connection with the mining rights of, a party of the other part; or
      B. any person or persons has or have the power (whether under the terms of the transaction or otherwise) to control directly or indirectly the entry into the transaction by, or the activities in connection with the mining rights of, a party of the one part and a party of the other part to the sale, transfer or assignment. For the purposes of this paragraph of the proviso, a person shall be deemed to be in control of his or her spouse and of any relative of his or her, whether by blood, marriage or adoption;
   iii. such expenditure as is excluded by subparagraph (B) shall not be claimable under subsection (15)(c).

[subs (17) am Act 31 of 2016 s 102, effective 1 December 2016]

Legislative History:
Act 31 of 2016 – prior to 1st December 2016 – Section 25(17) first line read as-
The expenditure to which subsections (16) to (18) refers is—

(18) The Minister may, in relation to capital expenditure incurred in the development of a new mine, substitute such other fraction for the fraction of one-fifth set out in subsection (16) and make corresponding provision for the period during which such expenditure may be set aside. An order made under this subsection may be general or restricted to a particular person or persons. During the currency of sunch order, subsection (16) shall be read in relation to the expenditure referred to in this subsection and to the persons affected by the order as if varied in accordance with the provisions of the order. For the purposes of this subsection, "a new mine" means a mine which was not in production on 1 January 1952.

[subs (18) am Act 31 of 2016 s 102, effective 1 December 2016]

Legislative History:

Act 31 of 2016 – prior to 1st December 2016 – Section 25(18) read as-
(18) The Minister may, in relation to capital expenditure incurred in the development of a new mine, substitute such other fraction for the fraction of one-fifth set out in subsection (1) and make corresponding provision for the period during which such expenditure may be set aside. An order made under this subsection may be general or restricted to a particular person or persons. During the currency of such order, subsection (1) shall be read in relation to the expenditure referred to in this subsection and to the persons affected by the order as if varied in accordance with the provisions of the order. For the purposes of this subsection, "a new mine" means a mine which was not in production on 1 January 1952.

[Section 25A] Other Incentives

The Minister may make regulations prescribing—

a) incentives, including—
   i. incentives to promote the investment in or growth of a particular industry or region in Fiji;
   ii. research and development incentives;
   iii. environment and climate change mitigation and adaptation incentives;
   iv. modernisation of buildings and housing development incentives;
   v. employment incentives, including through deductions from business income; and
   vi. incentives that will contribute to an identifiable benefit to Fiji; and
b) matters that are required to be prescribed or are necessary or convenient to be prescribed for the provision of the incentives under paragraph (a), including—
   i. terms or conditions issued by the CEO;
   ii. offences for failure to comply with any of the terms or conditions issued by the CEO or any of the requirements relating to the incentives; and
   iii. penalties for offences under regulations made in relation to the incentives with fines not exceeding $200,000 or imprisonment for terms not exceeding 10 years or both.

[s 25A subst Act 14 of 2018 s 2, effective 1 August 2018]

Legislative History:
Act 14 of 2018 – from 1 August 2018 – Section 25A inserted

[Section 26] Bad Debts

(1) A person is allowed a deduction for a tax year for a bad debt if the following conditions are satisfied—

a) the amount of the debt—
   i. was previously included in the gross income of the person; or
   ii. is money lent by the person in the normal course of carrying on a business of money lending to derive taxable business income;
b) the debt or part of the debt is written off in the person's financial accounts for the tax year;

c) there are reasonable grounds for believing that the debt is irrecoverable.

(2) The amount of the deduction allowed to a person under this section for a tax year must not exceed the amount of the debt written off in the person's financial accounts for that year.

[Section 27] Recouped Deductions

If a person has been allowed a deduction for any expenditure or loss incurred, or bad debt written off, in a tax year in the computation of the chargeable income of the person for the year and, subsequently, the person has received, in cash or in kind, any amount as a reimbursement or recovery of, or an indemnity for the expenditure or loss, or debt, the amount received is—

a) income included in the gross income of the person in the tax year in which it is received; and
b) treated as income of the same character as the income to which the deduction is related.

[Section 28] Natural Disaster Reserve

(1) Subject to subsection (2), a deduction is allowed for an amount deposited by a company in a tax year in an account with a financial institution for the purpose of providing a reserve for the loss to a building situated in Fiji caused by a windstorm, tidal wave, landslide or like catastrophe.

(2) The deduction allowed under subsection (1) for a tax year—

a) in relation to a commercial, industrial or agricultural building, is limited to 1.5% of the replacement cost of the building; or
b) in relation to a residential building, is limited to the lesser of—
    i. 1.5% of the replacement cost of the building; or
    ii. $500.

(3) No deduction is allowed under this Act for expenditure incurred by a company in relation to damage to a building to the extent that the expenditure is financed by an amount previously deposited to an account referred to in subsection (1) and for which a deduction has been allowed under that subsection in respect of the deposit.

(4) An amount for which a company has been allowed a deduction under subsection (1) that is withdrawn by the company from the account referred to in subsection (1) and that is not applied to the repair of a building damaged by a windstorm, tidal wave, landslide or like catastrophe is income included in the gross income of the company for the tax year in which the amount is withdrawn.

(5) In this section, "building" includes structural improvements to land on which a building is located that are used in connection with the building.

(6) Notwithstanding subsections (1) to (5), if a company has deposited an amount in an account with a financial institution in accordance with this section prior to 1 July 2021, the company may withdraw the amount to sustain a business activity of the company that is affected by the COVID-19 pandemic, provided that the amount withdrawn does not exceed the amount in the account as at 30 June 2021.

[sub (6) inserted Act 28 of 2021 s4, effective 1 August 2021

Legislative History:
Act 28 of 2021 – from 1 August 2021 – Section 28(6) inserted

[Section 28A] Pandemic Reserve

(1) Subject to subsection (2), a deduction is allowed for an amount deposited by a company in a tax year in an account with a financial institution for the purpose of providing a reserve for sustaining a business activity of the company that is affected by a pandemic.

(2) The deduction allowed under subsection (1) for a tax year is 150% of the amount deposited by the company.

(3) No deduction is allowed under this Act for expenditure incurred by a company to sustain a business activity of the company that is affected by a pandemic to the extent that the expenditure is financed by an amount previously deposited to an account referred to in subsection (1) and for which a deduction has been allowed under that subsection in respect of the deposit.

(4) An amount for which a company has been allowed a deduction under subsection (1) that is withdrawn by the company from the account referred to in subsection (1) and that is not applied to sustain the business activity of the company that is affected by a pandemic is income included in the gross income of the company for the tax year in which the amount is withdrawn.

[Sec 28 inserted by Act 28 of 2021, s5, effective 1 August 2021]

Legislative History:
Act 28 of 2021 – from 1 August 2021 – Section 28A inserted

[Section 29] Scientific Research Expenditure

(1) A person is allowed a deduction for scientific research expenditure incurred during a tax year in the course of carrying on a business to the extent that the expenditure is incurred for the purpose of deriving taxable business income.

(2) In this section—

scientific research means any activities in the fields of natural or applied science for the development of human knowledge;

scientific research expenditure in relation to a person carrying on a business, means the cost of scientific research undertaken for the purposes of developing the person's business, including any contribution to a scientific research institution which is used by the institution in undertaking research for the purposes of developing the person's business, but does not include the following—

a) expenditure incurred for the acquisition of a depreciable asset or an intangible asset;
b) expenditure incurred for the acquisition of land or structural improvement to land;
c) expenditure incurred for the purpose of ascertaining the existence, location, extent, or quality of a natural deposit; and

scientific research institution means an association, institute, college or university that undertakes scientific research.

[Section 30] Loss Carried Forward

(1) If the total deductions allowed to a person for a tax year, other than the deduction allowed under this section, exceeds the person's gross income, other than employment income, for that year, the person has a net loss for the year equal to the amount of the excess.

(2) If a person has a net loss for a tax year, the amount of the loss is carried forward to the following tax year and allowed as a deduction against the person's gross income, other than employment income, derived in that following year.

(3) If a net loss is not wholly deducted in a tax year under subsection (2), the undeducted amount is carried forward to the next following tax year and applied as specified in subsection (2) in that year, and so on until the loss is fully deducted, but no net loss can be carried forward—

a) for more than 4 tax years after the tax year in which the loss was incurred if the loss was incurred on or before 31 December 2018; and
b) for more than 8 tax years after the tax year in which the loss was incurred if the loss was incurred on or after 1 January 2019.

Legislative History:
Act 9 of 2019 – prior to 1st August 2019 – Section 30(3) read as-
(3) If a net loss is not wholly deducted in a tax year under subsection (2), the undeducted amount is carried forward to the next following tax year and applied as specified in subsection (2) in that year, and so on until the loss is fully deducted, but no net loss can be carried forward for more than 4 tax years after the tax year in which the loss was incurred.

(3A) Notwithstanding section 36(4), for the purposes of this section, if a company has a substituted tax year or transitional tax year, for the tax year which includes 1 January 2019 ("2019 tax year")—

(a) for the period of the 2019 tax year ending on 31 December 2018 ("prior period") if the total deductions allowed to the company for the prior period, other than the deduction allowed under this section, exceeds the company's gross income for that prior period, the company has a net loss for the prior period equal to the amount of the excess ("prior

period loss") and provided that the company has a net loss for the 2019 tax year, the prior period loss may be carried forward for up to 4 tax years after the tax year in which the loss was incurred; and

(b) for the period of the 2019 tax year commencing on 1 January 2019 ("subsequent period") if the total deductions allowed to the company for the subsequent period, other than the deduction allowed under this section, exceeds the company's gross income for that subsequent period, the company has a net loss for the subsequent period equal to the amount of the excess ("subsequent period loss") and provided that the company has a net loss for the 2019 tax year, the subsequent period loss may be carried forward for up to 8 tax years after the tax year in which the loss was incurred.".

(4) If a person has a net loss carried forward under this section for more than one tax year, the loss of the earliest year is deducted first.

[subs 3 and 3A amended by Act 9 of 2019 s5; effective 1 August 2019]

Legislative History:
Act 9 of 2019 –from 1st August 2019 – Section 30(3A) inserted

(5) The employment income derived by an employee in a tax year cannot be reduced by a net loss carried forward under this Act.

DIVISION 5 DEPRECIATION AND AMORTISATION

(Sections 31–35)

[Section 31] Depreciation of Depreciable Assets

(1) A person is allowed a deduction for a tax year for the amount by which the depreciable assets owned by the person have declined in value during the year through use in deriving income included in gross income.

(2) Subject to subsection (3), a person may elect for the depreciation deduction allowed under subsection (1) to be computed according to the straight-line method under section 32 or the diminishing value method under section 33 and an election so made applies to all depreciable assets owned by the person.

(3) A structural improvement can be depreciated only under the straight-line method and the cost of a structural improvement does not include the cost of the land on which the improvement is situated.

(4) A person may apply, in writing, to the CEO for a change in the method of depreciation and the CEO may, by notice in writing to the applicant, approve the application subject to such conditions as the CEO may specify in the notice.

(5) If a depreciable asset is used by a person in a tax year partly to derive income included in gross income and partly for another use, the amount of the depreciation deduction allowed under subsection (1) for the year is the fair proportional part of the amount computed under

section 32 or 33, as the case may be, that would be allowed if the asset were wholly used to derive income included in gross income.

(6) If a depreciable asset is not used by a person for the whole of the tax year to derive income included in gross income, the depreciation deduction for the year is computed according to the following formula—

Ax B/C

where—

A is the depreciation deduction computed under section 32 or 33 after taking into account subsection (5);

B is the number of days in the tax year the asset is used in deriving income included in gross income; and

C is the number of days in the tax year.

[Section 32] Straight-line Depreciation

(1) Subject to section 31(5) and (6), the depreciation deduction allowed under section 31 to a person for a tax year in respect of a depreciable asset under the straight-line method is computed by applying the rate prescribed by Regulations made under this Act against the cost of the asset.

(2) The total deductions allowed, or that would be allowed but for section 31(5), to a person in respect of a depreciable asset to which this section applies for the current tax year and all previous tax years must not exceed the cost of the asset.

[Section 33] Diminishing Value Depreciation

(1) Subject to section 31(5) and (6), the depreciation deduction allowed to a person for a tax year in respect of a depreciable asset under the diminishing value method is computed by applying the rate prescribed by Regulations made under this Act against the written down value of the asset at the beginning of the year.

(2) Subject to subsection (3), the written down value of a depreciable asset at the beginning of a tax year is—

a) if the asset was acquired during the year, the cost of the asset; or
b) in any other case, the cost of the asset as reduced by the total depreciation deductions allowed to the person in respect of the asset in previous tax years.

(3) If section 31(5) applies to a depreciable asset for a tax year, the written down value of the asset is computed on the basis that the asset has been used in that year solely to derive income included in gross income.

[Section 34] Disposal of Depreciable Asset

(1) Subject to this section, if a person disposes of a depreciable asset in a tax year the person is not allowed a depreciation deduction for the year and—

a) any excess of the consideration for the disposal of the asset over the written down value of the asset at the time of disposal, up to the total amount of depreciation deduction previously allowed in respect of the asset, is to be included in the gross income of the person for that year; and
b) where the asset is a capital asset, any excess of the consideration over the cost of the asset does not form part of the total income, but is to be subject to Capital Gains Tax in accordance with Part 3; or
c) if the written down value of the asset at the time of the disposal exceeds the consideration for the asset, the person is allowed a deduction in that year for the amount of the excess.

Legislative History:
Act 14 of 2020 –prior to 1st August 2020 – Section 34(1) read as-
34.— (1) Subject to this section, if a person disposes of a depreciable asset in a tax year, the person is not allowed a depreciation deduction for the year and—
(a) if the consideration for the disposal of the asset exceeds the written down value of the asset at the time of disposal, the amount of the excess is income included in the gross income of the person for that year; or
(b) if the written down value of the asset at the time of the disposal exceeds the consideration for the asset, the person is allowed a deduction in that year for the amount of the excess.

(2) If subsection (1) applies to a depreciable asset that has been used partly in deriving income included in gross income and partly for another use, the amount of income included in gross income under subsection (1)(a) or the amount allowed as a deduction under subsection (1)(b) is the proportional part that relates to the use of the asset in deriving income included in gross income.

[sub 34(2) amended by Act 14 of 2020 s9, effective 1 August 2020]

Legislative History:
Act 14 of 2020 –prior to 1st August 2020 – Section 34(2) read as-
(2) If subsection (1) applies to a depreciable asset that has been used partly in deriving income included in gross income and partly for another use and the consideration for the disposal of the depreciable asset is equal to or less than the cost of the asset at the time of the disposal, the amount of income included in gross income under subsection (1)(a) or the amount allowed as a deduction under subsection (1)(b) is the proportional part that relates to the use of the asset in deriving income included in gross income.

(3)

[sub 34(3) deleted by Act 14 of 2020 s9, effective 1 August 2020]

Legislative History:
Act 14 of 2020 –prior to 1st August 2020 – Section 34(3) read as-
(3) If subsection (1) applies to a depreciable asset that has been used partly in deriving income included in gross income and partly for another use and the consideration for the disposal of the asset exceeds the cost of the asset at the time of the disposal, the amount of income included in gross income under subsection (1)(a) is the sum of the following:
(a) the full amount of the difference between the consideration for the disposal and the cost of the asset at the time of the disposal;
(b) the proportional part of the difference between the cost of the asset and the written down value of the asset at the time of the disposal that relates to the use of the asset in deriving income included in gross income.

(4) If subsection (1)(a) applies to the disposal of a depreciable asset (referred to as the "replaced asset") by a person and the person acquires a similar depreciable asset wholly used to derive income included in gross income (referred to as the "replacement asset") within 12 months after the disposal, the person may elect by notice in writing to the CEO to defer recognition of the gain on disposal of the replaced asset until the subsequent disposal of the replacement asset.

(5) If a person makes an election under subsection (4) and the consideration given by the person for the replacement asset is equal to or exceeds the consideration received or receivable for the replaced asset, the cost of the replacement asset is the written down value of the replaced asset at the time of disposal increased by the amount of the excess, if any.

(6) If a person makes an election under subsection (4) and the consideration received or receivable for the replaced asset exceeds the consideration given for the replacement asset, the cost of the replacement asset is the written down value of the replaced asset at the time of disposal reduced by the amount of the excess.

(7) Subject to subsection (8), the written down value of a depreciable asset at the time of disposal of the asset is the cost of the asset at the time of disposal reduced by the depreciation deductions allowed to the person in respect of the asset in previous tax years.

(8) If section 31(5) applies to a depreciable asset for a tax year, the written down value of the asset is computed on the basis that the asset was used in that year solely to derive income included in gross income.

[Section 35] Amortisation of Business Intangibles

(1) A person is allowed an amortisation deduction for a tax year for the amount by which the person's business intangibles have declined in value during the year through use in deriving taxable business income.

(2) Subject to subsections (4) and (5), the amortisation deduction allowed to a person for a tax year in respect of a business intangible is computed by applying the amortisation rate specified in subsection (3) against the cost of the business intangible.

(3) The rate of amortisation is—

a) in the case of pre-commencement expenditure, 25%;
b) in the case of a business intangible mentioned in section 2(b) definition of "business intangible", 100% divided by the period of the lease;
c) in the case of a business intangible with a useful life of more than 10 years, other than a business intangible referred to in paragraph (b), 10%; or
d) in the case of any other business intangible, 100% divided by the useful life of the intangible.

(4) If a business intangible is used by a person in a tax year partly to derive taxable business income and partly for another use, the amount of the amortisation deduction for the year is the

fair proportional part of the amount computed under subsection (2) that relates to the use of the business intangible to derive taxable business income.

(5) If a business intangible is not used for the whole of the tax year in deriving taxable business income, the amortisation deduction for the year is computed according to the following formula—

Ax B/C

where—

A is the amortisation deduction computed under subsection (2) after taking into account subsection (4);

B is the number of days in the tax year the asset is used in deriving taxable business income; and

C is the number of days in the tax year.

(6) The total deductions allowed, or that would be allowed but for subsection (4), to a person under this section in respect of a business intangible for the current tax year and all previous tax years must not exceed the cost of the business intangible.

(7) Subject to subsections (8) and (9), if a person disposes of a business intangible in a tax year, the person is not allowed an amortisation deduction for the year and—

a) if the consideration for the disposal of the intangible exceeds the written down value of the intangible at the time of disposal, the amount of the excess is income included in the gross income of the person for that year; or
b) if the written down value of the intangible at the time of the disposal exceeds the consideration for the intangible, the person is allowed a deduction in that year for the amount of the excess.

(8) If subsection (7) applies to a business intangible that has been used partly in deriving taxable business income and partly for another use and the consideration for the disposal is equal to or less than the cost of the business intangible at the time of the disposal, the amount of income included in gross income under subsection (7)(a) or allowed as a deduction under subsection (7)(b) is the proportional part that relates to the use of the business intangible in deriving taxable business income.

(9) If subsection (7) applies to a business intangible that has been used partly in deriving taxable business income and partly for another use and the consideration for the disposal of the business intangible exceeds the cost of the intangible at the time of the disposal, the amount of income included in gross income under subsection (7)(a) is the sum of the following—

a) the full amount of the difference between the consideration for the disposal and the cost of the intangible at the time of the disposal;
b) the proportional part of the difference between the cost of the intangible and the written down value of the intangible at the time of the disposal that relates to the use of the intangible in deriving taxable business income.

(10) Subject to subsection (11), the written down value of a business intangible at the time of disposal of the intangible is the cost of the intangible at the time of disposal reduced by the amortisation deductions allowed to the person in respect of the intangible in previous tax years.

(11) If subsection (4) applies to a business intangible for a tax year, the written down value of the intangible is computed on the basis that the intangible was used in that year solely to derive taxable business income.

DIVISION 6 INCOME TAX ACCOUNTING
(Sections 36–42)

[Section 36] Substituted Tax Year

(1) A company carrying on a business may, with the written approval of the CEO, adopt a period of 12 months other than the calendar year as the tax year of the company (referred to as the "substituted tax year") and that period is the tax year for the company for each succeeding year unless, with the written approval of the CEO, another period of 12 months is adopted as the company's tax year.

(2) If a company's tax year changes as a result of subsection (1) and the period between the last full tax year prior to the change and the date on which the new tax year commences is 6 months or less (referred to as the transitional period), the transitional period is treated as part of the first substituted tax year.

(3) If a company's tax year changes as a result of subsection (1) and the transitional period is more than 6 months, the transitional period is treated as a separate tax year (referred to as the "transitional tax year").

(4) The law under this Act applicable to a substituted tax year or a transitional tax year is—

a) if the substituted tax year or transitional tax year ends in the period 1 January to 30 June, the law applicable for the calendar year in which the substituted tax year or transitional tax year commenced; or
b) if the substituted tax year or transitional tax year ends in the period 1 July to 31 December, the law applicable for the calendar year in which the substituted tax year or transitional tax year ends.

[Section 37] Method of Income Tax accounting

(1) An employee must account for employment income on a cash basis.

(2) Subject to subsection (4), the following persons must account for gross income, and expenditures and losses on an accrual basis—

a) a company;
b) a partnership; and
c) a person required to account for valued added tax on an invoice basis under section 36 of the Value Added Tax Act 1991.

(3) Subject to subsections (1) and (4), a person to whom subsection (2) does not apply may account for gross income, and expenditures and losses on a cash or accrual basis, provided that the same basis is used for determining both gross income, and expenditures and losses.

(4) The CEO may specify that any class of persons must account for Income Tax purposes on a cash or accrual basis.

(5) A person may apply, in writing, for a change in the person's method of accounting for Income Tax and the CEO may, by notice in writing, approve the application but only if he or she is satisfied that the change is necessary to properly compute the chargeable income of the person.

(6) If a person's method of accounting for Income Tax changes, the person must make adjustments in the tax year of change to items of income, deduction or credit, or to any other items affected by the change so that no item is omitted and no item is taken into account more than once.

[Section 38] Cash-basis Accounting

A person accounting for Income Tax on a cash basis derives an amount when it is received by the person and incurs expenditure when it is paid by the person.

[Section 39] Accrual-basis Accounting

(1) A person accounting for Income Tax on an accrual basis derives an amount when it is due to the person and incurs expenditure when it is payable by the person.

(2) Subject to this Act, an amount is due to a person at the time the person becomes entitled to receive it even if the time for discharge of the liability is postponed or the amount is payable by instalments.

(3) If—

a) a person has been allowed a deduction for any expenditure incurred in deriving gross income; and

b) the person has not paid the liability or a part of the liability to which the deduction relates within one year after the end of the tax year in which the deduction was allowed,

the unpaid amount of the liability is income included in the gross income of the person for the first tax year following the end of the one-year period.

(4) An amount to which subsection (3) applies has the same character as the income to which the deduction relates.

(5) If the amount of an unpaid liability is included in gross income under subsection (3) and the person subsequently pays the liability or a part of the liability, the person is allowed a deduction for the amount paid in the tax year in which the payment is made.

[Section 40] Trading stock

(1) The amount that a person is allowed as a deduction for a tax year for the cost of trading stock disposed of during the year is computed in accordance with the following formula—

$$(A + B) - C$$

where—

A is the opening value of the trading stock of the person for the year;

B is the cost of trading stock acquired by the person in the year; and

C is the closing value of trading stock of the person for the year.

(2) The opening value of trading stock of a person for a tax year is—

a) the closing value of the trading stock of the person for the previous tax year; or
b) if the person commenced business in the year, the value of any trading stock acquired by the person prior to the commencement of the business.

(3) The value referred to in subsection (2)(b) is the lesser of—

a) cost of the trading stock; or
b) the fair market value of trading stock determined at the time the trading stock is brought into the business.

(4) The closing value of the trading stock of a person for a tax year is the lower of cost or fair market value of the trading stock of the person on hand at the end of the year.

(5) A person accounting for Income Tax purposes on a cash basis may compute the person's cost of trading stock under the prime-cost method or absorption-cost method, and a person accounting for Income Tax purposes on an accrual basis must compute the person's cost of trading stock under the absorption-cost method.

(6) If particular items of trading stock cannot be readily identifiable, a person may account for that trading stock under any method recognised under generally accepted accounting principles, but the last-in-first-out method may not be used.

(7) If a person disposes of trading stock outside the ordinary course of business, including as part of the sale of a business—

a) the consideration for the disposal; and
b) the cost for the person acquiring the trading stock,

is the fair market value of the trading stock at the time of disposal.

(8) In this section, "absorption-cost method", "last-in-first-out method", and "prime-cost method" have their meaning under generally accepted accounting principles.

[Section 41] Finance Leases

(1) If a person has entered into a finance lease in relation to an asset, this Act applies to the person on the basis that the—

a) lessee is the owner of the asset;
b) lessee acquired the asset at the commencement of the lease, except when the lessee was the owner of the asset; and
c) lessor has made a blended loan to the lessee at the commencement of the lease and each lease payment is in part repayment of principal and in part payment of interest under that loan.

(2) The cost of an asset treated as owned by the lessee under subsection (1)(a) is—

a) if the lessor and lessee are not associates and an amount is stated as the cost or value of the asset in the lease agreement, that amount; or
b) in any other case, the fair market value of the asset at the commencement of the lease.

(3) The amount of the loan referred to in subsection (1)(c) is the amount determined under subsection (2) as the cost of the asset.

(4) The interest part of each payment made under the loan is computed by reference to the interest rate implicit in the lease agreement.

(5) In this section—

blended loan means a loan under which payments by the borrower represent in part a payment of interest and in part a repayment of principal where the interest part is calculated on the principal outstanding at the time of each payment;

finance lease means a lease that is treated under generally accepted accounting principles as a finance lease and is so accounted for by the lessor in its financial accounts; and

lease term includes any additional period of the lease under an option to renew.

[Section 42] Long-term Contracts

(1) A person accounting for Income Tax on an accrual basis must compute the gross income and expenditures deductible under this Act arising under a long-term contract during a tax year under the percentage of completion method.

(2) If, in the tax year in which a long-term contract is completed—

a) the person carrying out the contract has a final year loss; and
b) the person is not able to carry the loss forward under section 30 for the reason that the person ceases to carry on business in Fiji at the end of the contract,

the loss may be carried back to the preceding 2 tax years and allowed as a deduction in those years commencing with the year immediately preceding the year in which the contract was completed.

(3) The time limits for the amendment of assessments under section 11 of the Tax Administration Act 2009 do not apply for the purposes of subsection (2).

(4) A person has a final year loss under a long-term contract if both the following conditions are satisfied—

a) the chargeable income estimated to be made under the contract for the purposes of the percentage of completion method exceeds the actual chargeable income, if any, under the contract; and
b) the amount of the excess under paragraph (a) exceeds the difference between the gross income and deductible expenditures computed under subsection (1) for the tax year in which the contract was completed,

and the amount of the excess under paragraph (b) is the amount of the final year loss.

(5) In this section—

long-term contract means a contract for manufacture, installation or construction, or, in relation to each, the performance of related services, that is not completed within the tax year in which work under the contract commenced, other than a contract estimated to be completed within 6 months of the date on which work under the contract commenced; and

percentage of completion method means the generally accepted accounting principle under which revenues and expenditures arising under a long-term contract are recognised by reference to the stage of completion of the contract determined by reference to the actual costs incurred as a percentage of estimated total contract costs under the contract.

DIVISION 7 MISCELLANEOUS RULES RELATING TO INCOME AND DEDUCTIONS (Sections 43–47)

[Section 43] Income of joint owners

(1) For the purposes of this Act, if property is jointly owned by 2 or more persons, any income, or expenditures or losses relating to the property are apportioned among the owners according to their respective interests in the property.

(2) If the interests of the owners of jointly owned property cannot be ascertained, the owners of the property are treated as having an equal interest in the property.

[Section 44] Benefits-in-Kind

(1) In determining whether a benefit-in-kind is income included in gross income, the fact that the benefit is not otherwise convertible to cash is to be disregarded.

(2) Subject to this Act, the value of a benefit-in-kind included in gross income is the fair market value of the benefit at the time that the benefit is derived and ignoring any restriction on transfer.

[Section 45] Classes of Income

(1) Subject to this Act, an expenditure or loss relating to—

a) the derivation of more than one class of income; or
b) the derivation of a class of income and to some other purpose,

is apportioned on any reasonable basis taking account of the relative nature and size of the activities or purposes to which the expenditure or loss relates.

(2) The following are treated as a separate class of income—

a) taxable foreign-source income;
b) any other income included in gross income; and
c) exempt income.

[Section 46] Cessation of Source of Income

(1) If—

a) any income is derived by a person in a tax year from a business, activity, investment or other source that had ceased before the income was derived; and
b) had the income been derived before the business, activity, investment, or other source ceased it would have been included in the gross income of the person,

this Act applies to the income on the basis that the business, activity, investment or other source had not ceased at the time the income was derived.

(2) An expenditure or loss incurred to derive income to which subsection (1) applies is deductible to the extent allowed in accordance with this Act.

[Section 47] Rules to Prevent Double Derivation and Double Deductions

(1) For the purposes of this Act, if—

a) income is included in gross income on the basis that it is due, the income is not included again on the basis that it is received; or
b) income is included in gross income on the basis that it is received, the income is not included again on the basis that it is due.

(2) For the purposes of this Act, if—

a) expenditure is deductible under this Act on the basis that it is payable, the expenditure is not deductible again on the basis that it is paid; or
b) expenditure is deductible under this Act on the basis that it is paid, the expenditure is not deductible again on the basis that it is payable.

DIVISION 8 INSURANCE

(Sections 48-49)

[Section 48] Short-term Insurance

(1) The gross income of a resident company from carrying on a short-term insurance business for a tax year is the sum of the following amounts—

a) the gross premiums derived by the company in the year for the insurance of any risk, including premiums on reinsurance, but not including premiums returned to the insured;
b) any other income derived by the company in carrying on the short-term insurance business included in gross income under this Act, including any commission or expense allowance derived from the reinsurance of any risk, and any income derived from investments of the business;
c) the amount of the company's reserve for unexpired risks deducted in the previous tax year under subsection (2)(c).

(2) The total deductions allowed to a resident company in carrying on a short-term insurance business for a tax year is the sum of the following amounts—

a) the amount of the claims admitted by the company in the year less any amount recovered or recoverable under any contract of re-insurance, guarantee, security or indemnity;

b) the amount of agency expenses incurred by the company in the year in carrying on the short-term insurance business;
c) the balance of the company's reserve for unexpired risks at the percentage adopted by the company at the end of the year;
d) the total amount of any other expenditure or loss incurred by the company in carrying on the short-term insurance business in the year allowed as a deduction under this Act.

(3) The gross income of a non-resident company from carrying on a short-term insurance business in Fiji for a tax year is the sum of the following amounts—

a) the gross premiums derived by the company in the year for the insurance of any risk in Fiji, including premiums on reinsurance, but excluding premiums returned to the insured;
b) the total amount of any income derived from sources in Fiji by the company in carrying on the short-term insurance business that is included in the gross income of the company for the year, including any commission or expense allowance derived from the reinsurance of any risk in Fiji, and any income derived from investments of the business;
c) the amount of the company's reserve for unexpired risks deducted in the previous tax year under subsection (4)(c).

(4) The total deductions allowed to a non-resident company in carrying on a short-term insurance business in Fiji for a tax year is the sum of the following amounts—

a) the amount of the claims admitted by the company in the year in respect of insured risks in Fiji less any amount recovered or recoverable under any contract of re-insurance, guarantee, security, or indemnity;
b) the amount of agency expenses incurred by the company in Fiji in carrying on the short-term insurance business in the year;
c) the balance of the company's reserve for unexpired risks in Fiji at the percentage adopted by the company as at the end of the year;
d) the total amount of any other expenditure or loss incurred by the company in carrying on the short-term insurance business in the year allowed as a deduction in accordance with this Act.

(5) If a company carries on a short-term insurance business to which this section applies and any other business, the chargeable income of the company is computed taking account of all activities of the company but the income derived by the company from carrying on a short-term insurance business is a separate class of income for the purposes of section 45.

(6) In this section—

claim does not include a claim made under a life policy; and

risk does not include a risk under a life policy.

[Section 49] Life Insurance

(1) The chargeable income of a company carrying on a life insurance business is computed in accordance with the regulations.

(2) If a company carries on a life insurance business to which this section applies and any other business, the chargeable income of the company is computed taking account of all activities of the company but the income derived by the company from carrying on a life insurance business is a separate class of income for the purposes of section 45.

DIVISION 8A REPURCHASE TRANSACTIONS
(Sections 49A – 49D)

Legislative History:
Act 29 of 2022 – from 1 August 2022 – Division 8A inserted

[Section 49A] Application of Division 8A
This Division applies notwithstanding any other section in this Act.

[Section 49B] Interpretation
In this Division, unless the context otherwise requires—

"**Central Bank**" means the Reserve Bank of Fiji;

"**financial institution**" has the same meaning under section 2 but does not include an insurance company;

"**repo transaction**" means a repurchase agreement or a sale and purchase agreement carried out between a financial institution and the Central Bank under the Master Repo Agreement authorised by the Central Bank; and

"**Master Repurchase Agreement**" means a repurchase agreement between the Central Bank and financial institutions.

[Section 49C] Disposal of securities under a repo transaction
(1) Subject to section 49D, any gain made on the disposal of securities under a repo transaction is exempt from Capital Gains Tax.

(2) Any subsequent reacquisition of the securities in subsection (1) under the repo transaction will not change the cost of the security for the purpose of calculating subsequent gains or losses.

[Section 49D] Default under a repo transaction
(1) If a financial institution defaults under the Master Repo Agreement, the exemption granted on the disposal of securities under section 49C ceases to apply and any tax payable at the date of transfer of the security becomes immediately payable.

(2) Subsection (1) does not apply where the security is provided in the form of shares and bonds listed on the South Pacific Stock Exchange.

DIVISION 9 APPLICATION OF INCOME TAX TO PERSONS
(Sections 50–59)
Subdivision 1 Individuals
(Section 50)

[Section 50] Chargeable income of Individuals

The chargeable income of each individual is computed separately.

Subdivision 2 Partnerships
(Sections 51–53)

[Section 51] Principles of Taxation for Partnerships

(1) This Subdivision specifies how the Income Tax applies to amounts derived, and expenditures and losses incurred, through activities conducted by persons in partnership.

(2) A partnership is liable to furnish a partnership return of income in accordance with section 104, but the partners, and not the partnership, are liable to pay Income Tax in respect of the partnership's activities as set out in this Subdivision.

(3) Subject to subsection (4), the presence or absence of a written partnership agreement is not decisive in determining whether a partnership relationship exists between persons.

(4) Spouses carrying on a business together are not treated as doing so in partnership unless the CEO is satisfied that each spouse makes a separate and distinct contribution to the partnership based on their capital contribution or personal skills.

(5) Any election, notice or statement required to be filed in relation to a partnership's activities must be filed by the partnership and binds all the partners.

(6) If a partnership has a non-resident partner or partners, then, for the purposes of section 41 of the Tax Administration Act 2009, each resident partner in the partnership is treated as a representative of each non-resident partner in the partnership.

(7) In this section—

non-resident partner means a partner in a partnership who is not a resident person; and

resident partner means a partner in a partnership who is a resident person.

[Section 52] Computation of Chargeable Partnership Income and Partnership Loss

(1) Subject to subsection (3), the chargeable partnership income of a partnership for a tax year is—

a) the gross income of the partnership for that year calculated as if the partnership were a resident person; less
b) the total amount of deductions allowed under this Act for expenditures or losses to the extent incurred by the partnership in deriving that income, other than the deduction allowed under section 30.

(2) Subject to subsection (3), a partnership has a partnership loss for a tax year if the amount in subsection (1)(b) exceeds the amount in subsection (1)(a) for the year, and the amount of the excess is the amount of the partnership loss.

(3) For the purposes of calculating the chargeable partnership income or partnership loss of a partnership under this section and notwithstanding section 12(a), the gross income of the partnership includes amounts subject to tax under section 10 or 11.

[Section 53] Taxation of Partners

(1) The gross income of a partner in a partnership for a tax year includes—

a) if the partner is a resident person for the whole of the tax year, the partner's share of the chargeable partnership income of the partnership for the year;
b) if the partner is a non-resident person for the whole of the tax year, the partner's share of the chargeable partnership income for the year that is attributable to income derived from sources in Fiji; or
c) if the partner is a resident person for part of the tax year and a non-resident person for the other part of the tax year—
    i. the partner's share of the chargeable partnership income of the partnership for that part of the year the partner is a resident person; and
    ii. the partner's share of the chargeable partnership income for that part of the year the partner was a non-resident person and that is attributable to income derived from sources in Fiji.

(2) A partner in a partnership is allowed a deduction for a tax year—

a) if the partner is a resident person for the whole of the tax year, for the partner's share of a partnership loss of the partnership for the year;
b) if the partner is a non-resident person for the whole of the tax year, for the partner's share of a partnership loss of the partnership for the year that is attributable to income derived from sources in Fiji; or
c) if the partner is a resident person for part of the tax year and a non-resident person for the other part of the tax year—

i. for the partner's share of a partnership loss of the partnership for that part of the year the partner was a resident person; and

ii. for the partner's share of a partnership loss of the partnership for that part of the year the partner was a non-resident person and that is attributable to income derived from sources in Fiji.

(3) For the purposes of subsections (1)(b), (c)(ii), (2)(b) and (c)(ii), income derived from sources in Fiji includes only—

a) income derived by the partnership to the extent to which it is directly or indirectly attributable to—

   i. a business carried on by the partnership through a permanent establishment in Fiji;

   ii. sales in Fiji of goods or merchandise of the same or similar kind as those sold by the partnership through a permanent establishment in Fiji; or

   iii. any other business activity carried on in Fiji of the same or similar kind as that carried on by the partnership through a permanent establishment in Fiji; and

b) mounts derived by the partnership treated as derived from sources in Fiji under section 7(4), other than amounts to which section 10 or 11 apply.

(4) If the gross income of a resident partner under subsection (1) includes the partner's share of income to which section 10 or 11 applies, the partner is entitled to a tax credit for the partner's share of the tax paid under section 10 or 11 in relation to that income.

(5) A tax credit allowed under subsection (4) is applied in accordance with section 8(3).

(6) A tax credit or part of a tax credit allowed to a person under subsection (4) for a tax year that is not credited under section 8(3) for the year is refunded to the person in accordance with section 33 of the Tax Administration Act 2009.

(7) Income derived, or expenditure or losses incurred, by a partnership retain their character as to geographic source and type of income, expenditure or loss in the hands of the partners, and are allocated to partners on a pro rata basis.

(8) Subject to subsection (9), a partner's share of chargeable partnership income or a partnership loss is equal to the partner's percentage interest in the income of the partnership as set out in the partnership agreement.

(9) If the allocation of income in the partnership agreement does not reflect the contribution of the partners to the partnership's operations or there is no written partnership agreement, a partner's share of chargeable partnership income or a partnership loss is equal to the partner's percentage interest in the capital of the partnership.

Subdivision 3 Trusts
(Sections 54–57)

[Section 54] Principles of Taxation for Trusts

(1) Income derived by the trustee of a trust are taxed either to the trustee, settlor or beneficiary of the trust in accordance with this Subdivision.

(2) A trustee is not liable for Income Tax except as provided for in this Subdivision.

(3) The trustee of a trust is required to furnish a trust return of income in accordance with section 104 in relation to the trust.

(4) For the purposes of section 41 of the Tax Administration Act 2009, the trustee of a trust is treated as a representative of each beneficiary of the trust who is a non-resident person.

(5) In this section, "settlor" has the meaning in section 55.

[Section 55] Settlor and Absolute Beneficiary Trusts

(1) For all purposes of this Act, the following apply to a settlor trust—

a) a settlor trust is not treated as an entity separate from the settlor of the trust;
b) amounts derived, and expenditures and losses incurred, by the trustee of a settlor trust are treated as derived or incurred by the settlor;
c) the assets of a settlor trust are treated as owned by the settlor and any dealing in the assets by the trustee is treated as a dealing of the settlor.

(2) For all purposes of this Act, the following apply to an absolute beneficiary trust—

a) an absolute beneficiary trust is not treated as an entity separate from the beneficiary of the trust;
b) amounts derived, and expenditures and losses incurred, by the trustee of an absolute beneficiary trust are treated as derived or incurred by the beneficiary;
c) the assets of an absolute beneficiary trust are treated as owned by the beneficiary and any dealing in the assets by the trustee is treated as a dealing of the beneficiary.

(3) In this section—

absolute beneficiary trust means a trust that satisfies the following conditions—

a) the trust has a single beneficiary;
b) if the beneficiary of the trust is a non-resident person, the only income of the trust is derived from sources in Fiji and the only assets of the trust are Fiji assets;

c) the beneficiary has an absolute entitlement to the assets of the trust as against the trustee;

absolute entitlement means a trust that satisfies the following conditions—

a) the trust has a single beneficiary;
b) if the beneficiary of the trust is a non-resident person, the only income of the trust is derived from sources in Fiji and the only assets of the trust are Fiji assets;
c) the beneficiary has an absolute entitlement to the assets of the trust as against the trustee;

settlor in relation to a trust, means a person who—

a) has transferred money or an asset, or has provided a benefit to the trust;
b) has the power to revoke or alter the trust so as to acquire a beneficial entitlement in the whole or part of the capital or income of the trust, or has a reversionary interest in the capital or income of the trust; and
c) if the person is a non-resident person, the only income of the trust is derived from sources in Fiji and the only assets of the trust are Fiji assets; and

settlor trust means a trust in relation to which there is a settlor.

[Section 56] Taxation of Beneficiaries

(1) Amounts derived by a trustee of a trust to which a beneficiary of the trust is presently entitled are treated as derived by the beneficiary.

(2) If a beneficiary is treated as having derived income under subsection (1), the beneficiary is treated as having incurred any expenditure or loss incurred by the trustee to the extent to which it relates to the derivation of income to which subsection (1) applies.

(3) For the purposes of subsections (1) and (2)—

a) an amount, or expenditure or loss, retains its character and geographic source in the hands of the beneficiary; and
b) an amount is treated as derived, and expenditures and losses are treated as incurred by the beneficiary at the time the amount was derived or incurred by the trustee.

(4) The gross income of a resident beneficiary includes a distribution received by the beneficiary from a non-resident trust except to the extent that the distribution represents an amount derived by the trustee of the non-resident trust—

a) to which subsection (1) applies;
b) that has been taxed to the trustee under section 57; or
c) that would have been exempt income if derived by the resident beneficiary.

(5) A beneficiary is presently entitled to income of a trust if the beneficiary has a vested and indefeasible interest in the income and an immediate right to demand payment of the income from the trustee.

(6) In this section—

distribution in relation to a resident beneficiary, includes the amount of a loan, payment for goods or services, the fair market value of an asset or service provided, or the amount of a debt obligation released by a nonresident trust in favour of the resident beneficiary of the trust to the extent that the transaction is, in substance, a distribution of income accumulated in the trust; and

resident beneficiary in relation to a trust, means a beneficiary of the trust who is a resident person.

[Section 57] Taxation of Trustees

(1) The trustee of a trust is liable for Income Tax for a tax year in respect of the chargeable trust income of the trust for the year at the rate or rates prescribed by Regulations made under this Act.

(2) If a trustee has paid Income Tax on the chargeable trust income of a trust under this section, that income is not taxed again in the hands of the beneficiary.

(3) The trustee of a trust is personally liable for an Income Tax liability arising in respect of the chargeable trust income of the trust that is not satisfied out of the assets of the trust and, if there is more than one trustee, the trustees are jointly and severally liable.

(4) Subject to subsection (5), the "chargeable trust income" of a trust for a tax year is—

a) in the case of a resident trust, the gross income derived by the trustee for the year reduced by the sum of the following—
   i. any part of that amount to which section 56(1) applies for the year; and
   ii. the total deductions allowed under this Act in respect of expenditures or losses incurred by the trustee for the year, other than amounts to which section 56(2) applies; or
b) in the case of a non-resident trust, the gross income derived by the trustee from sources in Fiji for the year reduced by the sum of the following—
   i. any part of that amount to which section 56(1) applies for the year and in respect of which the beneficiary has paid tax; and
   ii. the total deductions allowed under this Act in respect of expenditures or losses incurred by the trustee for the year that relate to the gross income derived by the trustee from sources in Fiji, other than amounts to which section 56(2) applies.

(5) If a trust is a resident trust for a part of a tax year and a non-resident trust for the other part of a tax year, the trust has—

a) a chargeable trust income calculated under subsection (4)(a) for the part of the tax year that the trust is a resident trust; and
b) a chargeable trust income calculated under subsection (4)(b) for the part of the tax year that the trust is not a resident trust estate.

Subdivision 4 Companies
(Sections 58-59)

[Section 58] Principle of Taxation for Companies

A company is liable for tax separately from its members.

[Section 59] Change in Control of Company

(1) If there is a change of more than 50% in the underlying ownership of a company, any carry forward loss incurred for a tax year before the change is not allowed as a deduction in a tax year after the change, unless the company—

a) carries on the same business after the change as it carried on before the change until the earlier of either the loss has been fully deducted or the period for carrying the loss forward under the Act has expired; and
b) does not, until the earlier of either the loss has been fully deducted or the period for carrying the loss forward under the Act has expired, engage in any new business or investment after the change if the principal purpose of the company or the members of the company is to utilise the loss so as to reduce the Income Tax payable on the amounts derived from the new business or investment.

(2) In this section, “carry forward loss” means a net loss carried forward under section 30 or a foreign business loss carried forward under section 61.

DIVISION 10 INTERNATIONAL
(Sections 60–63)

[Section 60] Foreign Tax Credit

(1) If a resident person derives taxable foreign-source income in respect of which the person has paid foreign Income Tax, the person is allowed a tax credit (referred to as a "foreign tax credit") of an amount equal to the lesser of—

a) the foreign Income Tax paid; or
b) the Fiji Income Tax payable in respect of the taxable foreign-source income.

(2) For the purposes of subsection (1)(b), the Fiji Income Tax payable in respect of taxable foreign-source income derived by a resident person in a tax year is computed by applying the average rate of Fiji Income Tax applicable to the person for the year against the net foreign-source income of the person for the year.

(3) The foreign tax credit of a resident person for a tax year is computed separately for the business income of the person that is foreign-source income and the other foreign-source income of the person.

(4) Where subsection (3) applies, deductions are apportioned for the purposes of the definition of "net foreign-source income" in subsection (8)(b) in accordance with section 45 on the basis that the business income that is foreign source income and the other foreign-source income are separate classes of income.

(5) A foreign tax credit is allowed under this section only if the foreign Income Tax is paid within 2 years after the end of the tax year in which the foreign-source income to which the tax relates was derived by the resident person or within such further time as the CEO allows.

(6) A foreign tax credit allowed under this section is applied in accordance with section 8(3).

(7) Any foreign tax credit or part of a foreign tax credit allowed under this section for a tax year that is not credited under section 8(3) is not refunded, carried back to the preceding tax year or carried forward to the following tax year.

(8) In this section—

average rate of Fiji Income Tax in relation to a resident person for a tax year, means the percentage that the Fiji Income Tax payable by the person for the year, before the allowance of any tax credit under this Act, is of the chargeable income of the person for the year;

Fiji Income Tax means the Income Tax imposed under this Act;

[delete definition am Act 5 of 2023 s 6, effective 1 August 2023]

Legislative History:
Act 05 of 2023 – Prior to 1st January 2024 – Section 60 (8):
Fiji Income Tax means the Income Tax and Social Responsibility Tax imposed under this Act;

foreign Income Tax means the Income Tax, including withholding tax, imposed by the government of a foreign country or a political subdivision of a government of a foreign country, but does not include penalty, additional tax, or interest payable in respect of such tax; and

net foreign-source income, in relation to a resident person for a tax year, means the total taxable foreign-source income of the person for the year, as reduced by any deductions allowed to the person under this Act for the year that—

a) relate exclusively to the derivation of the taxable foreign-source income; and
b) are apportioned to the derivation of taxable foreign-source income in accordance with section 45.

[Section 61] Foreign Losses

(1) An amount that a resident person is allowed as a deduction under this Act in deriving taxable foreign-source income is deductible only against that income.

(2) If a resident person has a foreign loss for a tax year, the amount of the loss is carried forward to the following tax year and allowed as a deduction against the person's taxable foreign-source income derived in that following year.

(3) If a foreign loss is not wholly deducted in a tax year under subsection (2), the undeducted amount is carried forward to the next following tax year and applied as specified in subsection (2) in that year, and so on until the loss is fully deducted, but no foreign loss can be carried forward for more than 4 years after the tax year in which the loss was incurred.

(4) In this section, "foreign loss", in respect of a resident person for a tax year, is the excess of deductions allowed to the person in deriving taxable foreign-source income for the year over the amount of that taxable foreign-source income.'

[Section 62] Thin Capitalisation

(1) Subject to subsection (2), if a foreign-controlled resident company, other than a financial institution, has a debt-to-equity ratio in excess of 3 to 1 at any time during a tax year, a deduction is disallowed for the interest paid by the company during that year on that part of the debt that exceeds the 3 to 1 ratio for the period the ratio was exceeded.

Legislative History:
Act 14 of 2020 – from 1 August 2020 – Section 62(1) read as-
*62.—(1) Subject to subsection (2), if a foreign-controlled resident company, other than a financial institution, has a debt-to-equity ratio in excess of **2 to 1** at any time during a tax year, a deduction is disallowed for the interest paid by the company during that year on that part of the debt that exceeds the **2 to 1** ratio for the period the ratio was exceeded.*

(2) If the debt-to-equity ratio of a foreign-controlled resident company exceeds 3 to 1 for a tax year, subsection (1) does not apply if, at all times, during the year, the amount of the debt of the company does not exceed the arm's length debt amount.

Legislative History:
Act 14 of 2020 – from 1 August 2020 – Section 62(2) read as-
*(2) If the debt-to-equity ratio of a foreign-controlled resident company exceeds **2 to 1** for a tax year, subsection (1) does not apply if, at all times, during the year, the amount of the debt of the company does not exceed the arm's length debt amount.*

(3) This section applies to a non-resident company with a permanent establishment in Fiji on the basis of the following—

a) the permanent establishment is treated as a foreign-controlled resident company; and
b) the debt-to-equity ratio of the permanent establishment is computed by reference to—
   i. the debt obligations of the non-resident company attributable to the permanent establishment; and
   ii. the equity of the non-resident company attributable to the operations of the company conducted through the permanent establishment.

(3A) Subsection (1) does not apply if a foreign-controlled resident company, other than a financial institution, has incurred a debt on and from 1 April 2020 to 31 December 2020 resulting in a debt-to-equity ratio in excess of 3 to 1 at any time during the foreign-controlled resident company's tax year.
[inserted by Act 3 of 2020, s 4, effective 1 April 2020]

Legislative History:
Act 3 of 2020 – from 1 April 2020 – Section 62(3A) inserted

(4) In this section—

arm's length debt amount in relation to a foreign-controlled resident company, means the amount of debt that a financial institution that is not an associate of the company would be prepared to lend to the company having regard to all the circumstances of the company;

debt in relation to a foreign-controlled resident company, means the greatest amount, at any time during a tax year, of the debt obligations of the company on which interest is payable as determined according to generally accepted accounting principles;

debt obligation means an obligation to make a repayment of money to another person, including obligations arising under promissory notes, bills of exchange and bonds;

equity in relation to a foreign-controlled resident company, means the greatest amount, at any time during a tax year, of the equity of the company as determined according to generally accepted accounting principles; and

foreign-controlled resident company means a resident company in which more than 50% of the membership interests in the company are held by a non-resident person either alone or together with an associate or associates.

[Section 62 amended by Act 14 of 2020 s10, effective 1 August 2020]

[Section 63] Transfer Pricing

(1) Subject to subsection (2), the CEO may, in respect of any transaction between persons who are associates, distribute, apportion, or allocate income, gain, deductions, or tax credits between the persons as is necessary to reflect the income that the persons would have realised in an arm's length transaction.

(2) If a party to a transaction between associates is located in and subject to tax in Fiji, and another party to the transaction is located outside Fiji, any distribution, apportionment, or allocation of income, gain, deductions, or tax credits under subsection (1) must be made in accordance with the regulations.

(3) The allocation of income and deductions to—

a) a permanent establishment in Fiji of a non-resident person; or
b) a permanent establishment outside Fiji of a resident person,

must be made in accordance with the regulations.

PART 3 CAPITAL GAINS TAX
(Sections 64–68)

[Sections 64] Part 3 Interpretation

In this Part, unless the context requires otherwise, "person" means an individual, trust, partnership or company.

[Section 65] Imposition of Capital Gains Tax

(1) Subject to this Act, a tax to be known as "Capital Gains Tax" is imposed at the rate prescribed by Regulations made under this Act on a person who has made a capital gain, other than an exempt capital gain, on the disposal of a capital asset.

(2) The Capital Gains Tax payable by a person on the disposal of a capital asset is computed by applying the rate prescribed by Regulations made under this Act to the amount of the capital gain arising on the disposal.

(3) If the person who has made a capital gain is a non-resident person, subsection (1) applies only if the capital asset is a Fiji asset.

[Section 66] Capital Gain

(1) The capital gain made by a person on the disposal of a capital asset is the consideration for the disposal reduced by the cost of the asset at the time of the disposal.

(2) A capital gain made by a person on disposal of a capital asset is not reduced by any capital loss on the disposal of another capital asset.

(3) A capital gain made by a person on the disposal of a capital asset is reduced by any part of the gain that is included in the gross income of the person or that is exempt income.

[Section 67] Exempt Capital Gains

(1) The following capital gains are exempt capital gains—

a) a capital gain made by a resident individual or Fijian citizen that does not exceed $30,000;

Legislative History:
Act 14 of 2020 – prior to 1 August 2020 – Section 67(1)(a) read as-
(a) a capital gain made by a resident individual or Fiji citizen that does not exceed FJD$16,000;

b) a capital gain made by a resident individual or a Fijian Citizen on the first disposal of either the individual's first residential property or principal place of residence;

Legislative History:
Act 27 of 2016 – prior to 1 August 2016 – Section 67(1)(b) read as-
(b) a capital gain made by a resident individual or a Fiji Citizen on disposal of either the individual's first residential property or principal place of residence;

c) a capital gain made by a person on the disposal of shares listed on the South Pacific Stock Exchange;
d) a capital gain made on disposal of an asset that is used solely to derive exempt income excluding the disposal of shares;

Legislative History:
Act 9 of 2019 – prior to 1 August 2019 – Section 67(1)(d) read as-
(d) a capital gain made on disposal of an asset that is used solely to derive exempt income;

e) any gain made by a person on the disposal of an interest in a company within section 2(c) of the definition "company";
f) a capital gain made by a resident individual or a Fijian citizen on disposal of his or her interest in a family home, provided however that the disposal of the interest is by way of transfer to an existing joint tenant or tenant in common;
g) any gain made by a resident person from a capital asset, including from the sale of shares where a private or public company goes through re-organisation, restructure or amalgamation for the purposes of listing or as part of a listing process on the South Pacific Stock Exchange, provided that—
    i. the private company is listed on the South Pacific Stock Exchange within 24 months from the date of commencement of re-organisation, restructure or amalgamation; and
    ii. where the private company is not listed with the South Pacific Stock Exchange in accordance with subparagraph (i), the gain from the re-organisation, restructure or amalgamation of the private company shall be taxable under this Act;

Legislative History:
Act 14 of 2018 – prior to 1 August 2018 – Section 67(1)(g) read as-
(g) a capital gain made by a resident person from the sale of shares where a private company goes through re-organisation, restructure or amalgamation for the purposes of listing or as part of a listing process on the South Pacific Stock Exchange, provided that—
(i) the private company is listed on the South Pacific Stock Exchange within 24 months from the date of commencement of re-organisation, restructure or amalgamation; and
(ii) where the private company is not listed with the South Pacific Stock Exchange in accordance with sub-paragraph (i), the gain from the re-organisation, restructure or amalgamation of the private company shall be taxable under this Act;

h) a capital gain made by the trustee or beneficiary of a deceased estate on the disposal of an asset forming part of the estate that, if the gain had been made by the deceased on a disposal of the asset immediately before death, the gain would be an exempt capital gain to the deceased under this subsection, but only when the asset is disposed of by the trustee or beneficiary within 2 years after the death of the deceased or within such further time as the CEO allows;
i)

Legislative History:
Act 29 of 2022 – from 1 January 2023 – Section 67(1)(i) read as current subsection. Prior to 1st January 2023 the subsection read as:
"a capital gain made by a person on the disposal of shares if the shares were held by the person before 1 May 2011"

Act 35 of 2021 – from to 1 August 2021 – Section 67(1)(i) inserted
Act 5 of 2023 – 1st July 2023 – delete section 67(1)(i)
(i)a capital gain made by a resident person or Fijian citizen on the disposal of shares if the shares were held by the person before 1 May 2011.

(2) If the CEO is satisfied that a capital asset has been disposed of in 2 or more parts for the purpose of taking advantage of subsection (1)(a), any capital gain arising from the disposals is exempt under subsection (1)(a) only if the total gain from the disposal of all parts does not exceed $30,000.

[subs (2) am Act 31 of 2016 s 102, effective 1 December 2016; amended by Act 14 of 2020 s11, effective 1 August 2020]

Legislative History:
Act 14 of 2020 – prior to 1 August 2021 – Section 67(2) read as –
(2) If the CEO is satisfied that a capital asset has been disposed of in 2 or more parts for the purpose of taking advantage of subsection (1)(a), any capital gain arising from the disposals is exempt under subsection (1)(a) only if the total gain from the disposal of all parts does not exceed ***$16,000.***

Act 31 of 2016 – prior to 1 December 2016 – Section 67(2) read as-
(2) If the CEO is satisfied that a capital asset has been disposed of in two or more parts for the purpose of taking advantage of subsection (1)(a), any capital gain arising from the disposals is exempt under subsection (1)(a) only if the total gain from the disposal of all parts does not exceed ***FJD$20,000.***

(3) In the case of the disposal of a capital asset that is jointly owned, subsection (1)(a) applies only if the total capital gain made by all owners of the asset on disposal of the asset does not exceed $30,000.

[subs (3) am Act 31 of 2016 s 102, effective 1 December 2016; amended by Act 14 of 2020 s11, effective 1 August 2020]

Legislative History:
Act 14 of 2020 – prior to 1 August 2021 – Section 67(3) read as –
(3) In the case of the disposal of a capital asset that is jointly owned, subsection (1) (a) applies only if the total capital gain made by all owners of the asset on disposal of the asset does not exceed ***FJD$16,000.***
Act 31 of 2016 – prior to 1 December 2016 – Section 67(3) read as-
(3) In the case of the disposal of a capital asset that is jointly owned, subsection (1) (a) applies only if the total capital gain made by all owners of the asset on disposal of the asset does not exceed ***FJD$20,000****.*

(4) For the purposes of—

a) subsection (1)(b)—
   i. first residential property means the first residential property that a resident individual or Fijian citizen has acquired, and who has sole ownership or co-owns the same with his or her spouse, parents, siblings, children, grand parents or grandchildren;

Legislative History:
Amend Act 5 of 2023 s(67)(4)(a)(i) – 1 July 2023
(a)subsection (1)(b) —
(i)first residential property means the first residential property that a resident individual or Fijian citizen has acquired, and who has sole ownership or co-owns the same with his or her spouse and includes a spouse living in a de facto relationship as defined in the Family Law Act 2003; and

   ii. principal place of residence means the place of residence where the individual lives; and

b) subsection (1)(f), "family home" means a residential property in which family members, whether immediate or extended, hold an interest as joint tenants or tenants in common,

c) "spouse" includes a spouse in a de facto relationship as defined in the Family Law Act 2003;

Legislative History:
Amend Act 5 of 2023 s(67)(4)(b) – 1 July 2023 deleting "."and substituting ","
a) subsection (1)(f), "family home" means a residential property in which family members, whether immediate or extended, hold an interest as joint tenants or tenants in common.

Insert New subsection 67 (4) (c)
c)"spouse" includes a spouse in a de facto relationship as defined in the Family Law Act 2003;

(5) For the avoidance of doubt, any person who was liable for Capital Gains Tax on the disposal of shares before the commencement of section 3 of the Income Tax (Amendment(No.2) Act 2021 and had not paid Capital Gains Tax is liable to pay it as if the former subsection (5) of section 67 had not been enacted.

[sub (5) inserted Act 35 of 2021, s3, effective 1 August 2021, sub (5) inserted Act 5 of 2023, s(7), effective 1 August 2023]

Legislative History:
Act 35 of 2021 – from 1 August 2021 – Section 67(5) inserted
Act 5 of 2023 – from 1 August 2023 – section 67(5) inserted
(5) Notwithstanding this Act and the Tax Administration Act 2009, if, before the commencement of section 3 of the Income Tax (Amendment) (No 2) Act 2021, a person is required to pay Capital Gains Tax on the disposal of shares held by the person before 1 May 2011 and the person has not paid the Capital Gains Tax, the person is no longer required to pay the Capital Gains Tax and any action or suit for the recovery of the unpaid Capital Gains Tax immediately ceases.

(6) For the avoidance of doubt, if a person paid Capital Gains Tax before the commencement of section 3 of the Income Tax (Amendment) (No. 2) Act 2021 on the disposal of shares held by the person before 1 May 2011, the payment of the Capital Gains Tax is not refundable to the person.
[sub (6) inserted Act 35 of 2021, s3, effective 1 August 2021]

Legislative History:
Act 35 of 2021 – from 1 August 2021 – Section 67(5) inserted

[Section 68] Foreign Capital Gains

(1) Subject to this section, if a resident person has made a capital gain on disposal of a capital asset in respect of which foreign tax has been paid, the person is allowed a tax credit of an amount equal to the lesser of—

a) the foreign tax paid in respect of the disposal of the asset; or
b) the Fiji Capital Gains Tax payable in respect of the disposal of the asset.

(2) A tax credit allowed under subsection (1) reduces the amount of Capital Gains Tax payable under section 65 in respect of the disposal of the capital asset.

(3) A tax credit is allowed under this section only if the foreign tax is paid within 2 years after the end of the tax year in which the capital asset was disposed of by the resident person, or within such further time as the CEO may allow.

(4) The amount of a tax credit allowed under this section that is not credited under subsection (1) is neither refunded nor applied against the Capital Gains Tax payable in respect of the disposal of another capital asset.

(5) In this section—

Fiji Capital Gains Tax means the capital gains tax imposed under this Act; and

foreign tax means the Income Tax or Capital Gains Tax imposed by the government of a foreign country or a political subdivision of a government of a foreign country, but does not include penalty, additional tax, or interest payable in respect of such tax.

PART 4 FRINGE BENEFITS TAX
(Sections 69–81)
DIVISION 1 IMPOSITION OF TAX
(Sections 69–71)

[Section 69] Imposition of Fringe Benefits Tax

(1) Subject to this Act, a tax to be known as "Fringe Benefits Tax" is imposed for each quarter at the rate prescribed by Regulations made under this Act on an employer who has a fringe benefits taxable amount for the quarter.

(2) The Fringe Benefits Tax imposed under subsection (1) for a quarter is computed by applying the rate prescribed by Regulations made under this Act to the fringe benefits taxable amount of the employer for the quarter.

[Section 70] Fringe Benefits Taxable Amount

(1) Subject to subsection (2), the fringe benefits taxable amount of an employer for a quarter is computed in accordance with the following formula—

$$\frac{A}{(1-r)}$$

where—

A is the total value of fringe benefits provided by the employer to employees in the quarter; and

r is the rate of Fringe Benefits Tax prescribed by Regulations made under this Act.

(2) The value of the following fringe benefits provided by an employer is not included in the fringe benefits taxable amount of the employer—

a) an exempt fringe benefit;
b) a fringe benefit provided by an employer to an employee that is not received by the employee from sources in Fiji;
c) a fringe benefit provided by a non-resident employer and received by an employee, unless the benefit has been provided by a permanent establishment in Fiji of the employer.

(3) The value of a fringe benefit that is not included in the fringe benefits taxable amount of an employer by reason of subsection (2)(b) or (c) is included in the employment income of the employee under section 15(1)(b).

(4) A fringe benefit is received by an employee from sources in Fiji—

a) to the extent to which it is received in respect of employment exercised in Fiji, wherever provided; or
b) if it is provided by, or on behalf of, the Government, wherever the employment is exercised.

(5) In this section, "non-resident employer" means an employer who is a non-resident person.

[Section 71] Exempt Fringe Benefits

(1) The following fringe benefits are exempt fringe benefits—

a) a fringe benefit, the value of which is exempt income of the employee;
b) a fringe benefit provided to an employee in respect of employment if the employment income arising from the employment is exempt income;
c) a fringe benefit the value of which, after taking into account the frequency with which similar benefits are provided by the employer, is so small as to make accounting for it unreasonable or administratively impracticable;
d) a meal or refreshment provided in a canteen, cafeteria or dining room operated by or on behalf of an employer solely for the benefit of employees and which is available to all non-casual employees on equal terms; or
e) the provision of accommodation or housing to a non-managerial employee in a remote area if—
   i. the employee's usual place of employment is in the remote area; and
   ii. it is necessary for the employer to provide the accommodation or housing to the employee in the remote area because—
      A. the nature of the employer's business is such that the employee is likely to move frequently from one residential location to another; or
      B. there is insufficient suitable residential accommodation available in the remote area;
f) a fringe benefit provided to an employee of a religious body registered under the Religious Bodies Registration Act 1881; and
g) the provision of a health insurance cover to an employee who is a Fijian citizen.

Legislative History:
Act 26 of 2017 – from 1 August 2017 – Section 71(1)(g) inserted

(2) In this section—

remote area includes on board a vessel when not berthed; and

vessel includes a yacht, boat, or ship.

DIVISION 2 FRINGE BENEFITS
(Sections 72–81)

[Section 72] Fringe Benefits

(1) Subject to subsections (2) and (3), the following are fringe benefits—

a) a debt waiver fringe benefit;
b) a household personnel fringe benefit;
c) a housing fringe benefit;
d) a discounted interest loan fringe benefit;
e) a meal or refreshment fringe benefit;
f) a motor vehicle fringe benefit;
g) a private expenditure fringe benefit;
h) a property fringe benefit; and
i) a residual fringe benefit.

(2) A benefit is not a fringe benefit to the extent that it—

a) is a contribution to the Fiji National Provident Fund, or an approved or non-approved fund;
b) is included in employment income under section 15(1)(c) or (d) or gross income under section 16;
c) would be included in employment income under section 15(1)(c) or (d) but for the exception in those paragraphs; or
d) is not provided in respect of employment.

(3) A benefit is not a fringe benefit to the extent that, if the employee had acquired the benefit, the expenditure incurred by the employee in acquiring the benefit would have been incurred in deriving employment income.

(4) In determining whether a benefit is a fringe benefit and the value of a fringe benefit, any restriction on transfer of the benefit and the fact that the benefit is not otherwise convertible to cash are to be disregarded.

(5) For the purposes of determining whether a benefit is a fringe benefit under this Division, a benefit is treated as provided by an employer to an employee if—

a) the benefit is provided to the employee by the employer, an associate of the employer, or a third party arranger; or
b) the benefit is provided by the employer, an associate of the employer, or a third party arranger to the employee or an associate of the employee.

[Section 73] Debt Waiver Fringe Benefit

(1) The waiver by an employer of the obligation of an employee to pay or repay an amount owing to the employer is a debt waiver fringe benefit.

(2) The value of a debt waiver fringe benefit is the amount waived.

[Section 74] Household Personnel Fringe Benefit

(1) The services of a housekeeper, driver, gardener, security guard, or other household personnel (referred to as "household personnel") provided by an employer to an employee is a household personnel fringe benefit.

(2) The value of a household personnel fringe benefit for a quarter is the total employment income paid to the household personnel in that quarter for services rendered to the employee reduced by any payment made by the employee for such services.

[Section 75] Housing Fringe Benefit

(1) Accommodation or housing provided by an employer to an employee is a housing fringe benefit.

(2) The value of a housing fringe benefit provided by an employer to an employee for a quarter is—

a) if the employer or associate owns the accommodation or housing, the fair market rent of the accommodation or housing for the quarter; or
b) in any other case, the rent paid by the employer for the accommodation or housing during the quarter,

reduced by any payment made by the employee for the accommodation or housing.

(3) Despite the exemption in section 71(1)(e), the provision of accommodation or housing to an executive or manager of a hotel is a housing fringe benefit regardless of where the hotel is located.

[Section 76] Discounted Interest Loan Fringe Benefit

(1) A discounted interest loan provided by an employer to an employee is a discounted interest loan fringe benefit.

(2) The value of a discounted interest loan fringe benefit for a quarter is the difference between the interest paid by the employee on the loan for the quarter, if any, and the interest that would have been paid by the employee on the loan for the quarter if the loan had been made at the market lending rate for that quarter.

(3) In this section, "market lending rate", in relation to a quarter, means the market lending rate for the quarter as determined by the CEO in consultation with the Governor of the Reserve Bank of Fiji.

[Section 77] Meal or Refreshment Fringe Benefit

(1) A meal or refreshment provided by an employer to an employee is a meal or refreshment fringe benefit.

(2) The value of a meal or refreshment fringe benefit is the total cost to the employer of providing the meal or refreshment reduced by any amount paid by the employee for the meal or refreshment.

[Section 78] Motor Vehicle Fringe Benefit

(1) A motor vehicle provided by an employer to an employee wholly or partly for the private use of the employee is a motor vehicle fringe benefit.

(2) Subject to subsections (3) and (4), the value of the benefit for a quarter is as follows—

Motor vehicle engine capacity	Value per quarter
Under 1,800cc	$656
1,800cc and < 2,000cc	$778
2,000cc and above	$958
Irrespective of engine capacity, if the cost of the vehicle exceeds $100,000	$958 plus 2.5% of the excess of the cost above $100,000.

(3) Subject to subsection (4), if a motor vehicle is provided to an employee partly for private use and partly for use in employment, the value of the benefit is reduced by 50% of the value of the benefit determined under subsection (2).

(4) If a motor vehicle referred to in subsection (2) or (3) is not provided for the whole of a quarter, the value of the benefit computed under subsection (2) or (3) is based on the proportion of the quarter that the vehicle was provided wholly or partly for private use.

(5) For the purposes of subsection (2), if the motor vehicle is leased by the employer, the cost of the vehicle is the fair market value of the vehicle at the commencement of the lease.

[Section 79] Private Expenditure Fringe Benefit

(1) Subject to subsection (3), the payment of expenditure by an employer is a private expenditure fringe benefit to the extent that the expenditure gives rise to a private benefit to an employee.

(2) For the purposes of subsection (1), expenditure paid by an employer gives rise to a private benefit to an employee if, had the employee paid the expenditure, it would come within section 22(1)(a).

(3) This section does not apply to expenditure paid by an employer that is a fringe benefit under another section of this Division apart from section 80.

(4) The value of a private expenditure fringe benefit is the amount of the expenditure paid by the employer treated as a private expenditure fringe benefit under subsection (1).

[Section 80] Property Fringe Benefit

(1) The transfer of property or provision of services by an employer to an employee is a property fringe benefit.

(2) Subject to subsection (3), the value of a property fringe benefit is—

a) if the employer supplies the property or services to customers in the ordinary course of business, the normal selling price of the property or services; or
b) in any other case, the cost to the employer of acquiring the property or services,

reduced by any payment made by the employee to the employer for the property or services.

(3) If the property fringe benefit is the provision of free or subsidised air travel to an employee by an employer that is an airline operator, travel agent or tour operator, the value of the benefit is 40% of the standard economy fare for the flight reduced by any payment made by the employee to the employer for the flight.

(4) In this section, “services” includes the use of property and the making available of any facility.

[Section 81] Residual Fringe Benefit

(1) A benefit provided by an employer to an employee not covered by another section in this Division is a residual fringe benefit.

(2) The value of a residual fringe benefit is the fair market value of the benefit determined at the time it is provided, as reduced by any payment made by the employee for the benefit.

PART 5 COMMON RULES RELATING TO ASSETS
(Sections 82–89)

[Section 82] Joint Owners

(1) For the purposes of this Act, if an asset is jointly owned by 2 or more persons, any gain or loss made on disposal of the asset must be apportioned among the owners according to their respective interests in the asset.

(2) If the interests of the owners of a jointly owned asset cannot be ascertained, the owners of the asset are treated as having an equal interest in the asset.

[Section 83] Acquisition

(1) A person acquires an asset if the person begins to own the asset, including, in the case of an asset that is a right or option, the granting of the right or option to the person.

(2) A person acquires an asset at the time the person begins to own the asset, including, when a person acquires legal title to the asset and, in the case of an asset that is a right or option, when the person is granted the right or option.

[Section 84] Disposal

(1) A person makes a disposal of an asset if the person parts with the ownership of the asset, including when the asset is—

a) sold, exchanged, transferred or distributed; or
b) cancelled, redeemed, relinquished, destroyed, lost, expired or surrendered.

(2) A person disposes of an asset at the time the person parts with the ownership of the asset, including when the person ceases to have legal title to the asset and when the asset is sold, exchanged, transferred, distributed, cancelled, redeemed, relinquished, destroyed, lost, expired or surrendered.

(3) If a person creates an asset in another person being an asset that did not previously exist, the first mentioned person is treated as having made a disposal of the asset to the second-mentioned person and the disposal occurs when the asset is created.

(4) The transmission of an asset by succession or under a will is treated as a disposal of the asset by the deceased and the disposal occurs at the time the asset is transmitted.

(5) A disposal includes the disposal of a part of an asset.

(6) If a trustee-in-bankruptcy, liquidator, or receiver disposes of an asset of a person, the person is treated as having made the disposal and the CEO can collect the tax payable by the person in

respect of the disposal from the trustee-in-bankruptcy, liquidator, or receiver in accordance with section 26 of the Tax Administration Act 2009.

[Section 85] Cost

(1) Subject to this Act, this section establishes the cost of an asset for the purposes of the Act.

(2) Subject to this section, the cost of an asset of a person, other than an intangible asset, is the sum of the following amounts—

a) the total consideration given by the person for the asset, including the fair market value of any consideration in kind determined at the time the asset is acquired and, if the asset is constructed, produced or developed, the cost of construction, production or development;
b) any incidental expenditure incurred by the person in acquiring or disposing of the asset;
c) any expenditure incurred by the person to install, alter, renew, reconstruct or improve the asset.

(3) Subject to this section, the cost of an asset of a person that is an intangible asset is the total expenditure incurred by the person in acquiring, creating, improving and renewing the intangible asset, and any incidental expenditure incurred in acquiring or disposing of the intangible asset.

(4) The cost of an asset of a person includes any amount given for the grant of an option to the person to acquire the asset.

(5) The cost of an asset of a person is reduced by the amount of any deduction allowed to the person under Part 2 in respect of amounts included in the cost of the asset, other than a depreciation or amortisation deduction.

(6) An amount is included in the cost of an asset on the earlier of the date that it is paid or payable.

(7) If a person disposes of a part of an asset, the cost of the asset is apportioned between the part of the asset retained and the part disposed of in accordance with their respective fair market values determined at the time the person acquired the asset.

(8) The cost of an asset of a person does not include the amount of any grant, subsidy, rebate, commission, or other assistance received or receivable by the person in respect of the acquisition of the asset, except to the extent to which the amount is included in the gross income of the person.

(9) The reference to “other assistance” in subsection (8) does not include a loan repayable with or without interest.

(10) If the acquisition of an asset by a person is the derivation of an amount—

a) included in the gross income of the person, the cost of the asset is the amount so included plus any amount paid by the person for the asset; or
b) that is exempt income, the cost of the asset is the exempt amount plus any amount paid by the person for the asset.

(11) If—

a) a person seeks to include an amount of expenditure in the cost of a capital asset, including expenditure incurred in carrying out improvements to a capital asset;
b) the person is unable to produce any record of the expenditure; and
c) the CEO, after carrying out such investigation as he or she considers appropriate, has decided not to allow the inclusion of any such expenditure in the cost of the capital asset,

the person may apply to the Solicitor-General to appoint an independent assessor to provide an assessment of the amounts sought to be included as expenditure in the cost of the capital asset, including any expenditure incurred in carrying out improvements to the capital asset.

(12) The person appointed as an independent assessor under subsection (11) must be a person suitably qualified in carrying out valuation and assessment of such expenditure, and may include any person employed by the Government.

(13) The decision and assessment of the independent assessor appointed under subsection (11) is final and binding on all parties.

(14) The costs incurred in the appointment of, and assessment by, the independent assessor are to be borne by the Solicitor-General.

(15) Subsection (8) does not apply to a State-controlled entity that is in the business of generating, distributing and retailing electricity.

Legislative History:
Act 7 of 2022 – from 1 April 2022 – Section 85(15) inserted

(16) For the purposes of subsection (15), the meaning of State control is given in section 11 of the Public Enterprises Act 2019.

Legislative History:
Act 7 of 2022 – from 1 April 2022 – Section 85(16) inserted

[Section 86] Consideration

(1) Subject to this Act, this section establishes the amount of consideration for the disposal of an asset for the purposes of the Act.

(2) The consideration for the disposal of an asset is the total amount received or receivable for the asset, including the fair market value of any consideration in kind determined at the time of the disposal.

(3) The consideration for the disposal of an asset includes the consideration for the grant of an option in relation to the asset if the person has not been subject to tax in respect of any income or capital gain made on the grant of the option.

(4) If an asset has been lost or destroyed by a person, the consideration for the asset includes any compensation, indemnity, or damages received by the person as a result of the loss or destruction, including amounts received or receivable as a consequence of—

a) an insurance policy, indemnity or other agreement;
b) a settlement; or
c) a judicial decision.

(5) If 2 or more assets are disposed of by a person in a single transaction and the consideration for each asset is not specified, the total consideration for the disposal is apportioned among the assets disposed of in proportion to their respective fair market values determined at the time of the disposal.

(6) An amount is included in the consideration for the disposal of an asset on the earlier of the date that it is received or receivable.

[Section 87] Deferral of Recognition of Gain or Loss

(1) For the purposes of this Act and subject to subsection (2), no gain or loss is taken to arise on the disposal of any of the following—

a) an asset between spouses as part of a divorce settlement or under an agreement to live apart;
b) an asset by reason of the transmission of the asset on the death of a person to an executor or beneficiary;
c) a principal place of residence, first residential property, an interest in a capital asset, or shares in a company, by reason of love and affection between spouses, siblings, parents to children and vice versa, and grandchildren to grandparents and vice versa; or
d) an asset by reason of the loss, destruction or compulsory acquisition of the asset (referred to as the "replaced asset") if the consideration for the disposal is reinvested by the recipient in an asset of a like kind (referred to as a "replacement asset") within one year of the disposal or within such further period as the CEO allows.

(2) If the person acquiring an asset referred to in subsection (1)(a), (b), or (c) is a non-resident person at the time of the acquisition, subsection (1) applies only if—

a) a subsequent disposal of the asset by the non-resident will give rise to an amount included in the gross income of, or allowed as a deduction to, the non-resident person; or

b) the asset is a Fiji asset.

(3) If subsection (1)(a), (b), or (c) applies, the person acquiring the asset is treated as acquiring—

a) subject to subsection (4), an asset of the same character as the person disposing of the asset; and
b) the asset for an amount equal to—
   i. for an asset that was the principal place of residence or first residential property of the person disposing of the asset immediately before the disposal, the fair market value of the residence at the time of the disposal; or
   ii. for any other asset, the cost of the asset for the person disposing of the asset at the time of the disposal.

(4) If the asset to which subsection (3) applies is the principal place of residence or first residential property of the person disposing of the asset immediately before the disposal, the asset retains that character only if the person acquiring the asset uses the asset as their principal place of residence.

(5) If subsection (1)(d) applies and the consideration given by the person for the replacement asset is equal to or exceeds the consideration received or receivable for the replaced asset, the cost of the replacement asset is the cost of the replaced asset at the time of disposal increased by the amount of the excess, if any.

(6) If subsection (1)(d) applies and the consideration received or receivable for the replaced asset exceeds the consideration given for the replacement asset, the cost of the replacement asset is the cost of the replaced asset at the time of disposal reduced by the amount of the excess.

(7) Section 34(3) and not subsection (1)(d) applies if the asset is a depreciable asset.

(8) In this section, "first residential property" and "principal place of residence" have the meanings in section 67(4).

[Section 88] Re-Organisations

1) If—

a) a resident individual or a resident partnership (referred to as the "transferor") disposes of an asset, with or without liability not in excess of the cost of the asset or, in the case of a depreciable asset, written down value, to a resident company (referred to as the "transferee") and the transferee is wholly owned by the transferor; or
b) a resident company (referred to as the "transferor company"), disposes of an asset, with or without any liability not in excess of the cost of the asset or written down value in the case of a depreciable asset, to another resident company (referred to as the "transferee company") and the transferor company is a group company in relation to the transferee company,

then—

i. no gain or loss is taken to arise on disposal of the asset;
ii. the transferee or transferee company is treated as acquiring an asset of the same character as the asset disposed of by the transferor or transferor company; and
iii. the transferee or transferee company's cost on acquisition of the asset is equal to the transferor or transferor company's cost of the asset or, in the case of a depreciable asset, written down value at the time of disposal.

[sub (1)(a) amended by Act 28 of 2021, s 6, effective 1 August 2021]

Legislative History:
Act 28 of 2021 – prior to 1 August 2021 – Section 88(1) read as –
1) If—
a) a resident individual (referred to as the "transferor") disposes of an asset, with or without liability not in excess of the cost of the asset or, in the case of a depreciable asset, written down value, to a resident company (referred to as the "transferee") and the transferee is wholly owned by the transferor; or
b)a resident company (referred to as the "transferor company"), disposes of an asset, with or without any liability not in excess of the cost of the asset or written down value in the case of a depreciable asset, to another resident company (referred to as the "transferee company") and the transferor company is a group company in relation to the transferee company,
then—
i.no gain or loss is taken to arise on disposal of the asset;
ii. the transferee or transferee company is treated as acquiring an asset of the same character as the asset disposed of by the transferor or transferor company; and
iii. the transferee or transferee company's cost on acquisition of the asset is equal to the transferor or transferor company's cost of the asset or, in the case of a depreciable asset, written down value at the time of disposal.

Act 14 of 2020 – prior to 1 August 2020 – Section 88(1) read as –
Corporate re-organisations
88.—(1) If a resident company (referred to as the "transferor"), disposes of an asset, with or without any liability not in excess of the cost of the asset, to another resident company (referred to as the "transferee") and the transferor is a group company in relation to the transferee company—
(a) no gain or loss is taken to arise on disposal of the asset;
(b) the transferee is treated as acquiring an asset of the same character as the asset disposed of by the transferor; and
(c) the transferee's cost on acquisition of the asset is equal to the transferor's cost for the asset at the time of disposal.

(2) Subsection (1) does not apply if the income of the transferee and transferee company is exempt income.

Legislative History:
Act 14 of 2020 – prior to 1 August 2020 – Section 88(2) read as –
(2) Subsection (1) does not apply if the income of the transferee company is exempt income.

(2A) A transferee is wholly owned by the transferor if the transferor owns directly or through one or more interposed persons, 100% of the issued shares in the transferee.

Legislative History:
Act 14 of 2020 – from 1 August 2020 – Section 88(2A) inserted

(2B) For the purposes of subsections (1)(a) and (2A), where an asset under disposal is jointly owned by 2 or more transferors, the percentage of ownership in the asset or the depreciable asset should be the same as their percentage of beneficial ownership of the issued shares in the transferee.

Legislative History:
Act 14 of 2020 – from 1 August 2020 – Section 88(2B) inserted

(2C) Notwithstanding section 87, the deferral granted under subsection (1)(a) will cease to apply and any taxes applicable at the time of disposal shall immediately become payable if there is a change in beneficial ownership of the transferee within 2 years from the date of disposal.

Legislative History:
Act 14 of 2020 – from 1 August 2020 – Section 88(2C) inserted

(2D) For the purposes of subsection (1)*(a)*, where the transferor is a resident partnership, the percentage of ownership in the partnership should be the same as their percentage of beneficial ownership of the issued shares in the transferee.

Legislative History:
Act 28 of 2021 – from 1 August 2021 – Section 88(2D) inserted

(3) A company is a group company in relation to another company if—

a) one company owns, directly or through one or more interposed persons, 100% of the issued shares in the other company;
b) another company owns, directly or through one or more interposed persons, 100% of the issued shares in both companies; or
c) all shareholders of the transferor company and the transferee company are common shareholders who have the same percentage of ownership in the issued shares of the transferor company and the transferee company, either directly or indirectly through an interposed person

Legislative History:
Act 28 of 2021 – from 1 August 2021 – Section 88(3)(c) inserted

(4) In this section, "company" and "interposed person" means an incorporated body.

Legislative History:
Act 28 of 2021 – prior to 1 August 2021 – Section 88(4) read as –
(4) In this section, "company" means an incorporated body.

[Section 89] Non-Arm's Length Transaction

Subject to section 63, if an asset is disposed of by a person in a transaction that is not an arm's length transaction—

a) the person disposing of the asset is treated as having received consideration equal to the fair market value of the asset determined at the time the asset is disposed of; and
b) the person acquiring the asset is treated as having a cost equal to the amount determined under paragraph (a).

PART 6 MINING
(Sections 90–97)

[Section 90] Part 6 interpretation

(1) In this Part—

Contractor means a person who has been issued with—

a) a mining right under the Mining Act 1965; or
b) a petroleum right under the Petroleum (Exploration and Exploitation) Act 1978;

development expenditure means capital expenditure incurred in undertaking operations authorised under—

a) a mining tenement, other than expenditure incurred in the acquisition of a depreciable asset, and includes expenditure incurred in the acquisition of—
   i. the mining right other than a right referred to in paragraph (a)(i) of the definition of "exploration expenditure"; or
   ii. information associated with a mining right other than information referred to in paragraph (a)(ii) of the definition of "exploration expenditure"; or
b) a production licence, other than expenditure incurred in the acquisition or construction of a pipeline or in the acquisition of a depreciable asset, and includes expenditure incurred in the acquisition of—
   i. the petroleum right other than a right referred to in paragraph (b)(i) of the definition of "exploration expenditure"; or
   ii. information associated with a petroleum right other than information referred to in paragraph (b)(ii) of the definition of "exploration expenditure";

Director means the Director of Mines appointed under the Mining Act 1965;

exploration expenditure means expenditure incurred in undertaking operations authorised under—

a) a prospector's right, other than expenditure incurred in the acquisition of a depreciable asset, and includes expenditure incurred in the acquisition of—
   i. the prospector's right from the Government or under a farm-out agreement; or
   ii. prospecting information associated with a prospector's licence from the Government or under a farm-out agreement; or
b) an exploration licence, other than expenditure incurred in the acquisition of a depreciable asset, and includes expenditure incurred in the acquisition of—
   i. the exploration licence from the Government or under a farm-out agreement; or
   ii. exploration information associated with an exploration licence from the Government or under a farm-out agreement;

farm-out agreement means an agreement to which section 96 applies;

Mining Act means the Mining Act 1965;

mining operations means operations undertaken under a mining tenement;

mining right means a mining tenement or a prospector's right;

Petroleum (Exploration and Exploitation) Act means the Petroleum (Exploration and Exploitation) Act 1978;

petroleum operations means operations undertaken under a petroleum right;

petroleum right means an exploration licence or a production licence; and

sub-contractor means a person supplying services to a contractor in relation to mining operations or petroleum operations, other than a person supplying services as an employee.

(2) Unless the context otherwise requires, any term that is not defined in this Part but—

a) is defined in the Mining Act 1965 has, in relation to mining operations, the meaning assigned to it in the Mining Act 1965; or
b) is defined in the Petroleum (Exploration and Exploitation) Act 1978 has, in relation to petroleum operations, the meaning assigned to it in the Petroleum (Exploration and Exploitation) Act 1978.

[Section 91] Taxation of Contractors and Sub-Contractors

(1) A contractor or sub-contractor is subject to tax in accordance with this Act, subject to modifications in this Part.

(2) If there is an inconsistency in the taxation of a contractor as between this Part and the other Parts of this Act, this Part prevails.

(3) The rate of tax applicable to a contractor that is a company is 20%.

(4) The rate of Non-resident Withholding Tax applicable to a sub-contractor that is a non-resident person is 15%.

[Section 92] Exploration and Prospecting

(1) Section 35 applies to exploration expenditure incurred by a contractor on the basis that it is a business intangible with a rate of amortisation equal to 100%.

(2) For the purpose of Division 5 of Part 2, the depreciation rate applicable to a depreciable asset acquired by a contractor primarily for the purpose of undertaking operations under a prospector's right or exploration licence, and is being used for that purpose, is equal to 100%.

[Section 93] Development and Production

(1) Subject to subsection (2), section 35 applies to development expenditure on the basis that it is a business intangible with a rate of amortisation equal to 25%.

(2) If development expenditure is incurred by a contractor before commercial production, subsection (1) applies on the basis that the expenditure was incurred at the commencement of commercial production.

(3) In this section, "commencement of commercial production", in relation to mining or petroleum operations undertaken at a mine or well means the first day of the first period of 30 consecutive days during which the average level of production of the mine or well on the 25 highest production days in the 30-day period reaches a level as determined by the CEO with the advice of the Director.

[Section 94] Rehabilitation Expenditure

(1) A contribution made by a contractor to a rehabilitation fund in accordance with an approved rehabilitation plan in relation to mining or petroleum operations is allowed as a deduction for the tax year in which the contribution was made.

(2) An expenditure incurred by a contractor in carrying out work required by an approved rehabilitation plan in respect of the contractor's mining or petroleum operations is allowed as a deduction for the tax year in which the expenditure is incurred provided that the work is not paid for, directly or indirectly, from money made available out of the contractor's rehabilitation fund for the mining or petroleum operations.

(3) Amounts accumulated in a rehabilitation fund, or withdrawn from a rehabilitation fund to meet expenditure incurred under an approved rehabilitation plan, are exempt income.

(4) Subject to subsection (5), an amount withdrawn from the fund and returned to the contractor is included in the gross income of the contractor for the tax year in which the amount was returned to the contractor.

(5) Any surplus in a rehabilitation fund of a contractor at the time of completion of rehabilitation is included in the gross income of the contractor for the tax year in which rehabilitation is completed.

(6) In this section, —

approved rehabilitation plan means a plan for rehabilitation of a mine site or decommissioning of a petroleum site approved by the CEO upon the advice of the Director; and

rehabilitation fund means a fund or account required to be established under a mining or petroleum right to provide for the future payment of remedial work to the title area covered by the mining or petroleum right and is managed jointly by the Director and the contractor.

[Section 95] Ring-fencing of Mining or Petroleum Operations

(1) A deduction for expenditures or losses incurred wholly or partly by a contractor in undertaking mining or petroleum operations in a title area during a tax year are allowed only against the gross income derived by the contractor from such operations in the title area during the period.

(2) If the total deductions of a contractor in respect of mining or petroleum operations undertaken by a contractor in a title area during a tax year exceed the total gross income for such operations in the title area for the period, the excess is carried forward and allowed as a deduction against the gross income of the contractor from mining or petroleum operations in the title area in the next following tax year of the contractor.

(3) An amount that is not deducted under subsection (2) is carried forward to the next following tax year of the contractor and allowed as a deduction in accordance with subsection (2) in that period and so on until the amount has been fully deducted or the mining or petroleum operations in the title area cease.

(4) If a contractor has an excess carried forward under subsection (2) for more than 1 tax year, the excess of the earliest period is allowed as a deduction first.

(5) In this section, "title area", in relation to mining or petroleum operations undertaken by a contractor, means the area covered by the mining or petroleum right under which the mining or petroleum operations have been undertaken and includes—

a) in the case of a mining tenement—
   i. the area covered by a prospector's right of the contractor if the area covered by the mining tenement falls wholly within the area covered by the prospector's right; or
   ii. the area covered by another mining tenement of the contractor if the area covered by the other mining tenement is adjacent with the first mentioned mining tenement and both tenements relate to the same mineral; or
b) in the case of a production licence—
   i. the area covered by an exploration licence of the contractor if the area covered by the production licence falls wholly within the area covered by the production right; or
   ii. the area covered by another production licence of the contractor if the area covered by the other production licence is adjacent with the first mentioned production licence.

[Section 96] Farm-out agreements

(1) This section applies if the following conditions are satisfied—

a) a contractor (referred to as the “transferor”) has entered into an agreement with a person (referred to as the “transferee”) for the transfer of a part of the transferor’s interest in a mining or petroleum right; and
b) the consideration given by the transferee for the transferred interest wholly or partly includes the transferee agreeing to incur expenditure or undertaking some or all of the transferor’s work commitments in respect of the part of the interest retained by the transferor.

(2) If this section applies—

a) the value of any work undertaken by the transferee in relation to the part of the interest retained by the transferor is not included in the consideration of the transferor for the transferred interest;
b) the following applies to any amount in money received or receivable by the transferor for the transferred interest—
   i. section 27 applies to the amount in money on the basis that it is a reimbursement by the transferor of any deductions allowed for expenditure incurred by the transferor in respect of the transferred interest;
   ii. if the amount of money exceeds the amount of deducted expenditure to which section 27 applies, the excess is treated as consideration for the transferred interest.

[Section 97] Indirect Disposals of Mining or Petroleum Rights

(1) If a contractor that holds a mining or petroleum right suffers a 25% or more change in its underlying ownership, the contractor must immediately notify, in writing, the CEO of the change.

(2) If the person disposing of the right to which a notice under subsection (1) relates is a non-resident person, the contractor to which the notice relates is treated as the representative of the non-resident person for the purposes of section 41 of the Tax Administration Act 2009.

PART 7 LEVIES
(Sections 98–100)

[Section 98] Imposition of Telecommunications Levy

(1) Subject to this Act, a levy to be known as the "Telecommunications Levy" is imposed for a calendar month at the rate prescribed by Regulations made under this Act on a user of telecommunications services.

(2) The Telecommunications Levy imposed under subsection (1) for a calendar month is computed by applying the rate prescribed by Regulations made under this Act to the charges incurred by the person for calls transmitted by a licensed telecommunications service provider.

(3) The licensed telecommunications service provider providing the telecommunications service on which the Telecommunications Levy is imposed is liable to pay the levy on behalf of the user of the telecommunications services.

[Section 98A] Plastic Levy

A plastic levy shall be charged on plastic bags distributed by businesses prescribed by regulations

[Section 99] Imposition of Credit Card Levy (Repealed)

Legislative History:
Act 27 of 2016 – prior to 1 August 2016 – Section 99 read as –
99.— (1) Subject to this Act, a levy to be known as the "Credit Card Levy" is imposed for each monthly billing cycle at the rate prescribed by Regulations made under this Act on the holder of a bank credit card.
(2) The Credit Card Levy imposed under subsection (1) for a monthly billing cycle is computed by applying the rate prescribed by Regulations made under this Act to the debit balance at the end of the day specified as the due date for payment for the monthly billing cycle of the holder of the bank credit card including interest and other charges.
(3) The bank providing the credit card on which the Credit Card Levy is imposed is liable to pay the levy on behalf of the holder of the bank credit card.

[Section 100] Imposition of Third Party Insurance Levy (Repealed)

Legislative History:
Act 40 of 2017 – prior to 1 January 2018 – Section 100 read as –
100.— (1) Subject to this Act, a levy to be known as the "Third Party Insurance Levy" is imposed for a Calendar month at the rate prescribed by Regulations made under this Act on an insurance company.
(2) The Third Party Insurance Levy imposed under subsection (1) for a Calendar month is computed by applying the rate prescribed by Regulations made under this Act to the total third party insurance premiums collected by the insurance company during the month.

PART 8 ANTI-AVOIDANCE
(Sections 101-102)

[Section 101] Income splitting

(1) If a person attempts to split income with another person, the CEO may adjust the chargeable income and tax credits of both persons to prevent any reduction in tax payable as a result of the splitting of income.

(2) A person is treated as having attempted to split income when—

a) the person transfers income or the right to income, directly or indirectly, to another person; or
b) the person transfers property, including money, directly or indirectly, to another person with the result that the other person receives or enjoys the income from that property,

and the reason or one of the reasons for the transfer is to lower the total tax payable upon the income of the transferor and the transferee.

(3) In determining whether a person attempts to split income, the CEO must consider the value, if any, given for the transfer.

[Section 102] Tax Avoidance Schemes

(1) Notwithstanding this Act, if the CEO is satisfied that—

a) a tax avoidance scheme has been entered into or carried out; and
b) a person has obtained a tax benefit in connection with the tax avoidance scheme,
c) [repealed]

the CEO may determine the tax liability of the person who obtained the tax benefit as if the tax avoidance scheme had not been entered into or carried out and can make compensating adjustments to the tax liability of any other person affected by the tax avoidance scheme.

Legislative History:
Act 26 of 2017 – prior to 1 August 2017 – Section 102(1)(c) read as –
(c) having regard to the substance of the tax avoidance scheme, it would be concluded that a person or one of the persons, who entered into or carried out the scheme did so for the sole or dominant purpose of enabling the person referred to in paragraph (b) to obtain a tax benefit,

(2) When a resident person has entered into a transaction that directly or indirectly has the effect that income is foreign-source income derived through a non-resident entity that is connected to a tax haven, the CEO may adjust the income and foreign tax credit position of the resident person to reverse the tax effect of the transaction.

(3) If a determination or adjustment is made under this section, the CEO must issue an assessment giving effect to the determination or adjustment.

(4) A determination or adjustment under this section must be made within 7 years from the last day of the tax year to which the determination or adjustment relates.

(5) In this section—

non-resident entity means a partnership, trust or company that is not a resident person;

scheme includes a course of action and an agreement, arrangement, promise, plan, proposal, or undertaking, whether express or implied and whether or not enforceable;

tax avoidance scheme means any scheme, whether entered into by a person affected by the scheme or by another person, that directly or indirectly—

a) has tax avoidance as its purpose or effect; or
b) has tax avoidance as one of its purposes or effects, if the tax avoidance purpose or effect is not merely incidental;

tax benefit means—

a) a reduction in a liability to pay tax;
b) a postponement of a liability to pay tax;
c) an entitlement to a refund;
d) an increase in a tax credit;
e) any other advantage arising because of a delay in payment of tax; or
f) anything that causes gross income to be exempt income, a capital gain to be an exempt capital gain, or a fringe benefit to be an exempt fringe benefit; and

tax haven means a foreign country or part of a foreign country that has—

a) effective tax rates significantly lower than those of Fiji; or
b) laws providing for the secrecy of financial or corporate information that facilitate the concealment of the identity of the real owner of any income or asset.

Legislative History:
Act 26 of 2017 – prior to 1 August 2017 – Section 102(5) definition of "tax avoidance scheme" read as –
"tax avoidance scheme" means any scheme if one of the main purposes of a person in entering into the scheme is the avoidance or reduction of any person's liability to tax under this Act;

PART 9 PROCEDURAL RULES
(Sections 103–137)

DIVISION 1 APPLICATION OF TAX ADMINISTRATION ACT 2009
(Section 103)

[Section 103] Application of Tax Administration Act 2009

The Tax Administration Act 2009 applies for the purposes of the administration of this Act but subject to this Part.

DIVISION 2 PROCEDURAL RULES FOR INCOME TAX AND PRESUMPTIVE INCOME TAX
(Sections 104–125)

Subdivision 1 Tax Returns and Records
(Sections 104–107)

[Section 104] Filing of returns

(1) A person liable for Income Tax or who has a net loss for a tax year must file an Income Tax return for the year within 3 months after the end of the tax year.

Legislative History:
Act 05 of 2023 – Prior to 1st January 2024 – Part 9-Division 2 Heading is amended to delete the word SOCIAL RESPONSIBILITY TAX

DIVISION 2 PROCEDURAL RULES FOR INCOME TAX, SOCIAL RESPONSIBILITY TAX AND PRESUMPTIVE INCOME TAX

(2) A partnership or the trustee of a trust must file an Income Tax return for a tax year within 3 months after the end of the tax year.

(3) A person liable for Presumptive Income Tax for a quarter must file a Presumptive Income Tax return for the quarter within one month after the end of the quarter.

(4) An Income Tax return or Presumptive Income Tax return must be in the approved form and filed in the prescribed manner.

[Section 105] Income Tax return not Required to be Filed

An individual is not required to file an Income Tax return under section 104 for a tax year if the only income derived by the individual during the year consists solely of the following amounts—

a) income from which tax has been withheld under section 111, except if the person has 2 or more employments at the same time for the whole or part of the tax year;
b) income from which tax has been withheld under section 112 when section 125 treats the tax withheld as a final tax on the income.

[Section 106] Accounts and Records

(1) A person must keep such accounts, documents and records to enable the computation of the Income Tax or Presumptive Income Tax payable by the person for a tax year or quarter, as the case may be.

(2) Notwithstanding anything in the Tax Administration Act 2009, a person liable for Presumptive Income Tax must retain the records required under subsection (1) for 2 years after the end of the quarter to which they relate.

(3) The CEO may disallow a claim for a deduction for an expenditure or loss if a person is unable, without reasonable excuse, to produce a receipt or other record of the expenditure or loss, or to produce evidence relating to the circumstances giving rise to the claim for the deduction.

[Section 107] Rental Income Reporting System

(1) A real estate agent must file a report for a tax year by the last day of February after the end of the tax year.

(2) A report required to be filed under subsection (1) must be in the approved form and filed in the prescribed manner.

(3) If 2 or more persons carry on business jointly as real estate agents, each of those persons is treated as a real estate agent for the purposes of this section.

(4) In this section—

land includes all estates and interests, whether freehold or chattel, in real property, and any building and any part of a building, and, in relation to any transaction relating to land that also relates to any goods, chattel or other property, includes those goods or chattels and that other property;

real estate agent includes a person who acts or holds himself or herself out to the public as ready to act for reward as an agent in respect of the sale or other disposition of land or business, either with or without any interest in land, or the purchase or other acquisition of land or business, either with or without any interest in land, or in respect of the leasing and letting of land or business, whether or not the person carries on any other business; and

tax year means the calendar year.

Subdivision 2 Payment of Income Tax
(Sections 108-109)

Legislative History:
Act 05 of 2023 – Prior to 1st January 2024 – Part 9-Subdivision 2 Heading is amended to delete the word and Social Responsibility Tax

Subdivision 2 Payment of Income Tax and Social Responsibility Tax

[Section 108] Due date for Payment of Income Tax

(1) The Income Tax payable by a person for a tax year are due on the date that the Income Tax return for the year is due or such other date as prescribed.

Legislative History:
Act 05 of 2023 – Prior to 1st January 2024 – Part 9-Subdivision 2 Heading is amended by deleting the word "and Social Responsibility Tax".
(1) The Income Tax and Social Responsibility Tax payable by a person for a tax year are due on the date that the Income Tax return for the year is due or such other date as prescribed.

(2) The Presumptive Income Tax payable by a person for a quarter is due on the date that the Presumptive Income Tax return for the quarter is due.

[Section 109] Collection of Non-resident International Shipping Income Tax from Non-resident Ship Owners or Charterers

(1) Subject to subsection (3), before the granting of a port clearance for a ship owned or chartered by a non-resident person from a port in Fiji, the captain or chief commanding officer of the ship, or the shipping agent in Fiji for the non-resident person—

a) must file with the CEO a return showing the gross amount derived from the carriage of passengers, livestock, mail, merchandise, or goods embarked or loaded in Fiji in respect of the ship and the Non-resident International Shipping Income Tax payable thereon; and
b) pay the Non-resident International Shipping Income Tax due in respect of the ship with the return.

(2) The return required under subsection (1)(a) must be in the approved form and filed in the prescribed manner.

(3) The CEO may allow the return required under subsection (1)(a) to be filed within 30 days after departure of the ship from Fiji provided that the non-resident owner or charterer has made satisfactory arrangements with the CEO for the payment of any Non-resident International Shipping Income Tax due in respect of the ship.

(4) The Comptroller of Customs and Excise must not grant a port clearance for a ship owned or chartered by a non-resident person, and must use the powers available under the Customs legislation to prevent a ship from leaving Fiji, until the Comptroller is satisfied that—

a) any Non-resident International Shipping Income Tax due in respect of the ship has been paid or that arrangements for its payment have been made to the satisfaction of the CEO; or
b) no Non-resident International Shipping Income Tax is payable in respect of the ship.

(5) This section does not relieve the owner or charterer of the ship from liability to pay any non-resident International Shipping Income Tax due that is not paid by the captain or chief commanding officer of the ship, or the shipping agent in Fiji of the non-resident owner or charterer.

Subdivision 3 Current Payment System
(Section 110)

[Section 110] Advance Payments of Tax

(1) A person liable for Income Tax for a tax year is liable to make advance payments of Income Tax—

a) in the case of a company, on the last day of the sixth, seventh, eighth, ninth, tenth, eleventh and twelfth months of the tax year and the first and second months of the following tax year; or
b) in the case of any other person, on 30 April, 31 May, 30 June, 31 July, 31 August, 30 September, 31 October, 30 November and 31 December.

(2) If the total advance payments of Income Tax payable by a person, other than a company, for a tax year is less than $120, the advance tax payable by the person for the year is payable in one instalment on 30 September.

(3) The amount of each advance payment of Income Tax payable by a person for a tax year is computed according to the following formula—

$$11\ 1/9\ \% \times (A - B)$$

where—

A is the person's assessed Income Tax liability for the preceding tax year, including under a self-assessment, after reduction of any foreign tax credit allowed to the person for that year; and

B is so much of A that was paid by amounts withheld under Subdivision 4 of Division 2.

(4) If—

a) the Income Tax payable by a person for the preceding tax year has not been assessed by the due date for payment of the first advance payment of Income Tax for a tax year; or

b) the person commenced to derive income included in gross income during the tax year, the amount of each advance payment of Income Tax is one-ninth of the amount of Income Tax estimated by the person to be payable for the tax year, other than Income Tax to be collected by withholding under Subdivision 4 of Division 2.

(5) A statement of the Income Tax estimated to be payable by a person for a tax year in accordance with subsection (4) must be filed with the CEO at any time before the due date for payment of the seventh advance payment of Income Tax for the year.

(6) A person who reasonably believes that their Income Tax liability for a tax year will be significantly lower than the Income Tax liability assessed for the previous tax year may file a statement of the Income Tax estimated to be payable by the person for the year, at any time before the end of the twelfth month of the person's tax year, and the amount of each advance payment of Income Tax payable for the year is one-ninth of the person's estimated Income Tax liability for the year, other than Income Tax to be collected by withholding under Subdivision 4 of Division 2.

(7) If a person fails to file a statement as required under subsection (5) for a tax year, the estimated Income Tax of the person payable for the year is the amount of Income Tax estimated by the CEO to be payable by the person for the year.

(8) A statement filed by a person under subsection (5) or (6), or the CEO's estimate of the Income Tax payable by the person under subsection (7) remains in force for the whole of the tax year unless the person files a statement of a revised estimate with the CEO.

(9) A statement of a revised estimate filed under subsection (8) applies to the calculation of advance payments of Income Tax for a tax year payable by the person both before and after the date the statement was filed and—

(a) the amount of any underpayment of advance payment of Income Tax made prior to filing the statement of revised estimate must be paid by the person together with the first advance payment due after the statement is filed; or

(b) the amount of any overpaid advance payments of Income Tax is applied against future advance payments of Income Tax payable by the person.

(10) Each advance payment of Income Tax paid by a person during a tax year is credited against the person's Income Tax liability for the year in accordance with section 8(3) and if the amount of the credit allowed exceeds the Income Tax due for the year, the amount of the excess is refunded to the person.

(11) If the estimate, including the estimate of the CEO and any revised estimate, of Income Tax payable by a person for a tax year is less than 100% of the actual Income Tax liability of the person for the year (the difference referred to as the "advance tax shortfall"), the person is liable for a penalty equal to 40% of the person's advance tax shortfall.

(12) No penalty is imposed under subsection (11) if the CEO is satisfied that the reason for the advance tax shortfall was due to circumstances beyond the control of the person and all reasonable care was taken by the person in making the estimate or revised estimate.

(13) Notwithstanding subsection (12), no penalty is imposed under subsection (11) for a period of 3 years commencing on 1 August 2020.

(14)

[Section 110 amended by Act 14 of 2020 s9, effective 1 August 2020, amended by Act 5 of 2023, s10, effective 1 August 2023]

Legislative History:
Act 14 of 2020 – prior to 1 August 2020 – Section 110 read as –

Advance payments of tax

110.—(1) A person liable for Income Tax for a tax year is liable to make advance payments of Income Tax:

(a) in the case of a company, on the last day of the sixth, ninth and twelfth months of the tax year; or

(b) in the case of any other person, on 30th April, 31st August and 30th November.

(2) If the total advance payments of Income Tax payable by a person, other than a company, for a tax year is less than $120, the advance tax payable by the person for the year is payable in one instalment on 30th September.

(3) The amount of each advance payment of Income Tax payable by a person for a tax year is computed according to the following formula—

33 1/3% x (A—B)

where—

A is the person's assessed Income Tax liability for the preceding tax year, including under a self-assessment, after reduction of any foreign tax credit allowed to the person for that year; and

B is so much of A that was paid by amounts withheld under Subdivision 4 of Division 2 of this Part.

(4) If—

(a) the Income Tax payable by a person for the preceding tax year has not been assessed by the due date for payment of the first advance payment of Income Tax for a tax year; or

(b) the person commenced to derive income included in gross income during the tax year, the amount of each advance payment of Income Tax is one-third of the amount of Income Tax estimated by the person to be payable for the tax year, other than Income Tax to be collected by withholding under Subdivision 4 of Division 2 of this Part.

(5) A statement of the Income Tax estimated to be payable by a person for a tax year in accordance with subsection (4) must be filed with the CEO by the due date for payment of the first advance payment of Income Tax for the year.

(6) A person who reasonably believes that their Income Tax liability for a tax year will be significantly lower than the Income Tax liability assessed for the previous tax year may file a statement of the Income Tax estimated to be payable by the person for the year, before the end of the sixth month of the person's tax year, and the amount of each advance payment of Income Tax payable for the year is one-third of the person's estimated

Income Tax liability for the year, other than Income Tax to be collected by withholding under Subdivision 4 of Division 2 of this Part.

(7) If a person fails to file a statement as required under subsection (5) for a tax year, the estimated Income Tax of the person payable for the year is the amount of Income Tax estimated by the CEO to be payable by the person for the year.

(8) A statement filed by a person under subsection (5) or (6), or the CEO's estimate of the Income Tax payable by the person under subsection (7) remains in force for the whole of the tax year unless the person files a statement of a revised estimate with the CEO.

(9) A statement of a revised estimate filed under subsection (8) applies to the calculation of advance payments of Income Tax for a tax year payable by the person both before and after the date the statement was filed and—

(a) the amount of any underpayment of advance payment of Income Tax made prior to filing the statement of revised estimate must be paid by the person together with the first advance payment due after the statement is filed; or

(b) the amount of any overpaid advance payments of Income Tax is applied against future advance payments of Income Tax payable by the person.

(10) Each advance payment of Income Tax paid by a person during a tax year is credited against the person's Income Tax liability for the year in accordance with section 8(3) and if the amount of the credit allowed exceeds the Income Tax due for the year, the amount of the excess is refunded to the person.

(11) If the estimate, including the estimate of the CEO and any revised estimate, of Income Tax payable by a person for a tax year is less than 100% of the actual Income Tax liability of the person for the year (the difference referred to as the "advance tax shortfall"), the person is liable for a penalty equal to 40% of the person's advance tax shortfall.

(12) No penalty is imposed under subsection (11) if the CEO is satisfied that the reason for the advance tax shortfall was due to circumstances beyond the control of the person and all reasonable care was taken by the person in making the estimate or revised estimate.

(13) In this section, "Income Tax" includes the Social Responsibility Tax.

Act 5 of 2023 – prior to 1 January 2024 – Section 110 (14) is deleted.- Section 14 read before as follows:-
(14) In this section, "Income Tax" includes the Social Responsibility Tax.

[Section 110A] Advance payments of tax during coronavirus disease (COVID-19) pandemic [Repealed]

[inserted by Act 3 of 2020, s 6, effective 1 April 2020; repealed effective 1 August 2020]

Legislative History:
Act 3 of 2020 – from 1 April 2020 – Section 110A read as –

Advance payments of tax during coronavirus disease (COVID-19) pandemic

110A.— (1) A person liable for Income Tax for a tax year is liable to make advance payments of Income Tax—

(a) in the case of a company, on the last day of the sixth, seventh, eighth, ninth, tenth, eleventh and twelfth months of the tax year and the first and second months of the following tax year; or

(b) in the case of any other person, on 30 April, 31 May, 30 June, 31 July, 31 August, 30 September, 31 October, 30 November and 31 December,

provided that the tax year is—

(i) in the case of a company—

(A) the 2019 tax year ending on any date from 30 April 2020 to 30 June 2020; or

(B) the 2020 tax year ending on any date from 31 July 2020 to 31 December 2020; or

(ii) in the case of any other person, the 2020 tax year.

(2) If the total advance payments of Income Tax payable by a person, other than a company, for a tax year is less than $120, the advance tax payable by the person for the year is payable in one instalment on 30 September.

(3) The amount of each advance payment of Income Tax payable by a person for a tax year is computed according to the following formula—

11 1/9% x (A – B)

where—

A is the person's assessed Income Tax liability for the preceding tax year, including under a self-assessment, after reduction of any foreign tax

credit allowed to the person for that year; and

B is so much of A that was paid by amounts withheld under Subdivision 4 of Division 2.

(4) If—

(a) the Income Tax payable by a person for the preceding tax year has not been assessed by the due date for payment of the first advance payment of Income Tax for a tax year; or

(b) the person commenced to derive income included in gross income during the tax year, the amount of each advance payment of Income Tax is one-ninth of the amount of Income Tax estimated by the person to be payable for the tax year, other than Income Tax to be collected by withholding under Subdivision 4 of Division 2.

(5) A statement of the Income Tax estimated to be payable by a person for a tax year in accordance with subsection (4) must be filed with the CEO at any time before the due date for payment of the seventh advance payment of Income Tax for the year.

(6) A person who reasonably believes that their Income Tax liability for a tax year will be significantly lower than the Income Tax liability assessed for the previous tax year may file a statement of the Income Tax estimated to be payable by the person for the year, at any time before the end of the twelfth month of the person's tax year, and the amount of each advance payment of Income Tax payable for the year is one-ninth of the person's estimated Income Tax liability for the year, other than Income Tax to be collected by withholding under Subdivision 4 of Division 2.

(7) If a person fails to file a statement as required under subsection (5) for a tax year, the estimated Income Tax of the person payable for the year is the amount of Income Tax estimated by the CEO to be payable by the person for the year.

(8) A statement filed by a person under subsection (5) or (6), or the CEO's estimate of the Income Tax payable by the person under subsection (7) remains in force for the whole of the tax year unless the person files a statement of a revised estimate with the CEO.

(9) A statement of a revised estimate filed under subsection (8) applies to the calculation of advance payments of Income Tax for a tax year payable by the person both before and after the date the statement was filed and—

(a) the amount of any underpayment of advance payment of Income Tax made prior to filing the statement of revised estimate must be paid by the person together with the first advance payment due after the statement is filed; or

(deb) the amount of any overpaid advance payments of Income Tax is applied against future advance payments of Income Tax payable by the person.

(10) Each advance payment of Income Tax paid by a person during a tax year is credited against the person's Income Tax liability for the year in accordance with section 8(3) and if the amount of the credit allowed exceeds the Income Tax due for the year, the amount of the excess is refunded to the person.

(11) This section applies notwithstanding section 110.

(12) In this section, "Income Tax" includes the Social Responsibility Tax.

Subdivision 4 Withholding Tax
(Sections 111–125)

[Section 111] Withholding of Tax from Employment Income

(1) Subject to this Subdivision, an employer must withhold tax from a payment of employment income to an employee as prescribed.

(2) The obligation of an employer to withhold tax under subsection (1)—

a) is not reduced or extinguished because the employer has a right, or is otherwise obliged, to withhold any other amount from a payment of employment income; and
b) applies notwithstanding any law that provides that the employment income of an employee is not to be reduced or subject to attachment.

(3) [delete s 111 am Act 5 of 2023, s11, effective 1 August 2023]

Legislative History:
Act 05 of 2023 – Prior to 1st January 2024 deletes s111 (3) which is read as follows:-
(3) In this section and in other sections of this Subdivision applicable to employment income, "tax" includes the Social Responsibility Tax.

[Section 112] Withholding of Tax from Interest

Subject to this Subdivision, a resident company or permanent establishment in Fiji of a non-resident company paying interest to a resident person, must withhold tax from the gross amount of the interest at the rate prescribed by regulations except if—

a) the payment is to a financial institution; or
b) the CEO issues a certificate of exemption to a resident person on the basis that the interest is exempt as prescribed by regulations made under this Act.

[subs(1) am Act27 of 2016 s11,effective 1 August 2016]

(2)

[subs (2) rep Act 26 of 2017 s 9, effective 1 August 2017]
[s 112 am Act 26 of 2017 s 9, effective 1 August 2017]

Legislative History:
Act 27 of 2016 – prior to 1 August 2016 – Section 112 read as –

Withholding of tax from interest and dividends

112.— (1) Subject to this Subdivision, a resident company or permanent establishment in Fiji of a non-resident company paying interest to a resident person, must withhold tax from the gross amount of the interest at the rate of 10% except if—
(a) the payment is to a financial institution; or
(b) the CEO issues a certificate of exemption to a resident person on the basis that the interest is exempt as prescribed by Regulations made under this Act.
(2) Subject to this Subdivision, a resident company paying a dividend to a resident person must withhold tax from the gross amount of the dividend at the rate of 3%.

[Section 113] Withholding of Tax from Payments to Non-resident Persons

A person paying an amount to a non-resident person that is subject to tax under section 10 must withhold tax from the gross amount paid at the Non-resident Withholding Tax rate prescribed by Regulations made under this Act.

[Section 114] Withholding of Tax from Commissions and Other Payments for Services

(1) Subject to subsection (3), a resident person or permanent establishment in Fiji of a non-resident person making a payment of a commission for the provision of insurance or the sale of any property, including books, publications, buildings, or land, must withhold tax from the gross amount of the payment as prescribed.

(2) Subject to subsection (3), a resident person or a permanent establishment in Fiji of a non-resident person making a payment under a contract for service, including progress payments, must withhold tax from the gross amount of the payment as prescribed.

[subs (2) am Act 31 of 2016 s 102, effective 1 December 2016]

Legislative History:
Act 31 of 2016 – prior to 1 December 2016 – Section 114(2) read as –
(2) Subject to subsection (3), a resident person or a permanent establishment in Fiji of a non-resident person making a payment under a ***contract of service****, including progress payments, must withhold tax from the gross amount of the payment as prescribed.*

(3) This section does not apply to the following—

a) payments made under a contract of employment; or
b) payments subject to tax under section 10.

[Section 115] No withholding from Exempt Income

A person is not liable to withhold tax from an amount that is exempt income of the recipient as prescribed by Regulations made under this Act.

[Section 116] Time of Withholding

A person required to withhold tax under this Subdivision from an amount paid by the person must withhold the tax at the earlier of the time the amount is—

a) applied on behalf of the recipient either at the instruction of the recipient or under any law;
b) reinvested, accumulated or capitalised for the benefit of the recipient;
c) credited to the account, or carried to any reserve, or a sinking or insurance fund for the benefit of the recipient;
d) actually paid or otherwise made available to the recipient.

[Section 117] Payment of tax withheld

(1) Any tax required to be withheld by a person under this Subdivision must be paid to the CEO by the end of the calendar month following the month in which the person was required to withhold the tax.

(2) A liability for withholding tax under this Subdivision arises by operation of this section and is not dependent on the CEO making an assessment of the withholding tax due.

[Section 118] Failure to Pay Tax Withheld

(1) If a person—

a) fails to withhold tax as required under this Subdivision; or
b) having withheld tax fails to pay the tax to the CEO as required under section 117,

that person is personally liable to pay the amount of tax to the CEO.

(2) A person personally liable for an amount of tax under subsection (1) as a result of failing to withhold the tax is entitled to recover the tax from the recipient of the payment.

[Section 119] Recovery of Withholding Tax

(1) If a person fails to withhold tax as required under this Subdivision, the CEO may recover the tax from the recipient of the payment provided that the total amount recovered does not exceed the tax that should have been withheld.

(2) Notwithstanding the recovery of any tax under subsection (1), the person who failed to withhold the tax continues to be liable for—

a) any other legal action in relation to the failure;
b) the imposition of penalty in respect of the failure; and
c) the disallowing of a deduction for the expenditure to which the failure relates under section 22(2).

[Section 120] Tax Withholding Certificate

(1) A person withholding tax under this Subdivision must give to the recipient of the payment a Tax Withholding Certificate as prescribed.

(2) A person required to lodge an Income Tax return for a tax year must attach to the return any Tax Withholding Certificate as prescribed.

[Section 121] Monthly Withholding Tax Summary

A person withholding tax under this Subdivision except for employment income withholding final tax must file with the CEO a monthly withholding tax summary as prescribed.

Legislative History:
Act 9 of 2019 – Prior to 1 August 2019 – Section 121 read as –
121.—(1) A person withholding tax under this Subdivision except for employment income withholding final tax must, within 2 months after the end of the tax year or within such further time as the CEO may allow by notice in writing, file with the CEO an annual withholding tax summary as prescribed.
(2) In this section, "tax year" means the Calendar year.

[Section 122] Priority of tax withheld

An amount that a person is required to withhold from a payment under this Subdivision is—

a) a first charge on the payment; and

b) deducted prior to any other amount that the person may be required to deduct from the payment by virtue of an order of any court or under any other law.

[Section 123] Indemnity

A person who has withheld tax from a payment under this Subdivision and remitted the tax to the CEO is indemnified against any claim by the recipient for payment of the withheld amount.

[Section 124] Credit for Withholding Tax

(1) For the purposes of this Act, if tax has been withheld under this Subdivision from income derived by a person, the amount of income included in the gross income of the person is the amount derived before the withholding of the tax.

(2) Subject to subsections (3) and (4), if tax has been withheld under this Subdivision from income derived by a person, the person is allowed a tax credit for the tax against the tax due by the person on the chargeable income of the person for the tax year in which the tax was withheld.

(3) No tax credit is allowed if the tax withheld is a final tax on the income under section 12 or 125.

(4) A tax credit allowed under this section is applied in accordance with section 8(3).

(5) A tax credit or part of a tax credit allowed to a person under this section for a tax year that is not credited under section 8(3) for the year is refunded to the person in accordance with section 33 of the Tax Administration Act 2009.

[Section 125] Withholding Tax as a Final Tax

(1) This section applies to tax withheld during a tax year under—

a) section 111 provided that the employee does not have 2 or more employments at the same time for the whole or part of the tax year;
b) section 112 from interest paid by a financial institution to a resident individual; or
c) section 112 from interest paid to a resident individual to which paragraph (b) does not apply and the only other income of the individual is the following—
   i. income to which this section applies;
   ii. subject to tax under section 9.
d) [repealed]

[subs (1) am Act 26 of 2017 s 10, effective 1 August 2017]

Legislative History:
Act 26 of 2017 – prior to 1 August 2017 – Section 121(1) read as –
125.—(1) This section applies to tax withheld during a tax year under—
(a) section 111 provided that the employee does not have two or more employments at the same time for the whole or part of the tax year;
(b) section 112(1) from interest paid by a financial institution to a resident individual;
(c) section 112(1) from interest paid to a resident individual to which paragraph (b) does not apply and the only other income of the individual is the following—
(i) income to which this section applies;
(ii) subject to tax under section 9; or

(d) section 112(2).

(2) If this section applies, the tax withheld is a final tax on the income in respect of which the tax has been withheld and—

a) the income is not included in—
   i. gross income in computing the chargeable income of the person who derives it for any tax year, although employment income to which subsection (1)(a) applies is taken into account as specified in section 8(6); or
   ii. gross turnover in computing the Presumptive Income Tax liability of the person who derived it for any tax year;
b) no deduction is allowable under this Act in computing the chargeable income of the person for any expenditure or loss incurred in deriving the income;
c) the income is not reduced by any deduction allowed under this Act or by any loss carried forward; and
d) the tax withheld is not reduced by any tax credits allowed under this Act.

[Section 125A] Withholding tax not as a final tax

(1) Section 125 does not apply to tax withheld during a tax year under section 111 if the total deductions allowed to a person for a tax year exceed the person's gross income, other than employment income, for that year ("net loss").

(2) If a person has a net loss, the person's employment income is reduced by the net loss in computing the chargeable income provided that the amount reduced does not exceed $20,000.

(3) For the avoidance of doubt—
a) if the person's net loss exceeds $20,000, the person's employment income is reduced only by $20,000; and
b) if the person's net loss does not exceed $20,000, the person's employment income is reduced only by the amount equivalent to the net loss.

Legislative History:
Act 3 of 2020 – from 1 April 2020 – Section 125A inserted

DIVISION 3 PROCEDURAL RULES FOR CAPITAL GAINS TAX (Sections 126–130)

[Section 126] Filing of Capital Gains Tax return

(1) A person disposing of a capital asset must file a Capital Gains Tax return within one month after the disposal of the capital asset, except for disposal of capital asset under section 67(1)(c) and Division 8A of Part 2.

Legislative History:

Act 29 of 2022 – from 1 August 2022 – Section 126(1) amended which previously read as:
(1) A person disposing of a capital asset must file a Capital Gains Tax return within one month after the disposal of the capital asset, except for disposal of capital asset under section 67(1)(c).

(2) A Capital Gains Tax return must be in the approved form and filed in the prescribed manner.

[Section 127] Payment of Capital Gains Tax

The Capital Gains Tax payable by a person on the disposal of a capital asset is due on the due date for filing the taxpayer's Capital Gains Tax return in respect of the disposal.

[Section 128] Capital Gains Tax accounts and records

A person must keep accounts, documents and records relating to—

a) the disposal of capital assets by the person; and
b) the computation of the Capital Gains Tax payable (if any) by the person in respect of the disposal of capital assets.

[Section 129] Collection of Capital Gains Tax payable by Partnerships or Trusts

(1) Each trustee of a trust is responsible for performing any duties or obligations imposed by this Act on the trust in relation to Capital Gains Tax, including the payment of Capital Gains Tax.

(2) Each partner in a partnership is responsible for performing any duties or obligations imposed by this Act on the partnership in relation to Capital Gains Tax, including the payment of Capital Gains Tax.

(3) If a trust has more than one trustee, the duties and obligations imposed under this section on the trustee of the trust shall apply jointly and severally to the trustees but may be discharged by any of them.

(4) The duties and obligations imposed under this section on the partners in a partnership apply jointly and severally to the partners but may be discharged by any of them.

[Section 130] Capital asset registration and renewals

(1) The Registrar of Titles must not register an instrument relating to the transfer of a capital asset under the Land Transfer Act 1971 or renewal of the registration of a capital asset, unless the transferor or transferee has furnished the Registrar of Titles with a certificate from the CEO stating that the Capital Gains Tax due on the transfer has been paid or satisfactory arrangements for payment of the tax have been made, or that no such tax is payable.

(2) The Civil Aviation Authority of Fiji, Maritime Safety Authority of Fiji and Registrar of Companies must not register any instrument relating to the capital asset or renewal of a capital asset, unless the Civil Aviation Authority of Fiji, Maritime Safety Authority of Fiji or the Registrar of Companies is furnished with a certificate from the CEO stating that the capital gains tax due had been paid or satisfactory arrangements for payment of the tax has been made, or that no such tax is payable.

(3) The CEO shall furnish a certificate in subsection (2) within 7 days of receipt of an application from the Civil Aviation Authority of Fiji, Maritime Safety Authority of Fiji or Registrar of Companies for such a certificate.

DIVISION 4 PROCEDURAL RULES FOR FRINGE BENEFITS TAX (Sections 131–134)

[Section 131] Filing of Fringe Benefits Tax return

(1) An employer liable for Fringe Benefits Tax for a quarter must file a Fringe Benefits Tax return for the quarter within one month following the end of the quarter.

(2) A Fringe Benefits Tax return must be in the approved form and filed in the prescribed manner.

[Section 132] Payment of Fringe Benefits Tax

The Fringe Benefits Tax payable by an employer for a quarter is due on the due date for filing the taxpayer's Fringe Benefits Tax return for the quarter.

[Section 133] Fringe Benefits Tax accounts and records

An employer must keep such accounts, documents and records to enable the computation of the Fringe Benefits Tax payable by the person for a quarter.

[Section 134] Collection of Fringe Benefits Tax payable by partnerships or trusts

Section 129 applies, with the necessary changes made, to the Fringe Benefits Tax.

DIVISION 5 PROCEDURAL RULES FOR LEVIES (Sections 135–137)

[Section 135] Filing of Returns for Levies

(1) A licensed telecommunications service provider liable for the Telecommunications Levy must file a Telecommunications Levy return within 15 days after the end of each calendar month.

(2)

Legislative History:
Act 27 of 2016 – prior to 1 August 2016 – Section 135(2) read as –
(2) A bank liable for the Credit Card Levy must file a Credit Card Levy return within 15 days following the end of each Calendar month.

(3)

Legislative History:
Act 40 of 2017 – prior to 1 January 2018 – Section 135(3) read as –
(3) An insurance company liable for the Third Party Insurance Levy must file a Third Party Insurance Levy return within 15 days after the end of each Calendar month.

(4) A return required to be filed under this section must be in the approved form and filed in the prescribed manner.

[Section 136] Payment of Levies

The Telecommunications Levy payable by a person for a calendar month is due on the date that the Telecommunications Levy return for the month is due.

Legislative History:
Act 40 of 2017 – prior to 1 January 2018 – Section 136 read as –
*The Telecommunications Levy **or Third Party Insurance Levy** payable by a person for a Calendar month is due on the date that the Telecommunications Levy **or Third Party Insurance Levy** return, as the case may be, for the month is due.*

Act 27 of 2016 – prior to 1 August 2016 – Section 136 read as –
*The Telecommunications Levy, **Credit Card Levy** or Third Party Insurance Levy payable by a person for a Calendar month is due on the date that the Telecommunications Levy, **Credit Card Levy** or Third Party Insurance Levy return, as the case may be, for the month is due.*

[Section 137] Accounts and Records Relating to Levies

A person liable for the Telecommunications Levy must keep such accounts, documents and records to enable the computation of the amount of levy payable.

Legislative History:
Act 40 of 2017 – prior to 1 January 2018 – Section 137 read as –
*137. A person liable for the Telecommunications Levy **or the Third Party Insurance Levy** must keep such accounts, documents and records to enable the computation of the amount of levy payable.*

Act 27 of 2016 – prior to 1 August 2016 – Section 137 read as –
*137. A person liable for the Telecommunications Levy, **Credit Card Levy** or the Third Party Insurance Levy must keep such accounts, documents and records to enable the computation of the amount of levy payable.*

PART 10 MISCELLANEOUS PROVISIONS
(Sections 138–140)

[Section 138] Concessionary Rate of Tax for Regional or Global Headquarters

(Repealed)

Legislative History:
Act 29 of 2022 – from 1 August 2022 – Section 138 deleted which previously read as:
(1) The Minister may, by regulations, provide that tax at a rate of 17% or such other concessionary rate, be levied and paid for each tax year upon such income as the Minister may specify for an approved regional or global headquarters.

(2) Pursuant to subsection (1), tax shall be levied for income derived by the regional or global headquarters from the provision of qualifying services as prescribed to its offices, associated companies and other persons, outside Fiji.

(3) The concessionary rate of tax referred to in subsection (1) shall apply to an approved regional or global headquarters—
a) in respect of any qualifying service only where the qualifying service and the office, associated company or person to whom the service is rendered, have been approved in relation to that regional or global headquarters for such concessionary rate; and
b) subject to such conditions as the CEO or any person appointed by the CEO, may impose.

(4) A foreign company which operates or is carrying on business in Fiji is allowed a 150% deduction for capital expenditure incurred for the relocation of its regional or global headquarters to Fiji, which provides management, technical or other supporting services to its offices or associated companies.

(5) In this section—
associated company in relation to an approved regional or global headquarters, means a company—
a) the operations of which are or can be controlled, directly or indirectly, by that regional or global headquarters;
b) which controls or can control, directly or indirectly, the operations of that regional or global headquarters; or
c) the operations of which are or can be controlled, directly or indirectly, by a person or persons who control or can control, directly or indirectly, the operations of that regional or global headquarters; and
regional or global headquarters refers to a regional or international company which operates or is carrying on business in Fiji, and which provides management, technical or other supporting services to its offices or associated companies, outside Fiji.

(6) For the purposes of subsection (4), a company shall be deemed to be an associated company in relation to an approved regional or global headquarters if—
a) at least 25% of the total number of its issued shares are beneficially owned, directly or indirectly, by the approved headquarters company; or
at least 25% of the total number of the issued shares of the approved headquarters company are beneficially owned, directly or indirectly, by the first mentioned company.

Transition Rules

Notwithstanding section 5[2], any concessionary rate of tax applicable to a company under section 138 of the Act prior to the commencement of the Income Tax (Budget Amendment) (No. 2) Act 2022 continues to apply until the end of the company's tax year 2022.

[Section 139] Currency Translation

(1) An amount taken into account under this Act must be expressed in Fiji dollars.

[2] Section 5 of Income Tax (Budget Amendment) (No. 2) Act 2022

(2) If an amount is in a currency other than Fiji dollars, the amount must be translated to Fiji dollars at the exchange rate applying between the foreign currency and Fiji dollars on the date the amount is taken into account for the purposes of this Act.

(3) With the prior written permission of the CEO, amounts taken into account in computing the business income and deductions relating to such income of a person for a tax year may be translated to Fiji dollars at the average exchange rate for the tax year between the foreign currency and Fiji dollars.

(4) For the purposes of this Act, "exchange rate" means the telegraphic transfer rate issued by a financial institution relevant to the transaction.

Legislative History:
Act 27 of 2016 – prior to 1 August 2016 – Section 139(4) read as –
(4) For the purposes of this Act, "exchange rate" means the telegraphic transfer buying rate issued by a financial institution.

[Section 140] Double tax and tax information exchange agreements

(1) The Minister may enter into—

a) an agreement with the Government of any other country or territory under which arrangements are made with that Government for the prevention, mitigation, or discontinuance of the levying of Income Tax under the laws of Fiji and the other country or territory, in respect of the same income, gain or benefit, or to the rendering of reciprocal assistance in the administration of, and collection of taxes under this Act and the other country or territory; or
b) a tax information exchange agreement with the Government of any other country or territory for the reciprocal exchange of information.

(2) Without limiting the generality of subsection (1), it is hereby declared that an agreement to which effect is given under this section may contain provisions in relation to—

a) relief from double taxation;
b) the taxation of income derived from sources in Fiji by non-resident persons, the taxation of capital gains in relation to Fiji assets of non-resident persons, or the taxation of fringe benefits received by non-resident employees;
c) determining the income, and losses and expenditures, and capital gains to be attributed to permanent establishments in Fiji of non-resident persons; or
d) determining the income attributable to resident persons who have special relationships with non-resident persons.

(3) An agreement made under this section may include relief from double taxation for periods before the commencement date or before the agreement enters into force, and provisions relating to income that is not subject to double taxation.

(4) As soon as may be after the conclusion of an agreement under this section, the agreement must be notified by the Minister in the Gazette whereupon, until revoked, the agreement has effect as if enacted in this Act but only if and for so long as such agreement, in so far as it relates to immunity, exemption, or relief in respect of Income Tax levied or liable in the other country or territory has the effect in the other country or territory.

(5) The Minister may, at any time, revoke a notification in the Gazette under subsection (4) and whereupon the agreement to which the notification relates ceases to have effect, but the revocation does not affect the validity of anything done prior to the revocation having effect.

(6) The secrecy obligation in section 52 of the Fiji Revenue and Customs Service Act 1998 does not prevent the disclosure to any authorised officer of the Government of a foreign country or territory with which an agreement has been made under this section of such information as is required to be disclosed under the agreement.

[subs (6) am Act 38 of 2017 s 7, effective 1 August 2017]

Legislative History:

*Act 38 of 2017 – prior to 1 August 2017 – Section 140(6) references from "*Fiji Revenue and Customs Authority*" changed to "Fiji Revenue and Customs Service"*

(7) Subject to subsection (8), when an agreement made under this section provides that income derived from sources in Fiji is exempt or excluded from tax or the application of the agreement results in a reduction in the Fiji Income Tax payable, the benefit of that exemption, exclusion, or reduction is not available to any person who, for the purposes of the agreement, is a resident of the other contracting state when 50% or more of the beneficial ownership of that person is held by an individual or individuals who are not residents of that other Contracting State for the purposes of the agreement.

(8) Subsection (7) does not apply to a company listed on a stock exchange in the other Contracting State.

(9) To the extent that the terms of an agreement entered into under this section are inconsistent with the provisions of this Act, apart from subsection (7) and Part 8 which deals with tax avoidance, the terms of the agreement prevail over the provisions of this Act.

(10) In this section, "Income Tax" means any tax imposed under this Act.

PART 11 CONSEQUENTIAL AMENDMENTS (Section 141)

[Section 141] Consequential amendments

The Tax Administration Act 2009 is amended—

(a)in section 2—

i. by deleting the definition of “authorised officer”;

ii. by deleting the definition of “controlling interest” and substituting the following—

controlling interest means a direct or indirect controlling interest by way of shareholding, and includes control of a company by a director or other person, in accordance with whose directions, instructions or wishes the company or its directors are accustomed, or under an obligation, whether formal or informal, to act;

iii. by inserting the following new definition—

Capital Gains Tax means the Capital Gains Tax imposed under the Income Tax Act 2015;

iv. by deleting the definition of “Capital Gains Tax Act”;

v. by deleting “Fringe Benefit Tax Act” and substituting “Income Tax Act” in the definition of “Fringe Benefit Tax”;

vi. by deleting the definition of “Fringe Benefit Tax Act”;

vii. by deleting the definition of “Income Tax Act” and substituting the following—

Income Tax Act means the Income Tax Act 2015;

viii. by deleting “year of assessment” and substituting “tax year” in paragraph (a)(iii) of the definition of “tax period”;

ix. in the definition of “taxpayer” by deleting—

A. “year of assessment” and substituting “tax year” wherever it appears; and

B. “imposed under section 8, 8A, 9, 9A, 10, 10A or any other tax withheld specified in the Income Tax Act 2015” in paragraph (a)(iv); and

x. in the definition of “withholding tax” by deleting—

A. “8, 8A, 9, 9A, 10 or 10A of the Income Tax Act 2015” and substituting “10 of the Income Tax Act 2015” in paragraph (a);

B. “from emoluments under Part 11 of the Income Tax Act 2015; or” and substituting “under Subdivision 4 of Division 2 of Part 9 of the Income Tax Act 2015.” in paragraph (b); and

C. paragraph (c);

b) in section 24 by deleting “under section 8(4), 8A(6), 9(5), 9A(12), 10(5), 10A(3), 107(a)(2) or Part 11 of the Income Tax Act 2015” in subsection (1)(a);

c) in section 41 by deleting “authorised officer,” in subsection (1)(b);

d) in Schedule 1 by—

i. inserting “1.” before “The following are tax assessments for the purposes of this Act—”;

ii. deleting “section 5” and substituting “section 8” wherever it appears;

iii. deleting “Part 12 of the Income Tax Act 2015” and substituting “Subdivision 3 of Division 2 of Part 9 of the Income Tax Act 2015” in subparagraph (b); and

iv. inserting the following new paragraph at the end of the Schedule—

“2. The determination of the withholding tax payable is not a tax assessment.”;

e) in Schedule 3—

i. in Part A by deleting—

A. paragraph (1) and substituting the following—

"(1) In relation to the Income Tax—

a. a return required under sections 104 or 108 of the Income Tax Act 2015;

b. a report required under section 107 of the Income Tax Act 2015; or

c. an annual withholding tax summary required under section 121 of the Income Tax Act 2015";

B. "15 of the Capital Gains Tax Act" and substituting "126 of the Income Tax Act 2015" in paragraph (5); and

C. "19 of the Fringe Benefits Tax Act" and substituting "131 of the Income Tax Act 2015" in paragraph (6); and

ii. in Part B by—

A. inserting "(1)" before "A return";

B. deleting "and a return required under section 15 of the Capital Gains Tax Act 2011 and a return required under section 19 of the Fringe Benefit Tax Act" in paragraph (1); and

C. inserting the following new paragraph after paragraph (1)—

"(2) A return required under section 104, 108, 126, 131 or 135 of the Income Tax Act 2015."

PART 12 FINAL PROVISIONS
(Sections 142–144)

[Section 142] Regulations

(1) The Minister may make regulations—

a) prescribing forms or other matters as required under this Act; or
b) to give effect to the provisions of this Act.

(2) Without limiting the general effect of subsection (1), regulations made under that subsection may—

a) contain provisions of a saving or transitional nature consequent on the implementation of this Act ; or
b) prescribe penalties for the contravention of the regulations.

(3) If regulations made under this section are of a transitional nature and are made within 6 months after the commencement of this Act, the regulations may provide that they take effect from the date on which the Act comes into force.

[Section 143] Transitional and savings

(1) The repealed laws continue to apply to years of assessment prior to the tax year in which this Act comes into force.

(2) A reference in this Act to a previous tax year includes, when the context requires, a reference to a year of assessment under the repealed laws.

(3) (Repealed)

Legislative History:
Act 27 of 2016(s16) - prior to 1 August 2016 - Section 143(3) read as –
(3) Section 21(1)(r) of the Income Tax Act (Cap. 201) continues to apply.

(4) Sections 10 and 17(53) of Income Tax Act (Cap 201) and section 11 of the Tax Free Zones Act 1991 continue to apply until the expiration of the Tax Free Zone licence.

(5) An academic or charitable institution listed in, or approved by the CEO under, section 21(1)(n) of the Income Tax Act (Cap 201) is an approved academic or charitable institution for the purposes of section 24.

(6) A Double Tax Agreement in force at the commencement date of this Act continues to apply unless reviewed by the CEO in consultation with the Double Tax Agreement country's competent authority.

(7) (Repealed)

Legislative History:
Act 26 of 2017(s11) - prior to 1 August 2017 - Section 143(7) read as –

(7) If any part of the net profit after tax of a company for the tax year commencing on 1 January 2014 or equivalent substituted tax year has not been distributed as a dividend prior to 1 January 2016, the company shall pay tax on the undistributed amount at the rate of 1% and the tax is due on March 31, 2016

(8) A business is allowed a deduction for 150% of the amount of any cash donation made in a tax year to the Fiji Association of Sports and National Olympic Committee (FASANOC) for Fiji's participation at the 2015 Pacific Games.

(9) A business is allowed a deduction for 150% of the amount of any cash donation made in a tax year to the Fiji Rugby Union (FRU) for Fiji's participation at the 2015 Rugby World Cup.

(9A)
[subs (9A) insrt Act 27 of 2016 s 16, effective 1 August 2016; renum as 143A(2) Act 26 of 2017 s 11, effective 1 August 2017]

Legislative History:
Act 27 of 2016(s16) - prior to 1 August 2016 - Section 143(9A) read as –
(9A) If any part of the net profit after tax of a company for the tax year commencing on 1 January 2015 or equivalent substituted tax year has not been distributed as a dividend prior to 30 June 2016, the company must pay tax on the undistributed amount at the rate of 1% and the tax is due on 30 September 2016.

(9B) Section 25(15)(a)(ii), (iii) and (iv), (b) and (c), (16), (17) and (18) cease to apply when Part 6 of the Act comes into force in accordance with section 1(3).
[subs(9B)insrtAct27of2016s16,effective1August2016]

Legislative History:
Act 27 of 2016(s16) – from 1 August 2016 - Section 143(9B) inserted

(10) In this section, "repealed laws" means the laws specified in section 144.

[Section 143A] Transitional undistributed profits

(1) If any part of the net profit after tax of a company for the tax year commencing on 1 January 2014 or equivalent substituted tax year has not been distributed as a dividend prior to 1 January 2015, the company shall pay tax on the undistributed amount at the rate of 1% and the tax is due on 31 March 2016.

Legislative History:
Act 26 of 2017(s11) – from 1 August 2017 - Section 143A(1) inserted

(2) If any part of the net profit after tax of a company for the tax year commencing on 1 January 2015 or equivalent substituted tax year has not been distributed as a dividend prior to 30 June 2016, the company must pay tax on the undistributed amount at the rate of 1% and the tax is due on 30 September 2016.

Legislative History:
Act 26 of 2017(s11) – from 1 August 2017 - Section 143A(2) inserted

(3) If any part of the net profit after tax of a company for a tax year prior to 2014 has not been distributed as a dividend prior to 30 June 2017, the company must pay tax on the undistributed amount at the rate of 1% and the tax must be paid on or before 30 September 2017.

Legislative History:

Act 26 of 2017(s11) – from 1 August 2017 - Section 143A(3) inserted

(4) A company who fails to pay tax on or before the due date is liable to a penalty of 75% of the amount of unpaid tax.

Legislative History:
Act 26 of 2017(s11) – from 1 August 2017 - Section 143A(2) inserted

(5) A company who fails to comply with subsection (4) is liable to a penalty of 5% of the amount of unpaid tax for each month of default.

Legislative History:
Act 26 of 2017(s11) – from 1 August 2017 - Section 143A(5) inserted

(6) Any penalty paid by a company under this section must be refunded to a taxpayer to the extent that the tax to which the penalty relates is found not to have been payable.

Legislative History:
Act 26 of 2017(s11) – from 1 August 2017 - Section 143A(7) inserted

(7) For the avoidance of doubt, any payment of tax prior to 30 June 2017 on the dividends distributed from the net profit after tax of a company for a tax year prior to 2014 is not refundable by the Fiji Revenue and Customs Service.

Legislative History:
Act 26 of 2017(s11) – from 1 August 2017 - Section 143A(7) inserted

[Section 144] Repealed laws

The following laws are hereby repealed—

a) Income Tax Act (Cap. 201);
b) Capital Gains Tax Decree 2011; and
c) Fringe Benefit Tax Decree 2012.

SUBSIDIARY LEGISLATION

INCOME TAX (RATES OF TAX AND LEVIES) REGULATIONS 2016

Table of Amendments

Income Tax (Rates of Tax and Levies) Regulations 2016 (LN 5 of 2016) commenced on 1 January 2016, as amended by:

Amending Legislation	**Date of Commencement**
Income Tax (Rates of Tax and Levies) (Amendment) Regulations 2016 (LN 65 of 2016)	1 August 2016
Income Tax (Rates of Tax and Levies) (Amendment) Regulations 2017 (LN 59 of 2017)	1 August 2017
Accident Compensation Act 2017 (No 40 of 2017)	ss 1-17, 30, 32, 34-36: 15 August 2017; remainder: 1 January 2018
Income Tax (Rates of Tax and Levies) (Amendment) Regulations 2018 (LN 31 of 2018)	1 January 2017
Income Tax (Rates of Tax and Levies) (Amendment) Regulations 2019 (LN 49 of 2019)	1 August 2019
Income Tax (Rates of Tax and Levies) (Amendment) Regulations 2020 (LN 62 of 2020)	1 August 2020
Income Tax (Rates of Tax and Levies) (Amendment) Regulations 2022 (LN 28 of 2022)	1 April 2022
Income Tax (Rates of Tax and Levies) (Amendment) (No. 2) Regulations 2022 (LN 93 of 2022)	1 August 2022

[Regulation 1] Short title and commencement

(1) These Regulations may be cited as the Income Tax (Rates of Tax and Levies) Regulations 2016.

(2) These Regulations shall come into force on 1 January 2016.

[Regulation 2] Interpretation

(1) In these Regulations, "Act" means the Income Tax Act 2015.

(2) The words and phrases have the same meaning as under the Act unless the context otherwise requires.

[Regulation 3] Rates of tax and levies

For the purposes of sections 8, 10, 11, 57, 65, 69, 70, 98, 99, 100, 112 and 113 of the Act, the rates of tax and levies are specified in the Schedule.

[reg 3 am LN 65 of 2016 reg 2, effective 1 August 2016]

[Regulation 4] 2017 Income Tax assessment

(1) This regulation applies for the purposes of computing the Income Tax imposed on a person for the tax year commencing on 1 January 2017.

(2) In this regulation, unless the context otherwise requires—

Period 1 means the period from 1 January 2017 to 31 July 2017;

Period 1 tax rate means the rate or rates of Income Tax applicable to the chargeable income of a person in Period 1;

Period 2 means the period from 1 August 2017 to 31 December 2017;

Period 2 tax rate means the rate or rates of Income Tax applicable to the chargeable income of a person in Period 2; and

Person means a resident individual, other than a trustee where the income of the trust is taxed in the hands of the trustee.

(3) Where a person derived chargeable income only in Period 1 and not in Period 2, the total Income Tax for that period is computed by applying the Period 1 tax rate.

(4) Where a person derived chargeable income only in Period 2 and not in Period 1, the total Income Tax for that period is computed by applying the Period 2 tax rate.

(5) Where a person derived chargeable income in both Period 1 and Period 2, the total Income Tax for both periods is computed in accordance with the following formula—

$$\textbf{Income Tax} = \frac{7x}{12} + \frac{5y}{12}$$

where—

x means the Income Tax computed by applying the Period 1 tax rate to the chargeable income of the person for the tax year commencing on 1 January 2017;

Y means the Income Tax computed by applying the Period 2 tax rate to the chargeable income of the person for the tax year commencing on 1 January 2017; and

year means the calendar year.

[reg 4 insrt LN 31 of 2018 reg 2, effective 1 January 2017]

[Regulation 5] 2017 Social Responsibility Tax assessment

(1) This regulation applies for the purposes of computing the Social Responsibility Tax imposed on a person for the tax year commencing on 1 January 2017.

(2) In this regulation, unless the context otherwise requires—

Period 1 means the period from 1 January 2017 to 31 July 2017;

Period 1 tax rate means the rate or rates of Social Responsibility Tax applicable to the chargeable income of a person in Period 1;

Period 2 means the period from 1 August 2017 to 31 December 2017;

Period 2 tax rate means the rate or rates of Social Responsibility Tax applicable to the chargeable income of a person in Period 2; and

Person means a resident individual, other than a trustee where the income of the trust is taxed in the hands of the trustee.

(3) Where a person derived chargeable income only in Period 1 and not in Period 2, the total Social Responsibility Tax for that period is computed by applying the Period 1 tax rate.

(4) Where a person derived chargeable income only in Period 2 and not in Period 1, the total Social Responsibility Tax for that period is computed by applying the Period 2 tax rate.

(5) Where a person derived chargeable income in both Period 1 and Period 2, the total Social Responsibility Tax for both periods is computed in accordance with the following formula—

$$\textbf{Social Responsibility Tax} = \frac{7x}{12} + \frac{5y}{12}$$

where—

x means the Social Responsibility Tax computed by applying the Period 1 tax rate to the chargeable income of the person for the tax year commencing on 1 January 2017;

Y means the Social Responsibility Tax computed by applying the Period 2 tax rate to the chargeable income of the person for the tax year commencing on 1 January 2017; and

year means the calendar year.

[reg 5 insrt LN 31 of 2018 reg 2, effective 1 January 2017]

[Regulation 6] 2020 Environment and Climate Adaptation Levy assessment

(1) This regulation applies for the purposes of computing the Environment and Climate Adaptation Levy imposed on a person for the tax year commencing on 1 January 2020.

(2) In this regulation, unless the context otherwise requires—

"**Period 1**" means the period from 1 January 2020 to 31 July 2020;

"**Period 1 tax rate**" means the rate or rates of Environment and Climate Adaptation Levy applicable to the chargeable income of a person in Period 1;

"**Period 2**" means the period from 1 August 2020 to 31 December 2020;

"**Period 2 tax rate**" means the rate or rates of Environment and Climate Adaptation Levy applicable to the chargeable income of a person in Period 2; and

"**person**" means an individual, other than a trustee where the income of the trust is taxed in the hands of the trustee.

(3) Where a person derived chargeable income only in Period 1 and not in Period 2, the total Environment and Climate Adaptation Levy for that period is computed by applying the Period 1 tax rate.

(4) Where a person derived chargeable income only in Period 2 and not in Period 1, the total Environment and Climate Adaptation Levy for that period is computed by applying the Period 2 tax rate.

(5) Where a person derived chargeable income in both Period 1 and Period 2, the total Environment and Climate Adaptation Levy for both periods is computed in accordance with the following formula—

$$\text{Environment and Climate Adaptation Levy} = \frac{7x}{12} + \frac{5y}{12}$$

where—

x means the Environment and Climate Adaptation Levy computed by applying the Period 1 tax rate to the chargeable income of the person for the tax year commencing on 1 January 2020;

y means the Environment and Climate Adaptation Levy computed by applying the Period 2 tax rate to the chargeable income of the person for the tax year commencing on 1 January 2020; and

year means the calendar year.

[Regulation 6 inserted by LN 62 of 2020 reg 2; effective 1 August 2020]

[Regulation 7] 2022 Social Responsibility Tax assessment

(1) This regulation applies for the purposes of computing the Social Responsibility Tax imposed on a person for the tax year commencing on 1 January 2022.

(2) In this regulation, unless the context otherwise requires—

"Period 1" means the period from 1 January 2022 to 31 March 2022;

"Period 1 tax rate" means the rate or rates of Social Responsibility Tax applicable to the chargeable income of a person in Period 1;

"Period 2" means the period from 1 April 2022 to 31 December 2022;

"Period 2 tax rate" means the rate or rates of Social Responsibility Tax applicable to the chargeable income of a person in Period 2; and

"person" means a resident individual, other than a trustee where the income of the trust is taxed in the hands of the trustee.

(3) Where a person derived chargeable income only in Period 1 and not in Period 2, the total Social Responsibility Tax for that period is computed by applying the Period 1 tax rate.

(4) Where a person derived chargeable income only in Period 2 and not in Period 1, the total Social Responsibility Tax for that period is computed by applying the Period 2 tax rate.

(5) Where a person derived chargeable income in both Period 1 and Period 2, the total Social Responsibility Tax for both periods is computed in accordance with the following formula—

$$\text{Social Responsibility Tax} = \frac{3x}{12} + \frac{9y}{12}$$

where—

x means the Social Responsibility Tax computed by applying the Period 1 tax rate to the chargeable income of the person for the tax year commencing on 1 January 2022;

y means the Social Responsibility Tax computed by applying the Period 2 tax rate to the chargeable income of the person for the tax year commencing on 1 January 2022; and

year means the calendar year.

[Regulation 8] 2022 Environment and Climate Adaptation Levy assessment

(1) This regulation applies for the purposes of computing the Environment and Climate Adaptation Levy imposed on a person for the tax year commencing on 1 January 2022.

(2) In this regulation, unless the context otherwise requires—

"Period 1" means the period from 1 January 2022 to 31 March 2022;

"Period 1 tax rate" means the rate or rates of Environment and Climate Adaptation Levy applicable to the chargeable income of a person in Period 1;

"Period 2" means the period from 1 April 2022 to 31 December 2022; and

"person" means an individual, other than a trustee where the income of the trust is taxed in the hands of the trustee.

(3) Where a person derived chargeable income only in Period 1 and not in Period 2, the total Environment and Climate Adaptation Levy for that period is computed by applying the Period 1 tax rate.

(4) Where a person derived chargeable income only in Period 2 and not in Period 1, the total Environment and Climate Adaptation Levy for that period is $0.

(5) Where a person derived chargeable income in both Period 1 and Period 2, the total Environment and Climate Adaptation Levy for both periods is computed in accordance with the following formula—

$$\text{Environment and Climate Adaptation Levy} = \frac{3x}{12}$$

where—

x means the Environment and Climate Adaptation Levy computed by applying the Period 1 tax rate to the chargeable income of the person for the tax year commencing on 1 January 2022; and

year means the calendar year.

[Regulation 9] Imposition and collection of plastic levy on plastic bags

(1) Pursuant to section 98(A), the plastic levy charged on plastic bags is $0.50 per plastic bag.

(2) The plastic levy on plastic bags is payable by the person to whom a plastic bag is provided.

(3) The levy imposed under subsection (1) shall—

(a) not be subject to the Value Added Tax imposed under the Value Added Tax Act 1991; and

(b) be clearly and separately shown on a tax invoice, invoice or receipt issued for the purchase of any goods.

(4) The plastic levy charged on plastic bags must be collected by a cashier at the point at which a plastic bag is provided by the business to a consumer.

(5) The accountable person must—

(a) ensure that the plastic levy is collected in accordance with subregulation (4);

(b) ensure that the plastic levy collected under subregulation (4) is paid to the CEO before or on the last day of each month following the month in which the plastic levy is collected; and

(c) provide together with such payment a report in respect of the month in which the plastic levy is collected, setting out the—

(i) number of plastic bags stocked by the business at the beginning of that month;

(ii) number of plastic bags provided to consumers in that month;

(iii) number of plastic bags remaining in the stock of the business at the end of that month; and

(iv) amount of plastic levy collected in that month.

(6) Notwithstanding subregulation (5), the CEO may, in any particular case, require that the plastic levy be paid within a period of less than one month.

(7) Pursuant to subregulation (6), the accountable person must—

(a) not later than 14 days from the date the CEO requires, pay to the CEO the plastic levy collected at the time the CEO makes such a request; and

(b) provide along with such payment a report containing the particulars contained in subregulation 5(*c).*

(8) A business must display a notice informing consumers of the plastic levy charged on plastic bags.

(9) Pursuant to subregulation (8), the notice must be legible and displayed in a conspicuous place.

(10) In this regulation—

"accountable person" means the owner, manager, sole precedent partner and otherwise the person who is responsible for the daily management of a business;

"business" means any business that utilises a register;

"cashier" means a person who, as part of his or her employment with a business, operates a register for the business; and

"register" means a point of sale invoicing device into which a cashier enters data for a transaction.

[Regulation 10] Savings and transitional for companies listed on the South Pacific Stock Exchange

(1) The tax rate of 10% applies to a company listed on the South Pacific Stock Exchange until the end of the company's 7th tax year from the date of listing.

(2) The tax rate of 20% applies to a company from the company's tax year 2023, provided that the company has been listed on the South Pacific Stock Exchange for 7 or more tax years.

[Regulation 10 inserted by LN 93 of 2022; effective 1 August 2022]

SCHEDULE

(Regulation 3) -Rates of Tax and Levies

[Sch am LN 65 of 2016 reg 3, effective 1 August 2016; LN 59 of 2017 reg 2, effective 1 August 2017; Act 40 of 2017 s 37, effective 1 January 2018; Sch am LN 49 of 2019 reg 2, effective 1 August 2019]

(1) The rates of Income Tax and Social Responsibility Tax are——

Resident Individuals

Chargeable income $	**Income Tax $**	**Social Responsibility Tax $**
0—30,000	Nil	Nil
30,001—50,000	18% of excess over $30,000	Nil
50,001—270,000	$3600 + 20% of excess over $50,000	Nil
270,001-300,000	$47,600 + 20% of excess over $270,000	18% of excess over 270,000
300,001-350,000	$53,600 + 20% of excess over $300,000	$5,400 + 19% of excess over 300,000
350,001-400,000	$63,600 + 20% of excess over $350,000	$14,900 + 20% of excess over 350,000
400,001-450,000	$73,600 + 20% of excess over $400,000	$24,900 + 21% of excess over 400,000
450,001-500,000	$83,600 + 20% of excess over $450,000	$35,400 + 22% of excess over 450,000
500,001-1,000,000	$93,600 + 20% of excess over $500,000	$46,400 + 23% of excess over 500,000
1,000,001 +	$193,600 + 20% of excess over $1,000,000	$161,400 + % of excess over 1,000,000

Non-Resident Individuals

Chargeable income $	**Income Tax $**	**Social Responsibility Tax $**
0—30,000	20% of excess over $0	Nil
30,001—50,000	$6,000 + 20% of excess over $30,000	Nil
50,001—270,000	$10,000 + 20% of excess over $50,000	Nil
270,001-300,000	$54,000 + 20% of excess over $270,000	18% of excess over 270,000
300,001-350,000	$60,000 + 20% of excess over $300,000	$5,400 + 19% of excess over 300,000

350,001-400,000	$70,000 + 20% of excess over $350,000	$14,900 + 20% of excess over 350,000
400,001-450,000	$80,000 + 20% of excess over $400,000	$24,900 + 21% of excess over 400,000
450,001-500,000	$90,000 + 20% of excess over $450,000	$35,400 + 22% of excess over 450,000
500,001-1,000,000	$100,000 + 20% of excess over $500,000	$46,400 + 23% of excess over 500,000
1,000,001 +	$200,000 + 20% of excess over	$161,400 + 24% of excess over 1,000,000

(2) [Repealed]

[para 2 repealed by LN 49 of 2019 reg 2, effective 1 August 2019]

(3) The rates of Income Tax for companies are—

a) (repealed)

[para 3(a) repealed by LN 93 of 2022, effective 1 August 2022]

b) in respect of a company listed on the South Pacific Stock Exchange for a period of 7 tax years from the date of listing..... 10%

[para 3(b) amended by LN 93 of 2022, effective 1 August 2022]

c) in respect of any other company.....20%

(4) The rate of Income Tax applicable to a trustee is.....20%

(5) The rates of non-resident withholding tax are—

a) in respect of a royalty, management fee, natural resource amount, or fee for the provision of professional or other independent services.....15%

b) in respect of an interest.....10%

c) [repealed]

d) in respect of an insurance premium.....3%

(5A) The rates of resident withholding tax are—

a) in respect of an interest..... 10%

b) [repealed]

(6) The rate of Non-resident International Shipping Income Tax is.....2%

(7) The rate of Capital Gains Tax is.....10%

(8) The rate of Fringe Benefits Tax is.....20%

(9) The Telecommunications Levy at the rate of.....1%

(10) [Repealed]

(11) [Repealed]

INCOME TAX (EXEMPT INCOME) REGULATIONS 2016

Table of Amendments Income Tax (Exempt Income) Regulations 2016 (LN 2 of 2016) commenced on 1 January 2016, as amended by:

Amending Legislation	**Date of Commencement**
Income Tax (Exempt Income) (Amendment) Regulations 2016 (LN 47 of 2016)	1 August 2016
Income Tax (Exempt Income) (Amendment) Regulations 2017 (LN 57 of 2017)	1 August 2017
Income Tax (Exempt Income) (Amendment) (No 2) Regulations 2017 (LN 70 of 2017)	1 August 2017
Income Tax (Exempt Income) (Amendment) Regulations 2018 (LN 69 of 2018)	1 August 2018
Income Tax (Exempt Income) (Amendment) Regulations 2019 (LN 51 of 2019)	1 August 2019
Income Tax (Exempt Income) (Amendment) Regulations 2020 (LN 61 of 2020)	1 August 2020 Except Regulation 2(a) - 1 April 2020
Income Tax (Exempt Income) (Amendment) Regulations 2021 (LN 76 of 2021)	1 August 2021
Income Tax (Exempt Income) (Amendment) Regulations 2022 (LN 23 of 2022)	1 April 2022

[Regulation 1] Short Title and Commencement

(1) These Regulations may be cited as the Income Tax (Exempt Income) Regulations 2016.

(2) These Regulations shall come into force on 1 January 2016.

[Regulation 2] Interpretation

(1) In these regulations, "Act" means the Income Tax Act 2015.

(2) Subject to subregulation (1), words and phrases have the same meaning as under the Act unless the context otherwise requires.

[Regulation 3] Exempt Income

(1) The amounts specified in the Schedule are exempt income for the purposes of the Act.

(2) For the purposes of section 112(1)(b) of the Act, interest is exempt under the provisions of the Schedule.

[Regulation 4] One-off Payments or Receipts

For the purposes of section 8(8) of the Act, a one-off payment or receipt means—

a) a gain from the sale of an asset;
b) a redundancy payment;
c) a retiree allowance;
d) a gratuity allowance; or
e) an exit inducement payment.

[reg 4 insrt LN 57 of 2017 reg 2, effective 1 August 2017]

SCHEDULE

(Regulation 3) - Exempt Income

[Sch am LN 47 of 2016 reg 2, effective 1 August 2016; LN 57 of 2017 reg 3, effective 1 August 2017; LN 70 of 2017 reg 2, effective 1 August 2017; LN 69 of 2018 reg 2, effective 1 August 2018]

PART 1 — GOVERNMENT

The following amounts are exempt income—

1) The official allowances paid to members of Parliament.

(1A) The salary and official allowances paid to the President of the Republic of Fiji.

2) The income of a town or local council, or public authority, other than income received in trust.
3) The income of a company, commission, or association if not less than 90% of the stock or capital of the company, commission, or association is owned by a town council.
4) The income of the Reserve Bank of Fiji or of any sinking fund in respect of the public debt.
5) The income from the investment of a loan raised by the Government, the interest on which is exempt income under Part 4(1).
6) The income of the Fiji Development Bank.
7) The income of the Land Transport Authority.
8) The income of the iTaukei Land Trust Fund.
9) The income of Film Fiji.
10) The income of the Climate Action Trust Fund.
11) The income of the Climate Relocation of Communities Trust Fund.

[para 1A,10 and 11 inserted by LN 51 of 2019 reg 2, effective 1 August 2019]

PART 2 — EXEMPT ENTITIES

The income of the following entities is exempt income—

1) A co-operative society registered under the Co-operatives Act 1996 if the Minister has declared by order, to be exempt income. The period of the exemption shall be as specified in the order but shall not exceed 8 years from the date of registration as a co-operative society.
2) A society registered under the Co-operatives Act 1996, whose sole objects are accepting deposits from members and non-members, and granting loans for productive purposes to members but not including income derived from a trade or business carried on by the society. The exemption applies on income derived by a co-operative society and carried to a reserve fund or capitalised.

(2A) A society registered under the Co-operatives Act 1996 that is assisted by the Government for any project but the exemption shall not exceed 5 years from the date of the assistance.

3) The Government of a foreign country or foreign territory to the extent specified under the Diplomatic Privileges and Immunities Act 1971.

4) An international organisation declared pursuant to section 6 of the Diplomatic Privileges and Immunities Act 1971 to the extent specified under that Act. If the exemption provided to an international organisation under an agreement between the organisation and the Government of the Republic of Fiji is broader than provided under the Diplomatic Privileges and Immunities Act 1971, the exemption under the agreement applies, provided that the agreement has been approved by Cabinet.
5) A unit trust.
6) A company that owns and operates the Fijian Drua but the exemption is only for a period not exceeding 13 years.

[para 5 inserted by LN 76 of 2021, reg 2, effective 1 August 2021, para 6 inserted by 23 of 2022, from 1 April 2022]

PART 3 — INDIVIDUALS

The following amounts are exempt income—

1) A capital payment received by way of a death gratuity or consolidated compensation for death or injury.
2) So much of a lump sum amount relating to the employment of an employee as, in the opinion of the CEO, is reasonable, but not exceeding $5,000, reduced by any other amount treated as exempt income under this paragraph for the employee in the current and previous tax years. In this paragraph, lump sum amount means any amount, other than a redundancy payment, payable under a contract to an employee—
   a) on termination or impending termination of employment;
   b) for the relinquishment, termination, loss, repudiation, cancellation, or variation of employment;
   c) in respect of appointment to an employment, or of a right or claim to be appointed to an employment; or
   d) on retirement which, in the opinion of the CEO is reasonable if the employer of the employee has either been a contributor to an approved fund or to the Fiji National Provident Fund provided payment is made on or before 31 December 1986 and the employee has attained the age of 55 years or more, or has not been a contributor to an approved fund or to the Fiji National Provident Fund, but does not include the following—
      i. any refund from an approved fund or the Fiji National Provident Fund;
      ii. any amount received or accrued in respect of, or in commutation of, any amount due under any contract of employment;
      iii. any payment in respect of or in lieu of leave.

(2A) A redundancy payment not exceeding $15,000.

3) The employment income of a member of the State's forces serving in Fiji to the extent that such income are derived from funds other than the funds of the Government of the Republic of Fiji.

4) The employment income of a member of the States forces who is ordinarily resident in Fiji but who is serving outside Fiji to the extent that such income are derived from funds other than the funds of the Government of the Republic of Fiji.
5) The employment income of a member of the States forces who is ordinarily resident in Fiji but who is serving with the United Nations that is additional to the employment income that the member would be entitled if serving in Fiji.
6) The foreign-source income of a member of the armed forces of a foreign country or territory allied with the State serving in Fiji.
7) The foreign-source income of a member of an official mission, approved by the Minister, of a foreign country or territory allied with the State serving in Fiji.
8) The foreign-source income of an individual arising from service in Fiji on secondment from the government of a foreign country or territory (referred to as "foreign government"), but only if the foreign government continues to be responsible for the payment of the persons employment income during the secondment and the employment income is not exempt income in the foreign country or territory.
9) A scholarship awarded to a person for full-time instruction at a university, college, school, or other educational institution.
10) An education allowance paid to—
    a) a designated officer in pursuance of the Overseas Service (Fiji) Agreement, 1961; or
    b) a member of the staff of the University of South Pacific in pursuance of an agreement with a foreign government.
11) An amount payable as compensation under the Compensation Scheme to a pensionable designated officer under the Overseas Service (Fiji) Agreement, 1961 who retires in the interests of localisation.
12) The income of a member of the American Peace Corps working in Fiji.
13) The foreign income, other than employment income, of a temporary resident.
14) The employment income of a public servant of the Government who is required to live outside Fiji in order to perform their duties, other than basic salary and gratuity, if the income has been subject to tax in the foreign country or territory.
15) The costs of passage of a temporary resident and his or her family paid or reimbursed by an employer. The exempt amount is limited to the economy airfare by the most direct route between Fiji and the home country of the temporary resident in relation to—
    a) the initial arrival in or final departure from Fiji;
    b) one return journey per year for leave purposes; and
    c) journeys made for urgent family purposes.
16) Alimony or maintenance.
17) The income received by an individual who is a member of the staff of the University of the South Pacific or is the holder of an appointment sponsored by the Fijian Government that is payable under a scheme of supplementation by virtue of an agreement between the Fijian Government and the Government of another State if such income is paid, and subject to tax in the other State.
18) An inducement or education allowance received by an employee.

19) The proportion of a gratuity received by a designated officer that is payable by the United Kingdom Government under the provisions of the Overseas Service (Fiji) Agreement 1961, as amended from time to time.
20) The employment income derived by an individual by reason of service at the University of the South Pacific—
    a) under the Australian Universities International Development Programme in such circumstances that the Programme is responsible for the payment of such income and only to the extent that such income is paid under the Programme and is subject to Income Tax in Australia; or
    b) as the holder of any appointment in respect of which employment income is payable under any scheme of supplementation of the Government of Australia approved by the Government of the Republic of Fiji, only to the extent to which such income is subject to Income Tax in Australia.
21) An allowance paid in accordance with the Criminal Procedure Act (Allowances to Witnesses and Assessors) Rules 2010 to—
    a) a witness attending at a trial or enquiry before a Magistrates Court or the High Court, or summoned to appear before any Court exercising appellate jurisdiction; or
    b) an assessor attending a trial at the High Court.
22) The income of an individual entitled to privileges under the Diplomatic Privileges and Immunities Act 1971 to the extent specified under that Act. If the exemption provided to an official or employee of an international organisation under an agreement between the organisation and the Government of the Republic of Fiji is broader than provided under the Diplomatic Privileges and Immunities Act 1971, the exemption under the agreement applies, provided that the agreement has been approved by Cabinet.

[para 2A inserted by LN 51 of 2019 reg 2, effective 1 August 2019]

PART 4 — EXEMPT INTEREST

The following amounts are exempt income—

1) Interest payable on a loan charged on the public revenue of Fiji if the Minister has declared the interest, by order, to be exempt income.
2) Interest paid by a resident company or a permanent establishment in Fiji of a nonresident company to a non-resident person in respect of a loan if the following conditions are satisfied—
    a) the loan was entered into outside Fiji;
    b) the loan was provided in a currency other than Fijian currency;
    c) the payer and recipient of the interest are not associates;
    d) the loan funds were for use by
        i. the resident company in a business carried on by the company in or outside Fiji; or

ii. the permanent establishment of a non-resident company in a business carried on in Fiji; and

e) the interest is paid outside Fiji.

3) Interest credited to the account of a member of the Fiji National Provident Fund under the provisions of the Fiji National Provident Fund Act 2011.

4) The interest derived by an individual or a private entity, excluding a financial institution, from the financial instruments of the Government, a state owned entity or a statutory authority.

5) Interest derived by a citizen of a foreign country from a financial institution in Fiji recognised in the "Fiji My Second Home" programme administered by the Department of Immigration in Fiji—

   a) if the individual is below 50 years of age, the individual maintains a minimum deposit of $150,000 with a financial institution in Fiji for a minimum of 2 years; or

   b) if the individual is 50 years of age or older, the individual maintains a minimum deposit of $100,000 with a financial institution in Fiji for a minimum of 2 years.

   In both cases, the exemption is available in the third or a subsequent year only if the individual maintains a minimum deposit of $50,000.

6) Interest derived by a non-resident person from a deposit in a Foreign Currency Account if the amount of the deposit is above the equivalent of $150,000.

7) Interest derived by a non-resident person from a deposit in a Fiji Dollar External Account.

8) Interest derived from a financial institution by a non-profit organisation.

9) Interest derived from a Bank—

   a) by a senior citizen (55 years old or above) or a pensioner in a year, which—

      i. does not exceed $30,000; and

      ii. the CEO is satisfied that the interest income is their only source of income unless the other source of income is as specified in sub paragraph (b);

   b) by any senior citizen (55 years old or above) or a pensioner who earns a pension income paid by the Government, Fiji National Provident Fund or any approved fund and also earns an interest income as specified in paragraph (9)(a), shall be entitled to the exemption; or

   c) the interest derived from a licenced Bank, by an individual taxpayer gross income $30,000 or less in a year.

10) Interest derived by a resident person from a resident company or permanent establishment in Fiji of a non-resident company that does not exceed $1,000 per annum.

[para 4 inserted by LN 51 of 2019 reg 2, effective 1 August 2019, para 9 amended by LN 76 of 2021, reg 2, effective 1 August 2021, para 10 inserted by LN 23 of 2022, effective 1 April 2022]

PART 5 — EXEMPT DIVIDENDS

1) Any dividend received is exempt income.

2) [repealed]
3) [repealed]
4) [repealed]
5) [repealed]
6) [repealed]

PART 6 — PROVIDENT AND PENSIONS FUNDS, AND PENSIONS

The following amounts are exempt income—

1) The amount of contributions made by an employer to the Fiji National Provident Fund, or an approved or a non-approved fund in respect of an employee to the extent that the contributions do not exceed statutory minimum required to be made by the employer in respect of the employee under the Fiji National Provident Fund Act 2011.

1A) Notwithstanding paragraph (1), the amount of additional contribution made by an employer to the Fiji National Provident Fund or an approved fund in respect of an employee under the Fiji National Provident Fund Act 2011, provided that the additional contribution does not exceed 10% of the total salary or wages paid to the employee by the employer for a month.

[subreg (1A) inserted by LN 61 of 2020 reg 2, effective 1 April 2020]

2) The income of an approved fund and the Fiji National Provident Fund.
3) A pension or annuity paid by the Fiji National Provident Fund, or an approved or non-approved fund to a resident or non-resident individual.
4) A lump sum or refund of contributions paid by the Fiji National Provident Fund, or an approved or non-approved fund paid to a member of the fund or, in the case of the death of a member, paid to the person entitled to the benefit.
5) The income of a provident fund lawfully established by a town council.
6) The income of the Civil Service Widows and Orphans Pension Scheme and Non-Pensionable Employees Fund established under the Government Employees Provident Fund Ordinance.
7) A pension received by a member of Fiji's naval, military, or air forces for any disability suffered by the person receiving the pension serving in the State's forces during a war and a pension received by a dependent relative of any person killed or who suffered a disability while serving in a State's forces during a war if the pension is granted in respect of such death or disability.

PART 7 — SOCIAL POLICY EXEMPTIONS

The following amounts are exempt income—

1) The income arising from investments made by the Banaban Trust Fund Board in accordance with section 6C of the Banaban Settlement Act 1970.

2) The income (other than business income) derived by a non-profit organisation provided that the income is either expended in Fiji or for purposes that result in benefit of resident individuals.

PART 8 — SHIPPING PROFITS

1) The income of a non-resident person operating a ship in international traffic is exempt income if the Minister is satisfied that an equivalent exemption from Income Tax is granted to resident persons by the country in which the non-resident person resides. For the purposes of this section, a company is resident in the country in which its central management and control is located.

PART 9 — ECONOMIC DEVELOPMENT EXEMPTIONS

1) The Minister may, either by order, or by written direction to the CEO, if satisfied that it is expedient for the economic development of Fiji, declare that the whole of the income of a mining company is exempt income or taxed at a reduced rate as specified in the order or direction. The period of the exemption or application of a reduced rate is as specified in the order or direction.
2) The income of a co-operative dairy company incorporated in Fiji and registered under the provisions of the Co-operative Dairy Companies Act 1974 is exempt income in so far only as it is derived from the collection, treatment or manufacture and distribution of dairy produce from milk or cream supplied by shareholders, or from the investment of any surplus funds from such activities not distributed to shareholders.
3) The income of an Information Communications Technology business—
   a) operating on or before 1 January 2007 in the declared Kalabu Tax Free Zone is exempt income for the period 1 January 2007 – 31 December 2016; or
   b) granted a licence after 1 January 2009 is exempt income for the period of 20 years from the date of issue of the licence.

   [para 3(b) amended by LN 76 of 2021, reg 2, effective 1 August 2021]

   For the purposes of this paragraph, "Information Communications Technology business" means services provided by a person which are Information Communications Technology 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.

4) The income of prescribed small and micro enterprises engaged in agriculture, fisheries, or tourism that has a gross turnover not exceeding $500,000 is exempt income.
5) The income of the Hospital Corporation (South Pacific) Limited trading as Apollo Pacific Hospital Project is exempt income for the period 1 January 2008 to 31 December 2017.
6) [Repealed]
   [para 6 deleted by LN 76 of 2021, reg 2, effective 1 August 2021]
7) The income of a person derived from a new activity in processing agricultural commodities into bio-fuels approved by the CEO during the period 1 January 2009 to 31 December 2028 and employing 20 local employees or more for each year for the duration of the income tax exemption, is exempt income as follows—
   a) in the case of capital investment from $250,000 to $1,000,000, for a period of 5 consecutive tax years;
   b) in the case of capital investment from $1,000,001 to $2,000,000, for a period of 7 consecutive tax years; or
   c) in the case of capital investment of more than $2,000,000, for a period of 13 consecutive tax years.
8) The income of a person derived from a new activity in renewable energy projects and power cogeneration is exempt income for a period of 5 years if the exemption is approved by the CEO.
9) The net gain derived by a resident during the tax year from the trading of shares in a company listed with the South Pacific Stock Exchange is exempt income.
10) The income derived by a person from any new activity approved and established in the declared Tax Free Region from the airport side of the Rewa Bridge, excluding the town boundary of Nausori, up to the Ba side of the Matawalu River is exempt income—
    a) $250,000 to $1,000,000, for a period of 5 consecutive fiscal years;
    b) $1,000,001 to $2,000,000, for a period of 7 consecutive fiscal years;
    c) $2,000,001 or more, for a period 13 consecutive fiscal years.
11) The income derived by Momi Bay Resort Limited is exempt income for a period of 13 consecutive tax years commencing from the 2013 tax year.
12) The income of a shipping company derived from servicing the Rotuma and Lau Group, as approved by the CEO, is exempt income for a period of 7 consecutive tax years.
13) The income of any taxpayer who is a Fijian citizen, global change derived from a local backpacker operation that is wholly owned by the Fijian Citizen, with an annual gross turnover not exceeding $1,000,000, is exempt income.

14) The income of Information Communications Technology start-ups involved in application design or software development for a period of 13 years from the date of approval by the CEO.
15) The income of an accredited Information Communications Technology training institution for a period of 13 years from the date of approval by the CEO.
16) The income of a taxpayer derived from a new activity in commercial agricultural farming and agro-processing as approved by the CEO from 1 January 2015 to 31 December 2018—
    a) $250,000 to $1,000,000, for a period of 5 consecutive fiscal years;
    b) $1,000,001 to $2,000,000, for a period of 7 consecutive fiscal years;
    c) $2,000,001 or more, for a period of 13 consecutive fiscal years.

[para 3 amended by LN 51 of 2019 reg 2, effective 1 August 2019]

PART 10 — LISTING IN SOUTH PACIFIC STOCK EXCHANGE

1) Subject to paragraph (2), the income of a resident person made from the gain of the sale of shares or any other income of a resident person that may arise from the re-organisation, re-construction or amalgamation of a private or public company for the purposes of listing or as part of a listing process on the South Pacific Stock Exchange, prior to listing, or after listing on the South Pacific Stock Exchange.
2) The private or public company shall be listed with the South Pacific Stock Exchange within 24 months from the date of commencement of the re-organisation, re-construction or amalgamation of the private or public company.
3) If the private or public company is not listed with the South Pacific Stock Exchange in accordance with paragraph (2), the income from the reorganisation, reconstruction or amalgamation of the private or public company shall be taxable under the Act.

Corporate bonds

(1) The interest income earned on a corporate bond

INCOME TAX (TRANSFER PRICING) REGULATIONS 2012

Table of Amendments

Income Tax (Transfer Pricing) Regulations 2012 (LN 11 of 2012) commenced on 1 January 2012, as amended by:

Amending Legislation	**Date of Commencement**
Revised Edition of the Laws (Consequential Amendments) Regulations 2016 (LN 99 of 2016)	1 December 2016

PART 1 PRELIMINARY
(Regulations 1–7)

[Regulation 1] Short Title and Commencement

(1) These Regulations may be cited as the Income Tax (Transfer Pricing) Regulations 2012.

(2) These Regulations shall be deemed to have come into force on 1 January 2012 and shall apply to transactions occurring on or after that date.

[Regulation 2] Interpretation

In these Regulations, unless the context otherwise requires—

Act [def am LN 99 of 2016 reg 111, effective 1 December 2016]	means the Income Tax Act 2015;
arm's length principle	in relation to a controlled transaction, means the results of the transaction are consistent with the results that would have been realisedc in a transaction between independent persons dealing under the same or similar conditions;
associate	has the meaning in regulation 3;
comparability factors	means the factors specified in regulation 4;
comparable uncontrolled price method	means the transfer pricing method under which the price charged in a controlled transaction is compared with the price charged in a comparable uncontrolled transaction;
comparable uncontrolled transaction	in relation to the application of a transfer pricing method to a controlled transaction, means an uncontrolled transaction that, after taking account of the comparability factors, satisfies the following— a) the differences, if any, between the one transactions or between the persons undertaking the transactions that do not materially affect the financial indicator applicable under the method; or b) if the differences referred to in paragraph (a) do materially affect the financial indicator applicable under the method, reasonably accurate adjustments may be made to eliminate the effects of such differences;
controlled transaction	means a transaction between associates;

cost plus method	means the transfer pricing method under which the mark up on the costs directly and indirectly incurred in the supply of property or services in a controlled transaction is compared with the mark up on those costs directly or indirectly incurred in the supply of property or services in a comparable uncontrolled transaction;
financial indicator	means— a) in relation to the comparable uncontrolled price method, the price; b) in relation to the cost plus method, the mark up on costs; c) in relation to the resale price method, the resale margin; d) in relation to the transaction net margin method, the net profit margin; or e) in relation to the transactional profit split method, the division of profit and loss;
liaison office	means an office, the sole activity of which is representation;
permanent establishment	in relation to a person— a) if there is a tax treaty applicable to the person, means permanent establishment as defined in the treaty; or b) in any other case, means a fixed place of business through which the business of the person is wholly or partly carried on, and includes— i. a place of management, branch, office, factory, warehouse, or workshop, but does not include a liaison office; ii. a mine, oil or gas well, quarry, or other place of extraction of natural resources; iii. a building site, or a construction, assembly or installation project, or supervisory activities connected with such site or project, but only if the site, project or activities continue for more than 6 months; iv. the furnishing of services by the person, including consultancy services, through employees or other personnel engaged by the person for such purpose, but only if activities of that nature continue for the same or a connected project for a period or periods aggregating more than 6 months in any 12-month period; or

	v. a person, referred to as an "agent", acting on behalf of another person, referred to as the "principal", if the agent— A. has and habitually exercises an authority to conclude contracts on behalf of the principal; or B. habitually maintains a stock of trading stock from which the agent regularly delivers trading stock on behalf of the principal,but does not include an agent of independent status;
person	means an individual, company, partnership, trust, government, political subdivision of a government, or public international organisation, and includes a PE person and headquarters person as defined in regulation 5;
resale price method	means the transfer pricing method under which the resale margin that a purchaser of property in a controlled transaction earns from reselling the property in an uncontrolled transaction is compared with the resale margin that is earned in a comparable uncontrolled purchase and resale transaction;
transaction	means a supply or acquisition of property, services, money, intangibles or any other asset, and includes an arrangement, understanding, agreement, or mutual practice whether or not legally enforceable or intended to be legally enforceable, and a dealing between a branch of a person and another part of the person;
transactional net margin method	means the transfer pricing method under which the net profit margin relative to the appropriate base such as costs, sales or assets that a person achieves in a controlled transaction is compared with the net profit margin relative to the same basis achieved in a comparable uncontrolled transaction;
transactional profit split method	is the transfer pricing method under which the division of profit and loss that a person achieves through participation in a controlled transaction is compared with the division of profit and loss that would be achieved when participating in a comparable uncontrolled transaction;
transfer pricing method	means the— a) comparable uncontrolled price method; b) resale price method; c) cost plus method; d) transaction net margin method; or e) transactional profit split method; and

uncontrolled transaction means a transaction that is not a controlled transaction.

[Regulation 3] Associate

(1) Subject to subregulation (2), 2 persons are associates if the relationship between them is such that one may reasonably be expected to act in accordance with directions, requests, suggestions, or wishes of the other, or both persons may reasonably be expected to act in accordance with the directions, requests, suggestions, or wishes of a third person.

(2) Two persons are not associates solely by reason of the fact that one person is an employee of the other or both persons are employees of a third person.

(3) Without limiting the generality of subregulation (1), the following are treated as associates—

a) an individual and a relative of the individual, except if the Chief Executive Officer is satisfied that neither person may reasonably be expected to act in accordance with the intentions of the other;
b) a partner in a partnership and the partnership, if the partner, either alone or together with an associate or associates under another application of this section, controls 50% or more of the rights to income or capital of the partnership;
c) a trust and a person who benefits or may benefit under the trust;
d) a member of a company and the company, if the member, either alone or together with an associate or associates under another application of this section, controls either directly or through one or more interposed persons—
    i. 50% or more of the voting power in the company;
    ii. 50% or more of the rights to dividends; or
    iii. 50% or more of the rights to capital, and
e) 2 companies, if a person, either alone or together with an associate or associates under another application of this section, controls either directly or through one or more interposed persons—
    i. 50% or more of the voting power in both companies,
    ii. 50% or more of the rights to dividends in both companies, or
    iii. 50% or more of the rights to capital in both companies.

(4) In applying subregulation (3)(b), (d), or (e), holdings that are attributable to a person from an associate are not reattributed to another associate.

(5) In this regulation—

relative in relation to an individual, means—

a) an ancestor, a descendant of any of the grandparents, or an adopted child, of the individual;
b) an ancestor, a descendant of any of the grandparents, or an adopted child of a spouse of the individual; or
c) a spouse of the individual or of any person specified in paragraph (a) or (b); and

spouse in relation to an individual, includes another individual who, although not legally married to the first mentioned individual, lives with the individual on a genuine domestic basis in a relationship as a couple.

[Regulation 4] Comparability factors

In determining whether 2 or more transactions are comparable, the following factors are considered to the extent that they are economically relevant to the facts and circumstances of the transactions—

a) the characteristics of the property transferred or services transferred or supplied;
b) the functions undertaken by the person entering into the transaction taking account of assets used and risks assumed;
c) the contractual terms of the transactions;
d) the economic circumstances in which the transactions take place; and
e) the business strategies pursued by the associate to the controlled transaction.

[Regulation 5] Permanent Establishments

(1) Subject to subregulation (2), for the purposes of these Regulations—

a) a permanent establishment is deemed to be a separate and distinct person (referred to as the "PE person") from the person in respect of whom it is a permanent establishment (referred to as the "headquarters person");
b) the PE person and headquarters person are deemed to be associates; and
c) a PE person and a headquarters person are located where their activities are located.

(2) The Chief Executive Officer may choose not to apply this regulation if the foreign country in which the headquarters person is located does not apply the same rule as expressed in subregulation (1).

[Regulation 6] Relevance of OECD material to interpretation of Regulations

(1) Subject to subregulation (2), these Regulations are to be applied in a manner consistent with—

a) the arm's length principle in Article 9 of the OECD Model Tax Convention on Income and Capital; and
b) the OECD Transfer Pricing Guidelines for Multi-national Enterprises and Tax Administrations approved by the Council of the OECD for publication on 13 July, 1995 (C(95)126/FINAL), as supplemented and updated from time to time.

(2) If there is any inconsistency between the Act, including these Regulations, and the OECD documents referred to in subregulation (1), the Act prevails.

[Regulation 7] Application

The Regulations apply to a controlled transaction between—

a) resident and a non-resident person;
b) resident persons; or
c) a permanent establishment of a non-resident person in Fiji and a non-resident person outside Fiji,

other than a transaction that takes place wholly in Fiji.

PART 2 APPLICATION OF THE ARM'S LENGTH PRINCIPLE (Regulation 8)

[Regulation 8] Consistency with the Arm's Length Principle

(1) If a person has entered into a transaction or a series of transactions to which these Regulations apply, the person must determine its income and expenditures resulting from the transaction or transactions in a manner that is consistent with the arm's length principle.

(2) If a person does not comply with subregulation (1), the Chief Executive Officer may make such adjustments as necessary to ensure that the income and expenditures resulting from the transaction or transactions are consistent with the arm's length principle.

(3) The determination of the whether the result of a transaction or series of transactions is consistent with the arm's length principle is made by using the most appropriate transfer pricing method or a combination of methods having regard to the—

a) respective strengths and weaknesses of the transfer pricing methods in the circumstances of the case;
b) appropriateness of a transfer pricing method having regard to the nature of the controlled transaction determined, in particular, through an analysis of the functions undertaken by each person that is a party to the controlled transaction;
c) availability of reliable information needed to apply the transfer pricing methods; and
d) degree of comparability between controlled and uncontrolled transactions, including the reliability of adjustments, if any, that may be required to eliminate differences.

(4) If, having regard to subregulation (3), a person has used an appropriate transfer pricing method, the Chief Executive Officer's examination as to whether income and expenditures resulting from the person's transaction or transactions are consistent with the arm's length principle is based on the transfer pricing method used by the person.

(5) A person may apply a transfer pricing method other than those listed in the definition of "transfer pricing method" in regulation 2 if the person can establish that—

a) none of the listed methods can reasonably be applied to determine whether a controlled transaction is consistent with the arm's length principle; and
b) the method used gives rise to a result that is consistent with that between independent persons engaging in comparable uncontrolled transactions in comparable circumstances.

PART 3 DOCUMENTATION
(Regulation 9)

[Regulation 9] Documentation

(1) A person must record, in writing, sufficient information and analysis to verify that its controlled transactions are consistent with the arm's length principle.

(2) The documentation referred to in subregulation (1) for transactions undertaken in a tax year must be in place prior to the due date for filing the income tax return for that year.

(3) The Chief Executive Officer may, by notice, specify the items of documentation that a person is required to keep for the purposes of this regulation.

(4) A person who fails to comply with this regulation commits an offence and is liable upon conviction to a fine not less than $100,000.

PART 4 CORRESPONDING ADJUSTMENTS
(Regulation 10)

[Regulation 10] Corresponding Adjustments

If—

a) an adjustment is made by a competent authority of a country which Fiji has a double tax treaty (referred to as the "foreign country") to the taxation of a transaction or transactions of a person subject to tax in Fiji; and
b) the adjustment results in taxation in the foreign country of income or profits that are also taxable in Fiji,

the Chief Executive Officer must, upon request by the person subject to tax in Fiji, determine whether the adjustment is consistent with the arm's length principle and, if the Chief Executive Officer determines that it is consistent, the Chief Executive Officer must make a corresponding adjustment to the amount of tax charged in Fiji on the income or profits so as to avoid double taxation.

INCOME TAX (WITHHOLDING TAX) REGULATIONS 2013

Table of Amendments

Income Tax (Withholding Tax) Regulations 2013 (LN 66 of 2013) commenced on 1 January 2013, as amended by:

Amending Legislation	**Date of Commencement**
Income Tax (Withholding Tax) (Amendment) Regulations 2015 (LN 91 of 2015)	1 January 2016
Revised Edition of the Laws (Consequential Amendments) Regulations 2016 (LN 99 of 2016)	1 December 2016
Income Tax (Withholding Tax) (Amendment) Regulations 2019 (LN 55 of 2019)	reg 2, 4 and 5(a) effective 1 August 2017; and reg 5(b) effective 1 January 2020 remainder 1 August 2019
Income Tax (Withholding Tax) (Amendment) Regulations 2022 (LN 21 of 2022)	1 April 2022

PART 1 PRELIMINARY
(Regulations 1–3)

[Regulation 1] Short Title and Commencement

(1) These Regulations may be cited as the Income Tax (Withholding Tax) Regulations 2013.

(2) These Regulations shall be deemed to have come into force on 1 January 2013.

[Regulation 2] Interpretation

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

Act	means the Income Tax Act 2015;
approved form	has the same meaning as in the Tax Administration Act 2009;
bi-month	means a calendar month in which an employee is paid by the employer on 2 occasions within that month;
payee	means a person receiving an amount from which tax is required to be withheld under a withholding tax provision;
payer	means a person required to withhold tax from a payment under a withholding tax provision;
payment period	in relation to an employee, means— (a)if the employee is paid monthly, a calendar month; (b)if the employee is paid bi-monthly, a bi-month; (c)if the employee is paid fortnightly, a fortnight; (d)if the employee is paid weekly, a week; or (e)if the employee is paid for a period other than those specified in paragraphs (a) to (d) above, that other period;
primary employment	in relation to an employee, means the sole employment of the employee;
S code tax rate	in relation to an employee, means the rate of 20% of the Income Tax or the rate specified in the Special Tax Rate Certificate issued under regulation 8;
secondary employment	in relation to an employee, means any employment other than a primary employment;
tax	means— a) for Part 2, Income Tax and Social Responsibility Tax imposed under the Act; b) for Part 3, Resident Interest Withholding Tax Final Tax imposed under the Act;
tax code declaration	means a “P” tax code declaration or “S” tax code declaration as referred to in regulation 5; and

withholding tax provision means sections 111 and 112(1) of the Act.

[def am LN 99 of 2016 reg 113, effective 1 December 2016]

(2) All other terms used but not defined in these Regulations have the meaning assigned to them under the Act.

[Regulation 3] Application

These Regulations shall apply to payments subject to the relevant withholding tax under the Act made on or after 1 January 2013.

PART 2 WITHHOLDING OF TAX FROM EMPLOYMENT INCOME (Regulations 4–14)

[Regulation 4] Registration of employers

(1) A person who carries on or intends to carry on any trade, business, profession or vocation in respect of which he or she will be an employer, must, within 30 days from commencing the trade, business, profession or vocation, register with the Commissioner, in the approved form.

(2) An employer who fails to comply with subregulation (1) commits an offence and is liable upon conviction to a fine not exceeding $1,000 or to imprisonment for a term not exceeding 6 months, or to both.

(3) A person registered with the Commissioner as an employer immediately before the commencement of these Regulations shall be deemed to be registered under these Regulations.

[Regulations 5] Employee Tax Code Declaration

(1) An employee must file a tax code declaration in the approved form with his or her employer within 5 working days from the date of commencement of employment or such later time as may be determined by the Commissioner.

(2) If the employment is the employee's primary employment, the employee must file a “P” tax code declaration form with the employer.

(3) If the employment is the employee's secondary employment, the employee must file an “S” tax code declaration form with the employer.

(4) If an employee has 2 or more employments at the same time, the employee can file a “P” tax code declaration form with only one employer.

(5) A tax code declaration filed by an employee with an employer remains in force until the employee—

a) ceases to be employed by the employer; or
b) files a new tax code declaration with the employer.

(6) An employee who fails to file a tax code declaration with an employer as required under this regulation commits an offence and is liable upon conviction to a fine not exceeding $1,000 or to imprisonment for a term not exceeding 6 months, or to both.

[Regulation 6] Withholding of Tax in Relation to Primary Employment

(1) An employer required to withhold tax under section 111 of the Act from any payment of employment income to an employee in relation to the employee's primary employment must withhold tax in accordance with this regulation.
[subreg (1) am LN 99 of 2016 reg 113, effective 1 December 2016]

(2) Subject to subregulations (4) and (5) and regulation 7, if an employee has provided his or her employer with a "P" tax code declaration, the amount of tax to be withheld by the employer from a payment of employment income to the employee for a payment period, referred to in this regulation as the "current payment period", is computed according to the following formula—

Income Tax to withhold = (A1/F × G) – B1 + Income Tax on C3 – Income Tax on C1 [if result < 0, then tax to be withheld = 0];

SRT to withhold = [A2/F × G] – B2 [if result < 0, then tax to be withheld = 0]

where,

A1 = Income Tax payable on C1;

A2 = SRT payable on C2;

B1 = Income Tax withheld to date;

B2 = SRT withheld to date;

C1 = [D × (F – G + 1)] + E [however, if the pay period is the same as the previous period, then C1 = C1 in the previous pay period];

C2 = C1 + H;

C3 = C1 + I + H;

D = the amount of normal pay paid by the employer to the employee in the current payment period;

E = the total amount of normal pay paid by the employer to the employee in the previous payment periods in the tax year;

F = the number of payment periods in the tax year;

G = the number of completed payment periods, including the current period;

H = the total directors' remuneration and bonus/overtime paid to date including that paid in the current period;

I = the total other one-off payments paid to date including that paid in the current period;

normal pay = basic gross wage or salary usually paid regularly over a sufficient period of time; and

SRT = Social Responsibility Tax.

[reg 6(2) am LN 55 of 2019, reg 2, effective 1 August 2017]

(3) If there are unusual payments and at the end of a tax year the employee considers that the amount of tax withheld has been over deducted, he or she may seek clarification from the Commissioner.

(4) If, for any reason, the employer is uncertain as to the amount of tax to withhold from a payment of employment income, the employer may write to the Commissioner seeking clarification of the amount of tax to be withheld.

(5) If an employer has written to the Commissioner under subregulation (4), the Commissioner must advise the employer, by notice in writing, of the amount of tax to be withheld by the employer from the employment income paid by the employer to the employee and the employer must withhold tax accordingly.

(6) The Commissioner may prepare tax tables to assist employers with the withholding of tax under this regulation.

[Regulation 7] Withholding of tax in relation to secondary employment

(1) An employer required to withhold tax under section 111 of the Act from any payment of employment income to an employee in relation to the employee's secondary employment must withhold tax in accordance with this regulation.
[subreg (1) am LN 99 of 2016 reg 113, effective 1 December 2016]

(2) If an employee has provided his or her employer with an "S" tax code declaration, the amount of tax to be withheld by the employer from a payment of employment income to the employee for any payment period is computed according to the following formula—

$$J \times K$$

where—

J is the S code tax rate applicable to the employee at the time of the payment; and

K is the amount of employment income paid to the employee for the payment period.

[Regulation 8] Special Tax Rate Certificate

(1) The Commissioner may, on the application of any employee in the approved form, issue to that employee a Special Tax Rate Certificate specifying the rate of tax to be withheld from any secondary employment income payment made to that employee.

(2) The Commissioner must, within 5 working days of receipt of an application made under subregulation (1), either issue a Special Tax Rate Certificate or decline the application in writing.

(3) The Commissioner may, at any time, cancel any Special Tax Rate Certificate.

(4) Not later than 7 working days after the Commissioner has given notice of the cancellation of a Special Tax Rate Certificate to the person to whom it is addressed, that person shall return the certificate to the Commissioner.

(5) Not later than 7 working days after the cancellation of a Special Tax Rate Certificate, the Commissioner must notify the employers concerned.

(6) No person shall alter any Special Tax Rate Certificate issued by the Commissioner under this regulation, or pretend to be the person to whom any such certificate is addressed, or have in his or her possession, without lawful justification or excuse, an imitation of any such certificate, or cause or attempt to cause any person to refrain from making a tax deduction by the production of any such certificate which is not for the time being in force.

(7) Any person who contravenes subregulation (6) commits an offence and is liable upon conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months, or to both.

[Regulation 9] Redundancy payment (Repealed)

[reg 9 am LN 99 of 2016 reg 113, effective 1 December 2016; reg 9 del LN55 of 2019 reg 3, effective 1 August 2019]

[Regulation 10] Departing employee

(1) If an employee's employment ceases during a tax year, the Commissioner may furnish the employee with a statement of employment income setting out—

a) the total employment income paid by the employer to the employee for that part of the year prior to termination of employment; and
b) the total tax deducted from that employment income.

(2) If requested by an employee after cessation of the employee's employment, a statement of employment income required under subregulation (1) shall be furnished by the Commissioner to the employee—

a) by personal collection; or
b) by posting it to the employee's last known postal address.

(3) If an employee ceases employment during a tax year and the amounts of tax withheld have not been remitted to the Commissioner, the Commissioner may request the employer to furnish the Commissioner with the statement of employment income in the prescribed form in respect of that employee.

[Regulation 11] Statement of employment income upon request to the Commissioner

An employee may request the Commissioner to furnish a statement of employment income setting out—

a) the total employment income paid by the employer to the employee for that part of the year prior to termination of employment; and
b) the total tax deducted from that employment income.

[Regulation 12] Records

An employer must keep records of the following—

a) the gross amount of employment income paid to each employee, including any lump sum or redundancy payment;
b) the amount of tax withheld from each payment of employment income; and
c) employee tax code declarations.

[Regulation 13] Withholding Tax Disputes

(1) Pursuant to regulation 11, if an employee considers that tax is being incorrectly withheld by his or her employer from payments of employment income, the employee may file a written complaint with the Commissioner.

(2) The Commissioner must review, within 10 working days, any complaint filed under subregulation (1).

(3) If, after reviewing a complaint filed under subregulation (1), the Commissioner is satisfied that—

a) tax has been withheld in excess of the amount that should have been withheld, the Commissioner must refund the excess in accordance with section 33 of the Tax Administration Act; or
b) the tax withheld is less than the amount that should have been withheld, the Commissioner may recover the underpaid amount from the employee.

(4) If an employer withholds tax from the payments of employment income of an employee and the amount of tax withheld and remitted to the Commissioner is less than the amount of tax that

should have been withheld, the Commissioner may recover the underpaid amount from the current employer of the employee and the current employer may recover the underpaid amount from the employee.

[reg 13(4) ins LN 55 of 2019, reg 4, effective 1 August 2017]

[Regulation 14] Withheld tax treated as a single debt

The total amount of Income Tax and Social Responsibility Tax that an employer is required to withhold from employment income and pay to the Commissioner is treated as a single debt.

PART 3 WITHHOLDING OF TAX FROM INTEREST (Regulation 15)

[Regulation 15] Withholding of tax from interest paid by a financial institution

(1) Subject to subregulation (2), a financial institution must have regard to Part 4 of the Schedule to the Income Tax (Exempt Income) Regulations 2016 in determining the amount of tax to be withheld, if any, under section 112(1) of the Act from interest payable by the financial institution to a resident individual.
[subreg (1) am LN 99 of 2016 reg 113, effective 1 December 2016]

(2)
[subreg (2) rep LN 99 of 2016 reg 113, effective 1 December 2016]

PART 4 WITHHOLDING TAX DOCUMENTATION
(Regulations 16–24)

[Regulation 16] Notice of Tax Withheld

If a payee requests for a notice of tax withheld, a payer who withholds tax from a payment under a withholding tax provision must, within 7 working days give the payee a notice in writing specifying the tax that has been withheld from the payment.

[Regulation 17] Monthly Summary

(1) A payment to the Commissioner of the tax withheld by a payer for a month as required under section 117 of the Act must be accompanied by a remittance advice, in the approved form, of all amounts withheld by the payer during the month.
[subreg (1) am LN 99 of 2016 reg 113, effective 1 December 2016]

(2) If a payee's chargeable income does not exceed $30,000, the payer shall, once in every 6 months and in the electronic format approved by the Commissioner, submit a summary of the taxes withheld from the payments to the payee.
[subreg (2) am LN 91 of 2015 reg 2, effective 1 January 2016; reg 17(2) am LN 55 of 2019, reg 5(a), effective 1 August 2017]

(3) If a payee's chargeable income exceeds $30,000, the payer shall, on each pay day of the payee and in the electronic format approved by the Commissioner, submit a summary of the taxes withheld from the payments to the payee.

[reg 17(3) ins LN 55 of 2019, reg 5, effective 1 January 2020]

[Regulation 18] Tax Withholding Certificate

(1) A Tax Withholding Certificate required to be given by a payer to a payee for a tax year under section 120(1) of the Act must be given to the payee on or before the last day of February following the end of the year—

a) by personal collection;
b) by posting it to the payee's last known postal address; or
c) by electronic means.

[subreg (1) am LN 99 of 2016 reg 113, effective 1 December 2016, LN 21 of 2022, amended from 1 April 2022]

(2) A payer must file a copy of each Tax Withholding Certificate given to a payee under subregulation (1) for a tax year with the Commissioner on or before the last day of February following the end of the year or such later time as the Commissioner may allow.

(3) [Repealed]

[LN 21 of 2022, repealed from 1 April 2022]

(4) If a payee is required to attach a Tax Withholding Certificate to the payee's Income Tax return under section 120(2) of the Act and the certificate has been lost, stolen, or destroyed, the payee may apply, in writing, to the payer for a duplicate certificate.

[subreg (4) am LN 99 of 2016 reg 113, effective 1 December 2016]

(5) If an application has been made under subregulation (4), the payer must comply with the application within 5 working days and the Tax Withholding Certificate given to the payee must be clearly marked with "copy".

(6) If a payee dies during a tax year, the trustee of the payee's estate may apply, in writing, to a payer for a Tax Withholding Certificate for that part of the tax year prior to the death of the payee.

(7) A payee who intends to cease being a resident individual during a tax year may apply, in writing, to a payer for a Tax Withholding Certificate for that part of the tax year prior to the payee ceasing to be a resident individual.

(8) If an application has been made under subregulation (6) or (7), the payer must give the trustee or payee a Tax Withholding Certificate within 5 working days of the application being made or such other time as may be approved by the Commissioner.

(9) A payer who fails to comply with this regulation commits an offence and is liable upon conviction to a fine of $1,000 or to imprisonment for a term not exceeding 6 months, or to both.

(10) The payee may fill an approved form for the issuance of a certificate of exemption by the Commissioner, for any exempt interest under Part 4 of the Schedule to the Income Tax (Exempt Income) Regulations 2016.

[subreg (10) am LN 99 of 2016 reg 113, effective 1 December 2016]

(11)

[subreg (11) rep LN 99 of 2016 reg 113, effective 1 December 2016]

[Regulation 19] Annual Withholding Tax Summary

A monthly withholding tax summary required to be filed by a person withholding tax under section 121 of the Act must be in the approved form.

[reg 19 am LN 55 of 2019, reg 6, effective 1 August 2019]

[Regulation 20] Cessation of being an Employer

(1) A payer who carries on any trade, business, profession or vocation and ceases to be an employer during a tax year must, within 30 days or such other time as the Commissioner may determine after cessation of being an employer—

a) give to each payee of the payer a Tax Withholding Certificate for that part of the year prior to cessation of being an employer;
b) file with the Commissioner a monthly summary for the month or part of the month in which the cessation of the trade, business, profession or vocation occurred;
c) a payment of any tax withheld for the month or part of the month; and
d) submit a request for deregistration as an employer.

[Regulation 21] Deceased Payees

(1) If a payer pays an amount to the estate of a deceased payee, the payer must withhold tax as required under the Act and these Regulations as if the payee were still alive.

(2) If a payer becomes aware of the passing away of the payee, the payer must notify the commissioner in the approved form.

[Regulation 22] Adjustments

An employer may make necessary adjustments during a payment period during the tax year, if the employer pays an employee an amount within the year that is likely to increase or decrease the amount of withholding tax to be remitted to the Commissioner.

[Regulation 23] Transitional

Employers and employees must fully comply with these Regulations within 4 months from the date of their publication in the Gazette.

[Regulation 24] Repeal

The Income Tax (Employments) Regulations are hereby repealed.

INCOME TAX (COLLECTION OF PROVISIONAL TAX) REGULATIONS 2016

Table of Amendments

Income Tax (Collection of Provisional Tax) Regulations 2016 (LN 9 of 2016) commenced on 1 January 2016, as amended by:

Amending Legislation	**Date of Commencement**
Income Tax (Collection of Provisional Tax) (Amendment) Regulations 2019 LN 40 of 2019	1 August 2019
Income Tax (Collection of Provisional Tax) (Amendment) Regulations 2020 LN 31 of 2020	1 April 2020

[Regulation 1] Short title and commencement

(1) These Regulations may be cited as the Income Tax (Collection of Provisional Tax) Regulations 2016.

(2) These Regulations shall come into force on 1 January 2016.

[Regulation 2] Interpretation

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

Act means the Income Tax Act 2015; and

contract for service includes any person who is an independent contractor.

(2) In these Regulations, words and phrases have the same meaning as under the Act unless the context otherwise requires.

[Regulation 3] Provisional tax on commissions and on payments for services

(1) For the purpose of assisting persons whose income is derived wholly or partly from commissions received from the selling, leasing and renting of any property of whatever nature including insurance on life or property and land, and the sale of books and publications, the CEO may make such arrangements as he or she considers appropriate in respect of any particular person or class of persons, which may include instalment deductions at source upon the crediting or payment of such commissions.

(2) To facilitate the payment of provisional tax payable by any person in respect of the profits or gains of the trade, profession or vocation of that person, there shall be deducted from any payment made under any contract for services, but not being a contract of employment, including progress payments under a contract, a sum equal to 5% of such payment, and the sum so deducted shall be paid to the CEO and shall be treated for the purposes of income tax as not diminishing the payment, provided that such person entitled to such payment may request the CEO to make such other determination as to the sum properly payable and to notify the person making such payment of such determination.

(3) For the purpose of facilitating the making of the arrangements referred to in subregulation (1), the CEO may, at his or her discretion, nominate the person who shall be responsible for making the deduction at source of the instalments to be paid in respect of provisional tax and the person so nominated shall make and account for such deductions in such manner and in the appropriate form, which may include an electronic version as the CEO shall require.

[Regulation 3A] Certificate of exemption on provisional tax

(1) The CEO may, subject to conditions he or she thinks fit, issue a certificate of exemption to any person who is engaged in a contract for service and is required to pay provisional tax.

(2) A person issued with a certificate of exemption is entitled to receive any monies due under any contract for service without any deduction of any sum as provisional tax.

(3) The CEO may, if he or she thinks fit, withdraw a certificate of exemption by giving a written notice to the certificate holder.

[Reg 3A insrt by LN 31 of 2020, Reg 2, effective 1 April 2020]

[Regulation 4] Recovery of tax

Where any sum has been deducted by any person under the provisions of these Regulations, such sum shall be deemed to be held in trust for the State in accordance with the provisions of section 111 of the Act.

[Regulation 5] Date of payment

Any person who is required to make any such deductions and fails to do so or fails to remit or pay the sum of such deductions to the CEO on or before the fifteenth day of the next month in which the payment under the contract was made commits an offence and is liable to a fine not exceeding $25,000 or imprisonment for a term not exceeding 10 years or both.

[Reg 5 am LN 50 of 2019 reg 2; effective 1 August 2019]

[Regulation 6] Deduction of lawful sums

Any sums lawfully deducted under the provisions of these Regulations is deemed to have been deducted with the consent of the person otherwise entitled to receive the same and no action shall lie by such person against any other person by reason of the making of such deductions.

[Regulation 7] Recoverable of tax lawfully deducted of tax

For all purposes of the Act, any tax to be lawfully deducted under the provisions of these Regulations shall be recoverable in the same manner in all respects as if it were tax payable by the person by whom the payment is made.

[Regulation 8] Circumstances where deduction of provisional tax not required

These Regulations shall not require the deduction of provisional tax by any person making payments in respect of contracts for services where the total to be paid to any one person in any year is less than $1,000.

[Regulation 9] Revocation

The Income Tax (Collection of Provisional Tax) Regulations are hereby revoked.

INCOME TAX (SMALL AND MICRO ENTERPRISES INCENTIVES) REGULATIONS 2006

Table of Amendments

Income Tax (Small and Micro Enterprises Incentives) Regulations 2006 (LN 23 of 2006) commenced on 1 January 2006, as amended by:

Amending Legislation	**Date of Commencement**
Income Tax (Small and Micro Enterprises Incentives) (Budget Amendment) Regulations 2014 (LN 70 of 2014)[3]	1 January 2015
Revised Edition of the Laws (Consequential Amendments) Regulations 2016 (LN 99 of 2016)	1 December 2016
Fiji Revenue and Customs Authority (Budget Amendment) Act 2017 (No 38 of 2017)	1 August 2017

[3] This was rectified by the Corrigendum published on 27 November 2014.

[Regulation 1] Short title and commencement

These Regulations may be cited as the Income Tax (Small and Micro Enterprises Incentives) Regulations 2006 and shall be deemed to have come into operation on 1 January 2006.

[Regulation 2] Interpretation

In these Regulations, unless the context otherwise requires—

Agriculture means farming in any form or category of agricultural production approved by the Chief Executive Officer of the Fiji Revenue and Customs Service;
[def am Act 38 of 2017 s 7, effective 1 August 2017]

community and social project means any project which involves traditional production of handicraft;

tourism project means any project which involves sea-cruise operation, river-tour operation and eco-tourism; and

Minister means the Minister responsible for finance and national planning.
[reg 2 am LN 70 of 2014 reg 2, effective 1 January 2015 ; LN 99 of 2016 reg 110, effective 1 December 2016]

[Regulation 3] Availability of incentives

The incentives available under the Act and the Income Tax (Exempt Income) Regulations 2016 extends to persons engaged in the following projects, that is to say—

a) agriculture;
b) fishing;
c) livestock rearing;
d) bee keeping;
e) community and social projects; and
f) tourism projects.

[reg 3 am LN 99 of 2016 reg 110, effective 1 December 2016]

[Regulation 4] Records to be maintained

For the purposes of these Regulations, a person must establish, and maintain, in the English language, such records as will enable the Chief Executive Officer of the Fiji Revenue and Customs Service, or an officer duly authorised by the Chief Executive Officer of the Fiji Revenue and Customs Service, to readily ascertain the person's total income in any period.
[reg 4 am LN 99 of 2016 reg 110, effective 1 December 2016; Act 38 of 2017 s 7, effective 1 August 2017]

INCOME TAX (HOTEL INVESTMENT INCENTIVES) REGULATIONS 2016

Table of Amendments

Income Tax (Hotel Investment Incentives) Regulations 2016 (LN 3 of 2016) commenced on 1 January 2016, as amended by:

Amending Legislation	**Date of Commencement**
Income Tax (Hotel Investment Incentives) (Amendment) Regulations 2017 (LN 33 of 2017)	1 January 2017
Income Tax (Hotel Investment Incentives) (Amendment) (No 2) Regulations 2017 (LN 56 of 2017)	1 August 2017
Income Tax (Hotel Investment Incentives) (Amendment) Regulations 2019 (LN 58 of 2019)	1 August 2019
Income Tax (Hotel Investment Incentives) (Amendment) Regulations 2020 (LN 28 of 2020)	1 April 2020
Income Tax (Hotel Investment Incentives) (Amendment) (No. 2) Regulations 2020 (LN 66 of 2020)	1 April 2020
Income Tax (Hotel Investment Incentives) (Amendment) Regulations 2021 (LN 82 of 2021)	1 August 2021
Income Tax (Hotel Investment Incentives) (Amendment) Regulations 2022 (LN 20 of 2022)	1 April 2022
Income Tax (Hotel Investment Incentives) (Amendment) (No. 2) Regulations 2022 (LN 98 of 2022)	1 August 2022

PART 1 GENERAL

[Regulation 1] Short title and commencement

(1) These Regulations may be cited as the Income Tax (Hotel Investment Incentives) Regulations 2016.

(2) These Regulations shall come into force on 1 January 2016.

[Regulation 2] Interpretation

In these Regulations, unless the context otherwise requires—

amenity includes features and facilities that contribute to the physical and material comfort of a tourist in a hotel or a resort;

capital goods, for the purpose of regulation 16, means capital equipment, plant, and machinery, including building materials, furnishings and fittings, room amenities, kitchen and dining room equipment and utensils and specialised water sports equipment, but does not include motor vehicles;

[def am LN 58 of 2019; effective 1 Aug 2019]

company means a company registered under the Companies Act 2015;

consultant fees include salaries, allowances, per diem and incidental expenses, food and accommodation, and any other fees that directly or indirectly relate to the short life investment, paid or provided to a local or an overseas consultant;

extension means any additional accommodation or additional amenity to an existing hotel;

hotel means any premises in which accommodation is supplied to or is available to be supplied to persons in exchange for money or other valuable consideration, including—

a) a villa for resort purposes;
b) a retirement resort constructed with facilities, services and amenities for retirement, including facilities for health services for such resort, and the villa or retirement resort will provide accommodation for guests for hire or reward or for the owner or occupier, for a period of not more than 12 weeks; or
c) for the purpose of Part 2, quarters constructed for the workers of the hotel in an island resort,

but for the purpose of Part 3, does not include quarters and any facility constructed for the residence of the owner or for managers or workers of the hotel;

hotel owner means the owner of a hotel who has been granted an approval under Part 2;

integrated tourism development means the development of a hotel and the subdivision and sale of residential lots, including the development of jetties, moorings, recreational facilities and other amenities;

island resort means any resort separated by 15km or more of sea from Viti Levu;

Minister means the Minister responsible for finance;

new apartments mean any premises with a minimum capital investment of $7,000,000 in which accommodation is supplied to or is available to be supplied to a person or persons in exchange for money or other valuable consideration and the apartment will provide accommodation for guests for hire or reward or for the owner or occupier, for a period of not more than 6 months;

project means the building of a new hotel, the extension of an existing hotel or any refurbishment and renovation or buying of units in a hotel or integrated tourism development;

provisional approval means a provisional approval granted under Part 2 or Part 3;
[def amended LN 81 of 2021, reg 2, effective 1 August 2021]

refurbishment and renovation means any substantial construction works (which the estimated cost per square metre of floor area is determined under regulation 9(5)) of an existing hotel building (excluding its mere repainting or redecorating) which

a) have the effect of restoring the hotel building to a sound and new state; or
b) reconstruct, remodel, alter, upgrade or amend the interior of an existing hotel building so as to form new rooms or alter the sizes of existing rooms;

short life investment means—

a) building of a new hotel or integrated tourism development with capital investment, (including the cost of support infrastructure and consultant fees but excluding the cost of land) over—
    i. $7,000,000, where the construction commences on or after 1 January 2009 and the construction is completed within 24 months from the date the provisional approval was granted; and
    ii. $250,000, where the construction commences on or after 1 April 2020 and the construction is completed within 24 months from the date the provisional approval was granted; or
b) the refurbishment and renovation of an existing hotel with capital investment (including the cost of support infrastructure and consultant fees but excluding the cost of land) over $2,000,000, where provisional approval is granted between 1 August 2021 and 31 December 2023; and

[def amended by LN 28 of 2020, Reg 2, effective 1 April 2020, def amended LN 81 of 2021, reg 2, effective 1 August 2021, LN 20 of 2022, effective 1 April 2022]

short life investment package means the various exemptions, concessions and allowances given under a short life investment.

[Regulation 3] Objective

The purpose of these Regulations is to provide hotel investors with certainty about the way these Regulations are to be applied and to encourage hotels by the provision of financial inducements.

PART 2 STANDARD ALLOWANCE

[Regulation 4] Specification of particular requirements

The Minister may prescribe particular requirements applicable to any particular area of Fiji.

[Regulation 5] Power to approve application

(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.

[subreg (1) am LN 56 of 2017 reg 2, effective 1 August 2017]

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

a) the requirements for the accommodation of travellers in the area concerned;
b) whether the proposed hotel or extension will make an adequate contribution to the requirements of the area concerned;
c) whether the proposed accommodation is of suitable size and standard for the area;
d) whether adequate amenities would be provided by the project.

[subreg (2) am LN 56 of 2017 reg 2, effective 1 August 2017]

(3)

[subreg (3) rep LN 56 of 2017 reg 2, effective 1 August 2017]

(4) 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.
[reg 5(4) amended LN 81 of 2021, reg 3, effective 1 August 2021]

[Regulation 6] Application for provisional approval

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 location and description of the site of the hotel;
d) in the case of an existing hotel, the number and description of bedrooms and beds and of the toilet facilities;
e) the number and description of proposed new bedrooms and beds and the toilet facilities proposed to be established in connection with them;
f) a description of each public room for the proposed new hotel or extension of an existing hotel;
g) a detailed description of existing or proposed amenities;
h) a sketch plan showing in sufficient detail the site and lay out of the proposed hotel or extension and the amenities;
i) the estimate cost of the project;
j) if the project is to be carried out in stages, a description and the estimate cost, of each stage and details of the proposed timetable;
k) details of the proposed method of financing the project;
l) any other information the CEO may require.

[reg 6 am LN 56 of 2017 reg 3, effective 1 August 2017]

[Regulation 7] Completion of project

(1) Any hotel or integrated tourism development owner who has been granted provisional approval on or after 1 January 2016 shall complete construction of the project within 24 months from the date of provisional approval.
[reg 7(1) amended LN 81 of 2021, reg 4, effective 1 August 2021]

(2) Subject to the other provisions of this regulation, where a hotel owner has been granted provisional approval and has completed the project, the hotel owner 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 hotel.

(4) Subject to regulation 8, the Minister shall refuse to grant final approval if the hotel owner has failed to complete the project or has failed to comply with any condition upon which provisional approval was granted.

[reg 7 am LN 58 of 2019, effective 1 August 2019]

[Regulation 7A] Extension of time for completion

If a company to which provisional approval has been granted is unable to complete construction of the project within the period specified in regulation 7 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 project must be completed.

[Regulation 8] Final approval if completed

(1) An application for final approval shall not be granted unless—

a) the Minister is satisfied that the hotel owner 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).

[subreg (2) insrt LN 56 of 2017 reg 4, effective 1 August 2017]

[reg 8 am LN 56 of 2017 reg 4, effective 1 August 2017]

[Regulation 9] Investment allowance

(1) Subject to subregulation (3), a hotel owner is entitled to the following allowance—

a) an amount of taxable income equal to 50% of the total capital expenditure incurred in the project including the provision of amenities approved by the CEO as per the provisional approval, but less the cost of any land acquired for the project or refurbishment and renovation, is not chargeable to tax;
[reg 9(1)(a) amended LN 81 of 2021, reg 5, effective 1 August 2021]
b) so much of the amount not charged to tax under subregulation (1)(a) and which cannot be set off against the taxable income of the hotel owner for the first year of income after the commencement of operation or after the completion of the extension must be carried forward and be set off against the taxable income of the next successive fiscal years of income of the hotel owner until the amount is wholly set off.

[subreg (1) am LN 56 of 2017 reg 5, effective 1 August 2017]

(2) Notwithstanding subregulation (1), a hotel owner 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 hotel owner from the hotel business; or
c) the taxable income from the hotel business 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 that hotel business or the taxable income from the hotel premises, for the next successive years of income.

(5) For the purpose of the definition of refurbishment and renovation in regulation 2, the Minister may prescribe the cost per square metre of not less than 40% of the estimated cost per square metre of the floor area or a newly built equivalent hotel building.

(6) [Repealed]

[repealed by LN 28 of 2020, reg 6, effective 1 April 2020]

[Regulation 10] Procedure on sale of hotel

If the property of a hotel has been sold and the investment allowance in respect of such hotel has in accordance with regulation 7, 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.

[Regulation 11] Procedure in case of loss [Repealed]

[repealed by LN 28 of 2020, reg 6, effective 1 April 2020]

[Regulation 12] Applicability of standard allowance [Repealed]

[repealed by LN 28 of 2020, reg 6, effective 1 April 2020]

PART 3 SHORT LIFE INVESTMENT

[Regulation 13] Power to grant short life investment package

The Minister or CEO, as applicable, may grant or refuse to grant a short life investment package to a company, which has completed a short life investment and has complied with this Part.

[Reg 13 amended by LN28 of 2020, Reg 4, effective 1 April 2020]

[Regulation 14] Provisional approval

(1) The CEO may—

a) reject the application for provisional approval for short life investment; or
b) grant provisional approval to such application, with or without any condition.

[subreg (1) am LN 56 of 2017 reg 8, effective 1 August 2017]

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

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

[subreg (2) am LN 56 of 2017 reg 8, effective 1 August 2017]

(3) When considering an application for short life investment under subregulation (1), the CEO shall take into account the following matters—

a) the assets and liabilities of the company;
b) the nature and extent of the short life investment;
c) the requirements for hotel accommodation or integrated tourism development or new apartments in the area concerned;
d) whether the short life investment will adequately contribute to the requirements of the area concerned;
e) whether the proposed hotel or integrated tourism development or new apartments are a suitable size and standard for the area concerned;
f) whether adequate amenities would be provided as part of the proposed hotel;
g) such other matters as the CEO may consider relevant to the desirability or otherwise of the short life investment for Fiji and the capability of the company to complete it.

[subreg (3) am LN 56 of 2017 reg 8, effective 1 August 2017]

(4) 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.
[reg 14(4) amended LN 81 of 2021, reg 5, effective 1 August 2021]

[Regulation 15] Application for short life investment

(1) A company (applicant) may, in writing, apply to the CEO for provisional approval to carry out a short life 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 hotel site;
e) the number and description of proposed bedrooms and beds and the toilet facilities;
f) the description of each proposed public room;
g) the detailed description of all proposed amenities, such as swimming pools, tennis courts, golf courses and recreation facilities;
h) a sketch plan showing in sufficient detail the site and layout of the proposed hotel and its amenities;
i) an estimate of the total cost of the short life 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 short life investment;
k) details of the proposed method of financing the short life investment;
l) evidence of the companys ability to complete the short life investment;
m) estimates of the projected income from the new hotel;
n) the requirement of a hotel in the area;
o) the contribution of the short life investment into the area;
p) the nature and extent of short life investment;
q) the project must provide evidence that proceeds from the sale of lots which form part of the integrated tourism development or new apartments is reinvested in that project.

[subreg (1) am LN 56 of 2017 reg 9, effective 1 August 2017]

(2)

[subreg (2) rep LN 56 of 2017 reg 9, effective 1 August 2017]

(3) 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 short life investment package.

[subreg (3) am LN 56 of 2017 reg 9, effective 1 August 2017]

[Regulation 16] Effect of provisional approval

(1) When a provisional approval is granted, all capital goods, imported within the period specified in the definition of short life investment under regulation 2, by or on behalf of the company and used in the carrying out of the short life investment, shall be exempt from all duties payable in respect of their importation under concession codes 235, 235A and 244 of Schedule 2 to the Customs Tariff Act 1986.

[reg 16(1) amended LN 81 of 2021, reg 7, effective 1 August 2021]

(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 CEO, who shall decide whether such goods are to be imported.

[subreg (2) am LN 56 of 2017 reg 10, effective 1 August 2017]

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

[reg 16(4) del LN 58 of 2019, effective 1 August 2019]

[Regulation 17] Completion of short life investment

(1) If a company has been granted provisional approval, the company shall complete construction of the short life investmentwithin 24 months from the date the provisional approval was granted.

[reg 17(1) amended LN 81 of 2021, reg 8, effective 1 August 2021]

(2) Subject to the other provisions of this regulation, where a company has been granted provisional approval and has completed the short life investment, 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 short life investment;
b) a completion certificate from the local authority; and
c) a final plan showing the site, layout and surrounding areas of the hotel.

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

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 short life 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 tourism; and
c) the CEO.

[reg 17 amended by LN 28 of 2020, reg 5, effective 1 April 2020]

[Regulation 18] Extension of time for Completion of construction

(1) If a company to which provisional approval has been granted is unable to complete construction of its short life investment within the period specified in the definition of short life 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 short life investment must be completed.

[reg 18 amn LN 58 of 2019, effective 1 August 2019, reg 18(1) amended LN 81 of 2021, reg 9, effective 1 August 2021]

(2) If the Minister extends the time under subregulation (1), the company shall continue to enjoy the duty free concession provided for by regulation 16 during the extended period.

[Regulation 19] Final approval if completed

An application for final approval shall not be granted unless—

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

[reg 18(b) amended by LN 28 of 2020, reg 6, effective 1 April 2020]

[Regulation 20] Effect of final approval

(1) The final approval entitles the company to the benefits of a short life investment package from the first day of commercial operation of the hotel or such other date as the Minister may specify.

(2) The company is not entitled to claim the benefits of a short life investment package in any year unless it has been granted final approval and the Minister is satisfied that the shareholders of the company are substantially the same as the shareholders of the company when provisional approval was granted.

(3) For the purposes of subregulation (2), the shareholders of the company shall be deemed not to be substantially the same as the shareholders on the date when provisional approval was granted unless—

a) not less than 51% of the voting power in and the right to receive dividends from the company is held by or on behalf of the same persons; or
b) not less than 50% of the nominal value of the allotted shares in the company are held by or on behalf of the same persons.

(4) Notwithstanding subregulations (2) and (3), the company may, in writing, apply for exemption from those regulations to the Minister who may grant or refuse to grant the exemption.

[Regulation 21] Exemption from tax

(1) If final approval is granted under this Part to a company, the income of the company is exempt from tax on profits derived from the operation of the hotel if the capital investment in the hotel is more than $7,000,000—
a) in the case of a company that applies prior to 1 January 2017, for a period of 10 years;
b) in the case of a company that applies on or after 1 January 2017, for a period of 4 years.

[reg 21 am LN 33 of 2017 reg 4, effective 1 January 2017]

(2) If final approval is granted under this Part to a company, the income of the company is exempt from tax on profits derived from the operation of the hotel if the capital investment in the hotel is—

a) from $250,000 to $1,000,000, in the case of a company that applies on or after 1 April 2020, for a period of 5 consecutive fiscal years;
b) from $1,000,001 to $2,000,000, in the case of a company that applies on or after 1 April 2020, for a period of 7 consecutive fiscal years;
c) more than $2,000,000, in the case of a company that applies on or after 1 April 2020, for a period of 13 consecutive fiscal years;
d) from $2,000,001 to $40,000,000, in the case of a company that applies on or after 1 August 2021, for a period of 13 consecutive fiscal years; and

e) more than $40,000,000, in the case of a company that applies on or after 1 August 2021, for a period of 20 consecutive fiscal years.

[reg 21(2) inserted by LN 28 of 2020, reg 7, effective 1 April 2020, reg 21 (2) amended LN 81 of 2021, reg 10, effective 1 August 2021]

(3) If final approval is granted under this Part to a company that applies between 1 August 2021 and 31 December 2023 for refurbishment and renovation, the income of the company is exempt from tax on profits derived from the operation of the hotel if the capital investment in the hotel is more than $2,000,000 for a period of 5 consecutive fiscal years.
[reg 21(3) inserted LN 81 of 2021, reg 9, effective 1 August 2021, LN 20 of 2022, effective 1 April 2022]

[Regulation 22] Depreciation

(1) During the period from the date appointed by the Minister under regulation 20 to the end of the accounting period in which the last day of the tax-free period falls, such depreciation shall be written off the assets of that company in calculating its profits or gains as would have been available to it under the Act if the company were not in receipt of the concession provided by this Part, and the written down values of such depreciable assets at the end of the accounting period in which the last day of the tax-free period falls shall be calculated accordingly.

(2) For the purpose of subregulation (1), the company shall not be obliged to claim initial allowances but such election shall in that event continue for the whole of the tax free period.

[Regulation 23] Carry forward losses (Repealed)

[reg 23 rep LN 58 of 2019 reg 7, effective 1 August 2019]

[Regulation 24] Electricity generation (Repealed)

[reg 24 rep LN 56 of 2017 reg 11, effective 1 August 2017]

[Regulation 25] Annual accounts

Within 6 months after the end of each financial year a company which is entitled to the benefits of a short life investment package shall submit to the Minister fully audited accounts, including other information that the Minister may require.

[Regulation 26] Transferability of package

If the hotel in respect of which a short life investment 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 short life investment package.

[Regulation 27] Revocation of package

The Minister or CEO, as applicable, may revoke any Part 2 or Part 3 investment if the company or hotel owner has

a) breached any condition of provisional or final approval;
b) failed to comply with any of the requirements of the Act, Part 2 or 3; or
c) been convicted of an offence under any written law relating to taxation, customs or excise.

[reg 27 am LN 56 of 2017 reg 12, effective 1 August 2017]

[Regulation 28] Applicability of incentives

A hotel owner or a company is only entitled to either Part 2 investment allowance or Part 3 short life investment package for the same project, but not both.

[Regulation 29] Transitional

Any approval for hotel or integrated tourism development investment granted before 1 January 2016 will continue to ensure the benefits provided thereof.

INCOME TAX (MEDICAL INVESTMENT INCENTIVES) REGULATIONS 2016

Table of Amendments

Income Tax (Medical Investment Incentives) Regulations 2016 (LN 4 of 2016) commenced on 1 January 2016, as amended by:

Amending Legislation	Date of Commencement
Income Tax (Medical Investment Incentives) (Amendment) Regulations 2016 (LN 115 of 2016)	30 December 2016
Income Tax (Medical Investment Incentives) (Amendment) Regulations 2020 (LN 69 of 2020)	1 August 2020

PART 1 GENERAL

[Regulation 1] Short title and commencement

(1) These Regulations may be cited as the Income Tax (Medical Investment Incentives) Regulations 2016.

(2) These Regulations shall come into force on 1 January 2016.

[Regulation 2] Interpretation

In these Regulations, unless the context otherwise requires—

amenity includes features and facilities that contribute to the well-being of patients in a private hospital;

ancillary medical centre owner means the owner of an ancillary medical centre;

ancillary medical services means those ancillary medical services provided by a company, including pathology lab services, magnetic resonance imaging services (MRI) and other diagnostic services;

ancillary medical services investment means a project with capital investment (including the cost of support infrastructure and overseas consultant fees but excluding the cost of land) over—

a) $2,000,000 where the project commences on or after 1 January 2016; and
b) $500,000 where the project commences on or after 1 August 2020;

[def amended by LN 69 of 2020, effective 1 August 2020]

ancillary medical services investment allowance means the allowance of an amount of taxable income equal to—

a) 30% of the total expenditure incurred in the project with capital investment (including the cost of support infrastructure and overseas consultant fees but excluding the cost of land) from $500,000 to $1,000,000; and
b) 60% of the total expenditure incurred in the project with capital investment (including the cost of support infrastructure and overseas consultant fees but excluding the cost of land) over $1,000,000;

[def amended by LN 69 of 2020, effective 1 August 2020]

ancillary medical services investment package means various exemptions, concessions and allowances given under an ancillary medical services investment;

capital goods means capital equipment, plant machineries 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 medical investment, paid or provided to a local and an overseas consultant;

existing hospital means—

a) a private hospital; or
b) a hospital or other establishment or institution operated or maintained by the Government,

which was in operation on 1 August 2020;

[def insrt LN 115 of 2016 reg 2, effective 30 December 2016; def amended by LN 69 of 2020, effective 1 August 2020]

extension means any additional amenity to an existing hospital or existing ancillary medical centre;

[def am LN 115 of 2016 reg 2, effective 30 December 2016]

hospital owner means the owner of a private hospital;

medical investment means a project with capital investment (including the cost of support infrastructure and overseas consultant fees but excluding the cost of land) over—

a) $7,000,000 where the project commences on or after 1 January 2016; and
b) $2,500,000 where the project commences on or after 1 August 2020;

[def amended by LN 69 of 2020, effective 1 August 2020]

medical investment allowance means the allowance of an amount of taxable income equal to—

a) 30% of the total expenditure incurred in the project with capital investment (including the cost of support infrastructure and overseas consultant fees but excluding the cost of land) from $500,000 to $1,000,000; and
b) 60% of the total expenditure incurred in the project with capital investment (including the cost of support infrastructure and overseas consultant fees but excluding the cost of land) over $1,000,000;

[def amended by LN 69 of 2020, effective 1 August 2020]

medical investment package means the various exemptions, concessions and allowances given under a medical investment;

Minister means the Minister responsible for finance;

private hospital means a building or premises where persons suffering from any sickness, injury or infirmity are given medical or surgical treatment, but does not include a hospital or other establishment or institution operated or maintained by the Government or a sick bay or first aid

post maintained by a commercial or industrial undertaking for the benefit of its employees and their families;

project means

a) for the purposes of Part 2, the extension of an existing private hospital or any refurbishment or renovation;
b) for the purposes of Part 3—
   i. the establishment of a new private hospital, including the conversion of an existing building or premises into a new private hospital;
   ii. the extension of an existing hospital or any renovation or refurbishment;
c) for the purposes of Part 4, the extension of an existing ancillary medical centre or any refurbishment or renovation;
d) for the purposes of Part 5, the establishment of centres for the provision of ancillary medical services;

[def am LN 115 of 2016 reg 2, effective 30 December 2016; def amended by LN 69 of 2020, effective 1 August 2020]

refurbishment and renovation

means any substantial construction works (which the estimated cost per square metre of floor area is determined under regulations 9 and 32(5) for an existing hospital and existing ancillary medical centre (excluding its mere repainting or redecorating) which—

a) have the effect of restoring the hospital and ancillary medical centre to a sound and new state; or
b) reconstruct, remodel, alter, upgrade or amend the interior of an existing hospital and ancillary medical centre so as to form new rooms or alter the sizes of existing rooms.

[def am LN 115 of 2016 reg 2, effective 30 December 2016]

PART 2 MEDICAL INVESTMENT ALLOWANCE

[Regulation 3] Specification of particular requirements

The Minister may prescribe particular requirements applicable to any particular area of Fiji.

[Regulation 4] Power to approve application

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

a) the requirements for a private hospital in the area concerned;
b) whether the extension, refurbishment or renovation of the private hospital will make an adequate contribution to the requirements of the area concerned;
c) whether the proposed accommodation is of a suitable size and standard for the area;
d) whether adequate amenities would be provided by the project.

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

(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.

[Regulation 5] Application for provisional approval

A person wishing to carry out a project may apply in writing to the Minister 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 location and description of the site of the private hospital;
d) the number and description of wards, rooms and beds and of the toilet facilities;
e) the number and description of proposed new wards, rooms and beds and the toilet facilities proposed to be established in connection with them;
f) a description of each public room for the proposed project;

g) a detailed description of existing or proposed amenities;
h) a sketch plan showing in sufficient detail the site and layout of the private hospital;
i) the estimate cost of the project;
j) if the project is to be carried out in stages, a description and the estimate cost, of each stage and details of the proposed timetable;
k) details of the proposed method of financing the project;
l) any other information the Minister may require.

[Regulation 6] Effect of provisional approval

When a provisional approval is granted, all capital goods, imported within the period specified in the definition of "medical investment" under regulation 2, by or on behalf of the company and used in the carrying out of the medical investment, shall be exempt from all duties, including Value Added Tax payable in respect of their importation.

[Regulation 7] Completion of project

(1) Any owner of a private hospital who has been granted provisional approval shall complete the project within 24 months from the date on which the provisional approval was granted.

[reg 7(1) amended by LN 69 of 2020, effective 1 August 2020]

(2) Subject to the other provisions of this regulation, where a hospital owner has been granted provisional approval and has completed the project, the hospital owner 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 private hospital.

(4) Subject to the provision of regulation 8, the Minister shall refuse to grant final approval if the hospital owner has failed to complete the project or has failed to comply with any condition upon which provisional approval was granted.

[Regulation 8] Final approval if completed

An application for final approval shall not be granted unless—

a) the Minister is satisfied that the hospital owner has in all respects completed the requirements of the project; and
b) the project is fully completed.

[Regulation 9] Investment allowance

(1) Subject to subregulation (3), a hospital owner is entitled to the following allowance—

a) for a capital investment from $500,000 to $1,000,000, an amount of taxable income equal to 30% of the total capital expenditure incurred in the project including the provision of amenities approved by the Minister, but less the cost of any land acquired for the project or refurbishment and renovation, is not chargeable to tax;
b) for a capital investment more than $1,000,000, an amount of taxable income equal to 60% of the total capital expenditure incurred in the project including the provision of amenities approved by the Minister, but not including the cost of any land acquired for the project or refurbishment and renovation, is not chargeable to tax; and
c) so much of the amount not charged to tax under paragraphs (a) and (b) and which cannot be set off against the taxable income of the hospital owner for the first year of income after the commencement of operation or after the completion of the extension must be carried forward and be set off against the taxable income of the next successive fiscal years of income of the hospital owner until the amount is wholly set off.

(2) Notwithstanding subregulation (1), a hospital owner who has claimed an investment allowance under this section may claim depreciation under these Regulations 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 section exceeds the taxable income of the hospital owner from the private hospital business; or
c) the taxable income from the private hospital business 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 that private hospital business or the taxable income from the private hospital premises, for the next successive years of income.

(5) For the purpose of the definition of "refurbishment and renovation" in regulation 2, the Minister may prescribe the cost per square metre of not less than 40% of the estimated cost per square metre of the floor area or a newly built equivalent private hospital building.

(6) The capital expenditure allowable shall be given only to a private hospital, which has been in operation for a period of not less than 3 years.

[Regulation 10] Procedure in case of loss

If a loss is incurred in connection with a private hospital in respect of which investment allowance has been approved under regulation 9, any loss incurred in the operation of the private hospital may be carried forward and set off against the total income of that private hospital business or the total income from that private hospital premises for the next 8 years in succession.

PART 3 MEDICAL INVESTMENT PACKAGE

[Regulation 11] Power to grant medical investment package

The Minister may grant or refuse to grant a medical investment package to a company, which has completed a medical investment and has complied with this Part.

[Regulation 12] Provisional approval

(1) The Minister may, after consulting the Minister responsible for health and medical services—

a) reject the application for provisional approval for medical 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 medical investment;
b) the medical investment will be carried out by a new company for the purposes of the operation of a private hospital by the new company;
c) the company intends to complete and is capable of completing such medical investment; and
d) the medical investment will benefit the economic development of Fiji.

[subreg (2) am LN 115 of 2016 reg 3, effective 30 December 2016]

(3) When considering an application for medical 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 medical investment;
c) the requirements for private hospitals in the area concerned;
d) whether the medical investment will adequately contribute to the requirements of the area concerned;
e) whether the proposed private hospital is a suitable size and standard for the area concerned;
f) whether adequate amenities would be provided as part of the proposed private hospital;
g) such other matters as the Minister may consider relevant to the desirability or otherwise of the medical 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.

[Regulation 13] Effect of provisional approval

When a provisional approval is granted, all capital goods, imported within the period specified in the definition of "medical investment" under regulation 2, by or on behalf of the company and used in the carrying out of the medical investment, shall be exempt from all duties, including Value Added Tax payable in respect of their importation.

[Regulation 14] Application for medical investment

(1) A company ("applicant") may, in writing, apply to the Minister for provisional approval to carry out a medical 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 private hospital site;
e) the number and description of proposed wards, rooms and beds and the toilet facilities;
f) the description of each proposed public room;
g) a sketch plan showing in sufficient detail the site and layout of the proposed private hospital and its amenities;
h) an estimate of the total cost of the medical investment;
i) the description, and an estimate of the cost, of each individual stage of construction and details of the proposed timetable for completion of the medical investment;
j) details of the proposed method of financing the medical investment;
k) evidence of the company's ability to complete the medical investment;
l) estimates of the projected income from the new private hospital;
m) the requirement of a private hospital in the area;
n) the contribution of the medical investment into the area;
o) the nature and extent of medical investment.

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

(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 a medical investment package.

[Regulation 15] Completion of medical investment

(1) If a company has been granted provisional approval, the company shall complete the project within 24 months from the date 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 private hospital.

(4) Upon receiving an application under subregulation (1), the Minister may, after consulting with the Minister responsible for health and medical services—

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

(5) Subject to regulations 17 and 18, no approval shall be granted under this regulation if the Minister is satisfied that the company has failed to complete the medical 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 health and medical services; and
c) the CEO.

[Regulation 16] Extension of time for completion

(1) If a company to which provisional approval has been granted is unable to complete its medical investment within the period specified in the definition of "medical 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 medical investment 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.

[Regulation 17] Final approval if completed

An application for final approval shall not be granted unless—

a) the Minister, after consulting the Minister responsible for health and medical services, is satisfied that the company has in all respects completed the requirements of a medical investment; and
b) the private hospital is fully completed.

[Regulation 18] Effect of final approval

(1) The final approval entitles the company to the benefits of a medical investment package from—

a) in relation to the building of a new private hospital, the first day of commercial operation of the private hospital; and
b) in relation to the extension of an existing hospital or any renovation or refurbishment, the date that final approval is granted,

or such other date as the Minister may specify.

[subreg (1) subst LN 115 of 2016 reg 4, effective 30 December 2016]

(2) The company is not entitled to claim the benefits of a medical investment package in any year unless it has been granted final approval and the Minister is satisfied that the shareholders of the company are substantially the same as the shareholders of the company when provisional approval was granted.

(3) For the purposes of subregulation (2), the shareholders of the company shall be deemed not to be substantially the same as the shareholders on the date when provisional approval was granted unless—

a) not less than 51% of the voting power in and the right to receive dividends from the company is held by or on behalf of the same persons; or
b) not less than 50% of the nominal value of the allotted shares in the company are held by or on behalf of the same persons.

(4) Notwithstanding subregulations (2) and (3), the company may, in writing, apply for exemption from those regulations to the Minister who may grant or refuse to grant the exemption.

[Regulation 19] Exemption from tax

If final approval is granted under this Part to a company, the income of the company is exempt from tax on profits derived from the operation of the private hospital if the capital investment in the private hospital is—

a) from $2,500,000 to $5,000,000, in the case of a company that applies on or after 1 August 2020, for a period of 7 consecutive fiscal years;
b) from $5,000,001 to $10,000,000, in the case of a company that applies on or after 1 August 2020, for a period of 13 consecutive fiscal years; and
c) more than $10,000,000, in the case of a company that applies on or after 1 August 2020, for a period of 20 consecutive fiscal years.

[Regulation 20] Depreciation

(1) During the period from the date appointed by the Minister under regulation 18 to the end of the accounting period in which the last day of the tax-free period falls, such depreciation shall be written off the assets of that company in calculating its profits or gains as would have been available to it under these Regulations if the company were not in receipt of the concession provided by this Part, and the written down values of such depreciable assets at the end of the accounting period in which the last day of the tax-free period falls shall be calculated accordingly.

(2) For the purpose of subregulation (1), the company shall not be obliged to claim initial allowances but such election shall in that event continue for the whole of the tax free period.

[Regulation 21] Carry forward losses

Subject to these Regulations, any loss incurred by the company in the operation of the private hospital may be carried forward and set off against the total income of that private hospital business or the total income from that private hospital premises for the next 8 years in succession.

[Regulation 22] Annual accounts

Within 6 months after the end of each financial year a company which is entitled to the benefits of a medical investment package shall submit to the Minister fully audited accounts, including other information that the Minister may require.

[Regulation 23] Transferability of package

If the private hospital in respect of which a medical investment package has been granted is sold or 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 medical investment package.

[Regulation 24] Revocation of package

The Minister may revoke any Part 2 or Part 3 investment if the hospital owner—

a) has breached any condition of provisional or final approval;
b) has failed to comply with any of the requirements of these Regulations; or
c) has been convicted of an offence under these Regulations or any other written law relating to taxation, customs or excise.

[Regulation 25] Applicability of incentives

A hospital owner or a company is only entitled to either Part 2 medical investment allowance or Part 3 medical investment package for the same project, but not both.

PART 4 ANCILLARY MEDICAL SERVICES INVESTMENT ALLOWANCE

[Regulation 26] Specification of particular requirements

The Minister may prescribe particular requirements applicable to any particular area of Fiji.

[Regulation 27] Power to approve application

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

a) the requirements of ancillary medical centres in the area concerned;
b) whether the extension, refurbishment or renovation of the ancillary medical centre will make an adequate contribution to the requirements of the area concerned;
c) whether the proposed ancillary medical service centre is of a suitable size and standard for the area;
d) whether adequate amenities would be provided by the project.

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

(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.

[Regulation 28] Application for provisional approval

A person wishing to carry out a project may apply in writing to the Minister 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 location and description of the site of the ancillary medical centre;
d) the number and description of wards, rooms and beds and of the toilet facilities;
e) the number and description of proposed new wards, rooms and beds and the toilet facilities proposed to be established in connection with them;

f) a description of each public room for the proposed project;
g) a detailed description of existing or proposed amenities;
h) a sketch plan showing in sufficient detail the site and layout of the ancillary medical centre;
i) the estimate cost of the project;
j) if the project is to be carried out in stages, a description and the estimate cost, of each stage and details of the proposed timetable;
k) details of the proposed method of financing the project;
l) any other information, the Minister may require.

[Regulation 29] Effect of provisional approval

When a provisional approval is granted, all capital goods, imported within the period specified in the definition of "medical investment" under regulation 2, by or on behalf of the company and used in the carrying out of the medical investment, shall be exempt from all duties, including Value Added Tax payable in respect of their importation.

[Regulation 29] Effect of provisional approval

When a provisional approval is granted, all capital goods, imported within the period specified in the definition of "medical investment" under regulation 2, by or on behalf of the company and used in the carrying out of the medical investment, shall be exempt from all duties, including Value Added Tax payable in respect of their importation.

[Regulation 30] Completion of project

(1) Any owner of an ancillary medical centre who has been granted provisional shall 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 ancillary medical centre owner has been granted provisional approval and has completed the project, the ancillary medical centre owner 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 ancillary medical centre.

(4) Subject to the provision of regulation 31, the Minister shall refuse to grant final approval if the ancillary medical centre owner has failed to complete the project or has failed to comply with any condition upon which provisional approval was granted.

[Regulation 31] Final approval if completed

An application for final approval shall not be granted unless—

a) the Minister is satisfied that the ancillary medical centre owner has in all respects completed the requirements of the project; and
b) the project is fully completed.

[Regulation 32] Investment allowance

(1) Subject to subregulation (3), an ancillary medical centre owner is entitled to the following allowance—

a) for a capital investment from $500,000 to $1,000,000, an amount of taxable income equal to 30% of the total capital expenditure incurred in the project including the provision of amenities approved by the Minister, but less the cost of any land acquired for the project or refurbishment and renovation, is not chargeable to tax;
b) for a capital investment more than $1,000,000, an amount of taxable income equal to 60% of the total capital expenditure incurred in the project including the provision of amenities approved by the Minister, but not including the cost of any land acquired for the project or refurbishment and renovation, is not chargeable to tax; and
c) so much of the amount not charged to tax under paragraphs (a) and (b) and which cannot be set off against the taxable income of the hospital owner for the first year of income after the commencement of operation or after the completion of the extension must be carried forward and be set off against the taxable income of the next successive fiscal years of income of the hospital owner until the amount is wholly set off.

(2) Notwithstanding subregulation (1), an ancillary medical centre owner who has claimed an investment allowance under this section may claim depreciation under these Regulations 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 section exceeds the taxable income of the ancillary medical centre owner from the ancillary medical centre business; or
c) the taxable income from the ancillary medical centre business 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 that ancillary medical centre business or the taxable income from the ancillary medical centre premises, for the next successive years of income.

(5) For the purpose of the definition of "refurbishment and renovation" in regulation 2, the Minister may prescribe the cost per square metre of not less than 40% of the estimated cost per square metre of the floor area or a newly built equivalent ancillary medical centre building.

(6) The capital expenditure allowable shall be given only to an ancillary medical centre, which has been in operation for a period of not less than 3 years.

[Regulation 33] Procedure in case of loss

If a loss is incurred in connection with an ancillary medical centre in respect of which investment allowance has been approved under regulation 32, any loss incurred in the operation of the ancillary medical centre may be carried forward and set off against the total income of that ancillary medical centre business or the total income from that ancillary medical centre premises for the next 8 years in succession.

PART 5 ANCILLARY MEDICAL SERVICES INVESTMENT PACKAGE

[Regulation 34] Power to grant ancillary medical services investment package

The Minister may grant or refuse to grant an ancillary medical services investment package to a company, which has completed an ancillary medical services investment and has complied with this Part.

[Regulation 35] Provisional approval

(1) The Minister may, after consulting the Minister responsible for health and medical services—

a) reject the application for provisional approval for ancillary medical services investment; or
b) grant provisional approval to such application, with or without any condition.

[subreg (1) am LN 115 of 2016 reg 5, effective 30 December 2016]

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

a) the application is for ancillary medical services investment;
b) the ancillary medical services investment will be carried out by a new company for the purposes of the provision of ancillary medical services by the new company;
c) the company intends to complete and is capable of completing such ancillary medical services investment; and
d) the ancillary medical services investment will benefit the economic development of Fiji.

[subreg (2) am LN 115 of 2016 reg 5, effective 30 December 2016]

(3) When considering an application for ancillary medical services 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 ancillary medical services investment;
c) the requirements for an ancillary medical center in the area concerned;
d) whether the ancillary medical services investment will adequately contribute to the requirements of the area concerned;
e) whether the proposed ancillary medical centre is a suitable size and standard for the area concerned;
f) whether adequate amenities would be provided as part of the proposed ancillary medical centre;

g) such other matters as the Minister may consider relevant to the desirability or otherwise of the ancillary medical services 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.

[Regulation 36] Application for ancillary medical services investment

(1) A company ("applicant") may, in writing, apply to the Minister for provisional approval to carry out an ancillary medical services 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 ancillary medical centre site;
e) the number and description of proposed wards, rooms and beds and the toilet facilities;
f) the description of each proposed public room;
g) a sketch plan showing in sufficient detail the site and layout of the proposed ancillary medical centre and its amenities;
h) an estimate of the total cost of the ancillary medical services investment;
i) the description, and an estimate of the cost, of each individual stage of construction and details of the proposed timetable for completion of the ancillary medical services investment;
j) details of the proposed method of financing the ancillary medical services investment;
k) evidence of the company's ability to complete the ancillary medical services investment;
l) estimates of the projected income from the new ancillary medical centre;
m) the requirement of an ancillary medical centre in the area;
n) the contribution of the ancillary medical services investment into the area;
o) the nature and extent of ancillary medical services investment.

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

(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 an ancillary medical services investment package.

[Regulation 37] Effect of provisional approval

When a provisional approval is granted, all capital goods, imported within the period specified in the definition of "ancillary medical services investment" under regulation 2, by or on behalf of the company and used in the carrying out of the ancillary medical services investment, shall be exempt from all duties, including Value Added Tax payable in respect of their importation.

[Regulation 38] Completion of ancillary medical services investment

(1) If a company has been granted provisional approval, the company shall 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 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 ancillary medical centre.

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

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

(5) Subject to regulations 40 and 41, no approval shall be granted under this regulation if the Minister is satisfied that the company has failed to complete the ancillary medical services 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 health and medical services; and
c) the CEO.

[Regulation 39] Extension of time for completion

(1) If a company to which provisional approval has been granted is unable to complete its ancillary medical services investment within the period specified in the definition of "ancillary medical services 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 ancillary medical services investment 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.

[Regulation 40] Final approval if completed

An application for final approval shall not be granted unless—

a) the Minister, after consulting the Minister responsible for health and medical services, is satisfied that the company has in all respects completed the requirements of an ancillary medical services investment; and
b) the ancillary medical centre is fully completed.

[Regulation 41] Effect of final approval

(1) The final approval entitles the company to the benefits of an ancillary medical services investment package from the first day of commercial operation of the ancillary medical centre or such other date as the Minister may specify.

(2) The company is not entitled to claim the benefits of an ancillary medical services investment package in any year unless it has been granted final approval and the Minister is satisfied that the shareholders of the company are substantially the same as the shareholders of the company when provisional approval was granted.

(3) For the purposes of subregulation (2), the shareholders of the company shall be deemed not to be substantially the same as the shareholders on the date when provisional approval was granted unless—

a) not less than 51% of the voting power in and the right to receive dividends from the company is held by or on behalf of the same persons; or
b) not less than 50% of the nominal value of the allotted shares in the company are held by or on behalf of the same persons.

(4) Notwithstanding subregulations (2) and (3), the company may, in writing, apply for exemption from those regulations to the Minister who may grant or refuse to grant the exemption.

[Regulation 42] Exemption from tax

If final approval is granted under this Part to a company, the income of the company is exempt from tax on profits derived from the operation of the ancillary medical centre if the capital investment in the ancillary medical centre is—

a) from $500,000 to $3,000,000, in the case of a company that applies on or after 1 August 2020, for a period of 7 consecutive fiscal years;
b) from $3,000,001 to $10,000,000, in the case of a company that applies on or after 1 August 2020, for a period of 13 consecutive fiscal years; and
c) more than $10,000,000, in the case of a company that applies on or after 1 August 2020, for a period of 20 consecutive fiscal years

[Regulation 43] Depreciation

(1) During the period from the date appointed by the Minister under regulation 41 to the end of the accounting period in which the last day of the tax-free period falls, such depreciation shall be written off the assets of that company in calculating its profits or gains as would have been available to it under these Regulations if the company were not in receipt of the concession provided by this part, and the written down values of such depreciable assets at the end of the accounting period in which the last day of the tax-free period falls shall be calculated accordingly.

(2) For the purpose of subregulation (1), the company shall not be obliged to claim initial allowances but such election shall in that event continue for the whole of the tax free period.

[Regulation 44] Carry forward losses

Subject to these Regulations, any loss incurred by the company in the operation of the ancillary medical centre may be carried forward and set off against the total income of that ancillary medical centre business or the total income from that ancillary medical centre premises for the next 8 years in succession.

[Regulation 45] Annual accounts

Within 6 months after the end of each financial year a company which is entitled to the benefits of an ancillary medical services investment package shall submit to the Minister fully audited accounts, including other information that the Minister may require.

[Regulation 46] Transferability of package

If the ancillary medical centre in respect of which an ancillary medical services investment 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 ancillary medical services investment package.

[Regulation 47] Revocation of package

The Minister may revoke any Part 4 or Part 5 investment if the ancillary medical centre 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.

[Regulation 48] Applicability of incentives

The owner of an ancillary medical centre is only entitled to either Part 4 ancillary medical services investment allowance or Part 5 ancillary medical services investment package for the same project, but not both.

INCOME TAX (RESIDENTIAL HOUSING DEVELOPMENT PACKAGE) REGULATIONS 2016

Table of Amendments

Income Tax (Residential Housing Development Package) Regulations 2016 (LN 6 of 2016) commenced on 1 January 2016, as amended by:

Amending Legislation	Date of Commencement
Income Tax (Residential Housing Development Package) (Amendment) Regulations 2019 (LN 63 of 2019)	1 August 2019
Income Tax (Residential Housing Development Package) (Amendment) Regulations 2020 (LN 67 of 2020)	1 August 2020
Income Tax (Residential Housing Development Package) (Amendment) Regulations 2022 (LN97 of 2022)	1 August 2022

PART 1 GENERAL

[Regulation 1] Short title and commencement

(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.

[Regulation 2] Interpretation

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;

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;".

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 subdivision of residential lots , where more than one residential housing units are developed;

[def am LN 60 of 2019 reg 2, effective 1 August 2019]

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; and

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

[Regulation 3] Power to grant residential housing development investment package

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.

[Regulation 4] Provisional approval

(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;
c) the residential housing development investment will benefit the economic development of Fiji; and
d) in the case of a residential housing development, the sale price of a unit is below $300,000 (VIP)—
    i. in the case of a ground level development, for at least 15% of the units in the development; and
    ii. in the case of a multi-storey development, for at least 15% of the units on each storey for the first 5 storeys of the development.

[reg (4)(2) am LN 63 of 2019 effective 1 August 2019]

(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 local 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.

[Regulation 5] Effect of provisional approval

(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 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.

[Regulation 6] Application for residential housing development investment

(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.

[Regulation 7] Completion of residential housing development investment

(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.

[Regulation 8] Extension of time for completion

(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.

[Regulation 9] Final approval if completed

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.

[Regulation 10] Effect of final approval

(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, the owner shall be granted a rebate of—
    i. 7% of the TCE attributed to the development of the units that are sold by the owner for a sale price per unit of less than $100,000; plus
    ii. 5% of the TCE attributed to the development of the units that are sold by the owner for a sale price per unit of $100,000 to $200,000; plus
    iii. 3% of the TCE attributed to the development of the units that are sold by the owner for a sale price per unit of more than $200,000 but not more than $300,000.

(3) For the purpose of this regulation, "TCE" is the total capital expenditure incurred in the residential housing development

[Reg 10 am LN 63 of 2019, effective 1 August 2019]

[Regulation 11] Revocation of package

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.

PART 3—DEVELOPMENT OF HOUSING FOR PUBLIC RENTAL

[Regulation 12] Public-private partnership for an affordable housing project

(1) The income of a person derived from a public private partnership investment for a residential housing development as approved by the CEO is exempt income for the term of the public private partnership.

[Part 3 insrt LN 63 of 2019, effective 1 August 2019]

(2) A person who establishes a residential housing under a public private partnership investment is allowed a duty concession on the importation of raw material, machinery and capital equipment for the establishment of the residential housing

[reg 12(2) inserted by LN 67 of 2020 reg 2, effective 1 August 2020]

PART 4—NEW RESIDENTIAL HOUSING DEVELOPMENT INVESTMENT PACKAGE

[Regulation 13] Power to grant new residential housing development investment package
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.

[Regulation 14] Provisional approval
(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.

[Regulation 15] Effect of provisional approval

(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.

[Regulation 16] Application for new residential housing development investment

(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.

[Regulation 17] Completion of new residential housing development investment

(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.

[Regulation 18] Extension of time for completion

(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.

[Regulation 19] Final approval if completed

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.

[Regulation 20] Effect of final approval

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

[Regulation 21] Revocation of package

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.

INCOME TAX (MARITIME VESSELS INVESTMENT ALLOWANCE) REGULATIONS 2016

Table of Amendments

Income Tax (Maritime Vessels Investment Allowance) Regulations 2016 (LN 7 of 2016) commenced on 1 January 2016, as amended by:

Amending Legislation	Date of Commencement

[Regulation 1] Short title and commencement

(1) The Regulations may be cited as the Income Tax (Maritime Vessels Investment Allowance) Regulations 2016.

(2) These Regulations shall come into force on 1 January 2016.

[Regulation 2] Interpretation

In these Regulations, unless the contrary intention appears—

eligible vessel, means a sea-going vessel that has been, is being or is to be built in Fiji by or on behalf of that person at a cost of not less than $250,000;

investment allowance means the maritime vessels investment allowance referred to in regulation 5(1);

Minister means the Minister responsible for finance;

Maritime Safety Authority of Fiji means Maritime Safety Authority of Fiji, established under the Maritime Safety Authority of Fiji Act 2009;

MSAF Approved Plan means a vessel plan that bears the official seal of the Maritime Safety Authority of Fiji;

primary allowance period in relation to a person who is certified under regulation 5(1) to be entitled to the investment allowance in respect of a vessel, means the 5 fiscal years of that person commencing with the fiscal year in which the vessel is completed in accordance with the relevant provisional approval;

provisional approval means an approval in principle given by the Minister under regulation 4; and

relevant area, in relation to a vessel that is the subject of an application under regulation 4 or a provisional approval, means the area over which it is proposed in the application or the provisional approval, as the case requires, that the vessel be used.

[Regulation 3] Applications for investment allowance

(1) In order to obtain the benefit of the maritime vessels investment allowance, a person who proposes to use an eligible vessel in Fiji may apply in writing to the Minister.

(2) An application under subregulation (1) shall—

a) contain—
   i. the information specified in subregulation (3);
   ii. particulars of the relevant area;
   iii. particulars of the method of financing the construction, refurbishment or renovation of the vessel; and
   iv. such other information as may be required by the Minister; and
b) be accompanied by—
   i. a MSAF Approved plan of the vessel; and
   ii. such other documents as may be required by the Minister.

(3) Investment allowance on refurbishment or renovation under subregulation (2) shall only be applicable to a vessel that is wholly or principally engaged in the carriage of tourists within Fiji and providing accommodation for more than 3 nights.

(4) For the purpose of subregulation (3), "refurbishment or renovation" means those construction works of a substantial nature carried out in or upon an existing vessel which have the effect of restoring the vessel to a sound and new state and/or which reconstruct, remodel, alter, upgrade or amend the interior of an existing vessel, but not confined to the repainting or redecorating of an existing vessel.

(5) The capital expenditure allowable under subregulation (2) shall be given—

a) only to the eligible vessels stated in subregulation (3); and
b) which has been in operation for a period of not less than 5 years.

(6) The information referred to in subregulation (2)(a)(i) is the following information in relation to the vessel—

a) its overall size, including its length and beam;
b) its tonnage;
c) a description of its main propulsion system, with the following particulars—
   i. whether single or twin screw or otherwise;
   ii. name, model and horse-power rating of main engine or engines;
d) its estimated (or, where known, actual) fuel consumption per hour;
e) its estimated (or, where known, actual) service speed in knots;
f) its passenger capacity, with the following particulars—
   i. the number of suites;
   ii. the number of twin cabins;
   iii. the number of single cabins;
   iv. the overall seating capacity otherwise than in suites, cabins and dining rooms;
   v. the dining room capacity;

vi. the number of toilets, showers and similar facilities;
vii. any other amenities;

g) its construction (whether steel, timber or otherwise);
h) its total estimated (or, where known, actual) cost;
i) the name of its builder.

[Regulation 4] Approval

(1) The Minister, upon receipt of an application under regulation 3, shall consider the application and refer it, together with his or her recommendations in relation to it, to the Minister responsible, before giving written notice to—

a) reject the application;
b) give provisional approval to the application, with or without any condition as he or she considers reasonable; or
c) give provisional approval to a part, and reject the remainder, of the application, imposing such conditions in relation to his or her partial provisional approval as he or she considers reasonable.

(2) In arriving at his or her decision under subregulation (1), the Minister shall take into consideration the following matters, that is to say—

a) the requirements for such a vessel in the relevant area;
b) whether the vessel is likely to make an adequate contribution to the meeting of those requirements in the relevant area;
c) whether the vessel is or is to be of suitable size and standard for operations in the relevant area;
d) whether the facilities proposed to be provided in the vessel would be adequate for the comfort and safety of passengers, but shall, in all other respects, exercise his or her own discretion.

(3) Without prejudice to his or her powers under subregulations (1) and (2), the Minister may specify particular requirements applicable to any particular area of operation in Fiji.

(4) The decision of the Minister under subregulation (1) shall be final but, in case of rejection (whether total or partial), shall not preclude the applicant from submitting a fresh application or amending his or her original application.

[Regulation 5] Allowance

(1) Where—

a) the construction of a vessel is completed in accordance with provisional approval granted to a person; and
b) the Minister is satisfied that it is expedient for the economic development of Fiji that that person should be entitled to a maritime vessels investment allowance in respect of that vessel,

the Minister may, either by order or by written direction to the Chief Executive Officer, certify that person, upon such conditions as he or she thinks fit, to be entitled to a maritime vessels investment allowance in respect of that vessel.

(2) Subject to subregulations (3), (4) and (5) and regulation 8, the investment allowance in respect of a vessel is a deduction from total income arising from the use of that vessel in accordance with the conditions (if any) referred to in subregulation (1), for maritime operations over the primary allowance period of amounts not exceeding in the aggregate an amount equal to 55% of the total capital expenditure incurred in the construction of the vessel, as approved by the Minister.

(3) Where, at the expiration of the primary allowance period, any part of the investment allowance in respect of the vessel has not been claimed, the owner of the vessel may set off against total income derived by him or her in succeeding fiscal years from other vessels operated by him or her, amounts not exceeding in the aggregate the amount of that unclaimed part of the investment allowance.

(4) Where income is derived by the owner of the vessel from the use of other vessels, the profit in respect of the first mentioned vessel shall be deemed to be—

a) except where item (b) applies, an amount that bears to the total profit derived by him or her from the use of all such vessels the same proportion as the gross income derived by him or her from the first mentioned vessel bears to the total gross income derived by him or her from the use of vessels; or
b) where the Chief Executive Officer so directs, an amount ascertained on such other basis as the Chief Executive Officer may determine.

(5) Where the owner of the vessel is a company, no deduction from total income by way of investment allowance shall be allowed in relation to a fiscal year of that company if the Chief Executive Officer is satisfied that, in that year, the shareholders of the company are not substantially the same as on the date on which the provisional approval was granted unless prior approval from the Minister for the changes of shareholders has been obtained.

(6) For the purposes of this regulation, the shareholders of a company at any date shall be deemed not to be substantially the same as the shareholders on any other date unless, on both those dates, not less than 30% of the voting power in and the right to receive dividends from the company was held by or on behalf of the same persons, nor unless, on both those dates, not less than 30% of the nominal value of the allotted shares in the company were held by or on behalf of the same persons.

(7) Shares in a company held by or on behalf of another company shall be deemed to be held by the shareholders of the last mentioned company and shares held by or on behalf of the trustee of the estate of a deceased shareholder, or by or on behalf of the persons entitled to those shares as beneficiaries in the estate of a deceased shareholder, shall be deemed to be held by that deceased shareholder.

[Regulation 6] Depreciation

Nothing in regulation 5 shall be taken to prevent a person who is entitled to an investment allowance in relation to a vessel from claiming depreciation under this Act in relation to that vessel and, for that purpose, the investment allowance shall not be deducted in calculating the prime cost of that vessel.

[Regulation 7] Recoupment

(1) If, before the expiration of the primary allowance period, the vessel is sold, transferred, lost, destroyed or otherwise disposed of, the amount of any proceeds shall be taken, for the purposes of ascertaining the total income of its owner, to be an amount to which section 17 of the Act applies, but that amount shall not exceed an amount equal to the aggregate of the deductions from total income by way of investment allowance which have been allowed previously.

(2) For the purposes of subregulation (1), the reference in that subregulation to the proceeds in relation to the sale, transfer, loss, destruction or other disposal of a vessel shall, without limiting the generality of that reference, be taken to include, in particular—

a) the market value of any consideration received otherwise than in cash; and
b) any moneys received—
    i. under any policy of insurance;
    ii. by way of indemnity;
    iii. by way of damages; or
    iv. in settlement of any claim, in relation to that sale, transfer, loss, destruction or other disposal.

(3) If, during the primary allowance period, the nature of the use of the vessel changes substantially, an amount equal to the aggregate of deductions from total income by way of investment allowance already allowed shall be taken, for the purposes of ascertaining the total income of its owner, to be an amount to which section 17 of the Act applies in the year in which the change occurred.

(4) Subregulations (1) and (3) shall not be taken to affect the operation of the Income Tax Allowance for Depreciation and Improvement Instructions 1998, in respect of any balancing charge arising in respect of the vessel.

(5) The Minister may, where he or she considers it warranted, upon application by the owner of a vessel, direct that an amount that, in accordance with subregulation (1) or (3), is to be taken to be an amount to which section 17 of the Act applies be reduced to such extent as he or she deems fit.

[Regulation 8] Application to certain vessels

These Regulations shall apply in relation to an eligible vessel the construction of which commenced before 1 January 2016 subject to such modifications and adaptations as the Minister directs, either generally by order or, in a particular case, by written direction to the applicant for the allowance.

INCOME TAX (FILM-MAKING AND AUDIO-VISUAL INCENTIVES) REGULATIONS 2016

Table of Amendments

Income Tax (Film-making and Audio-visual Incentives) Regulations 2016 (LN 8 of 2016) commenced on 1 January 2016, as amended by:

Amending Legislation	Date of Commencement
Fiji Revenue and Customs Authority (Budget Amendment) Act 2017 (No 38 of 2017)	1 August 2017
Income Tax (Film-making and Audio-visual) (Amendment) Regulations 2017 (LN 60 of 2017)	1 August 2017
Income Tax (Film-making and Audio-visual Incentives) (Amendment) Regulations 2019 (LN 62 of 2019)	1 August 2019
Service Turnover Tax (Repeal) Act 2020 (No 17 of 2020) Consequential Amendments	1 August 2020
Income Tax (Film-making and Audio-visual Incentives) (Amendment) Regulations 2022 (LN 30 of 2022)	1 April 2022

PART 1 GENERAL

[Regulation 1] Short title and commencement

(1) The Regulations may be cited at the Income Tax (Film-making and Audio-visual Incentives) Regulations 2016.

(2) These Regulations shall come into force on 1 January 2016.

[Regulation 2] Interpretation

(1) For the purposes of these Regulations, unless the context otherwise requires—

Act means the Income Tax Act 2015;

Film Fiji means the corporation established under section 3 of the Film Fiji Act 2002;

FRCS means the Fiji Revenue and Customs Service; and

[def am Act 38 of 2017 s 7, effective 1 August 2017]

Minister means the Minister responsible for finance.

(2) In these Regulations, unless otherwise defined herein, words and phrases shall have the meanings given to them under the Act or, where the case may be, the Tax Administration Act 2009.

(3) For the avoidance of doubt, a certificate issued under Schedule 6 to the Income Tax Act (Cap. 201) shall be deemed to have been issued under these Regulations.

[Regulation 3] Regulations

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.

[Reg 3 am LN 62 of 2019, 1 August 2019]

[Regulation 4] Limitation on applications for incentives

(1) A company, production entity or any person engaged in the making of a film or audio-visual production in Fiji may apply for only one incentive under Parts 2, 3, 4 or 5 of these Regulations for each film or audio-visual production made in Fiji.

(2) Notwithstanding anything contained in subregulation (1), the Minister may approve an application made under Part 2 by a company, production entity or any person engaged in the making of a film or audio-visual production who has applied for an incentive under either Part 3 or 5 of these Regulations.

[Regulation 5] Audits to be in a form approved by Film Fiji

(1) Any company, production entity or person engaged in the making of a film or audio-visual production in Fiji that applies for an incentive under these Regulations shall provide Film Fiji with an audited report in a form approved by Film Fiji.

(2) An audit referred to in subregulation (1) must be conducted—

a) in accordance with all applicable Fiji accounting standards, including any standards relating to the independence of auditors; and
b) by an auditor who has been approved in writing by FRCS.

[subreg (2) am Act 38 of 2017 s 7, effective 1 August 2017]

PART 2 NON-RESIDENT EMPLOYEE TAX WAIVER

[Regulation 6] Interpretation

For the purposes of this Part, unless the context otherwise requires—

applicant means a film company which makes an application under either regulation 8 or 18;

application means an application made under either regulation 8 or 17;

film means a cinematographic or digital or analogue film made or intended for public exhibition or for use in connection with television;

film company means a company engaged or intending to be engaged, in making a film in Fiji;

[def am LN 60 of 2017 reg 2, effective 1 August 2017]

local goods and services means—

a) employment income paid to employees who are citizens or are permanently resident in Fiji; and
b) the cost of goods produced in their entirety in Fiji except that, if goods acquired in Fiji have foreign and local cost contents, the estimated foreign cost content is excluded; and

qualifying employee means an employee of a film company who, other than in relation to being in Fiji for the purpose of the film company making a film, is a non-resident and includes an individual engaged by a film company to work in Fiji on a contract of service or contract for services either with that individual or with any other person.

[Regulation 7] Non-resident tax incentive

If the Minister is satisfied that it is expedient for the economic development of the film-making industry in Fiji, the Minister may upon the recommendation of Film Fiji approve the income of the film companys' qualifying employees to be—

a) exempt from tax; or
b) taxed at a reduced rate specified by the Minister, for a period determined by the Minister.

[Regulation 8] Application for approval

(1) A film company seeking exemption or reduction of the rate of tax under this part may apply to Film Fiji for the Ministers approval under regulation 7.

(2) An application under subregulation (1) must be made in the prescribed form and must include—

a) the full name and address of the film company;
b) the full name, address, nationality and country of usual residence of each qualifying employee concerned and the amount of employment income payable by the film company while the employee is engaged in Fiji;
c) the total amount of employment income that the film company proposes to pay local employees who would be engaged by it;
d) the total amount the film company proposes to expend on local goods and services and a brief description of the goods and services in respect of which the goods and services will be used;
e) the duration for which the film company will be engaged in making the film in Fiji;
f) the title of the film and the script; and
g) the locations where the film company will be engaged during the making of the film in Fiji.

[Regulation 9] Film Fiji to consider applications and make recommendations

(1) Film Fiji shall consider and refer each application to the Minister together with the recommendation in respect of the application.

(2) Film Fiji may before making a recommendation to the Minister require an applicant to provide additional information or particulars in order that it may properly consider the application.

[Regulation 10] Minister must approve or reject an application

The Minister upon receiving an application and recommendation from Film Fiji shall consider and by written notice to Film Fiji approve or refuse the application.

[Regulation 11] Approval must specify details of exemption or reduction

(1) Where the Minister approves an application in accordance with subregulation 10 and the approval allows for

a) an exemption, it shall specify—
   i. the qualifying employees whose income is exempt from tax; and
   ii. the period during which the exemption of tax applies;
b) a reduced rate of tax, it shall specify—
   i. the qualifying employees whose income is chargeable to tax at a reduced rate;
   ii. the reduced rate of tax determined by the Minister; and
   iii. the period during which the reduced rate of tax applies.

[Regulation 12] Film Fiji to inform applicant

(1) Film Fiji shall inform the applicant in writing of the Ministers decision.

(2) If the Minister approves an application, Film Fiji shall provide the CEO with a copy of the approval.

[Regulation 13] Method of relief if final certificate is granted

Where a final certificate has been granted, the amount of tax payable by the applicant in respects of each qualifying employee the lesser of—

a) the amount of tax assessed in accordance with these Regulations; or
b) the amount of tax assessed in accordance with the Ministers approval under regulation 7.

[Regulation 14] Film Fiji may require security

An approved film company may be required by Film Fiji to provide a suitable monetary security in favour of the CEO on the basis of tax payable by its qualifying employees under regulation 13.

PART 3 FI/F2 AUDIO-VISUAL INCENTIVE

DIVISION 1 INTERPRETATION

[Regulation 15] Interpretation

(1) In this Part, unless the context otherwise requires—

applicant means an applicant for a provisional or final certificate who is a resident individual, a resident partnership or a company incorporated in Fiji but excludes—

a) a holder of a broadcast licence in television or radio in Fiji or any associated company or individual with substantial holdings in a broadcast licence in Fiji; and
b) a theatrical exhibitor in Fiji or any associated company or individual with substantial holdings in a theatre or group of theatres in Fiji;

approved financing charges means the reasonable budgeted and approved cost of financing an audio-visual production and includes legal fees for financing, brokerage for financing, prospectus or offer document costs and disbursements if those charges do not exceed 8% of the production budget of an audio-visual production;

approved marketing materials costs means the reasonable budgeted and approved cost of generating masters for marketing materials if not less than 85%of the expenditure to produce such items is spent in Fiji and the budgets have been approved by Film Fiji;

audio recording means an audio recording for commercial sale on disk, audio cassette, audio disc or on line services and includes music, a voice recording of spoken word, a book on tape or audio disc and a dramatic performance in any language;

audio-visual production has the meaning given to it in regulation 16;

audio-visual production account means, in relation to an audio-visual production, an account that opened in a Fiji bank for the purpose of audiovisual production and from which withdrawals may only be made for expending audio-visual production costs;

audio-visual production costs means, in relation to an audio-visual production, monies expended directly—

a) in producing the audio-visual production;
b) on approved financing charges; and
c) on approved marketing materials costs;

audio-visual production levy means a fee prescribed by Film Fiji included in the budget of every qualifying audio-visual production payable to Film Fiji;

bank means a financial institution licenced under the Banking Act 1995;

broadcast television programmes means programmes produced on film or video tape or digitally recorded for broadcast on free-to-air, free satellite or pay television and includes television movies, mini-series, drama series, situation comedy series, documentaries and documentary series, educational programmes and series, animation series and current affairs series;

completion bond means an insurance policy ensuring completion of an audiovisual production for the benefit of the production entity and investors;

completion bond company means a company specialising in insuring and managing the risk associated with audio-visual production with operations and offices in Fiji which has in place necessary underwriting arrangements with internationally recognised insurance companies;

computer software means an interactive product or instruction set, operating system, manufacturing system, manufacturer controller set or communications protocol for use in or use such as computers, modems, play stations and other games consoles, televisions, video players, digital equipment, telecommunication devices, web servers, CD-ROM drives and stored on media including CD, Zip drive, computer disc, digital video disc, computer chip or online or any other electronic equipment and includes games, educational products and business products produced for sale, products for research and design and development and the establishment software costs of a commercial operation, online e-commerce businesses, websites or internet businesses;

direct to video or video disc programme means a programme produced for marketing to the public by retail sale produced specifically for home use;

Fl audio-visual production means an audio-visual production which qualifies under Division 4;

F2 audio-visual production means an audio-visual production which qualifies under Division 4;

feature film means any film production with a running time of not less than 80 minutes and is intended for public exhibition as a theatrical release or television film or for sale as direct to video film;

Fiji Production Company means a limited liability company registered in Fiji and having 100% of its shares owned by residents;

final certificate means a certificate issued under Division 3;

gross international and domestic revenues means the revenues derived from the commercial exploitation of an audio-visual production (including advances, licence fees and royalties) collected by a collection agent or by other arrangements on behalf of international sales agents, distributors (including the production company where it performs that function) and their sub agents (including associated companies or entities operating at arm's-length);

large format film means a film produced in 70mm for exhibition in IMAX, IWERKS, SHOWSCAN and other 15/70, 81/70 and 4/70 large format theatres and ride simulators;

marketing materials in relation to an audio-visual production, includes—

a) broadcast television commercials (no more than 2 commercials per audio-visual production);
b) radio commercials (no more than 2 commercials per audio-visual production);
c) film art for advertising including posters;
d) press kit masters;
e) electronic press kits;
f) internet websites; and
g) film trailers;

production entity means an applicant entity which has been granted a provisional certificate or a final certificate;

provisional certificate means a certificate issued under Division 2;

qualifying audio-visual production means an Fl or F2 audio-visual production that has been made—

a) wholly or substantially in Fiji and for Fl has substantial Fiji content; or
b) in pursuance of an agreement or arrangement entered into between the Fijian Government or an authority of the Fijian Government and the Government or an authority of the Government of another country under a co-production agreement or arrangement;

relevant 24 months period in relation to an audio-visual production, means the period of 24 months after the end of the year of assessment in which monies of a capital nature were first expended as audio-visual production costs or by way of contribution to those costs;

resident has the meaning given to it under this Act;

short film means an approved film produced for public exhibition, television, theatres or at film festivals with a running time of less than 60 minutes and intended primarily as a demonstration of new and emerging film-making talent;

substantial Fiji content means at least 51% of the running time of the completed qualifying audio-visual production showing Fiji as Fiji; and

theatrical feature film means a film intended to be produced for initial release in theatres.

(2) For the purposes of the definition of "gross international and domestic revenues", the income is net of any deduction of the distributor in a specific country or place but no other deductions.

[Regulation 16] Audio-visual productions

Subject to regulations 17 and 18, "audio-visual production" means the production, wholly or principally for exhibition or sale or use in the conduct of business, of—

a) a large format film in large format theatres;
b) a theatrical film or a short film in cinemas;
c) broadcast television programmes by—
    i. broadcast on free-to-air, satellite or pay television; or
    ii. internet broadcast;
d) a direct to video and video disc programme; or
e) an audio recording.

[Regulation 17] Exclusions from references to audio-visual productions

For the purposes of Divisions 2 to 6, a reference to an audio-visual production does not include a reference to an audio-visual production that is or is intended to be to a substantial extent—

a) an audio-visual production for exhibition as an advertising programme or a commercial other than where that advertising programme or commercial is part of the marketing budget of an audio-visual production and is only advertising the audio-visual production which has funded it;
b) an audio-visual production for exhibition as a discussion programme, a quiz programme, a panel programme, a variety programme or a programme of like nature, unless the AVP is produced by a Fiji Production Company;
c) an audio-visual production which is substantially (more than 50%) of a public event; and
d) an audio-visual production produced principally as a training aid.

[Regulation 18] Further exclusions from references to audio-visual productions

(1) For the purposes of Divisions 2 to 6, a reference to an audio-visual production does not include—

a) an extension of broadcast television programmes beyond the first 26 episodes of a continuing series;
b) an extension of broadcast television programmes and television movies beyond 2 full length films in a continuing series;
c) more than 2 audio recordings by the same artist or substantially the same artist; or
d) more than one short film by an individual director.

(2) Subregulation (1) does not apply in the case of an AVP produced by a Fiji Production Company.

DIVISION 2 PROVISIONAL CERTIFICATES

[Regulation 19] Reference to audio-visual production

In this Part, unless a contrary intention appears, a reference to an audio-visual production includes a reference to a proposed audio-visual production.

[Regulation 20] Application for provisional certificate

An applicant may apply to Film Fiji for a provisional certificate stating that a proposed audio-visual production will, when complete, be a qualifying audio-visual production for the purposes of this Part.

[Regulation 21] Application for another provisional certificate

(1) An applicant who holds a current provisional certificate may not apply to Film Fiji for a provisional certificate for another or a new audio visual production until after a final certificate for the first or current audio-visual production has been issued by Film Fiji.

(2) Notwithstanding anything in subregulation (1), Film Fiji may if it deems it expedient for the development of the audio-visual industry in Fiji, exercise its discretion to grant a provisional certificate for another or a new audio-visual production to an applicant who holds a current provisional certificate and has not yet been issued with a final certificate in respect thereof.

[Regulation 22] Form of application

An application under regulation 20 shall be—

a) in the prescribed form and accompanied by the prescribed fee;
b) signed by an authorised officer of the applicant; and
c) accompanied by such information as Film Fiji requires.

[Regulation 23] Film Fiji to consider and decide applications

(1) Upon receipt of an application under regulation 20, Film Fiji must consider it and either approve or refuse it.

(2) Film Fiji must not approve an application, unless it is satisfied that—

a) the proposed audio-visual production, when complete, will be a qualifying Fiji audio-visual production; and
b) having regard to the role of the applicant in the production of the audio-visual production, a provisional certificate should be issued.

[Regulation 24] Film Fiji to issue provisional certificate or give notice of refusal

Film Fiji shall—

a) if it approves the application, issue a provisional certificate to the applicant in respect of the proposed audio-visual production; or
b) if it refuses the application, give written notice to the applicant of its refusal of the application.

[Regulation 25] Information to be provided to Film Fiji

A production entity that applies for a provisional certificate shall furnish to Film Fiji in writing, within a period specified by Film Fiji, any information in relation to the proposed audio-visual production as Film Fiji requests.

[Regulation 26] Film Fiji may revoke or vary certificate in certain circumstances

If Film Fiji has issued a provisional certificate and—

a) at any time after the issue of the certificate, Film Fiji becomes satisfied that the proposed audio-visual production does not comply with the conditions or requirements in respect of which the certificate was issued; or
b) the production entity fails to comply with a request for information made by Film Fiji under regulation 25, Film Fiji may, by written notice to the person to whom the provisional certificate was issued revoke the provisional certificate with effect from the date of the certificate's issue or in the case of a qualifying audio-visual production which is an Fl AVP, vary its audiovisual production status from Fl to F2.

[Regulation 27] Revocation does not prevent subsequent issue of certificate

The revocation of a provisional certificate in respect of a proposed audio-visual production does not prevent the re-issue of a provisional certificate in respect of the same proposed audio-visual production or for a new audio-visual production by the same applicant.

[Regulation 28] Certificate deemed to be in force from time of issue

Subject to regulations 26 and 29, a provisional certificate is deemed to have been in force at all times from the date of its issue.

[Regulation 29] Certificate lapses unless application for final certificate made

(1) If an application for a final certificate in respect of an audio-visual production is not made in accordance with Division 3 before the expiration of 12 months after the time when the audio-visual production is completed, a provisional certificate in respect of that audio-visual production is deemed never to have been in force.

(2) If an application is made by a Fiji Production Company, a provisional certificate issued in respect of the proposed AVP is deemed never to have been in force if the application for a final

certificate in respect of the AVP is not made in accordance with Division 3 before the expiration of 6 months after the time when the AVP is completed.

(3) For the purposes of this Part, an audio-visual production is deemed complete when Film Fiji is satisfied that it is ready for commercial distribution.

(4) Film Fiji may at its discretion extend the periods in subregulations (1) and (2) above.

DIVISION 3 FINAL CERTIFICATES

[Regulation 30] Application for final certificate

An applicant may apply to Film Fiji for a final certificate stating that an audiovisual production that has been completed is a qualifying audio-visual production for the purposes of this Part.

[Regulation 31] Method of application

An application under regulation 30 must be—

a) in the prescribed form and accompanied by the prescribed fee;
b) signed by an authorised officer of the applicant; and
c) accompanied by such information as Film Fiji requires.

[Regulation 32] Film Fiji to consider and decide applications

(1) If an application is made under regulation 30, Film Fiji must consider it and either approve or refuse it.

(2) Film Fiji must not approve an application unless it is satisfied that—

a) the audio-visual production is a qualifying audio-visual production; and
b) having regard to the role of the applicant in the production of the audio-visual production, a final certificate should be issued.

[Regulation 33] Film Fiji to issue final certificate or give notice of refusal

Film Fiji must, on receiving an application under regulation 30—

a) if it approves the application, issue a final certificate to the applicant in respect of the audio-visual production; or
b) if it refuses the application, give written notice to the applicant of its refusal of the application.

[Regulation 34] Information to be provided to Film Fiji

A production entity that applies for a final certificate must furnish to Film Fiji in writing, within a period specified in writing by Film Fiji, such information in relation to the proposed audio-visual production as Film Fiji requests.

[Regulation 35] Final certificate deemed to be in force from time of issue

A final certificate is irrevocable and deemed to have been in force from the date of its issue.

DIVISION 4 QUALIFYING AUDIO-VISUAL PRODUCTIONS

[Regulation 36] AVP may qualify as F1 AVP or F2 AVP

An audio-visual production qualifies as an F1 AVP or an F2 AVP if—

a) it satisfies the minimum prerequisites set out in regulation 37; and
b) it satisfies the additional criteria set out in—
   i. regulation 38, in the case of F1 AVPs; and
   ii. regulation 39, in the case of F2 AVPs.

[Regulation 37] Minimum prerequisites for F1 AVPs and F2 AVPs

(1) The minimum prerequisites for an audio-visual production to qualify as an Fl AVP or an F2 AVP are—

a) 100% of the production budget less approved pre-production expenses must be deposited in an audio-visual production account prior to the commencement of the production;
b) 100% of the profits or revenues to be paid to any Fiji investors in the production must pass through an approved Fiji bank account prior to disbursement and the CEO must be provided with half yearly statements of income and disbursement;
c) an audio-visual production levy must be paid to Film Fiji upon full financing;
d) a refundable producer's bond equal to 5% of the budgeted producer's fees must be paid to Film Fiji before principal photography begins in Fiji;
e) the audio-visual production is not, in the opinion of Film Fiji, culturally derogative in its portrayal of Fiji or the people of Fiji;
f) the audio-visual production must be produced by a production entity;
g) the audio-visual production must have a completion bond from a company that is independent of the applicant and is approved by Film Fiji as an acceptable completion bond company;
h) the audio-visual production has a certificate from the completion bond company confirming that—
   i. the budget does not contain fees or costs which are not commercial;
   ii. producer fees and overheads paid or payable by the production entity for services of production do not exceed 15% of the total budget;
   iii. expenses to be paid by the production entity to non-arms' length parties associated with the production are genuine and reasonable;
   iv. all expenses, allowances, wages and fees for service in the budget are commercial and are for services to be rendered on the audiovisual production;

v. the audio-visual production has been or will be able to be, completed within the relevant 24 months period; and
vi. approved financing charges or approved marketing materials costs will be or have been, spent in accordance with this Part.

(2) If an application is made by a Fiji Production Company, the requirement under subregulation (1)(g) does not apply but without requiring a certificate from a completion bond company Film Fiji must be satisfied that the conditions under subregulation (1)(h) are met.

[Regulation 38] Additional criteria to be satisfied for F1 status

(1) Subject to regulation 37, an audio-visual production who qualifies as an F1 AVP, shall satisfy the following—

a) the production entity, has secured for the audio-visual production, to the satisfaction of Film Fiji and on commercial terms, distribution for the production when complete in at least one significant international market; and
b) one of the following levels of expenditure has been or is budgeted, to be spent in Fiji—
   i. 40% for a large format film, a feature film or broadcast television programmes;
   ii. 50% for a direct to video programme or video disk programme; and
   iii. 55% for an audio recording.

(2) In addition to subregulation (1), an audio visual production which qualifies as Fl AVP must also satisfy one of the criteria—

a) a large format film, a feature film, a short film, broadcast television, a direct to video or video disc programme is directed, written or based on the creative idea of a citizen or a resident;
b) an audio recording is produced or composed by or is the performance principally of a resident or citizen;
c) computer software is based on the original creative idea developed by a resident or citizen; or
d) the content satisfies the guidelines set down by Film Fiji from time to time for being a satisfactory portrayal of Fiji, the history or life of the people of Fiji and Fiji's flora and fauna.

(3) If the Fl AVP is produced by a Fiji Production Company, then the requirement under subregulation (1)(i) does not apply provided Film Fiji is satisfied that the Fl AVP shall distribute through at least one significant local distributor when production is completed.

(4) For the purposes of assessing the levels of expenditure in subregulation (1)(ii), the provisions of Division 3 of Part 5 shall apply and any reference to "tax rebate" therein shall for the purposes of subregulation (3) be read as or to mean "Fl incentive".

[Regulation 39] Additional criteria to be satisfied for F2 status

(1) Subject to regulation 37, an audio-visual production which qualifies as an F2 AVP shall also satisfy the following—

a) the production entity has secured for the audio-visual production, to the satisfaction of Film Fiji and on commercial terms, distribution for the production when completed in at least one significant international market;
b) one of the following levels of expenditure has been or is budgeted to be, spent in Fiji—
   i. 40% for a large format film, a feature film or broadcast television programmes;
   ii. 50% for a direct to video programme or video disk programme; and
   iii. 55% for an audio recording.

(2) If the F2 AVP is produced by a Fiji Production Company then the requirement under subregulation (1)(a) does not apply provided that Film Fiji is satisfied that the F2 AVP will when completed be distributed through at least one significant local distributor.

(3) For the purposes of assessing the levels of expenditure in subregulation (1)(b), the provisions of Division 3 of Part 5 shall apply and any reference to "tax rebate" therein shall for the purposes of subregulation (l)(b) be read as or to mean "F2 incentive".

[Regulation 40] Criteria for determining Fiji's content of AVP

An Fl or F2 AVP has or will have substantial Fiji content for the purposes of being a qualifying audio-visual production, Film Fiji must have regard to—

a) the subject matter of the audio-visual production;
b) the place where the audio-visual production was or will be, made;
c) the nationalities and places of residence of—
   i. the persons who took part or will take part, in the making of the audio-visual production (including actors, authors, composers, designers, directors, editors, musicians, producers, script writers, singers and technicians);
   ii. the persons who are or will be, the beneficial owners of the copyright in the audio-visual production; and
   iii. the persons who are or will be, the beneficial owners in any shares in any company concerned in the making of the audio-visual production;
d) the source from which monies that were used in the making of the audiovisual production were or that are to be used in the making of the proposed audio-visual production will be derived;
e) details of the production expenditure incurred or the budgeted production expenditure to be incurred, in respect of the audio-visual production; and
f) any other matter that Film Fiji considers relevant.

DIVISION 5 DEDUCTIONS FOR CAPITAL EXPENDITURE ON AUDIO–VISUAL PRODUCTIONS

[Regulation 41] Deduction for capital expenditure

Subject to this Division, if a taxpayer during a year of assessment expends monies of a capital nature, under a contract by way of contribution to the audio-visual production costs in respect of a qualifying AVP and at the time when the monies were expended a provisional certificate or a final certificate was in force in relation to the AVP, an amount shall be allowed as a deduction in the assessment of the taxpayer in respect of the income in the year the monies are expended, being an amount equal to—

a) in the case of an Fl AVP — 150% of the monies expended; or
b) in the case of an F2 AVP — 125% of the monies expended.

[Regulation 42] Deduction in event of taxpayer's death

If a taxpayer dies before he or she has realised any deductions in relation to a qualifying AVP to which regulation 41 applies, an amount must be allowed as a deduction in the assessment of the taxpayer's estate in respect of the year of income in which the taxpayer died, being an amount equal to—

a) in the case of an Fl AVP, 150% of the monies expended; or
b) in the case of an F2 AVP, 125% of the monies expended.

[Regulation 43] Licensees may not claim deduction

A taxpayer, being a production entity, which is a licensee for the purposes of Part 4, shall not claim a deduction under this Division.

DIVISION 6 TAXATION OF AUDIO-VISUAL INCOME

[Regulation 44] Tax exemption of income derived from qualifying AVP

If a taxpayer expends monies of a capital nature, under a contract, by way of contribution to the audio-visual production costs in respect of a qualifying AVP, the income derived by the taxpayer from his or her investment in the qualifying AVP is exempt from tax until the taxpayer has received a return of—

a) in the case of an Fl AVP — 60% of the monies expended; or
b) in the case of an F2 AVP — 50% of the monies expended and thereafter all income so derived must be included in total income.

[Regulation 45] Sale of copyright interest

A taxpayer who sells any copyright interest in a qualifying AVP, in respect of which a deduction under Division 5 has been claimed, must include the gross receipts of the sale in his or her total income.

PART 4 STUDIO CITY ZONE

DIVISION 1 STUDIO CITY ZONE DEFINITIONS

[Regulation 46] Interpretation

In this Division, unless the context otherwise requires—

applicant for an audio visual operating licence means a sole proprietor, a partnership or a company, which makes an application for an audio-visual operating licence;

applicant for the zone means a sole proprietor, a partnership or a company which makes an application for a declaration by the Minister pursuant to regulation 47(5);

audio-visual operating licence means a licence issued under regulation 48;

AVOL means audio-visual operating licence;

company means a company incorporated in Fiji carrying on a business of production activity in Fiji and which has its operations exclusively in the studio city zone or temporary studio city zone;

licensee means a sole proprietor, a partnership or a company holding an audiovisual operating licence;

partnership means a partnership of 2 or more residents carrying on a business of production activity in Fiji and which has as its exclusive operating location and the studio city zone or temporary studio city zone;

production activity means any activity in the production of, world-wide distribution of, conduct of business in or supply of services to—

a) a large format film in large format theatres;
b) a theatrical film or a short film in cinemas;
c) broadcast television programmes by—
    i. broadcast on free-to-air, satellite or pay television; or
    ii. internet broadcast;
d) a direct-to-video and video disk programme;
e) musical recordings for the purposes of local or international distribution;
f) the development of computer software; and
g) development of interactive websites and other e-commerce and telecommunications operations; and

sole proprietor

means a resident carrying on a business of production activity in Fiji and whose business has as its exclusive operating location the studio city zone or temporary studio city zone.

[Regulation 47] Minister may declare studio city zone

(1) Subject to other provisions of this regulation, the Minister may, declare by notice in the Gazette any area of land (including any buildings situated or erected on that land) in Fiji to be a studio city zone for the purposes of this Part.

(2) Subject to the issue of a licence required under any written law and the Town Planning Act 1946, the Minister may declare—

a) a studio city zone for the purposes of the development of infrastructure, services and resources for the audio-visual industry and tourist attractions, hotels, residential accommodation, sporting facilities, amusement parks; and
b) a temporary studio city zone for the purposes of the development of infrastructure, services and resources for the audio-visual industry.

(3) The Minister may declare, by notice published in the Gazette, any area of land (including buildings situated or erected on that land) in Fiji to be incorporated into and to form part of a studio city zone or a temporary studio city zone.

(4) The Minister may not declare more than one studio city zone at any time for a period of 15 years from the date the studio city zone was first declared following which period this provision will be subject to review.

(5) The Minister may declare, by order in the Gazette, any area of land (including any buildings situated or erected on that land) to be a temporary studio city zone in order that the land (and buildings) may be developed by the applicant for the zone for use by a licensee to conduct any production activity.

(6) The Minister may declare more than one temporary studio city zone.

(7) A temporary studio city zone may be used as an interim facility for such period or periods as the Minister may declare.

(8) The Minister may, by notice in the Gazette, revoke any declaration of a temporary studio city zone under this regulation.

[Regulation 48] Film Fiji may approve application for operating licence in studio city zone

(1) An application for an audio visual operating licence authorising the carrying on of a production activity in the studio city zone or in a temporary studio city zone, by a sole proprietor, a partnership or a company for an audio-visual must be made to Film Fiji.

(2) Film Fiji may approve the operating licence in accordance with this Part.

[Regulation 49] Method of application

An application under regulation 48 must be—

a) made to Film Fiji in writing in the prescribed form and accompanied by the prescribed fee;
b) signed by an authorised officer; and
c) accompanied by such information as Film Fiji requires.

[Regulation 50] Film Fiji to consider and decide applications

(1) If an application is made under regulation 48, Film Fiji may approve or refuse the application.

(2) Film Fiji must not approve an application unless it is satisfied that—

a) the applicant has entered into a contract or has secured a right to operate from facilities within the studio city zone or temporary studio city zone and will engage in a production activity;
b) the applicant's production activity will generate employment opportunities for the people of Fiji; and
c) the applicant's production activity will enhance, expand and improve the technological, trading capability and capacity of the economy of Fiji.

(3) Film Fiji may approve an application subject to the applicant complying with any other condition Film Fiji considers to be appropriate.

[Regulation 51] Film Fiji to issue audio-visual operating licence or give notice of refusal

Film Fiji must—

a) on approval of an application, issue an audio-visual operating licence, including any conditions imposed by it; or
b) on refusal of an application, give written notice to the applicant of its refusal of the application.

[Regulation 52] Film Fiji may vary conditions of audio-visual operating licence

(1) Film Fiji, may, if it considers it appropriate in the circumstances, vary the conditions of an audio-visual operating licence.

(2) Film Fiji must, by written notice, inform a licensee of any variation in the conditions of the licensee's audio-visual operating licence and the variation is deemed to be effective from the date the notice is received by the licensee.

[Regulation 53] Film Fiji may approve transfer of audio-visual operating licence

(1) A licensee may apply to Film Fiji in the prescribed form for its operating licence to be transferred to another sole proprietor, a partnership or a company.

(2) Film Fiji may require the licensee or the proposed transferee to provide any other information as Film Fiji requires in order for it to consider the transfer application.

(3) Film Fiji may—

a) approve the transfer of the licensee's audio-visual operating licence— or
b) refuse the application.

(4) Film Fiji may not approve a transfer of an audio-visual operating licence unless it is satisfied that the proposed transferee satisfies the criteria set out in regulation 49(2).

(5) Film Fiji must give written notice to the licensee of its decision under subregulation (3).

[Regulation 54] Film Fiji may revoke an audio-visual operating licence

(1) Film Fiji may give written notice to a licensee that it intends to revoke the licensee's audio-visual operating licence if—

a) there has been a breach of the audio-visual operating licence;
b) there has been non-compliance with any condition of the audio-visual operating licence; or
c) the licensee is convicted of an offence against the Act, the Value Added Tax Act 1991 or the Customs Act 1986.

(2) If notice is given in accordance to subregulation (1), Film Fiji must inform the licensee of the licensee's right to make representations to Film Fiji on or before a date specified by Film Fiji, being not less than 21 days from the day that notice is given under subregulation (1).

(3) If a licensee makes representations, Film Fiji must consider them and may by written notice to the licensee, withdraw its notice under subregulation (1).

(4) If Film Fiji does not withdraw its recommendation in accordance with subregulation (3) or the licensee does not make any representations by the specified date Film Fiji may, by written notice to the licensee, revoke the audio-visual operating licence from a date (being not less than 14 days and not more than 42 days from the date of the notice).

[Regulation 55] Register of operating licence

(1) Film Fiji must establish and maintain a register of all audio-visual operating licences and there must be entered in the register in respect of each audio-visual operating licence—

a) the date of commencement of the audio-visual operating licence;
b) the name, registered address and authorised representative of the sole proprietor, partnership or company to which the audio-visual operating licence was granted; and
c) the production activity relating to the audio-visual operating licence.

(2) The register must be kept at Film Fiji's principal office and be open to inspection during the times Film Fiji directs, subject to the payment of the prescribed fee for each inspection.

[Regulation 56] Transfer must be registered within 7 days

If an audio-visual operating licence is transferred under regulation 53, the sole proprietor, partnership or company to which it is transferred must within 7 days of the transfer, submit its name and address and the name and address of its authorised representative, for inclusion in the register.

[Regulation 57] Exemption from tax of licensee's production activity income

An audio-visual operating licence exempts the licensee from the payment of income tax under the Act (except for withholding tax) on any income derived by the licensee from the production activity with effect from the date of commencement of the audio-visual operating licence.

[Regulation 58] Non-AVP and distribution income subject to tax

Any income of a licensee that is not derived from a production activity must be charged tax in accordance with the other provisions of the Act notwithstanding the business being located in the studio city zone.

[Regulation 59] Tax assessable on sale of company or business in studio city zone

(1) In respect of any business activity carried out pursuant to this Division and notwithstanding any other provision of the Act, tax must be assessed, levied and paid, at the rate set out in subregulation (2), in respect of any income from—

a) the sale of shares in a licensee; or
b) the sale of the licensee's business or part of a business, if the sale occurs less than 8 years after the commencement of the business.

(2) The rate at which tax must be assessed, levied and paid under subregulation (1) is—

a) if the sale occurs within 2 years after the commencement of the business, 20%;
b) if the sale occurs within 4 years after the commencement of the business, 15%;
c) if the sale occurs within 6 years after the commencement of the business, 10%; or
d) if the sale occurs within 8 years after the commencement of the business, 2.5%.

DIVISION 2 TAXATION CONCESSIONS TO RESIDENTS OF THE STUDIO CITY ZONE

[Regulation 60] Interpretation

For the purposes of this Division, unless the context otherwise requires, "audio-visual earnings" means—

a) income derived from work in AVPs or production activities including contracted fees, wages, royalties and distributions of profits from AVPs or production activities but does not include any income from an AVP in respect of which a deduction has been claimed under this Part; and
b) income from sports performances including prize money, performance fees and endorsements.

[Regulation 61] Film Fiji may approve individuals for studio city zone benefits

(1) Film Fiji may approve an individual to enjoy the benefits specified in subregulation (2) if—

a) the individual indicates his or her intention to reside in the studio city zone;
b) the individual derives audio-visual earnings; and
c) the individual complies with the requirements of this Division.

(2) The earnings derived by an individual approved by Film Fiji under subregulation (1) are exempt from tax.

[Regulation 62] Applications by non-residents

An application under this Division by an individual who is not a resident must be made in writing to Film Fiji in the prescribed form and accompanied by the prescribed fee and must include—

a) confirmation that the applicant's country of citizenship is other than Fiji;
b) confirmation of a contract to take up residence at the studio city zone;
c) confirmation and certification by a chartered accountant holding a certificate of public practice of—
    i. net annual audio-visual earnings in excess of $100,000; and
    ii. assets held in the studio city zone in excess of $250,000 in either real estate, tangible business assets including stock, plant and equipment and tools of trade or other valuable and confirmable assets excluding cash and other liquid assets.

[Regulation 63] Requirements and conditions for tax exemption

An individual, who is not a resident, approved by Film Fiji is not eligible to claim in a year of assessment the tax exemption under regulation 61(2) unless the individual—

a) is resident in the studio city zone for a period or periods in aggregate of at least 60 days in the year of assessment;
b) maintains a permanent place of residence in the studio city zone during the year of assessment; and
c) provides to the CEO confirmation and certification by a chartered accountant holding a certificate of public practice of—
    i. net annual audio-visual earnings in excess of $100,000 in the year of assessment; and
    ii. assets held during the year of assessment in the studio city zone in excess of $250,000 in either real estate, tangible business assets including stock, plant and equipment and tools of trade or other valuable and confirmable assets excluding cash and other liquid assets.

[Regulation 64] Applications by residents

An application under this Division by a resident must be made in writing to Film Fiji in the prescribed form and accompanied by the prescribed fee and must include—

a) confirmation of a contract to take up residence in the studio city zone;
b) confirmation and certification by a chartered accountant holding a certificate of public practice of—
    i. net annual audio-visual earnings in excess of $50,000; and
    ii. assets held in the studio city zone in excess of $100,000 in either real estate, tangible business assets including but not limited to stock, plant and equipment and tools of trade or other valuable and confirmable assets excluding cash and other liquid assets.

[Regulation 65] Requirements and conditions for tax exemption

An individual, who is a resident, approved by Film Fiji is not eligible to claim in a year of assessment the tax exemption under regulation 61(2) unless the individual—

a) is resident in the studio city zone for a period or periods in aggregate of at least 183 days in the year of assessment; or, in the case of a resident who derives a minimum of 80% of audio-visual earnings from outside Fiji, is resident in the studio city zone for a period or periods in aggregate of at least 60 days in the year of assessment;
b) maintains a primary place of residence in the studio city zone during the year of assessment; and
c) provides to the CEO confirmation and certification by a chartered accountant holding a certificate of public practice of—
    i. net annual audio-visual earnings in excess of $50,000 in the year of assessment;
    ii. the source of audio visual earnings whether from within Fiji or from outside Fiji; and
    iii. assets held during the year of assessment in the studio city zone in excess of $100,000 in either real estate, tangible business assets including stock, plant and equipment and tools of trade or other valuable and confirmable assets excluding cash and other liquid assets.

[Regulation 66] Film Fiji must consider and decide application

(1) Film Fiji must consider an application made under regulation 62 or 64 for tax exemption and may approve or refuse the application for tax exemption.

(2) Film Fiji must not approve an application unless—

a) it is satisfied that it is expedient for the development of the audio-visual industry in Fiji;
b) the work in audio-visual productions from which income is derived is original and creative and has cultural or creative merit; and

c) the applicant has complied with all the requirements of this Division.

(3) Film Fiji must give written notice to an applicant of its decision under subregulation (1).

PART 5 FILM TAX REBATE AND TELEVISION COMMERCIAL

DIVISION 1 INTERPRETATION

[Regulation 67] Interpretation

In this Part, unless the context otherwise requires—

approved local production company means a locally registered company that is a subsidiary company of a licensed audio-visual agent that is approved by Film Fiji to be used by a foreign production company for the purposes of carrying out television commercial production;

[def insrt LN 60 of 2017 reg 3, effective 1 August 2017]

audio visual agent has the same meaning given in the Film Fiji (Licensing of Audio Visual Agents) Regulations 2012;

broadcast television programmes has the meaning given by regulation 15 in Part 3;

completed in relation to a film, has the meaning given by regulation 70(2);

development expenditure for a film means expenditure to the extent to which it is incurred in meeting the development costs for the film and includes expenditure to the extent to which it is incurred on any of the following—

a) location surveys and other activities undertaken to assess locations for possible use in the film;
b) storyboarding for the film;
c) scriptwriting for the film;
d) research for the film;
e) casting actors for the film;
f) developing a budget for the film;
g) developing a shooting schedule for the film;

feature film includes animated feature film;

film means an aggregate of images or of images and sounds, embodied in any material;

High Court means the High Court of Fiji;

large format film has the meaning given by regulation 16 in Part 3;

make, in relation to a film, has the meaning given by regulation 71(2), (3) and (4);

production expenditure has the meaning given by regulations 71 to 73;

short film has the meaning given by regulation 15 in Part 3;

television commercial means an audio-visual production of not more than one minute in duration made exclusively for advertising or promoting a product or service on television; and

[def insrt LN 60 of 2017 reg 3, effective 1 August 2017]

total Fiji expenditure or **Fiji expenditure** means the production expenditure on goods and services purchased from and paid to a Fijian resident.

DIVISION 2 TAX REBATE FOR FIJI EXPENDITURE IN MAKING A FILM

[Regulation 68] Film production company entitled to tax rebate

(1) A company is entitled to a tax rebate for an income year in respect of a film if—

a) the film was completed in the income year;
b) Film Fiji, with the concurrence of the Minister, has issued a certificate to the company for the film under regulation 70;
c) the company claims (which are irrevocable) the rebate in its income tax return for the income year;
d) the company—
   i. is a Fijian resident; or
   ii. is not a Fijian resident but lodges an income tax return for the purpose of claiming the tax rebate under this Part; and
e) the company is not—
   i. the holder of a broadcast licence in television or radio in Fiji and it is not associated with any company or individual with substantial holdings in a broadcast licence in Fiji; or
   ii. a theatrical exhibitor in Fiji and it is not associated with any company or individual with substantial holdings in a theatre or group of theatres in Fiji;
f) the film production company is able to release and have the movie distributed for production in a least one significant International market to the satisfaction of the Minister responsible for Film Fiji;
g) the film production company demonstrates to the satisfaction of the Minister responsible for Film Fiji that it—
   i. will engage services of Fijian citizens in movie productions; and
   ii. will utilise technicians, students and technical aid facilities at the Film Making School at Fiji National University or any other specified local institution;
h) the company engages audio visual agents for the production of the film; and
i) Fiji as a location needs to be accredited and acknowledged in the film's credits and any other required accreditation as stipulated in the approval letter by Film Fiji.

(2) The company or any other person is not entitled to the tax rebate if—

a) an application has been made under Part 3; or
c) a provisional or final certificate for the film has been issued at any time under Part 3 whether or not the certificate is still in force.

[Regulation 69] Amount of tax rebate

(1) Subject to subregulation (2), the amount of tax rebate is 20% of the company's total Fiji expenditure on the film.

(2) If the total Fiji expenditure on the film exceeds $20 million, the maximum allowable tax rebate is $4 million.

[reg 69 am LN 62 of 2019, effective 1 August 2019, amended LN 30 of 2022, from 1 April 2022]

[Regulation 70] Film Fiji may issue certificate for a film

(1) Film Fiji may, with the concurrence of the Minister, issue a certificate to a company stating that a film satisfies the following requirements—

a) the company—
   i. is a Fijian resident; or
   ii. is not a Fijian resident but lodges an income tax return for the purpose of claiming the tax rebate under this Part;
b) Film Fiji has provided the company with provisional approval to make their film in Fiji under this incentive;
c) the film was produced for—
   i. exhibition to the public in cinemas;
   ii. exhibition to the public by way of television broadcasting or pay television;
   iii. distribution to the public as a video recording (whether on video tapes, digital video disks or otherwise); or
   iv. distribution to the public via the internet;
d) the film is—
   i. a large format film or a feature film or a short film;
   ii. a broadcast television programme including television movies, miniseries, drama series, situation comedy series, documentaries and documentary series, educational programmes and series, animation series and current affairs series; or
   iii. a production intended for exhibition as an advertising programme or a commercial in at least one significant international market;
e) the total of the company's total Fiji expenditure on the film (worked out using Division 3) is at least—
   i. $250,000 for films described under paragraph (d)(i) and (ii); or
   ii. $50,000 for films described under paragraph (d)(iii);
f) the company either carried out or made the arrangements for the carrying out of, all the activities in Fiji that were necessary for the making of the film;
g) the company is the only company that satisfies paragraph (f) in relation to the film;
h) the film is not culturally derogative in its portrayal of Fiji or the people of Fiji;
i) the application for certificate for rebate was made no later than 12 months from the time that the film was completed;

j) the film production company is able to release and have the movie distributed to the satisfaction of the Minister; and
k) the film production company demonstrates to the satisfaction of the Minister that it—
   i. will engage services of Fijian citizens in movie productions; and
   ii. will utilise technicians, students and technical aid facilities at the film making school at Fiji National University or any other specified local institutions.

(2) A film is completed when it is first in a state where it could reasonably be regarded as ready to be distributed, broadcasted or exhibited to the general public.

(3) Film Fiji may revoke a provisional approval under regulation 70(1)(b) at any time if—

a) it is satisfied that the provisional approval was obtained by fraud or serious misrepresentation;
b) the applicant does not comply with the conditions or requirements in respect of which the provisional approval was issued;
c) the company fails to furnish any information required by Film Fiji in relation to the film within a period specified by Film Fiji; or
d) in the case of a company provided with a provisional approval prior to 1 June 2019, the company has not commenced filming by 1 June 2019.

(4) A revocation of a provisional approval made under subregulation (3) does not prevent the re-issuance of a provisional approval in respect of the same proposed film by the same applicant.

[reg 70 amn LN 67 of 2019, effective 1 August 2019]

DIVISION 2A TAX REBATE FOR FIJI EXPENDITURE IN MAKING A TELEVISION COMMERCIAL

[Regulation 70A] Approved local production company entitled to tax rebate

An approved local production company is entitled to a tax rebate for an income year in respect of a television commercial if—

a) the television commercial was completed in the income year;
b) Film Fiji, with the concurrence of the Minister, has issued a certificate to the approved local production company for the television commercial under regulation 70D;
c) the approved local production company claims (which are irrevocable) the rebate in its income tax return for the income year;
d) the approved local production company is a Fijian resident;
e) the approved local production company is not—
   i. the holder of a broadcast licence in television or radio in Fiji and it is not associated with any company or individual with substantial holdings in a broadcast licence in Fiji; or
   ii. a theatrical exhibitor in Fiji and it is not associated with any company or individual with substantial holdings in a theatre or group of theatres in Fiji;

f) the approved local production company is able to release and have the television commercial distributed for the production in at least one significant international market to the satisfaction of the Minister responsible for Film Fiji;
g) the Minister responsible for Film Fiji is satisfied that the approved local production company will—
    i. engage the services of Fijian citizens in the production of television commercials; and
    ii. utilise technicians, students and technical aid facilities at the film-making school at the Fiji National University or any other specified local institution;
h) the approved local production company engages an audio-visual agent for the production of television commercials; and
i) the approved local production company allows Film Fiji to use the television commercial for promotional purposes.

[Regulation 70B] Amount of tax rebate

(1) Subject to subregulation (2), the amount of tax rebate is 20% of the company's total Fiji expenditure on the television commercial.

(2) If the total Fiji expenditure on the film exceeds $20 million, the maximum allowable tax rebate is $4 million.

[amended LN 30 of 2022, from 1 April 2022]

[Regulation 70C] Access to documents

A foreign production company and approved local production company must grant Film Fiji or the Fiji Revenue and Customs Service access to or provide legal and financial records in relation to the production of a television commercial, as required.

[reg 70C am Act 38 of 2017 s 7, effective 1 August 2017]

[Regulation 70D] Film Fiji may issue certificate for a television commercial

(1) Film Fiji may, with the concurrence of the Minister, issue a certificate to an approved local production company, provided Film Fiji is satisfied of the following requirements—

a) the audio-visual agent has registered a subsidiary company solely for the production of television commercials;
b) Film Fiji has approved the subsidiary company specified under paragraph (a) to be an approved local production company by Film Fiji;
c) the approved local production company—
    i. has a separate trust bank account for each production of television commercials, to receive and expend funds from the production company; and
    ii. all payments relating to the production of a television commercial are made into the trust bank account under paragraph (c)(i);

d) the foreign production company has entered into a legally binding agreement with the approved local production company for the purpose of making an application for rebate and distribution of funds;
e) the company's total Fiji expenditure on the television commercial is at least $250,000;
f) the approved local production company has either carried out or made arrangements to carry out all the activities in Fiji necessary for the production of the television commercial;
g) the approved local production company is the only company that satisfies the requirements under paragraph (f);
h) the television commercial is not culturally derogative in its portrayal of Fiji or the people of Fiji;
i) the application for a certificate for rebate was made not later than 12 months from the time the television commercial was completed; and
j) the approved local production company demonstrates to the satisfaction of the Minister that—
    i. Fijian citizens will be engaged in the production of television commercials; and
    ii. technicians, students and technical aid facilities at the film-making school at the Fiji National University or any other specified local institution will be engaged or utilised.

(2) The production of a television commercial is completed when it is distributed, broadcasted or exhibited to the general public.

DIVISION 3 PRODUCTION EXPENDITURE AND TOTAL FIJI EXPENDITURE

[Regulation 71] Production expenditure — general test

(1) A company's production expenditure on a film is expenditure that the company incurs to the extent to which it—

a) is incurred in or in relation to, the making of the film; or
b) is reasonably attributable to—
    i. the use of equipment or other facilities for; or
    ii. activities undertaken in; the making of the film.

(2) The making of a film means the doing of the things necessary for the production of the first copy of the film.

(3) The making of a film includes—

a) pre-production activities in relation to the film;
b) post production activities in relation to the film; and
c) any other activities undertaken to bring the film up to the state where it could reasonably be regarded as ready to be distributed, broadcasted or exhibited to the general public.

(4) The making of a film does not include—

a) developing the proposal for the making of the film;
b) arranging or obtaining finance for the film;
c) distributing the film; or
d) promoting the film.

(5) Without limiting subregulation (1), a company's production expenditure on a film—

a) may be expenditure that is incurred in the income year for which the incentive is sought or in an earlier income year;
b) may be expenditure of either a capital or a revenue nature; and
c) may be expenditure that gives rise to a deduction, subject to item 10 in the table in regulation 73.

(6) If—

a) a company—
   i. holds a depreciating asset; and
   ii. uses the asset, while held, in the making of a film; and
b) deductions in relation to the asset are available under the Income Tax (Allowances for Depreciation and Improvements) Regulations 2019;

[reg 71(6)(b) am LN 53 of 2019, reg 26, effective 1 August 2019]

the production expenditure of the company on the film includes an amount equal to the accumulated depreciation of the asset to the extent to which that accumulated depreciation is reasonably attributable to the use of the asset in the making of the film. The accumulated depreciation of the asset is to be worked out using the Income Tax (Allowances for Depreciation and Improvements) Instructions 1998.

[Regulation 72] Production expenditure — special qualifying Fiji production expenditure

Expenditure of a company is also production expenditure of the company on a film if it is qualifying Fiji production expenditure of the company on the film under regulation 75.

[Regulation 73] Production expenditure — specific exclusions

Notwithstanding regulations 71 and 72, the following expenditure of a company is not production expenditure of the company on a film—

EXPENDITURE THAT DOES NOT COUNT AS PRODUCTION EXPENDITURE ON A FILM		
Item	*This kind of expenditure by the company is not production expenditure*	*except to the extent to which the expenditure is*
1.	Financing expenditure Expenditure incurred by way of, or in relation to, the financing of the film (including returns payable on amounts invested in the film and	

	expenditure in relation to raising and servicing finance for the film)	
2.	Development expenditure Development expenditure on the film	Total Fiji expenditure under item 1 in the table in regulation 754(1)
3.	Copyright acquisition expenditure Expenditure incurred in acquiring copyright, or a licence in relation to copyright, in a preexisting work for use in the film	Total Fiji expenditure under item 2 in the table in regulation 75(1)
4.	General business overheads Expenditure incurred to meet the general business overheads of the company that— (a) are not incurred in, or in relation to, the making of the film; and (b) are not reasonably attributable to— (i) the use of equipment or other facilities for; or (ii) activities undertaken in; the making of the film	Total Fiji expenditure under item 3 in the table in regulation 75(1)
5.	Publicity and promotion expenditure Expenditure incurred in publicising or otherwise promoting the film (including press expenses, still photography, videotapes, public relations and other similar expenses)	
6.	Deferments Amounts that are payable only out of the receipts, earnings or profits from the film	
7.	Profit participation Amounts that— (a) depend on the receipts, earnings or profits from the film; or (b) are otherwise dependent on the commercial performance of the film	
8.	Residuals Amounts payable in satisfaction of the residual rights of a person who is a member of the cast	Paid out by the company before the film is completed
9.	Advances Amounts paid by way of advance on a payment to which item 6, 7 or 8 applies to the extent to which it may become repayable by the person to whom it is paid	

10.	Acquisition of depreciating asset Expenditure to the extent to which it sets, or increases, the cost of a depreciating asset. This item has effect subject to regulation 71(6)	Total Fiji expenditure under item 2 in the table in regulation 754(1)
11.	Regulations Expenditure specified in regulations	
12	Value Added Tax (VAT) on prescribed services, Social Responsibility Tax, plastic levy, superyacht levy, prize monies, penalties, fines and payment for damage during production	

[amended by LN 62 of 2019, effective 1 August 2019, amended LN 30 of 2022, effective 1 April 2022]

[Regulation 74] Total Fiji expenditure — general test

A company's total Fiji expenditure on a film is the company's production expenditure on the film to the extent to which it is incurred for or is reasonably attributable to—

a) goods and services provided in Fiji and which is paid from a Fiji bank account;
b) the use of land in Fiji and payment for which is made from a Fiji bank account; or
c) the use of goods that are located in Fiji at the time they are used in the making of the film and which is paid for from a Fiji bank account.

[Regulation 75] Total Fiji expenditure — specific inclusions

(1) The following expenditure of a company is also total Fiji expenditure of the company on a film—

EXPENDITURE THAT COUNTS AS SPECIAL FIJI EXPENDITURE ON A FILM	
Item	Type of expenditure
1.	Fiji development expenditure Development expenditure on the film to the extent to which it is incurred for, or is reasonably attributable to— (a) goods and services (including foreign cast, crew and other service providers) provided in Fiji and paid for from a Fiji bank account; (b) the use of land or building located in Fiji and payment for which is made from a Fiji bank account; (c) the use of goods that are located in Fiji at the time they are used in the making of the film and paid for from a Fiji bank account; (d) Repealed (e) Repealed (f) goods and services provided in Fiji relating to the final location survey and other activities undertaken to assess locations for possible use in the film; or

	(g) the allowable expenditure incurred for the salaries paid for the services rendered in Fiji by the non-resident cast, subject to such expenditure not exceeding 20% of the total qualifying Fiji production expenditure.
2.	Expenditure incurred in acquiring Fiji copyright (Repealed)
3.	Fiji business overheads Subject to subregulation (3), general business overheads of the company that— (a) are incurred in or in relation to the making of the film; and (b) are reasonably attributable to— (i) the use of equipment or other facilities for; or (ii) activities undertaken in; the making of the film, to the extent to which they— (aa) are incurred for, or are reasonably attributable to— (i) goods and services provided in Fiji and paid from a Fiji bank account; or (ii) the use of land or buildings located in Fiji and payment for which is made from a Fiji bank account; or (iii) the use of goods that are located in Fiji at the time they are used in the making of the film and paid from a Fiji bank account; and (bb) represent a reasonable apportionment of those overheads between the making of the film and the other activities undertaken by the company.
4.	Travel to Fiji Expenditure of the company in relation to a person's travel to Fiji to undertake activities in Fiji in relation to the making of the film if the remuneration paid to the person for those activities is qualifying Fiji production expenditure of the company as follows— (a) 100% of the expenditure included in travelling to and from any aircraft operated by Air Pacific Limited. (b) Repealed
5.	Approved post-production expenditure (Repealed)
6.	Equipment The hiring of cameras and filming equipment from outside Fiji, where such cameras and filming equipment are not available in Fiji.
7.	Regulations Expenditure prescribed by the regulations.

[subreg (1) am LN 60 of 2017 reg 3, effective 1 August 2017]

(2) Repealed

(3) General business overheads of the company are covered by item 3 in the table in subregulation (1) only to the extent to which they do not exceed the lesser of—

a) 2% of the total of all the company's production expenditure on the film; or
b) $250,000.

[Reg 75 amended LN 62 of 2019, effective 1 August 2019]

[Regulation 76] Total Fiji expenditure — specific exclusions

Notwithstanding regulations 74 and 75, the following expenditure of a company is not total Fiji expenditure of a company on a film—

a) expenditure in relation to—
   i. (Repealed); or
   ii. travel and other costs associated with the services a person provides in relation to the making of the film, if the person is not a member of the cast or crew and enters Fiji to work on the film for less than 2 consecutive calendar weeks;
   iii. Value Added Tax (VAT) on prescribed services, Social Responsibility Tax, plastic levy, superyacht levy, prize monies, penalties applied by authorities on the company, damages as a result of the company's negligence incurred at any time from the commencement of the production and any other taxes deemed by FRCS; or
   iv. any sporting competitions or tournaments
b) (Repealed).

[reg 76 LN 62 of 2019, 1 August 2019 amended LN 30 of 2022, effective 1 April 2022]

[Regulation 77] Total Fiji expenditure — treatment of services embodied in goods

If—

a) a company incurs expenditure for the provision of what is essentially a service; and
b) the results of the service are provided to the company by being embodied in goods that are delivered to the company; and
c) the service that is embodied in the goods was predominantly performed outside Fiji,

the service is not provided to the company in Fiji merely because the goods are delivered to the company in Fiji.

[Regulation 78] Expenditure to be worked out in Fijian dollars

(1) Expenditure that is incurred in foreign currencies is to be converted into Fijian dollars for the purposes of quantifying the total of the company's total Fiji expenditure on a film.

(2) The conversion rate to be used is the average of the exchange rates applicable from time to time during the period that—

a) starts on the earliest day on which—
   i. principal photography takes place; or
   ii. the production of the animated image commences; and
b) ends when the film is completed.

[Regulation 79] Expenditure to be worked out on an arm's length basis

For the purposes of this Part, if any 2 or more parties to—

a) an arrangement under which a company incurs expenditure in relation to a film; or
b) any act or transaction directly or indirectly connected with expenditure that a company incurs in relation to a film,

do not deal with each other at arm's length in relation to the arrangement or in relation to the act or transaction, the expenditure is taken to be only so much (if any) of the expenditure as would have been incurred if they had been dealing with each other at arm's length in relation to the arrangement or in relation to the act or transaction.

[Regulation 80] Expenditure incurred by prior production companies

(1) For the purposes of this Part, if a company (the incoming company) takes over the making of a film from another company (the outgoing company)—

a) expenditure incurred in relation to the film by the outgoing company is taken to have been incurred in relation to the film by the incoming company; and
b) expenditure that the incoming company incurs in order to be able to take over the making of the film is to be disregarded for the purposes of this Part; and
c) any activities carried out and arrangements made, by the outgoing company in relation to the film are taken, for the purposes of regulation 70(1)(f) to have been carried out or made by the incoming company in relation to the film.

(2) For the purposes of subregulation (1)—

a) expenditure incurred on the film by the outgoing company includes expenditure that the outgoing company is itself taken to have incurred on the film because of the operation of subregulation (1); and
b) activities carried out by the outgoing company in relation to the film includes activities that the outgoing company is taken to have carried out in relation to the film because of the operation of subregulation (1); and
c) arrangements made by the outgoing company for the carrying out of activities in relation to the film include arrangements that the outgoing company is taken to have made because of the operation of subregulation.

DIVISION 3A PRODUCTION EXPENDITURE AND TOTAL FIJI EXPENDITURE FOR TELEVISION COMMERCIALS

[Regulation 80A] Production expenditure

(1) An approved local production company's production expenditure on a television commercial is expenditure that the approved local production company incurs to the extent to which it—

a) is incurred in, or in relation to, the making of a television commercial; or
b) is reasonably attributable to—
   i. the use of equipment or other facilities for; or
   ii. activities undertaken in,

the making of the television commercial.

(2) The making of a television commercial means the doing of the things necessary for the production of the first copy of the television commercial.

(3) The making of a television commercial includes—

a) pre-production activities in relation to the television commercial;
b) post-production activities in relation to the television commercial; and
c) any other activity undertaken to bring the television commercial to the state where it can be distributed, broadcasted or exhibited to the general public.

(4) The making of a television commercial does not include—

a) developing the proposal for the making of the television commercial;
b) arranging or obtaining finances for the television commercial; and
c) distributing or promoting the television commercial.

(5) Without limiting subregulation (1), an approved local production company's production expenditure on a television commercial may be expenditure that is incurred in the income year for which the rebate is sought or in an earlier income year.

[Regulation 80B] Production expenditure — special Total Fiji expenditure

Expenditure of an approved local production company is also production expenditure of the approved local production company on a television commercial if it is total Fiji expenditure of the approved local production company on the television commercial under regulation 80E.

[Regulation 80C] Production expenditure — specific exclusions

Notwithstanding regulations 80A and 80B, the following expenditure of a company is not production expenditure of the approved local production company—

EXPENDITURE THAT DOES NOT COUNT AS PRODUCTION		
EXPENDITURE ON A TELEVISION COMMERCIAL		
Item	This kind of expenditure by the approved local production company is not production expenditure	Except to the extent to which the expenditure is

1.	Financial expenditure	
	Expenditure incurred by way of, or in relation to, the financing of the television commercial (including returns payable on amounts invested in the television commercial and expenditure in relation to raising and servicing finance for the television commercial).	
2.	Development expenditure	Total Fiji expenditure under item 1 in the table in regulation 80E(1).
	Development expenditure on the television commercial.	
3.	Copyright acquisition expenditure	Total Fiji expenditure under item 2 in the table in regulation 80E(1).
	Expenditure incurred in acquiring copyright, or a licence in relation to copyright, in a pre-existing work for use in the television commercial.	
4.	General business overheads	Total Fiji expenditure under item 3 in the table in regulation 80E(1).
	Expenditure incurred to meet the general business overheads of the approved local production company that—	
	(a) are not incurred in, or in relation to, the making of the television commercial; and	
	(b) are not reasonably attributable to -	
	(i) the use of equipment or other facilities for; or	
	(ii) activities undertaken in, the making of the television commercial.	
5.	Publicity and promotion expenditure	
	Expenditure incurred in publicising or otherwise promoting the television commercial (including press expenses, still photography, videotapes, public relations and other similar expenses).	
6.	Deferments Amounts that are payable only out of the receipts, earnings or profits from the commercial.	
7.	Profit participation	
	Amounts that—	
	a) depend on the receipts, earnings or profits from the television commercial; or	
	(b) are otherwise dependent on the commercial performance of the television commercial.	
8.	Residuals	Paid out by the approved local production company before the television commercial is completed.
	Amounts payable in satisfaction of the residual rights of a person who is a member of the cast.	
9.	Advances	

	Amounts paid by way of advance on a payment to which item 6, 7 or 8 applies to the extent to which it may become repayable by the person to whom it is paid.	
10.	Acquisition of depreciating asset	Total Fiji expenditure under item 2 in the table in regulation 80E(1).
	Expenditure to the extent, to which it sets, or increases, the cost of a depreciating asset.	
11.	Regulations	
	Expenditure specified in Regulations	
12	Value Added Tax (VAT) on prescribed services, Social Responsibility Tax, plastic levy, superyacht levy, prize monies, penalties, fines and payments for damage during production	

[amended LN 30 of 2022, effective 1 April 2022]

[Regulation 80D] Total Fiji expenditure — general test

An approved local production company's production expenditure on a television commercial is the approved local production company's production expenditure on the television commercial to the extent to which it is incurred for, or is reasonably attributable to—

a) goods and services provided in Fiji and which is paid from a Fiji trust bank account;
b) the use of land in Fiji and payment for which is made from a Fiji trust bank account; or
c) the use of goods that are located in Fiji at the time they are used in the making of the television commercial and which is paid for from a Fiji trust bank account.

[Regulation 80E] Total Fiji production expenditure — specific inclusions

(1) The following expenditure of an approved local production company is also total Fiji expenditure of the approved local production company on a television commercial—

	EXPENDITURE THAT COUNTS AS SPECIAL FIJI	
	EXPENDITURE ON A TELEVISION COMMERCIAL	
Item	Type of expenditure	
1.	*Fiji development expenditure*	
	Development expenditure on the television commercial to the extent to which it is incurred for, or is reasonably attributable to—	
	(a)	goods and services (including foreign cast, crew and other service providers) provided in Fiji and paid for from a Fiji trust bank account;
	(b)	the use of land or buildings located in Fiji and payment for which is made from a Fiji bank account;
	(c)	the use of goods that are located in Fiji at the time they are used in the making of the television commercial and paid for from a Fiji trust bank account;
	(d)	the allowable expenditure incurred for services rendered by the producer (producer's fees), provided that such expenditure shall not exceed 10% of the total Fiji expenditure. The producer is not restricted

		to remain in Fiji throughout the production of the television commercial; or			
	(e)	goods and services provided in Fiji relating to the final location survey and other activities undertaken to assess locations for possible use in the television commercial.			
2.	*Expenditure incurred in acquiring Fiji copyright*				
	(a)	Expenditure incurred to acquire copyright or a licence in relation to copyright, in a pre-existing work for use in the television commercial if the copyright is held by a qualified person under the Copyright Act 1999;			
	(b)	Expenditure incurred to purchase the writer's story and rights for the production of the film provided that the producer submits the following documentary evidence -			
		(i)	notarised legal contract with the writer which is registered in Fiji with the Registrar of Deeds upon payment of the appropriate stamp duty;		
		(ii)	evidence of payment made directly into the writer's bank account from the Fiji trust bank account; and		
		(iii)	receipt or acknowledgment of payment is received.		
3.	*Fiji business overheads*				
	Subject to subregulation (2), general business overheads of the company that—				
	(a)	are incurred in or in relation to the making of the television commercial;			
	(b)	are reasonably attributable to—			
		(i)	the use of equipment or other facilities for; or		
		(ii)	activities undertaken in, the making of the television commercial, to the extent which they -		
			(aa)	are incurred for, or are reasonably attributable to—	
				(i)	goods and services provided in Fiji and paid from a Fiji trust bank
				(ii)	the use of land or buildings located in Fiji and payment for which is made from a Fiji trust bank account; or
				(iii)	the use of goods that are located in Fiji at the time they are used in the making of the television commercial and paid from a Fiji trust bank account; and
			(bb)	represent a reasonable apportionment of those overheads between the making of the television commercial and the other activities undertaken by the company.	
4.	Travel to Fir Expenditure of the company in relation to a person's travel to Fiji to undertake activities in Fiji in relation to the making of the television commercial if the remuneration paid to the person for those activities is qualifying Fiji production expenditure of the company as follows—				

	(a)	100% of the expenditure included in travelling to and from any aircraft operated by Air Pacific Limited trading as Fiji Airways but excluding taxes and surcharges contained in the air ticket price.
5.	*Approved post-production expenditure*	
	Approved post-production expenditure on the television commercial paid from a Fiji trust bank account to the extent that it is incurred or reasonably attributable to approved post-production services in relation to the completion of the television commercial made in Fiji.	
	The maximum amount payable as rebate under these expenditure items is $100,000 upon the production of documentary evidence of the expenditure.	
6	*Regulations*	
	Expenditure prescribed by the Regulations	

(2) General business overheads of the approved local production company are covered by item 3 in the table in subregulation (1) only to the extent to which they do not exceed the lesser of—

a) 2% of the approved local production company's total production expenditure on the television commercial; or
b) $75,000.

[Regulation 80F] Total Fiji expenditure — specific exclusions

Notwithstanding regulations 80D and 80E, the following expenditure of an approved local production company are not total Fiji expenditure of an approved company on a television commercial—

a) expenditure in relation to—
   i. remuneration and other benefits provided to a person for the person's services in relation to the making of the television commercial; or
   ii. travel and other costs associated with the services a person provides in relation to the making of the television commercial, if the person who is not a member of the cast or crew enters Fiji to work on the television commercial for less than 2 consecutive calendar weeks;
b) the expenditure incurred to purchase costumes, make-up and set design properties not available in Fiji that will be used in relation to the television commercial production in Fiji;
c) expenditure incurred to acquire copyright, or a licence in relation to copyright, in a pre-existing work for use in the television commercial if the copyright is held by a qualified person under the Copyright Act 1999;
d) if the approved local production company—
   i. holds a depreciating asset; and
   ii. uses the asset, while held, in the making of a television commercial;
e) deductions in relation to the asset are available under the Income Tax (Allowances for Depreciation and Improvements) Regulations 2019;

[reg 80F am LN 53 of 2019, reg 26, effective 1 August 2019]

f) the production expenditure of the approved local production company on the television commercial includes an amount equal to the accumulated depreciation of the asset to which that accumulated depreciation is reasonably attributable to the use of the asset in the making of the television commercial. The accumulated depreciation of the asset is to be worked out using the Income Tax (Allowances for Depreciation and Improvements) Regulations 2019;

[reg 80F am LN 53 of 2019, reg 26, effective 1 August 2019]

g) the hiring of cameras and filming equipment from outside Fiji; and

h) legal costs covered by item 1 of the table in regulation 80E(1) which relates to—

   i. writers contracts;

   ii. chain of title and other copyright issues; and

   iii. expenditure prescribed by the regulations.

[Regulation 80G] Total Fiji expenditure-treatment of services embodied in goods

If—

a) a company incurs expenditure for the provision of what is essentially a service;

b) the results of the service are provided to the company by being embodied in goods that are delivered to the company; and

c) the service that is embodied in the goods was predominantly performed outside Fiji,

the service is not provided to the company in Fiji merely because the goods are delivered to the company in Fiji.

[Regulation 80H] Expenditure to be worked out in Fijian dollars

(1) Expenditure that is incurred in foreign currencies is to be converted into Fijian dollars for the purposes of quantifying of the company's Fiji expenditure on a television commercial.

(2) The conversion rate to be used shall be the rate on the bank telegraphic transfer document on the date of the transaction.

[Regulation 80I] Expenditure to be worked out on an arm's length basis

For the purposes of this Part, if any 2 or more parties to—

a) an arrangement under which a company incurs Fiji expenditure in relation to a television commercial; or

b) any act or transaction directly or indirectly connected with Fiji expenditure that a company incurs in relation to a television commercial,

do not deal with each other at arm's length in relation to the arrangement, or in relation to the act or transaction, the expenditure is taken to be only so much, if any, of the expenditure as

would have been incurred if they had been dealing with each other at arm's length in relation to the arrangement, or in relation to the act or transaction.

[Regulation 80J] Non-transferrable expenditure incurred for provisional certificate

For the purposes of this Part, any provisional certificate issued by Film Fiji to the approved local production company for the shooting of a television commercial, the rights of ownership, legal and financial records including expenditure incurred are non-transferrable.

DIVISION 4 CERTIFICATES FOR FILMS AND TELEVISION COMMERCIALS

[Regulation 81] Production company may apply for certificate

(1) Once a film is completed, a company may apply to Film Fiji for the issue of a certificate to the company for the film under regulation 70.

(1A) Once a television commercial is completed, an approved local production company may apply to Film Fiji for the issue of a certificate on behalf of the foreign production company for the television commercial under regulation 70D.

[subreg (1A) insrt LN 60 of 2017 reg 3, effective 1 August 2017]

(2) The application must be made in accordance with the rules determined by Film Fiji under regulation 86 so far as they relate to the requirements for applications.

[Regulation 82] Refusal to issue certificate

If Film Fiji, with the concurrence of the Minister, decides not to issue a certificate for a film or television commercial, Film Fiji must give the applicant written notice of the decision and reasons for the decision.

[reg 82 am LN 60 of 2017 reg 3, effective 1 August 2017]

[Regulation 83] Issue of certificate

(1) A certificate issued to a company under regulation 70 or 70A must be in writing. Film Fiji must give FRCS notice of the issue of a certificate for a film or television commercial within 30 days after issuing the certificate.

[subreg (1) am Act 38 of 2017 s 7, effective 1 August 2017; LN 60 of 2017 reg 3, effective 1 August 2017]

(2) The notice under subregulation (2) must—

a) specify the company's name and address; and
b) be accompanied by a copy of the certificate issued under regulation 70 or 70A; and
c) specify other matters agreed to between Film Fiji and FRCS.

[subreg (2) am Act 38 of 2017 s 7, effective 1 August 2017; LN 60 of 2017 reg 3, effective 1 August 2017]

[Regulation 84] Revocation of certificate

(1) Film Fiji may, with the concurrence of the Minister, revoke a certificate issued to a company for a film or television commercial under regulation 70 or 70A if Film Fiji is satisfied that the issue of the certificate was obtained by fraud or serious misrepresentation.

[subreg (1) am LN 60 of 2017 reg 3, effective 1 August 2017]

(2) If Film Fiji revokes a certificate under subregulation (1), Film Fiji must give the company to whom the certificate was issued written notice of the revocation including reasons for the decision to revoke the certificate.

(3) If a certificate is revoked under subregulation (1), it is taken, for the purposes of this Part, never to have been issued.

(4) Subregulation (3) does not apply for the purposes of—

a) the operation of this regulation or regulation 85; or
b) a review by the High Court of the decision to revoke the certificate.

[Regulation 85] Notice of decision

(1) This regulation applies to a notice of a decision given under regulation 82 or 84.

(2) The notice of the decision is to include the statements set out in subregulation (3).

(3) There must be a statement to the effect that an application may be made to the High Court, by or on behalf of any entity whose interests are affected by the decision, for review of the decision.

[Regulation 86] Review of decisions by the High Court

Applications may be made to the High Court for review of—

a) a decision made by Film Fiji to refuse an application for a certificate under regulation 70; or
b) a decision made by Film Fiji under regulation 84 to revoke a certificate.

[Regulation 87] Film Fiji may make rules

(1) Film Fiji may, by notice in the Gazette, make rules—

a) for it—
    i. to consider applications under regulation 80; and
    ii. to perform such other functions in relation to the operation of this Part as are specified in the rules;
b) specifying procedures to be followed by Film Fiji in performing its functions;

c) providing for the issue of provisional certificates; and
d) specifying how applications for certificates (including provisional certificates) are to be made, including—
   i. the form in which applications are to be made;
   ii. the information to be provided in applications;
   iii. methods for verifying such information; and
   iv. procedures for providing, at Film Fiji's request, additional information in support of an application.

(2) Rules under subregulation (l)(d)(iii) may include rules requiring reports by auditors or independent line producers.

DIVISION 5 REVIEW OF OPERATION OF THIS PART

[Regulation 88] Review of operation of this Part

(1) Film Fiji must cause a review of the operation of this Part to be conducted and completed before 1 January 2016 and thereafter at the end of every 5 years unless Cabinet directs otherwise.

(2) The review—

a) must include—
   i. an evaluation of the success of the tax rebate provided for by this Part as an incentive for attracting audio-visual production to Fiji, taking into account the net cost of the rebate; and
   ii. an assessment of the impact of the tax rebate on Fiji audio-visual industry including an assessment of the opportunities it generates for employment and skills transfer; and
b) must allow an opportunity for any person or organisation involved in the audio visual industry to make written submissions to the person conducting the review.

(3) The person who conducts the review must give Film Fiji a written report of the review.

(4) Within 3 months of receipt by Film Fiji of the written report of the review, Film Fiji must submit a copy to the Minister for tabling to Cabinet.

DIVISION 6 TAX REBATE RULES

[Regulation 89] Tax rebate amount

(1) A company entitled to a tax rebate under this Part must lodge a return of income with FRCS for the relevant year in which the production was complete.

[subreg (1) am Act 38 of 2017 s 7, effective 1 August 2017; LN 60 of 2017 reg 3, effective 1 August 2017]

(2) The company that is entitled to a tax rebate under this Part may use that tax rebate as a rebate or credit against any tax due and payable by that company in Fiji in the relevant income year.

[subreg (2) am LN 60 of 2017 reg 3, effective 1 August 2017]

(3) If the total of the rebate exceeds the amount of tax that the company is due to pay in the relevant income year then the company will receive a refund from FRCS.

[subreg (3) am Act 38 of 2017 s 7, effective 1 August 2017]

[Regulation 89A] Transitional

An applicant who holds a provisional certificate issued by Film Fiji as at the commencement of the Income Tax (Film-making and Audio-visual Incentives) (Amendment) Regulations 2022 and is issued a final certificate on or after the commencement of the Income Tax (Film-making and Audio-visual Incentives) (Amendment) Regulations 2022 is entitled to a tax rebate of 75% and if the total Fiji expenditure on the film exceeds $20 milllion, the maximum allowable tax rebate is $15 million.

[Reg 89A inserted LN 30 of 2022, from 1 April 2022]

PART 6—OTHER INCENTIVES

[Part 6 inserted LN 62 of 2019, effective 1 August 2019]

DIVISION 1—TAX INCENTIVE

[Regulation 90] Tax deduction

(1) A person is allowed a deduction of 200% of the amount of expenses incurred in a tax year on filming equipment imported into Fiji for film making and audio-visual production.

(2) For the purpose of subregulation (1), the filming equipment must be owned by a business registered in Fiji.

DIVISION 2—POST-PRODUCTION FACILITY INVESTMENT PACKAGE

[Regulation 91] Interpretation

In this Division, unless the context otherwise requires—

exempt goods means raw materials, plant, machinery and equipment (including spare parts) required for the setting up of a post-production facility;

post-production facility means a facility which includes filming equipment, cameras, editing and post production studio equipment;

post-production facility investment package means the incentives under this Division;

production facility investment means a project with a capital investment of $2 million or more, and the project commences on or after 1 August 2019 and the production facility is completed within 24 months from the date the provisional approval is granted;

project means the setting up of a post-production facility; and

provisional approval means a provisional approval granted under this Division.

[Regulation 92] Power to grant post-production investment package

The Minister or CEO, as applicable, may grant or refuse to grant a post-production investment under this Division to a person who has completed a project and who has complied with this Division.

[Regulation 93] Provisional approval

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

a) reject the application for provisional approval for a post-production 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 the Minister is satisfied that—

a) the application is for a post-production investment; and
b) the person intends to complete and is capable of completing such post-production investment.

(3) When considering an application for a post-production 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 person;
b) the nature and extent of the post-production investment;
c) whether adequate amenities would be provided as part of the proposed post-production investment;
d) such other matters as the Minister may consider relevant to the desirability or otherwise of the post-production investment for Fiji and the capability of the person 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.

[Regulation 94] Application for post-production investment

(1) A person ("applicant") may, in writing, apply to the CEO for provisional approval to carry out a post-production investment, setting out the following—

a) the name and registered office of the business;
b) the names of all directors and shareholders of the business together, if applicable, including shareholdings of the directors and shareholders;
c) a recent statement of all assets and liabilities of the business;
d) the location and description of the project site;
e) the detailed description of the proposed post-production facility;
f) a sketch plan showing in sufficient detail the site and layout of the proposed project;
g) an estimate of the total cost of the project;
h) details of the proposed method of financing the project;
i) evidence of the business ability to complete the post-production investment; and
j) estimates of the projected income from the new post-production investment.

(2) The CEO may require the applicant to provide other information he or she may consider necessary in relation to the application.

[Regulation 95] Effect of provisional approval

(1) When a provisional approval is granted, all exempt goods, imported within the period specified in the definition of "post-production investment" under regulation 91, by or on behalf of the person and used in the carrying out of the post-production investment, are exempt from all duties payable in respect of their importation.

(2) Before exempt goods are allowed to be imported by a person, it is a condition of importation that the person 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.

[Regulation 96] Completion of post-production investment

(1) If a person has been granted provisional approval, the person must complete the project within 24 months from the date on which the provisional approval is granted.

(2) Subject to the other provisions of this regulation, where a person has been granted provisional approval and has completed the project, the person 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 post-production facility.

(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 conditions.

(5) Subject to regulations 97 and 98, no approval must be granted under this regulation if the Minister is satisfied that the person 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 person.

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

[Regulation 97] Extension of time for completion

(1) If a person to which provisional approval has been granted is unable to complete its post-production investment within the period specified in the definition of "post-production investment" in regulation 91 due to unforeseen circumstances or some other act beyond the

control of the person, the person may apply in writing to the Minister to extend the time by which the post-production investment must be completed.

(2) If the Minister extends the time under subregulation (1), the person continues to enjoy the duty free concession provided for by regulation 95 during the extended period.

[Regulation 98] Final approval if completed

An application for final approval shall not be granted unless—

a) the Minister in concurrence of the Minister responsible for industry and trade is satisfied that the company has in all respects completed the requirements of the project; and
b) the post-production facility is fully operational.

[Regulation 99] Effect of final approval

Notwithstanding anything contained in these Regulations, the income of a person will be exempt from tax for a period of 7 consecutive tax years provided that the capital investment of the post-production investment is more than $2 million.

[Regulation 100] Revocation of post-production investment package

The Minister may revoke any post-production investment if the person has—

a) breached any condition of the 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.

INCOME TAX (FILM-MAKING AND AUDIO-VISUAL INCENTIVES) (FEES) REGULATIONS 2006

[Regulation 1] Short title and commencement

These Regulations may be cited as the Income Tax (Film-making and Audio-visual Incentives) (Fees) Regulations 2006 and are deemed to have come into force on 1 January 2006.

[reg 1 am LN 99 of 2016 reg 109, effective 1 December 2016]

[Regulation 2] Income Tax (Film-making and Audio-visual Incentives) (Fees)

SCHEDULE

(Regulation 2) - Income Tax (Film-Making and Audio-Visual Incentives) (Fees)

[Sch am LN 99 of 2016 reg 109, effective 1 December 2016]

PURPOSE	FEE
Audio Visual Production Levy (defined under regulation 15(1) of the Income Tax (Film-making and Audio-visual Incentives) Regulations 2016.	0.75% of the total production budget
Application for an Audio Visual Operating Licence (regulation 48 of the Income Tax (Film-making and Audio-visual Incentives) Regulations 2016)	$1,000 plus VAT
Application for the Declaration of Temporary Studio City Zone (regulation 47 of the Income Tax (Film-making and Audio-visual Incentives) Regulations 2016)	$5,000 plus VAT
Inspection of Register of Audio Visual Operating Licences (regulation 55 of the Income Tax (Film-making and Audio-visual Incentives) Regulations 2016)	$20 plus VAT

INCOME TAX (TAX FREE REGION INCENTIVES) REGULATIONS 2016

Table of Amendments

Income Tax (Tax Free Region Incentives) Regulations 2016 (LN 10 of 2016) commenced on 1 January 2016, as amended by:

Amending Legislation	**Date of Commencement**
Income Tax (Tax Free Region Incentives) (Amendment) Regulations 2016 (LN 30 of 2016)	1 January 2016
Income Tax (Tax Free Region Incentives) (Amendment) (No 2) Regulations 2016 (LN 46 of 2016)	1 August 2016
Fiji Revenue and Customs Authority (Budget Amendment) Act 2017 (No 38 of 2017)	1 August 2017
Income Tax (Tax Free Region Incentives) (Amendment) Regulations 2017 (LN 58 of 2017)	1 August 2017
Income Tax (Tax Free Region Incentives) (Amendment) Regulations 2019 (LN 56 of 2019)	1 August 2019
Income Tax (Tax Free Region Incentives) (Amendment) Regulations 2021 (LN 79 of 2021)	1 August 2021

PART 1 GENERAL

[Regulation 1] Short title and commencement

(1) These Regulations may be cited as the Income Tax (Tax Free Region Incentives) Regulations 2016.

(2) These Regulations shall come into force on 1 January 2016.

[Regulation 2] Laws to be read together

These Regulations shall inter alia be read 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.

[Regulation 3] Interpretation

In these Regulations, unless the context otherwise requires—

Act means the Income Tax Act 2015;

authorised officer means any person appointed under regulation 8(c);

business includes—

a) trade, commerce, agriculture, manufacture, profession or vocation, but does not include employment;
b) a venture or concern in the nature of a trade, commerce, agriculture, or manufacture; or
c) a profit-making undertaking or scheme not covered by paragraphs (a) or (b);

enforcement officer means any FRCS officer or any officer of the Ministry of Economy designated in writing by his or her respective Minister as an enforcement officer for the purpose of these Regulations;
[def am Act 38 of 2017 s 7, effective 1 August 2017]

ICT means information and communications technology;
[def inserted LN 79 of 2021, reg 2, effective 1 August 2021]

ICT business means a business providing services which are ICT enabled such as software development, data storage services, 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;

[def inserted LN 79 of 2021, reg 2, effective 1 August 2021]

ICT park means an area of commercial infrastructure as approved by the Minister built by or for an ICT business in the area specified in regulation 4(1)(h);
[def inserted LN 79 of 2021, reg 2, effective 1 August 2021]

iTaukei landowner means any iTaukei who holds a proprietary landowning unit in the Tax Free Region and who is registered in the iTaukei Lands Commission (Vola ni Kawa Bula) under the iTaukei Lands Act 1905;

Minister means the Minister responsible for finance;

provisional licence means a licence granted by the Minister under regulation 7(2); and

Tax Free Region means any area under regulation 4(1).

PART 2 ESTABLISHMENT OF TAX FREE REGION

[Regulation 4] Declaration of Tax Free Region

(1) The following areas have been declared as the Tax Free Region—

a) Vanua Levu;
b) Rotuma;
c) Kadavu;
d) the airport side of the Rewa Bridge, excluding the town boundary of Nausori, up to the Ba side of the Matawalu River;
e) Lomaiviti;
f) Lau;
g) Naboro; and
h) Tamavua

[reg 4 am LN 56 of 2019, reg 2, effective 1 August 2019, reg 4(1)(h) inserted LN 79 of 2021, reg 2, effective 1 August 2021]

(2) For the purposes of subregulation (1), Vanua Levu includes Taveuni, Rabi, Kioa and other islands generally included for governments administrative purpose as being in the Northern Division.

(3) For the purposes of subregulation (1)(d), the areas from the airport side of the Rewa Bridge, excluding the town boundary of Nausori, up to the Ba side of the Matawalu River, are specified on the map in Schedule 1.

(4) Areas that may be declared Tax Free Region under subregulation (1) shall include office and other facilities required for the proper customs supervision of goods entering or leaving the Region and shall conform to the requirements of a bonded Customs Area as stipulated under section 6 of the Customs Act 1986.

[Regulation 5] Development, management and control of Tax Free Region

(1) Responsibility for the development, management and control of Tax Free Region shall vest in the Minister.

(2) The Minister may delegate responsibility for the development, management, or control of Tax Free Region to any statutory body, government department or company.

PART 3 LICENSING OF TAX FREE REGION ACTIVITIES

[Regulation 6] Application for a provisional licence in Tax Free Region

(1) Any company may apply to the Minister for a provisional licence.

(1A) Notwithstanding subregulation (1), any company applying for a provisional licence in relation to regulation 4(1)(g) must hold a permit under the Environment Management (Waste Disposal and Recycling) Regulations 2007;

(1B) A company applying for a provisional licence in relation to regulation 4(1)(h) must hold the relevant permit, licence, certificate, approval or authorisation for business, construction or development required under any written law, as and when applicable.
[reg 6(1B) inserted LN 79 of 2021, reg 4, effective 1 August 2021]

(2) Every application under this regulation shall be made on a form approved by the CEO.

[reg 6 am LN 56 of 2019, reg 3, effective 1 August 2019, reg 6(2) amended LN 79 of 2021, reg 4, effective 1 August 2021]

[Regulation 7] Grant of Tax Free Region provisional licence and criteria for grant of provisional licence

(1) The Minister shall, when considering an application, take into account that the company is a newly incorporated entity engaged in a new business in a Tax Free Region with the following level of investment—

a) capital investment from $250,000 to $1,000,000;
b) capital investment from $1,000,001 to $2,000,000;
c) capital investment above $2,000,000.

[subreg (1) am LN 58 of 2017 reg 2, effective 1 August 2017]

(1A) For the purposes of subregulation (1), any business of a company is a "new business" provided that the company is a newly incorporated entity, notwithstanding that a related body corporate as defined under the Companies Act 2015 of the company engages in the same or similar type of business.

[subreg (1A) insrt LN 58 of 2017 reg 2, effective 1 August 2017]

(1B) Notwithstanding subregulation (1), the Minister shall, when considering an application in relation to regulation 4(1)(g), take into account that the company is engaged in a waste management business in a Tax Free Region with the following levels of investment—

a) capital investment from $250,000 to $1,000,000;
b) capital investment from $1,000,001 to $2,000,000; and
c) capital investment above $2,000,000.

[reg 7 am LN 56 of 2019, reg 4, effective 1 August 2019]

(1C) Notwithstanding subregulation (1), the Minister shall, when considering an application in relation to regulation 4(1)(h), take into account that the company is to make a new investment in the development of an ICT park with the following levels of investment—
(a) capital investment of $10,000,000 to $30,000,000; and
(b) capital investment above $30,000,000.
[reg 7(1C) inserted LN 79 of 2021, Reg 5, effective 1 August 2021]

(2) The Minister may, in concurrence with the Minister responsible for industry and trade, grant to any company a provisional licence in the form in Schedule 2 authorising the carrying on of any business in a Tax Free Region.

(3) Any company seeking a provisional licence for the carrying on of business in a Tax Free Region shall be required to—

a) derive all of its income from business carried out in a Tax Free Region;
b) generate employment opportunities for the people of Fiji;
c) enhance, expand and improve the technological and trading capability and capacity of the economy of Fiji; and
d) comply with any other condition deemed by the Minister to be appropriate under the circumstances.

[Regulation 8] Conditions of provisional licence

(1) The Minister may attach to a provisional licence certain conditions including conditions in regard to the following matters—

a) the date, fixed by the Minister after consultation with the licensee, on or before which the licensee shall commence the business authorised by the licence. The date should be no longer than 18 months from the date of the project approval;
b) the revocation of the licence if the licensee should at any time after the grant of the licence, undertake in a Tax Free Region any business not authorised by the licence; and
c) the appointment by the licensee of an authorised officer who shall be an individual person and who shall be a resident as defined under the Act.

[subreg (1) am LN 46 of 2016 reg 2, effective 1 August 2016]

(2) If the licensee is unable to commence the business on the date fixed by the Minister in subregulation (1)(a), the licensee, in writing—

a) must notify the Minister; and
b) may apply to the Minister for an extension of such time.

[subreg (2) insrt LN 46 of 2016 reg 2, effective 1 August 2016]

(3) A written application under subregulation (2)(b) must contain an explanation of the circumstances which the licensee genuinely considers relevant to the application.

[subreg (3) insrt LN 46 of 2016 reg 2, effective 1 August 2016]

[Regulation 9] Final approval

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 these Regulations; and
b) the project is fully completed.

[Regulation 10] Revocation of licence

(1) The Minister may revoke a licence if the company—

a) has breached any condition of the licence;
b) has failed to comply with any of the requirements of the Act; or
c) has been convicted of an offence under the Act or any other written law relating to taxation, customs or excise.

(2) The Minister shall not revoke a provisional licence unless a notice in writing is given informing the licensee of the intention to revoke the licence, the reasons for revoking the licence and giving the licensee at least 21 days within which the licensee may make representation to the Minister.

(3) The Minister shall consider any representation made by the licensee and make a decision whether or not to revoke a licence.

(4) If a licensee fails to commence operations or complete establishment of the project within 18 months from the date on which provisional approval was granted, the Minister shall revoke the concession and any duty foregone shall be payable with the appropriate penalties.

(5) If a licensee after an audit is below the minimum capital investment threshold of $250,000 as specified in paragraph 13, the Minister must revoke the licence and any tax or duty foregone is payable with the appropriate penalties.

[subreg (5) insrt LN 30 of 2016 reg 2, effective 1 January 2016]

[Regulation 11] Variation of conditions and transfer of licence

(1) The Minister, in concurrence with the Minister responsible for industry and trade, may—

(a)vary at any time the conditions of a licence; or

(b)vary the conditions of a licence and approve the transfer of that licence to another company fulfilling the requirements set out at regulation 7(3).

[subreg (1) am LN 46 of 2016 reg 3, effective 1 August 2016]

(2) The approval for the transfer of the licence shall only be made if the CEO is satisfied that the former company has been in operation for 2 consecutive years from the date of the transfer.

(3) The transferee shall only enjoy the balance of the exemptions granted under regulation 13.

[Regulation 12] Register of licences

(1) The Minister shall establish and maintain a register of the licences granted under regulation 7(3).

(2) There shall be entered in the register in respect of each licence—

a) the date of commencement of the licence;
b) the name, registered address and the authorised officer of the company to which the licence was granted; and
c) the business to which the licence relates.

(3) The register shall be kept in the Ministry of Economy in Suva and shall be open to inspection during such times as the Minister may direct.

(4) Where a licence is transferred by the licensee in accordance with regulation 11(1)(b), the Company to which it is transferred shall submit its name, and registered address and authorised officer for inclusion in the register.

PART 4 DUTY AND TAX EXEMPTIONS

[Regulation 13] Duty and tax exemptions for licensed activities in Tax Free Region

(1) A licence granted by the Minister under regulation 7(2) from the commencement year of such a licence, shall be provided in the following periods—

a) Any new activity approved and established between the following regions shall be exempt from tax in accordance with paragraph (b)—
   i. 1 January 2009 to 31 December 2028 for Vanua Levu, Rotuma, Kadavu, Levuka, Lomaiviti and Lau;
   ii. 1 January 2014 to 31 December 2028 for Korovou to Tavua;
   iii. 1 January 2016 to 31 December 2028 from the airport side of the Rewa Bridge excluding the town boundary of Nausori, up to the Ba side of the Matawalu River;
   iv. 1 August 2019 to 31 December 2028 for Naboro.

[reg 13 am LN 56 of 2019, reg 13, effective 1 August 2019]

b) The exemption from tax for any licensed activities in the Tax Free Region in accordance with paragraph (a), shall be exempt in the following manner—
   i. capital investment from $250,000 to $1,000,000, for a period of 5 consecutive fiscal years;
   ii. capital investment from $1,000,001 to $2,000,000 for a period of 7 consecutive fiscal years; or
   iii. capital investment above $2,000,000 for a period of 13 consecutive fiscal years.

[subreg (1) am LN 30 of 2016 reg 3, effective 1 January 2016; LN 58 of 2017 reg 3, effective 1 August 2017]

(c) From the first day of commercial operation of the ICT business in the ICT park or such other date as the Minister may specify, the ICT business in the ICT park approved and established in the region prescribed in regulation 4(1)(h) shall be exempt from tax on income derived from the ICT business in the ICT park in the following manner—

i. capital investment of $10,000,000 to $30,000,000, for a period of 20 consecutive fiscal years; and
ii. capital investment above $30,000,000, for a period of 25 consecutive fiscal years.”.

[reg 13(1)(c) inserted LN 79 of 2021, reg 6, effective 1 August 2021]

(2) Subject to subregulation (1) and in accordance with the Customs Tariff Act 1986, the Excise Act 1986 and the Act, the licensee shall be exempt from the following payment—

a) duties leviable on the importation or purchase ex bond or excise duty leviable on purchase ex-excise factory of raw materials, machinery and equipment (including parts and materials) in so far as they are required for the establishment of the business in the Tax Free Region; and

b) tax normally leviable on chargeable income under the Act in respect of a company licensed under regulation 7(2).

[Regulation 14] Exemption for licence holder having beneficial iTaukei landowner equity

(1) Notwithstanding the exemptions granted under regulation 13—

a) the income of any company granted a licence under regulation 7(2) and having beneficial iTaukei landowner equity of at least 25%, shall be exempted from tax on profits for an additional 5 consecutive fiscal years; and
b) the income of any hotel developer granted a licence under regulation 7(2) and having beneficial iTaukei landowner equity of at least 25% shall be exempted from tax on profits for an additional 7 consecutive fiscal years,

provided further that no concession shall be granted under this regulation for any year, if the CEO is not satisfied that the shareholders of the company are substantially the same as on the date when the concession was granted. For the purposes of this regulation, the shareholders of a company shall not be deemed to be substantially the same if 25% or more of the voting power or the right to receive dividends is not held by the same person.

(2) Where such income is subjected to tax under the laws of the State of that person, then tax exemption under this regulation will not apply.

[Regulation 15] Computation of profits and gains

During the period from the appointed day to the end of the accounting period in which the last day of the tax concession period falls, such depreciation shall be written off the assets of that company in calculating its profits or gains as would have been available to it under the provisions of the Act if the company were not in receipt of the concession in respect of the approved enterprise, and the written down values of such depreciable assets at the end of the accounting period in which the last day of the tax concession period falls shall be calculated accordingly, provided that the company shall not be obliged to claim initial allowances but such election shall in that event continue for the whole of the tax free period.

[Regulation 16] End of tax free period

If the end of the tax concession period does not coincide with the end of an accounting period of the company, the profits or gains for the accounting period in which the last day of the tax concession falls will be apportioned between the parts of the accounting period which precede and follow the end of such tax concession period on a time basis, and the profits or gains so attributed to the part which precedes the end of the tax concession period shall be subject to the concessions set out in these Regulations which shall also be apportioned on a time basis.

PART 5 CUSTOMS CONTROL AND DISPOSAL OF GOODS IN TAX FREE REGION

[Regulation 17] Disposal of goods taken into Tax Free Region

(1) No person shall deal with or otherwise dispose of any goods taken into a Tax Free Region except in the manner hereinafter provided.

(2) Goods in a Tax Free Region may be—

a) removed from such Tax Free Region for export or sent into another Tax Free Region either in the original pack or otherwise; or
b) stored, exhibited, processed or manufactured or put to other uses in accordance with the provisions of these Regulations, or
c) destroyed or be disposed of as the Comptroller may direct.

[Regulation 18] Utilisation of exempted goods

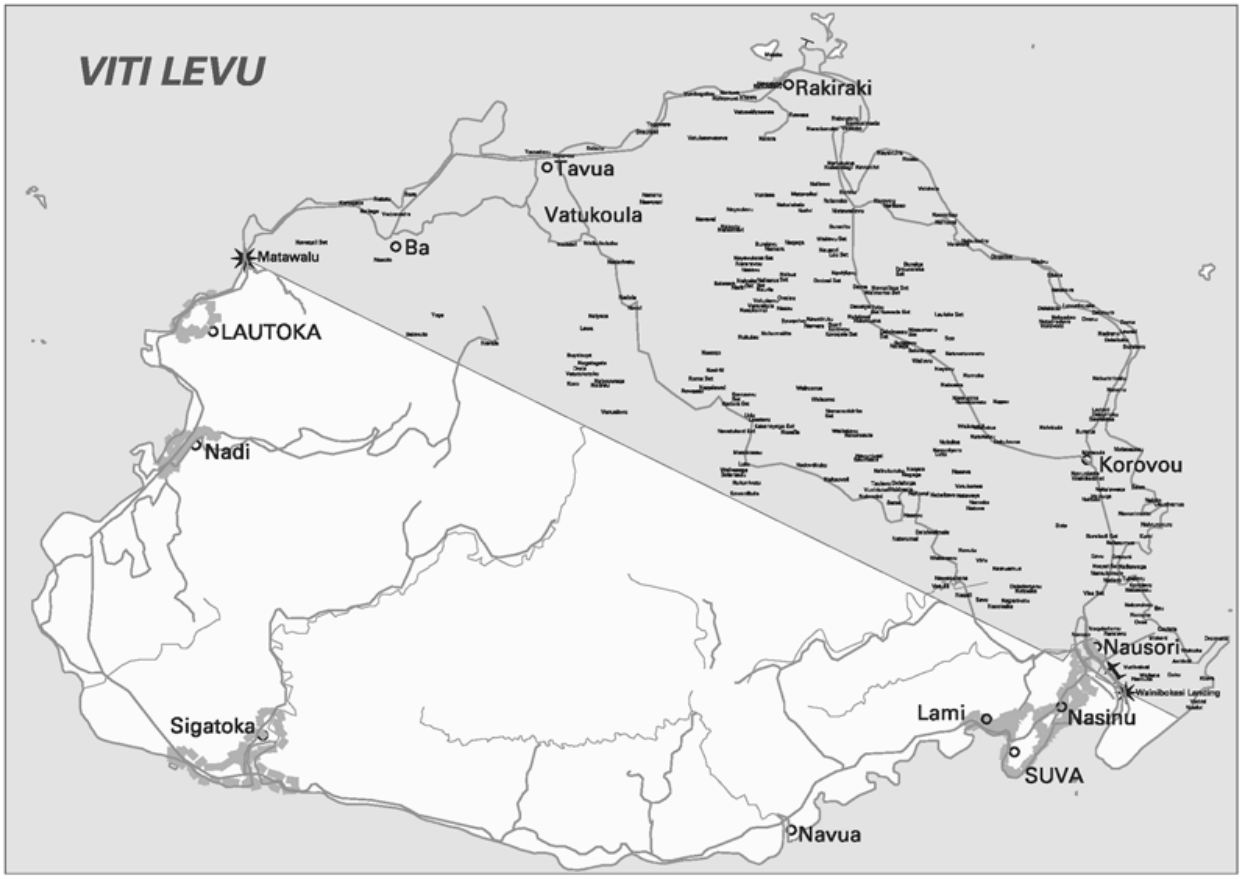
Subject to the provisions of regulation 17 all goods exempted under regulation 13 shall be utilised only in a Tax Free Region.

PART 6 MISCELLANEOUS

[Regulation 19] Enforcement officers

Enforcement officers shall be responsible for the proper and efficient administration and control of the provisions of these Regulations.

SCHEDULE 1
(Regulation 4(3)) - Map



SCHEDULE 2
(Regulation 7(2)) - Grant of Tax Free Region Licence

By virtue of powers vested in me under regulation 7(2) and in concurrence with the Minister responsible for industry and trade, I hereby grant a provisional licence to

.....

(Company Name, Address etc.).....

To operate the business described below, in the TAX FREE REGION on the following terms and conditions

.....

.....

(Description of business)

This Licence shall remain valid until it is surrendered or revoked.

Dated— .....

.....
MINISTER RESPONSIBLE FOR FINANCE

INCOME TAX (EMPLOYMENT INCENTIVES) REGULATIONS 2016

Table of Amendments

Income Tax (Employment Incentives) Regulations 2016 (LN 64 of 2016) commenced on 1 August 2016, as amended by:

Amending Legislation	**Date of Commencement**
Income Tax (Employment Incentives) (Amendment) Regulations 2018 (LN 45 of 2018)	reg 3: 1 January 2019; remainder: 1 August 2018
Income Tax (Employment Incentives) (Amendment) Regulations 2020 (LN 27 of 2020)	1 April 2020
Income Tax (Employment Incentives) (Amendment) Regulations 2021 (LN 62 of 2021)	1 August 2021
Income Tax (Employment Incentives) (Amendment) Regulations 2022 (LN 22 of 2022)	1 April 2022
Income Tax (Employment Incentives) (Amendment) Regulations 2022 (LN 95 of 2022)	1 August 2022

PART 1 PRELIMINARY

[Regulation 1] Short title and commencement

(1) These Regulations may be cited as the Income Tax (Employment Incentives) Regulations 2016.

(2) These Regulations come into force on 1 August 2016.

[Regulation 2] Interpretation

(1) In these Regulations, unless the context otherwise requires, “Act” means the Income Tax Act 2015.

(2) In these Regulations, words and phrases have the same meaning as under the Act unless the context otherwise requires.

PART 2 EMPLOYMENT INCENTIVES

[Regulation 3] Registration for employment incentives

(1) A person may, where applicable, apply to the CEO for an employment incentive specified in these Regulations.

(2) An application under subregulation (1) must be made in the form approved by the CEO.

(3) A person who applies for an employment incentive under subregulation (1) must register with the CEO by providing such information as the CEO may require.

[Regulation 4] First-time employees

(1) A person carrying on business in Fiji is allowed a deduction for—

a) 150% of the amount of any salary or wages paid to a qualifying employee between 1 January 1997 and 31 July 2016; and
b) 300% of the amount of any salary or wages paid to a qualifying employee between 1 August 2016 and 31 December 2024,

provided that the salary or wages paid to the qualifying employee in respect of whom the deduction is claimed must not be less than the minimum wage prescribed by written law for a particular industry or sector.

(2) The deduction under subregulation (1) is not available unless the CEO is satisfied that such person has not terminated the employment of any qualifying employee in order to take advantage of the deduction.

(3) Notwithstanding subregulations (1) and (2), the deduction under subregulation (1) is restricted to the salary and wages paid in respect of the 12-month period commencing from the date of the appointment of the qualifying employee.

(4) For the purpose of subregulations (1) to (3), "qualifying employee" means an additional employee who commences employment in Fiji after 31 December 1996 and who has not previously been in full-time paid employment.

[Regulation 5] Work placements

(1) A person is allowed a deduction for 300% of the amount of any salary or wages paid to a student for employment of the student before the student's graduation where the employment forms part of the student's course requirements of a higher education institution as defined in the Higher Education Act 2008.

(2) The deduction under subregulation (1) may only be claimed between 1 August 2016 and 31 December 2024.

[Regulation 5A] Apprenticeship

(1) A person is allowed a deduction for 300% of the amount of any salary or wages paid to a student for employment of the student under an apprenticeship before the student's graduation where the apprenticeship forms part of the student's course requirements of a higher education institution as defined in the Higher Education Act 2008.

(2) The deduction under subregulation (1) may only be claimed between 1 August 2022 and 31 December 2024.".

[Regulation 6] Part-time workers

(1) A person is allowed a deduction for 300% of the amount of any salary or wages paid to a student for employment of the student in an area related to the student's area of study for a period not exceeding 3 months in a 12-month period.

(2) The deduction under subregulation (1) may only be claimed between 1 August 2016 and 31 December 2024.

[Regulation 7] Persons with disabilities

(1) A person is allowed a deduction for 400% of the amount of any salary or wages paid to a person with a disability for a consecutive period of 3 years, provided that if the employee is unfairly dismissed, any deduction allowed must be recouped by the CEO.

(2) The deduction under subregulation (1) may only be claimed between 1 August 2016 and 31 December 2024.

[Regulation 8] Employee development

(1) A person is allowed a deduction for 150% of the amount paid by the person for an employee's education fees to study during the course of the employee's employment, provided that the employee is required to work for the person for a minimum of one year upon the completion of the employee's study.

(2) A person is allowed a deduction for 150% of the amount paid for training the person's employee, provided that the training is conducted through a training provider approved by the CEO.

[subreg (2) insrt LN 45 of 2018 reg 2, effective 1 August 2018]

[reg 8 am LN 45 of 2018 reg 2, effective 1 August 2018]

[Regulation 8A] Family care leave

(1) A person is allowed a deduction for 150% of the amount of any salary or wages paid to an employee during the 5 working days when the employee is on family care leave.

(2) For the purpose of subregulation (1), "family care leave" means the family care leave entitlement provided under section 68A of the Employment Relations Act 2007.

[reg 8A insrt LN 45 of 2018 reg 3, effective 1 January 2019]

[Regulation 8B] Paternity leave

(1) A person is allowed a deduction for 150% of the amount of any salary or wages paid to an employee during the 5 working days when the employee is on paternity leave.

(2) For the purpose of subregulation (1), "paternity leave" means the paternity leave entitlement provided under section 101A of the Employment Relations Act 2007.

[reg 8B insrt LN 45 of 2018 reg 3, effective 1 January 2019]

[Regulation 8C] Employees affected by COVID-19

(1) A person is allowed a deduction for 300% of the amount of salary or wages paid to an employee if the employee—

a) has tested positive for COVID-19 or is a primary or secondary contact of a person who has tested positive for COVID-19; and
b) is required by the Ministry of Health and Medical Services to be quarantined,

provided that the person submits documentary evidence from the Ministry of Health and Medical Services confirming paragraphs (a) and (b) in respect of the employee.
[reg 8C (1) amended LN 62 of 2021 reg 2, effective 1 August 2021]

(2) The deduction under subregulation (1) may only be claimed for the salary and wages paid between 1 April 2020 and 31 December 2023.
[reg 8C (2) amended LN 62 of 2021 reg 2, effective 1 August 2021, amended by LN 22 of 2022 effective 1 April 2022]

(3) In this regulation, "COVID-19" means the coronavirus disease as named by the World Health Organization on 11 February 2020.".

[reg 8C insrt LN 27 of 2020 reg 6, effective 1 April 2020]

[Regulation 8D] Maternity leave

(1) A person is allowed a deduction for 200% of the amount of any salary or wages paid to an employee when the employee is on maternity leave.

(2) For the purpose of sub regulation (1), “maternity leave” means the maternity leave entitlement provided under section 101 of the Employment Relations Act 2007.”.

PART 3 MISCELLANEOUS

[Regulation 9] Offence

(1) A person who knowingly or recklessly—

a) makes a false or misleading statement in a material particular to a tax officer; or
b) omits from a statement made to a tax officer any matter or thing without which the statement is false or misleading in a material particular,

commits an offence.

(2) For the purpose of subregulation (1), the Tax Administration Act 2009 applies.

INCOME TAX (ELECTRIC VEHICLE CHARGING STATION DEVELOPMENT PACKAGE) REGULATIONS 2016

Table of Amendments

Income Tax (Electric Vehicle Charging Station Development Package) Regulations 2016 (LN 70 of 2016) commenced on 1 August 2016, as amended by:

Amending Legislation	**Date of Commencement**
Income Tax (Electric Vehicle Charging Station Development Package) (Amendment) Regulations 2017 (LN 55 of 2017)	1 August 2017
Income Tax (Electric Vehicle Charging Station Development Package) (Amendment) Regulations 2018 (LN 46 of 2018)	1 August 2018
Income Tax (Electric Vehicle Charging Station Development Package) (Amendment) Regulations 2022 (LN 99 of 2022)	1 August 2022

[Regulation 1] Short title and commencement

(1) These Regulations may be cited as the Income Tax (Electric Vehicle Charging Station Development Package) Regulations 2016.

(2) These Regulations come into force on 1 August 2016.

[Regulation 2] Laws to be read together

These Regulations shall inter alia be read in conjunction with the—

a) Customs Act 1986 and the Customs Tariff Act 1986 in so far as it relates to customs and duties; and
b) Income Tax Act 2015.

[Regulation 3] Interpretation

For the purposes of these Regulations—

capital goods for the purpose of regulation 7, 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;

electric vehicle charging station means a publicly available electric service equipment which has an electric component assembly or cluster of component assemblies designed specifically to charge batteries within electric vehicles by permitting the transfer of electric energy to a battery or other storage device in an electric vehicle;

electric vehicle charging station development investment package means the various exemptions, concessions and subsidies given to electric vehicle charging station development investments;

[def am LN 46 of 2018 reg 2, effective 1 August 2018]

electric vehicle charging station development investment means a project with capital investment of $50,000 or more, and the electric vehicle charging station is completed within 24 months from the date the provisional approval was granted;

[def am LN 55 of 2017 reg 2, effective 1 August 2017; LN 46 of 2018 reg 2, effective 1 August 2018]

Minister means the Minister responsible for economy;

owner means the owner of an electric vehicle charging station who has been granted an approval under these Regulations;

project means the construction of a new electric vehicle charging station; and

provisional approval means a provisional approval granted under regulation 6.

[Regulation 4] Power to grant electric vehicle charging station development investment package

The Minister may grant an electric vehicle charging station development investment package to a company, which has invested in the development of an electric vehicle charging station in Fiji and has complied with these Regulations.

[Regulation 5] Application for provisional approval

(1) A company ("applicant") may, in writing, apply to the Minister for provisional approval to carry out an electric vehicle charging station 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 electric vehicle charging station development site;
e) the number and description of the electric vehicle charging station development;
f) the detailed description of all proposed amenities and facilities;
g) a sketch plan showing in sufficient detail the site and layout of the proposed electric vehicle charging station development and its amenities;
h) an estimate of the total cost of the electric vehicle charging station development investment;
i) the description, and an estimate of the cost, of each individual stage of construction and details of the proposed timetable for completion of the electric vehicle charging station development investment;
j) details of the proposed method of financing the electric vehicle charging station development investment;
k) evidence of the company's ability to complete the electric vehicle charging station development investment;
l) estimates of the projected income from the new electric vehicle charging station development; and
m) the nature and extent of electric vehicle charging station development investment.

(2) 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 electric vehicle charging station development investment package.

[Regulation 6] Processing of provisional approval

(1) The Minister may—

a) reject the application for provisional approval electric vehicle charging station 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 an electric vehicle charging station development investment;
b) the company intends to complete and is capable of completing such electric vehicle charging station development investment; and
c) the electric vehicle charging station development investment will benefit the economic development of Fiji.

(3) When considering an application for electric vehicle charging station 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 electric vehicle charging station development investment;
c) the requirements for electric vehicle charging station development in the area concerned;
d) whether the electric vehicle charging station development investment will adequately contribute to the area concerned;
e) whether the proposed electric vehicle charging station development is of a suitable size and standard for the area concerned;
f) whether adequate amenities would be provided as part of the proposed electric vehicle charging station development; and
g) such other matters as the Minister may consider relevant to the desirability or otherwise of the electric vehicle charging station 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 partially rejected applications) has been rejected may make a new application or amend and resubmit the original application.

[Regulation 7] Effect of provisional approval

When a provisional approval is granted, all capital goods, imported within the period specified in the definition of "electric vehicle charging station development investment", by or on behalf of the company and used in the carrying out of the electric vehicle charging station development investment, shall be exempt from all duties in respect of their importation.

[reg 7 am LN 46 of 2018 reg 3, effective 1 August 2018]

[Regulation 8] Extension of time for completion

(1) If a company to which provisional approval has been granted is unable to complete its electric vehicle charging station development investment within the period specified in the definition of "electric vehicle charging station development investment" due to unforeseen circumstances or some other act beyond the control of the company, the owner may apply in writing to the Minister to extend the time by which the electric vehicle charging station development must be completed.

[subreg (1) am LN 46 of 2018 reg 4, effective 1 August 2018]

(2) An application under subregulation (1) must contain an explanation of the circumstances which the company considers relevant to the application.

(3) If the Minister extends the time under subregulation (1)—

a) the Minister may attach any further relevant conditions or vary the conditions attached to the provisional approval; and
b) the company shall continue to enjoy the duty free concession provided for by regulation 7 during the extended period.

[Regulation 9] Completion of project and application for final approval

(1) Where a company has been granted provisional approval under regulation 6, 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 electric vehicle charging station development.

(4) Upon receiving an application under subregulation (2), the Minister may—

a) reject the application; or
b) grant final approval to the application, with or without any conditions.

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

(6) The Minister must, in writing, notify the following persons of the decision to reject or grant the application—

a) the applicant; and
b) the CEO.

[Regulation 10] Final approval if completed

Final approval shall not be granted, unless—

a) the Minister is satisfied that 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 of these Regulations; and
c) the electric vehicle charging station is fully completed.

[Regulation 11] Effect of final approval

(1) The final approval entitles the company to the benefits of an electric vehicle charging station development investment package from the first day of commercial operation of the electric vehicle charging station or such other date as the Minister may specify.

[subreg (1) am LN 46 of 2018 reg 5, effective 1 August 2018]

(2) Where the owner has—

a) been granted provisional approval; and
b) completed the project in accordance with the provisional approval, he or she upon being issued a final approval, shall be granted a subsidy up to a maximum rate of 10% of the total capital expenditure incurred in the electric vehicle charging station development investment provided that the capital expenditure is not less than $50,000.

[subreg (2) am LN 55 of 2017 reg 3, effective 1 August 2017; LN 46 of 2018 reg 5, effective 1 August 2018]

[Regulation 12] Exemption from tax

If final approval is granted under regulation 11 to a company, the income of the company is exempt from tax on profits derived from the operation of the electric vehicle charging station for a period of 7 years, if the capital investment in the electric vehicle charging station is more than $50,000.

[reg 12 am LN 55 of 2017 reg 4, effective 1 August 2017; LN 46 of 2018 reg 6, effective 1 August 2018]

[Regulation 13] Depreciation

(1) During the period under regulation 11(1) to the end of the accounting period in which the last day of the tax-free period falls, such depreciation shall be written off the assets of that company in calculating its profits or gains as would have been available to it under these Regulations if the company were not in receipt of the concession provided by this part, and the written down values of such depreciable assets at the end of the accounting period in which the last day of the tax-free period falls shall be calculated accordingly.

(2) For the purpose of subregulation (1), the person shall not be obliged to claim initial allowances but such election shall in that event continue for the whole of the tax free period.

[Regulation 14] Carry forward losses

Subject to these Regulations, any loss incurred by the company in the operation of the electric vehicle charging station may be carried forward and set off against the gross income from that electric vehicle charging station premises for the next 8 years in succession.

[Regulation 15] Annual accounts

Within 6 months after the end of each financial year a company which is entitled to the benefits of an electric vehicle charging station development investment package shall submit to the Minister fully audited accounts, including other information that the Minister may require.

[reg 15 am LN 46 of 2018 reg 7, effective 1 August 2018]

[Regulation 16] Transferability of package

If the electric vehicle charging station in respect of which an electric vehicle charging station development investment 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 electric vehicle charging station development investment package.

[reg 16 am LN 46 of 2018 reg 8, effective 1 August 2018]

[Regulation 17] Revocation of package

The Minister may revoke any electric vehicle charging station development investment package if the company 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 or customs.

[reg 17 am LN 46 of 2018 reg 9, effective 1 August 2018]

INCOME TAX (MODERNISATION OF BUILDINGS INCENTIVES) REGULATIONS 2018

Table of Amendments

Income Tax (Modernisation of Buildings Incentives) Regulations 2018 (LN 64 of 2018) commenced on 1 August 2018, as amended by:

Amending Legislation	**Date of Commencement**
Income Tax (Modernisation of Buildings Incentives) (Amendment) Regulations 2019 LN 52 of 2019	1 August 2019
Income Tax (Modernisation of Buildings Incentives) (Amendment) Regulations 2021 (LN 9 of 2021)	1 August 2020

PART 1 PRELIMINARY

[Regulation 1] Short title and commencement

(1) These Regulations may be cited as the Income Tax (Modernisation of Buildings Incentives) Regulations 2018.

(2) These Regulations come into force on 1 August 2018.

[Regulation 2] Interpretation

In these Regulations, unless the context otherwise requires—

applicant means a person who applies for the investment allowance under Part 2;

application means the application for the investment allowance under Part 2;

building means any building used for a commercial purpose within a town or city;

extension means any additional feature to an existing building;

final approval means the approval granted by the Minister under regulation 9;

project means the exterior extension or redevelopment and renovation of a building;

provisional approval means the approval granted by the CEO under regulation 7; and

redevelopment and renovation means any substantial construction works (which the estimated cost per square metre of floor area is determined under regulation 4(5)) of an existing building (excluding the interior furnishings, furniture and fittings) which—

a) have the effect of restoring the building to a sound and new state: or
b) reconstruct, remodel, alter or upgrade the exterior of a building.

[Regulation 3] Objective

The purpose of these Regulations is to provide certainty about the way these Regulations are to be applied and to encourage the modernisation of buildings by the provision of financial inducements.

PART 2 MODERNISATION OF BUILDINGS INCENTIVE

[Regulation 4] Investment allowance

(1) Subject to subregulation (3), a person is entitled to, for a capital investment above $250,000, the following allowance—

a) an amount of taxable income equal to 25% 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
b) so much of the amount not charged to tax under subregulation (1)(a) 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.

[reg 4(1) am LN 52 of 2019 reg 2, effective 1 August 2019]

(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 may 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.

(5) For the purpose of the definition of "redevelopment and renovation" in regulation 2, the Minister may prescribe the cost per square metre of not less than 40% of the estimated cost per square metre of the floor area of the building.

(6) The capital expenditure allowable under redevelopment and renovation shall be given to a building that is more than 5 years old.

[Regulation 5] Procedure on sale of building

If the building has been sold and the investment allowance in respect of such building has in accordance with regulation 8, 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.

[Regulation 6] Power to approve applications

(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 building must be more than 5 years old;
b) [Repealed]
c) the building must not be a hotel or an apartment;
d) the project must exclude the interior furnishings, furniture and fittings of the building;
e) the project must include the use of green technology or technology that mitigates the adverse effects of human activities on the environment;
f) the project must include the installation of lighting on the exterior of the building that improves street visibility at night; and
g) the project must provide some form of building access for persons living with disabilities.

[reg 6(2)(b) del LN 53 of 2019 reg 3, effective 1 August 2019]

(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.

[Regulation 7] Application for provisional approval

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 location and description of the building;
d) a sketch plan showing the proposed 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.

[Regulation 8] Completion of project

(1) Any applicant who has been granted provisional approval on or after 1 August 2018 must 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 9, 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.

[Regulation 9] Final approval if completed

(1) An application for final approval must 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).

[Regulation 10] Extension of time for completion

If an applicant to whom the provisional approval has been granted is unable to complete the project within the period specified in regulation 8(1) 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.

[Regulation 11] Applicability of the investment allowance

(1) The investment allowance shall cease to apply from 1 August 2023.

Legislative History:
LN 9 of 2021 – from 1 August 2020 - Regulation 11(1) of the Income Tax (Modernisation of Buildings Incentives) Regulations 2018 is amended by deleting "2020" and substituting "2023"

(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.

[Regulation 12] Revocation of the investment allowance

The Minister or CEO, as applicable, may revoke the investment allowance 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.

[Regulation 13] Specification of particular requirements

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

INCOME TAX (OTHER INCENTIVES) REGULATIONS 2018

Table of Amendments

Income Tax (Other Incentives) Regulations 2018 (LN 44 of 2018) commenced on 1 August 2018, as amended by:

Amending Legislation	**Date of Commencement**
Income Tax (Other Incentives) (Amendment) Regulations 2020 (LN 29 of 2020)	1 April 2020
Income Tax (Other Incentives) (Amendment) (No. 2) Regulations 2020 (LN 68 of 2020)	1 August 2020 except for regulation 3 in relation only to FNPF employer additional contributions which is deemed to have come into force on 1 April 2020
Income Tax (Other Incentives) (Amendment) Regulations 2021 (LN 63 of 2021)	1 August 2021
Income Tax (Other Incentives) (Amendment) (No. 2) Regulations 2021 (LN 112 of 2021)	25 October 2021
Income Tax (Other Incentives) (Amendment) Regulations 2022 (LN 31 of 2022)	1 April 2022
Income Tax (Other Incentives) (Amendment) (No. 2) Regulations 2022 (LN 96 of 2022)	1 August 2022

[Regulation 1] Short title and commencement

(1) These Regulations may be cited as the Income Tax (Other Incentives) Regulations 2018.

(2) These Regulations come into force on 1 August 2018.

[Regulation 2] Annual Meeting of the Asian Development Bank Board of Governors

A person is allowed a deduction for 150% of the amount of a cash donation exceeding $10,000 made in a tax year to the Government for the hosting of the 52nd Annual Meeting of the Asian Development Bank Board of Governors in May 2019.

[Regulation 3] Research and development

A company is allowed a deduction for 250% of the amount of expenses incurred for research and development of Information Communications Technology and renewable energy industries.

[Regulation 4] Electric omnibuses

(1) A company is allowed a deduction for 55% of the amount of expenses incurred for investments in electric omnibuses.

(2) In this regulation, "omnibus" has the meaning given in section 2 of the Land Transport Act 1998.

[Regulation 5] Reduction of rent

(1) Subject to subregulation (2), a landlord that reduces the rent payable under a tenancy agreement is allowed a deduction for the aggregate sum of the difference between the rent payable on 26 March 2020 and the rent payable in the deduction period.

(1A) Subject to subregulation (2), a landlord that reduces the rent payable under a tenancy agreement is allowed a deduction of 200% of the aggregate sum of the difference between the rent payable on 31 July 2021 and the rent payable in the period commencing on and from 1 August 2021 and ending on 31 July 2023.
[reg (1A) inserted by LN 63 of 2021, reg 2, effective 1 August 2021, reg amended LN 31 of 2022, effective 1 April 2022]

(2) The tenancy agreement must have taken effect before 26 March 2020 and the landlord must prove to the satisfaction of the CEO that the tenancy agreement has been in effect for the 6 consecutive months before 26 March 2020.

(3) In this regulation—

"**tenancy agreement**" means a tenancy agreement for any premises used for commercial purposes but does not include residential purposes; and

"**deduction period**" means the period commencing on and from 27 March 2020 to 31 December 2021.

[Reg 5 inserted by LN 29 of 2020, reg 2, effective 1 April 2020]

[Regulation 6] COVID-19 pandemic

(1) A person is allowed a deduction for 300% of the amount of a cash donation made in a tax year to a fund established by the Government to respond to the COVID-19 pandemic.

(2) The fund will be used for any of the following—

a) to procure medical supplies and personal protective equipment;
b) to establish and maintain quarantine facilities;
c) to maintain food security;
d) to assist employees affected by the COVID-19 pandemic;
e) to assist industries affected by the COVID-19 pandemic; or
f) any other COVID-19 pandemic related response approved by the Minister.

(3) In this regulation, "**COVID-19**" means the coronavirus disease as named by the World Health Organization on 11 February 2020.".

[Reg 6 inserted by LN 29 of 2020, reg 2, effective 1 April 2020]

[Regulation 7] Corporate bonds

(1) A company is allowed a deduction for 150% of the prescribed costs incurred in a tax year in preparation for listing a corporate bond on the South Pacific Stock Exchange.

(2) A company is allowed a deduction for 150% of the amount of interest paid on a corporate bond.

(3) In this regulation—

"**corporate bond**" means an instrument issued by a company which provides debt security to raise capital for the company; and

"**prescribed costs**" includes accounting fees, investment advisory fees, listing fees, legal fees, company administration and management costs, underwriting costs and special reports costs.

[regulation 7 inserted by LN 68 of 2020; effective 1 August 2020]

[Regulation 8] FNPF employer additional contributions

The total amount allowed as a deduction for a tax year for an employer additional contribution to the Fiji National Provident Fund in respect of an employee is 200% of the employer additional

contribution paid in respect of the employee for the tax year, provided that the additional contribution does not exceed 10% of the total salary or wages paid to the employee by the employer for a month.

[regulation 8 inserted by LN 68 of 2020; effective 1 August 2020, reg 8 amended by LN 63 of 2021, reg 3, effective 1 August 2021]

[Regulation 9] Loans taken for medical treatment

(1) A person who takes a loan from a credit institution or financial institution for the purposes of medical treatment during a tax year is allowed a deduction of—

a) the principal amount of the loan and any interest accrued on the principal amount provided the full principal amount is spent for the purposes of the medical treatment; or
b) only the amount of the principal amount of the loan that is spent for the purposes of the medical treatment and any interest accrued respectively, where the full principal amount has not been spent for the purposes of the medical treatment.

(2) In subregulation (1), expenditure of the principal amount of the loan for the purposes of the medical treatment means the actual cost of medical treatment and any expenditure on accommodation and food, if part of a package with a hospital, and any international travel in relation to the medical treatment.

(3) Subject to subregulation (1), a person applying for a deduction must provide any applicable medical certificate, details of the loan taken from the credit institution or financial institution and receipts to confirm expenditure in relation to the medical treatment.

(4) In this regulation, "**credit institution or financial institution**" means a credit institution or financial institution licensed under the Banking Act 1995.

[regulation 9 inserted by LN 68 of 2020; effective 1 August 2020]

[Regulation 10] Local artists

(1) A hotel or resort carrying on business in Fiji is allowed a deduction for 300% of the amount of any salary or wages paid for the employment of a local artist.

(2) In this regulation, "local artist" means a craftsperson, dancer or musician.

[regulation 10 inserted by LN 68 of 2020; effective 1 August 2020, amended by LN 96 of 2022, effective 1 August 2022]

[Regulation 11] 50th independence day celebrations

A person is allowed a deduction for 150% of the amount of a cash donation made in a tax year to a fund established by the Government for the 50th independence day celebrations.
[reg 11 insrt LN 75 of 2020 reg 2, effective 20 August 2020]

[Regulation 12] Online shopping websites and payment platforms

A person is allowed a deduction for 200% of the amount of expenses incurred for the development or upgrade of an online shopping website with an integrated payment platform.

[reg 12 insrt LN 63 of 2021 reg 4, effective 1 August 2021]

[Regulation 13] Fogging machines

A person is allowed a deduction for 200% of the amount of expenses incurred for any investment in a fogging machine used for the purpose of sanitisation or decontamination.
[reg 13 insrt LN 63 of 2021 reg 4, effective 1 August 2021]

[Regulation 14] Installation, implementation and operation of EFD

(1) A taxpayer who—

a) operates a business; and

b) installs, implements and operates an EFD for the business and any other business operated by the taxpayer under the same Taxpayer Identification Number as the business, is allowed a deduction of 300% of the costs incurred in the exemption period for the installation, implementation and operation of each EFD.

(2) In this regulation—

business	means a business supplying goods and services that is operated by a taxpayer;
EFD	has the meaning given in regulation 28(1) of the Tax Administration (Electronic Fiscal Device) Regulations 2017;
exemption period	means the period commencing on and from 1 August 2021 to 31 December 2023;
taxpayer	has the meaning given in section 2 of the Tax Administration Act 2009; and
Taxpayer Identification Number	has the meaning given in section 2 of the Tax Administration Act 2009.

[reg 14 insrt LN 63 of 2021 reg 4, effective 1 August 2021]

[Regulation 15] Cold storage facility

(1) A person is allowed a deduction for 200% of the amount of expenses incurred for the construction of a cold storage facility in—

a) agriculture areas for agriculture purposes; or
b) rural and maritime areas for agriculture or fishing purposes.

(2) In addition to subregulation (1), a person shall be granted a 10% investment rebate when the construction of a cold storage facility is completed.

(3) In this regulation, "cold storage facility" refers to a permanent structure, room or building mechanically cooled by refrigeration machinery that is used for agriculture or fishing purposes.

[reg 15 insrt LN 112 of 2021 reg 2, effective 25 October 2021]

[Regulation 16] Sponsorship for Fijian Drua team

(1) A person is allowed a deduction for 200% of the amount of a cash sponsorship of not less than $250,000 made to the company that owns and operates the Fijian Drua team.

(2) Any item imported on and from 1 July 2022 to 30 June 2023 for the purpose of the establishment of a unit for the high performance of the Fijian Drua team is exempted from import duty.

[reg 16 inserted LN 31 of 2022, effective 1 April 2022]

[Regulation 17] Student sponsorship

(1) Subject to subregulations (3), (4) and (5), a company is allowed a deduction of 100% of the amount of tuition and living expenses paid for a student's education at a higher education institution.

(2) The deduction applicable for the amount of living expenses of a student is limited to $7,000 per calendar year and must be paid into a bank account held at a commercial trading bank under the name of the student.

(3) The CEO must be provided with documentary evidence to substantiate the amount paid for the student's tuition and expenses.

(4) The deduction under this regulation is not available unless the CEO is satisfied that the sponsorship is provided to a student who is not an associate of a shareholder or director of the company.

(5) The deduction under this regulation is not available where the student is required to repay any amount to the company for the sponsorship of his or her tuition and living expenses.

(6) In this regulation—

"higher education institution" has the meaning given in section 4 of the Higher Education Act 2008; and

"student" means a Fijian citizen who is not a full-time employee of the company during the course of the student's education that is being sponsored.

[reg 17 inserted LN 96 of 2022, effective 1 August 2022]

INCOME TAX (DEPRECIATION RATES) REGULATIONS 2016

Table of Amendments

Income Tax (Depreciation Rates) Regulations 2016 (LN 1 of 2016) commenced on 1 January 2016, as amended by:

Amending Legislation	**Date of Commencement**
Income Tax (Depreciation Rates) (Amendment) Regulations 2019 (LN 54 of 2019)	1 August 2019
Income Tax (Depreciation Rates) (Amendment) Regulations 2020 (LN 30 of 2020)	1 April 2020
Income Tax (Depreciation Rates) (Amendment) (No. 2) Regulations 2020 {LN 63 of 2020)	1 August 2020

[Regulation 1] Short title and commencement

(1) These Regulations may be cited as the Income Tax (Depreciation Rates) Regulations 2016.

(2) These Regulations shall come into force on 1 January 2016.

[Regulation 2] Interpretation

(1) In these Regulations, "Act" means the Income Tax Act 2015.

(2) The words and phrases have the same meaning as under the Act unless the context otherwise requires.

[Regulation 3 Provisional Tax] Depreciation rates

For the purposes of sections 32 and 33 of the Act, the depreciation rates are specified in the Schedule.

[Regulation 4] 100% write-off expenditure

(1) Notwithstanding the provisions of these Regulations, where the cost of a depreciable asset is $10,000 or less, a taxpayer may deduct the full cost of the asset in the tax year it was acquired.

[reg 4(1) amended by LN 63 of 2020 reg 2, effective 1 August 2020]

(2) A deduction under this regulation must not be allowed unless the taxpayer can demonstrate that the asset—

a) is regarded as a whole;
b) is capable of being separately identified; and
c) has a separate function.

(3) Where a taxpayer applies the diminishing value method and the written down value of an asset has reached 5% or less of the cost of the asset at the end of a tax year, the taxpayer must deduct the equivalent sum in that tax year

[reg 4 ins LN 54 of 2019, reg 2, effective 1 August 2019]

SCHEDULE 1

(Regulation 3) - Depreciation Rates

Asset	Depreciation Rate	
	Diminishing value	Straight line
Motor vehicles; buses and minibuses with a seating capacity of less than 30 passengers; goods vehicles with a load capacity of less than 7 tonnes; computers and data handling equipment; and construction equipment and earthmoving equipment	40%	25%
Buses with a seating capacity of 30 or more passengers; goods vehicles designed to carry or pull loads of more than 7 or more tonnes; specialised trucks; tractors; trailers and trailer-mounted containers; and plant and machinery used in manufacturing, mining, or farming operations	30%	20%
Vessels, barges, tugs, and similar water transportation equipment; aircraft; specialised public utility plant, equipment, and machinery; office furniture, fixtures, and equipment; and any depreciable asset not included in another category	20%	12.5%
Buildings		
— Brick, stone or concrete		2.5%
— Timber buildings		4%
— Steel or steel prefabricated		4%
— Steel or steel prefabricated on copra plantations		7%
— Bure		15%
— Other		2.5%

INCOME TAX (ALLOWANCES FOR DEPRECIATION AND IMPROVEMENTS) INSTRUCTIONS 1998

Table of Amendments

Income Tax (Allowances for Depreciation and Improvements) Instructions 1998 (LN 64 of 1998) commenced on 1 January 1998, as amended by:

Amending Legislation	**Date of Commencement**
Allowances for Depreciation and Improvements (Amendment) Instructions 1999 (LN 24 of 1999)	1 January 1999
Income Tax (Allowances for Depreciation and Improvements) (Amendment) Instructions 2001 (LN 8 of 2001)	1 January 2001
Income Tax (Allowances For Depreciation And Improvements) (Amendment) Instructions 2003 (LN 55 of 2003)	1 September 2003
Income Tax (Allowances For Depreciation and Improvements) (Amendment) Instructions 2004 (LN 68 of 2004)	1 January 2004
Income Tax (Allowances for Depreciation and Improvements) (Amendment) Instructions 2006 (LN 27 of 2006)	1 January 2006
Income Tax (Allowance for Depreciation and Improvements) (Budget Amendment) Instructions 2008 (LN 4 of 2009)	1 January 2009
Income Tax (Allowance for Depreciation and Improvements) (Amendment) Instructions 2011 (LN 8 of 2011)	1 January 2011
Income Tax (Allowance for Depreciation and Improvements) (Amendment) Instructions 2012	1 January 2012
Income Tax (Allowances for Depreciation and Improvements) (Budget Amendment) Instructions 2014 (LN 68 of 2014)	1 January 2015
Revised Edition of the Laws (Consequential Amendment) Regulations 2016 (LN 99 of 2016)	1 December 2016
Income Tax (Allowances for Depreciation and Improvements) Regulations 2019 (LN 53 of 2019)	1 August 2019

The Income Tax (Allowances for Depreciation and Improvements) Instructions 1998 has been repealed by Income Tax (Allowances for Depreciation and Improvements) Regulations 2019 (LN 53 of 2019) effective 1 August 2019

INCOME TAX (ALLOWANCES FOR DEPRECIATION AND IMPROVEMENTS) REGULATIONS 2019

Table of Amendments

Income Tax (Allowances for Depreciation and Improvements) Regulations 2019 (LN 53 of 2019) commenced on 1 August 2019, as amended by:

Amending Legislation	**Date of Commencement**
Income Tax (Allowances for Depreciation and Improvements) (Amendment) Regulations 2020 (LN 32 of 2020)	1 April 2020
Income Tax (Allowances for Depreciation and Improvements) (Amendment) Regulations 2022 (LN 94 of 2022)	1 August 2022

[Regulation 1] Short title and commencement

(1) These Regulations may be cited as the Income Tax (Allowances for Depreciation and Improvements) Regulations 2019.

(2) These Regulations come into force on the date of publication, except for—

a) regulation 11(2)*(c)* which is deemed to have come into force on 1 August 2017; and

b) regulation 11(2)(d) which is deemed to have come into force on 1 August 2018.

[Regulation 2] Interpretation

In these Regulations, unless the context otherwise requires—

Agriculture includes copra planting, silviculture, dairy farming, fruit growing, sugar cane growing, animal husbandry, poultry keeping, grazing and market gardening;

commercial means generally concerned with commerce and includes wholesale and retail trading, hotels, offices and the means of distribution, transport and exchange, but does not include industrial undertakings or properties let for residential purposes;

industrial means generally concerned with mills, factories or other similar premises in which the manufacture or processing of raw or partly manufactured materials is carried out and includes mining, land development and road development; and

Information Communications Technology business means services provided by a person which are information communications technology 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.

PART 2—ALLOWANCE FOR CAPITAL EXPENDITURE RELATING TO FUEL ECONOMY AND ALTERNATIVE SOURCES OF ENERGY

[Regulation 3] Minister may approve allowances

(1) For the purposes of encouraging economies in the use of fuel oil and its derivatives, the Minister may, on application by a taxpayer and subject to such conditions as he or she thinks fit, approve the following allowances for depreciation in respect of capital expenditure—

(a) an allowance of 100% of the expenditure incurred in the adaptation of buildings, plant and machinery presently used in a trade or business where such expenditure is considered to be expedient for the purpose of reducing the consumption of electricity and its derivatives or fuel oil and its derivatives, whereby such allowance is a substitute for any other allowance for depreciation;

(b) an initial allowance of 50% of the expenditure incurred for plant and machinery purchased to replace plant and machinery presently used in any trade or business considered to be expedient for the purpose of economising the consumption of electricity; or

(c) either—

i. a fuel economy investment allowance of up to 40% of the expenditure incurred for plant and machinery purchased to replace plant and machinery used in a trade or business, and using an alternative energy to electricity and its derivatives or fuel oil and its derivatives; or

ii. a fuel economy investment allowance of 40% of the expenditure incurred for an asset used in a trade or business which generates energy from a source of energy which is indigenous to and is produced in Fiji,

provided that the fuel economy investment allowance, which is in addition to the initial and annual allowances provided for under these Regulations, must not be approved unless the expenditure is deemed to be expedient for the economic benefit of Fiji and is capable of achieving substantial savings in foreign exchange.

[Regulation 4] Approved allowances

(1) The depreciation and initial allowances referred to in regulation 3 must be deducted by the taxpayer from the gross income for the tax year in which the expenditure is incurred and must also be deducted in calculating the written down value of any asset in respect of which the allowances have been granted.

(2) The fuel economy investment allowance referred to in regulation 3 must be deducted by the taxpayer from the gross income for the tax year in which the expenditure is incurred but must not be

deducted in calculating the written down value of any asset in respect of which the allowance has been granted, provided that, in the event of a sale of any such asset within 5 years of the end of the tax year in which the asset was purchased, the amount of the fuel economy investment allowance must be added back to the gross income of the trade or business for the tax year in which such asset is sold.

[Regulation 5] Approved allowances deemed to be depreciation

It is declared that, for the purposes of section 31 of the Act, any allowance approved under this Part, other than the fuel economy investment allowance, is deemed to be depreciation.

PART 3—ALLOWANCE FOR AGRICULTURAL IMPROVEMENTS

[Regulation 6] Allowance in respect of land improvements

(1) Subject to subregulation (2), the CEO may, for the purpose of arriving at the gross income of a taxpayer for any tax year, allow any taxpayer engaged in any agricultural pursuit a deduction in respect of any sum spent in that tax year by the taxpayer on capital improvements to land if the sum is spent on—

a) the destruction, clearing and removal of timber indigenous to the land;
b) the destruction of weed or plant growth detrimental to the land;
c) the preparation of the land for agriculture;
d) the planting of trees or crops upon the land for the purpose of deriving income;
e) the draining of swamp or low lying lands;
f) combating soil erosion;
g) the construction of levee banks or similar improvements having like uses; or
h) the construction of any work, whether or not included in paragraphs (a) to (g),

which the taxpayer is required to do on the land under section 9 of the Land Conservation and Improvement Act 1953.

(2) The taxpayer may opt to have the expenditure allowed under subregulation (1) during the tax year in which the expenditure is incurred and the next succeeding 4 tax years of income.

(3) The allowances under this Part must not exceed the total allowable expenditure incurred.

[Regulation 7] Allowance in respect of buildings

Notwithstanding the other provisions of this Part, if the CEO is satisfied that the buildings or other construction specified in regulation 8 will be used wholly and exclusively for the agricultural pursuits of the taxpayer, the CEO may, for the purpose of arriving at the gross income of the taxpayer for any tax year, allow the taxpayer a deduction in respect of any sum spent on the buildings or construction—

a) in the tax year in which the expenditure is incurred; or

b) at the option of the taxpayer, in that tax year and the next succeeding 4 tax years of income,

provided that the total amount of the deductions allowed does not exceed the total allowable expenditure incurred.

[Regulation 8] Buildings qualifying for allowance

For the purpose of regulation 7, the following buildings or construction qualify for the allowance—

a) any agricultural building, excluding a dwelling house;

b) any dwelling house provided for an employee provided that the cost of any single dwelling house does not exceed $10,000;

c) the cost of fencing;

d) the cost of a water storage scheme excluding a water storage scheme constructed solely or mainly for the purpose of supplying the taxpayer's dwelling house or the employee's dwelling house or both; and

e) the cost of any irrigation scheme.

[Regulation 9] Allowance as alternative to depreciation

The write-off of capital expenditure under this Part may be claimed and allowed as an alternative to any other depreciation allowances provided under these Regulations.

PART 4—ACCELERATED ALLOWANCE FOR BUILDINGS

DIVISION 1—PRELIMINARY

[Regulation 10] Interpretation

In this Part, unless the context otherwise requires—

building construction project means a project for the construction of a building as provided under regulation 11(2)(e);

capital expenditure, in relation to a building to which this Part applies, does not include—

a) the cost value of the land;109
b) expenditure incurred for any preparation of the site enabling the erection of the building to commence; or
c) the cost of any plant and machinery installed in a building;

company means a company registered under the Companies Act 2015';

independent building contractor means a building contractor not under the control of the taxpayer;

Minister means the Minister responsible for finance;

multi-storey and multi-unit residential building means a residential block of flats consisting of at least 2 floors and 6 units; and

prescribed years means any 5 of the 8 years of income consisting of the tax year in which the building is completed and the 7 immediately succeeding years.

DIVISION 2—APPLICATION OF THIS PART

[Regulation 11] Application for write-off of capital expenditure

(1) Notwithstanding the depreciation allowance for buildings prescribed in the Income Tax (Depreciation Rates) Regulations 2016, a taxpayer may claim a write-off of capital expenditure in respect of the capital expenditure incurred for the construction of a building to which this Part applies.

(2) This Part applies to—

a) buildings which are used for commercial or industrial purposes, the erection of which commenced on or after 1 January 1999 and completed on or before 31 December 2018;

b) buildings which are not designed to be used as a hotel or for residential purposes, the erection of which commenced on or after 1 January 1999 and completed on or before 31 December 2018;

c) buildings which are used for an Information Communications Technology business or agriculture, fisheries and forestry, the erection of which commenced on or after 1 August 2017 and completed on or before 31 December 2028;

d) buildings which are used for greenhouse and nursery buildings, research labs and pack houses, the erection of which commenced on or after 1 August 2018 and completed on or before 31 December 2028; and

e) buildings which are used for commercial or industrial purposes, including multi-storey and multi-unit residential buildings provided that—

   i. the erection of such building commences on or after 1 April 2020; and

   ii. a provisional and final approval is granted for such building under Division 3.

(3) Subregulation (2)(b) does not apply to a multi-storey and multi-unit residential building.

(4) For the avoidance of doubt, if the erection of a building has not been completed on—

(a) 31 December 2018 for the purposes of subregulation (2)(a);

(b) 31 December 2018 for the purposes of subregulation (2)(b); or

(c) 31 December 2028 for the purposes of subregulation (2)(c) and (d),

the cost or value, whichever is less, of the work done at that date will be treated as the capital expenditure.

(5) For the purpose of subregulation (4), the cost or value must be certified by an independent qualified valuer registered in Fiji.

DIVISION 3—COMMERCIAL OR INDUSTRIAL BUILDINGS

[Regulation 11A] Applications

(1) A taxpayer that seeks to claim a write-off of capital expenditure for buildings referred to in regulation 11(2)(e) must apply in writing to the CEO for provisional approval of the building construction project.

(2) The application must contain the following information—

a) the name and address of the taxpayer;

b) if the taxpayer is a company, the registered office of the company and 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 taxpayer;

d) evidence of the taxpayer's ability to complete the building construction project; and

e) estimates of the projected income from the new building.

(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.

[Regulations 11B] Provisional approval

(1) The CEO may—

(a) reject the application; or

(b) grant provisional approval, with or without any conditions.

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

(a) the application is for an investment in a building construction project;

(b) the taxpayer intends to complete and is capable of completing the building construction project.

(3) When considering an application the CEO must take into account the following matters—

(a) the assets and liabilities of the taxpayer;

(b) the nature and extent of the investment;

(c) the capability of the taxpayer to complete the building construction project; and

(d) such other matters as the CEO may consider relevant.

(4) If the CEO grants provisional approval he or she must refer the taxpayer to the Building Permits Evaluation Committee established under section 4(1) of the Regulation of Building Permits Act 2017.

(5) The decision of the CEO under this regulation is final.

(6) Notwithstanding subregulation (5), a person whose application (including partial rejected application) has been rejected may make a new application or amend and resubmit the original application.

(7) If a taxpayer has been granted provisional approval, the taxpayer must commence the erection of the building construction project within 12 months from the date on which the provisional approval is granted.

[Regulation 11C] Final approval

(1) If a taxpayer has been granted provisional approval and has completed the building construction project, the taxpayer may apply to the Minister for final approval.

(2) An application under subregulation (1) 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.

(3) 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 conditions.

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

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

[Regulation 11D] Extension of time

If an applicant to whom provisional approval has been granted is unable to commence the erection of the building construction project within the period specified in regulation 11B(7) 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 such period.

DIVISION 4—CALCULATIONS

[Regulation 12] Calculation of write-off

(1) Subject to this Part, the write-off for the purposes of regulation 11 is to be calculated in accordance with this regulation.

(2) A taxpayer may claim a deduction in calculating gross income arising from—

a) a new trade or business established in the building;

b) an existing trade or business established in the building; or

c) the letting or occupation of the building.

(3) Subject to subregulation (7), the amount of deduction under this regulation in a year of income is is—

(a) for buildings referred to regulation 11(2)(a) and (b), 20%; and

(b) for buildings referred to in regulation 11(2)(c) to (e), 100%,

of the capital expenditure incurred by the taxpayer on the erection of the building". (4) A deduction may be claimed in any of the prescribed years.

(5) Subject to subregulation (2), a taxpayer is not permitted to set off a deduction under this Part against income in that tax year from any other trade, business or employment.

(6) A taxpayer is not permitted to carry forward any loss resulting from a deduction allowed under this Part as a deduction against any other trade, business or employment.

(7) A taxpayer may claim in any prescribed year of income an amount less than the amount of the deduction set out in subregulation (3).

(8) If an amount of capital expenditure is not written off at the end of the last prescribed year, that amount of capital expenditure must be available for write-off in accordance with the normal depreciation rules under section 31 of the Act.

(9) If subregulation (8) applies, depreciation must be based on the written down value at the end of the last prescribed year.

(10) The aggregate amount of capital expenditure which a taxpayer can claim, in respect to any number of buildings, must not exceed $70 million or the cost, whichever is less.

(11) The total depreciation written off under these Regulations must not exceed the amount of the capital expenditure incurred by the taxpayer on the erection of the building in respect of which the allowance has been claimed.

DIVISION 5—OTHER CONDITIONS

[Regulation 13] Conditions

(1) Subject to regulation 14, a taxpayer does not qualify for an allowance under this Part unless the building is erected in accordance with subregulation (2) or (3).

(2) A building may be erected by an independent building contractor under a general building contract.

(3) If a building is not erected by an independent building contractor under a general building contract—

a) the cost or value of it must be certified by an independent qualified valuer registered in Fiji; and

b) the cost of construction of the building must be approved by the CEO.

[Regulation 14] Independent building contractors controlled by non-resident

If an independent building contractor is under the direct or indirect control of a non-resident, the independent building contractor must have had at least 10 employees from Fiji between 1 January 1999 and 31 December 2028.

[Regulation 15] Sale of shares in company with qualifying building

If—

a) shares in a controlled company are sold or transferred, directly or indirectly; and

b) that company has as its principal asset a building which qualifies or has qualified for an allowance under this Part,

a proportion, determined by the CEO, of the consideration received or recoverable for the sale of the shares is deemed to be consideration for the building or part of the building.

[Regulation 16] Consequences of sale of shares

If regulation 15 applies, the vendor of the share is deemed to be the owner of the building or part of the building and Division 5 of Part 2 of the Act applies.

[Regulation 17] Sale of interest in partnership building

If—

a) an interest in a partnership is sold, directly or indirectly; and

b) that partnership has as its principal asset a building which qualifies or has qualified for an allowance under this Part,

a proportion, determined by the CEO, of the consideration received or recoverable for the sale of the interest is deemed to be consideration for the building or part of the building.

[Regulation 18] Consequences of sale of interest

If regulation 17 applies, the partner who has sold the interest in the partnership is deemed to be the owner of the building or part of the building and Division 5 of Part 2 of the Act applies.

DIVISION 6—MISCELLANEOUS

[Regulation 19] Written-off amounts deemed to be depreciation

For the purposes of section 31 of the Act, an amount written off under this Part is deemed to be depreciation.

[Regulation 20] Allowance as an alternative to other depreciation allowances

The allowance permitted under this Part is an alternative to any other depreciation allowance provided under section 31 of the Act.

PART 5—ACCELERATED ALLOWANCE FOR RENEWABLE

ENERGY PLANT AND WATER STORAGE FACILITY

[Regulation 21] Interpretation

(1) For the purposes of this Part—

BRAS means Broadband Remote Access Server;

CDMA means Code Division Multiple Access;

DNN means Deep Neural Network;

DSLAM means Digital Subscriber Line Access Multiplexer;

EVDO means Evolution Data Optimised;

IP means Internet Protocol;

IPPABX means Internet Protocol Private Branch Exchange;

LAN means Local Area Network;

NGN means to New Generation Network;

renewable energy plant refers to biofuel generators, solar water pumps, hydropower systems or those that are based on the following wind, wave and solar technology—

a) biofuel generator that is solely operated by biofuel;
b) solar water pumps consisting of—
    i. solar panels Wind Energy Generation System (WEGS) assemblies;
    ii. hydraulic pump; and
    iii. inverter;
c) hydro power system consisting of—
    i. turbine;

ii. generator containing electrical alternator;
iii. pen stock;
iv. control system containing parts such as switch board and electrical accessories;
v. data loggers;
vi. current meters; and
vii. transformers;

d) wind technology (such as wind monitoring and wind farms) consisting of—
i. tower with accessories;
ii. wind turbine;
iii. control system;
iv. data loggers;
v. pyranometer;
vi. anemometer;
vii. wind direction vane; and
viii. sensor cables;

e) wave technology consisting of—
i. wave energy generating system;
ii. wave sensor or gauge;
iii. raft assembly;
iv. power transformer;
v. tower and beacon; and
vi. reaction plane assembly;

f) solar technology (such as a solar home system) consisting of—
i. solar panels;
ii. double ended lights;
iii. charge, discharge, controller;
iv. prepayment meter;
v. switchers;
vi. inverter;
vii. deep cycle battery; and

viii. electrical accessories;

SDH means Synchronous Digital Hierarchy;

UPS means Uninterruptable Power Supply; and

water storage facility means any storage facility that has the capacity to store over 3,785.5 litres of water.

(2) An application for a write-off may only be made up to 31 December 2028.

[Regulation 22] Renewable energy plant and water storage facility

Notwithstanding any provision under these Regulations, a taxpayer may apply to claim 100% write-off in the tax year of expenditure in respect of the capital expenditure incurred for the installation of a renewable energy plant or water storage facility.

PART 6—ACCELERATED ALLOWANCE FOR INFRASTRUCTURE IN FIXED LINE NEW GENERATION NETWORK

[Regulation 23] Infrastructure in fixed line NGN

(1) Notwithstanding any provision under these Regulations, a taxpayer may apply to claim 100% write-off in the tax year of expenditure, from 2009 to 2028, in respect of the capital expenditure incurred for the installation of infrastructure in a fixed line NGN facility.

(2) For the purposes of this Part, "fixed line NGN" means—

a) fibre optic cables and electronic equipment attached to fibre optic cables, including the cost of incidental installation materials, ducts and cost of civil works;

b) NGN, broadband or data distribution systems including head end equipment;

c) IP based wireless access systems including CDMA, EVDO base stations and cards used for providing customer access for NGN, broadband and data services;

d) equipment, development and acquisition cost of content and platforms that utilise NGN, broadband or data services;

e) operational support systems for planning, managing, provisioning and monitoring networks that provide NGN, broadband or data services;

f) business support systems that are used for billing and customer support of network services that provide NGN, broadband or data services;

g) LAN switches, routers, soft switches, DNN networks, DSLAM, BRAS, media gateways and multi access devices and cabinets, racks, service and applications platforms and equipment that provide switching, routing and application functionality for NGN, broadband or data services;

h) transport multiplexers including fibre optic and SDH microwave equipment, mux terminal blocks, and broadband wireless access technologies and terminal equipment;

i) undersea fibre optic cables enabling the provision of NGN, broadband or data services within Fiji or internationally, electronics attached to the cables, cost and civil works including installation, landing stations and international bandwidth capacity of cable and satellite;

j) equipment, public access terminals and customer premises equipment including IPPABXs, applications software and terminals customers utilise to access NGN, broadband or data services and applications on the network;

k) UPS, rectifiers, for NGN, broadband and data network equipment and power equipment for cable landing stations;

l) test equipment, tools, test labs and demonstration facilities for NGN, broadband and data equipment; and

m) equipment and civil works and power for internet data centres including storage area networks.

[Regulation 24] Application for write off for manufacturing purposes

(1) Notwithstanding any provision under these Regulations, a taxpayer may apply to claim 100% write-off in the tax year of expenditure, in respect of the capital expenditure incurred for the purchase of new plant and machinery, for manufacturing purposes.

(2) An application for a write-off may only be made up to 31 December 2028.

PART 6A – ACCELERATED ALLOWANCE FOR CAPITAL EXPENDITURE RELATING TO ELECTRIC VEHICLES

[Regulation 24A] Accelerated allowance for capital expenditure relating to electric vehicles

(1) Notwithstanding any other provision in these Regulations, a taxpayer may apply to claim 100% write-off in the tax year of expenditure, in respect of the capital expenditure incurred for the purchase of an electric vehicle used for the taxpayer's business.

(2) In this Part, "electric vehicle" means a vehicle imported under customs tariff codes 8701.24.10, 8701.24.90, 8702.40.11, 8702.40.12, 8702.40.19, 8702.40.21, 8702.40.22, 8702.40.29, 8703.80.10, 8703.80.11, 8703.80.14, 8703.80.15, 8703.80.18, 8703.80.19, 8703.80.22, 8703.80.23, 8703.80.26, 8703.80.29, 8704.60.00 and 8711.60.00.".

[Part 6A inserted by LN 94 of 2022, effective 1 August 2022]

PART 7—MISCELLANEOUS

[Regulation 25] Revocation

The Income Tax (Allowances for Depreciation and Improvements) Instructions 1998 is revoked.

[Regulation 26] Consequential Amendments

The Income Tax (Film-making and Audio-visual Incentives) Regulations 2016 is amended in regulations 71(6) and 80F(e) and (f) by deleting "Income Tax (Allowances for Depreciation and Improvements) Instructions 1998" and substituting "Income Tax (Allowances for Depreciation and Improvements) Regulations 2019".

INCOME TAX (WAREHOUSE CONSTRUCTION INCENTIVES) REGULATIONS 2019

Table of Amendments

Income Tax (Warehouse Construction Incentives) Regulations 2019 (LN 57 of 2019) commenced on 1 August 2019, as amended by:

Amending Legislation	Date of Commencement

PART 1—PRELIMINARY

[Regulation 1] Short title and commencement

(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.

[Regulation 2] Laws to be read together

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.

[Regulation 3] Interpretation

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.

[Regulation 4] Objective

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

PART 2—WAREHOUSE BUSINESS INVESTMENT PACKAGE

[Regulation 5] Power to grant warehouse business investment package

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.

[Regulation 6] Provisional approval

(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.

[Regulation 7] Application for warehouse business investment

(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.

[Regulation 8] Effect of provisional approval

(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.

[Regulation 9] Completion of warehouse business investment project

(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.

[Regulation 10] Extension of time for completion

(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.

[Regulation 11] Final approval if completed

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.

[Regulation 12] Effect of final approval

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.

[Regulation 13] Revocation of warehouse business investment package

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

[Regulation 14] Investment allowance

(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.

[Regulation 15] Power to approve applications

(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.

[Regulation 16] Application for provisional approval

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.

[Regulation 17] Completion of project

(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.

[Regulation 18] Final approval if completed

(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).

[Regulation 19] Extension of time for completion

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.

[Regulation 20] Procedure on sale of warehouse

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

[Regulation 21] Applicability of incentives

(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.

[Regulation 22] Revocation of package

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.

[Regulation 23] Specification of particular requirements

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

INCOME TAX (RETIREMENT VILLAGE INCENTIVES) REGULATIONS 2019

Table of Amendments

Income Tax (Retirement Village Incentives) Regulations 2019 (LN 61 of 2019) commenced on 1 August 2019, as amended by:

Amending Legislation	Date of Commencement

PART 1—PRELIMINARY

[Regulation 1] Short title and commencement

(1) These Regulations may be cited as the Income Tax (Retirement Village Incentives) Regulations 2019.

(2) These Regulations come into force on 1 August 2019.

[Regulation 2] 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.

[Regulation 3] Interpretation

3. In these Regulations unless the context otherwise requires—

company means a company registered under the Companies Act 2015;

exempt goods means raw materials, plant, machinery and equipment (including spare parts) required for the establishment of a retirement village business;

Minister means the Minister responsible for finance;

project means the construction of a new retirement village;

provisional approval means a provisional approval granted under Part 2;

retirement village means a retirement village or aged care facility constructed with facilities, services and amenities for retirement including facilities for health services;

retirement village investment means a project with a capital investment of $250,000 or more, and the project commences on or after 1 August 2019 and the retirement village is completed within 24 months from the date the provisional approval is granted; and

retirement village investment package means the incentives under Part 2.

PART 2—RETIREMENT VILLAGE INVESTMENT PACKAGE

[Regulation 4] Power to grant retirement village investment package

The Minister or CEO, as applicable, may grant or refuse to grant a retirement village investment package to a company which has completed a project and has complied with this Part.

[Regulation 5] Provisional approval

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

a) reject the application for provisional approval for a retirement village 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 the Minister is satisfied that—

a) the application is for a retirement village investment; and

b) the company intends to complete and is capable of completing such retirement village investment.

(3) When considering an application for a retirement village 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 retirement village investment;
c) whether adequate amenities would be provided as part of the proposed retirement village investment;
d) such other matters as the Minister may consider relevant to the desirability or otherwise of the retirement village 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.

[Regulation 6] Application for retirement village investment

(1) A company ("applicant") may, in writing, apply to the CEO for provisional approval to carry out a retirement village 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 project site;
e) the number and description of proposed rooms and beds and the health and toilet facilities for the project;
f) the detailed description of all proposed amenities;
g) a sketch plan showing in sufficient detail the site and layout of the proposed project;
h) an estimate of the total cost of the project;
i) the description and an estimate of the cost, of each individual stage of construction and details of the proposed timetable for completion of the project;
j) details of the proposed method of financing the project;
k) evidence of the company's ability to complete the retirement village investment;
l) estimates of the projected income from the new retirement village; and
m) the nature and extent of the retirement village investment.

(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 retirement village investment package.

[Regulation 7] Effect of provisional approval

(1) When a provisional approval is granted, all exempt goods, imported within the period specified in the definition of "retirement village investment" under regulation 3, by or on behalf of the company and used in the carrying out of the retirement village 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.

[Regulation 8] Completion of retirement village investment

(1) If a company has been granted provisional approval, the company must complete the project 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;

b) a completion certificate from the local authority; and

c) a final plan showing the site, layout and surrounding areas of the retirement village.

(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 conditions.

(5) Subject to regulations 9 and 10, 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 CEO of the decision to reject or grant the application.

[Regulation 9] Extension of time for completion

(1) If a company to which provisional approval has been granted is unable to complete its retirement village investment within the period specified in the definition of "retirement village 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 retirement village 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 7 during the extended period.

[Regulation 10] Final approval if completed

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 the project; and

b) the retirement village is fully operational.

[Regulation 11] Effect of final approval

Notwithstanding anything contained in these Regulations, 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.

[Regulation 12] Revocation of retirement village investment package

The Minister may revoke any retirement village 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.

[Regulation 13] Specification of particular requirements

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

INCOME TAX (MANUFACTURE OF PHARMACEUTICAL PRODUCTS INVESTMENT PACKAGE) REGULATIONS 2019

Table of Amendments

Income Tax (Manufacture of Pharmaceutical Products Investment Package) Regulations 2019 (LN 64 of 2019) commenced on 1 August 2019, as amended by:

Amending Legislation	Date of Commencement

PART 1—PRELIMINARY

[Regulation 1] Short title and commencement

(1) These Regulations may be cited as the Income Tax (Manufacture of Pharmaceutical Products Investment Package) Regulations 2019.

(2) These Regulations come into force on 1 August 2019.

[Regulation 2] Laws to be read together

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.

[Regulation 3] Interpretation

In these Regulations, unless the context otherwise requires—

company means a company registered under the Companies Act 2015;

exempt goods means raw materials, plant, machinery and equipment (including spare parts) required for the establishment of a business for the manufacture of pharmaceutical products;

manufacture includes the process of refining, manipulating and mixing a pharmaceutical product, including in its a raw state, but does not include the process that is carried out by a pharmacist in the lawful practice of his or her profession, and includes an existing manufacture of pharmaceutical products;

manufacture of pharmaceutical products investment means the development of a building or buildings for the manufacture of pharmaceutical products 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 building is completed within 24 months from the date the provisional approval is granted;

manufacture of pharmaceutical products investment package means the various exemptions, concessions and subsidies given under a manufacture of pharmaceutical products investment;

manufacturer means a person who manufactures pharmaceutical products and includes a person manufacturing pharmaceutical products as at 1 August 2019;

Minister means the Minister responsible for finance;

pharmaceutical product means a substance or product, not being an instrument, apparatus or appliance that is represented to achieve, or likely to achieve, its principal intended action by pharmacological, chemical, immunological or metabolic means in or on the body of a human or animal and that is—

a) represented in any way to be, or that is, whether because of the way it is presented or for any other reason, likely to be taken to be for—

   i. therapeutic use;

   ii. use as an ingredient or component in the manufacture of medicines;

   iii. use as a container or part of a container for medicines of a kind referred to in subparagraph (i) or (ii); or

b) of substances or products, the sole or principal use of which is or ordinarily is a—

   i. therapeutic use; or

   ii. use of a kind referred to in paragraph (a)(ii) or (iii) and includes substances and products under the Medicinal Products Act 2011, but does not include—

      A. substances or products declared under the Medicinal Products Act 2011 not to be medicinal products or not to be medicinal products when used, advertised or presented for supply in a specified way if the substances or products are used, advertised or presented for supply in that way;

      B. food;

      C. any herbal drug or medicine, or a homoeopathic medicine; or

      D. prohibited substances; and

provisional approval means a provisional approval granted under Part 2.

[Regulation 4] Objective

The purpose of these Regulations is to encourage investments in the manufacture of pharmaceutical products by the provision of financial inducements.

PART 2—MANUFACTURE OF PHARMACEUTICAL PRODUCTS INVESTMENT PACKAGE

[Regulation 5] Power to grant manufacture of pharmaceutical products investment package

The Minister or CEO may grant or refuse to grant a manufacture of pharmaceutical products investment package to a company which has completed a manufacture of pharmaceutical products investment and has complied with this Part.

[Regulation 6] Provisional approval

(1) The Minister or CEO, as applicable, may after consulting the Minister responsible for health and medical services—

a) reject the application for provisional approval for a manufacture of pharmaceutical products 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 the Minister is satisfied that—

a) the application is for a manufacture of pharmaceutical products investment;

b) the company intends to complete and is capable of completing such manufacture of pharmaceutical products investment; and

c) the manufacture of pharmaceutical products investment will benefit the economic development of Fiji.

(3) When considering an application for a manufacture of pharmaceutical products 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 manufacture of pharmaceutical products investment;

c) whether the company is approved by the Fiji Pharmacy Board;

d) such other matters as the Minister or CEO may consider relevant to the desirability or otherwise of the manufacture of pharmaceutical products investment for Fiji and the capability of the company to complete it.

(4) The decision of the Minister or the 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.

[Regulation 7] Application for the manufacture of pharmaceutical products investment

(1) A company ("applicant") may, in writing, apply to the CEO for provisional approval to carry out a manufacture of pharmaceutical products 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 manufacture of pharmaceutical products investment; and

e) estimates of the projected income from the new pharmaceutical manufacturing business.

(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 manufacture of pharmaceutical products investment.

[Regulation 8] Effect of provisional approval

(1) When a provisional approval is granted, all exempt goods, imported within the period specified in the definition of "manufacture of pharmaceutical products investment" under regulation 3, by or on behalf of the company and used in the carrying out of the manufacture of pharmaceutical products 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.

[Regulation 9] Completion of manufacture of pharmaceutical products investment package

(1) If a company has been granted provisional approval, the company must complete the manufacture of pharmaceutical products investment within 24 months from the date on 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 manufacture of pharmaceutical products investment, 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 manufacture of pharmaceutical products investment;

b) a completion certificate from the local authority; and

c) a final plan showing the site, layout and surrounding area for the manufacturing of pharmaceutical products.

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

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 manufacture of pharmaceutical products 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 health and medical services; and

c) the CEO.

[Regulation 10] Extension of time for completion

(1) If a company to which provisional approval has been granted is unable to complete its manufacture or pharmaceutical products investment within the period specified in the definition of "manufacture of pharmaceutical products 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 manufacture of pharmaceutical products 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.

[Regulation 11] Final approval if completed

An application for final approval shall not be granted unless—

a) the Minister, after consulting the Minister responsible for health and medical services, is satisfied that the company has in all respects completed the requirements of a manufacture of pharmaceutical products investment; and

b) the factory for the manufacture of pharmaceutical products is fully operational.

[Regulation 12] Effect of final approval

Notwithstanding anything contained in these Regulations, if the Minister gives final approval to the application, the income of a person derived from a new or existing activity in manufacturing pharmaceutical products as approved by the CEO from 1 August 2019 is exempt income as follows—

a) in the case of a capital investment from $250,000 to $1,000,000, for a period of 5 consecutive tax years;

b) in the case of a capital investment from $1,000,001 to $2,000,000, for a period of 7 consecutive tax years; and

c) in the case of a capital investment of more than $2,000,000, for a period of 13 consecutive tax years.

[Regulation 13] Revocation of manufacture of pharmaceutical products investment package

The Minister may revoke any manufacture of pharmaceutical products 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.

INCOME TAX (SUBDIVISION OF LAND INCENTIVES) REGULATIONS 2020

Table of Amendments

Income Tax (Subdivision of Land Incentives) Regulations 2020 (LN 71 of 2020) commenced on 1 August 2020, as amended by:

Amending Legislation	Date of Commencement
Income Tax (Subdivision of Land Incentives) (Amendment) Regulations 2021 (LN 10 of 2021)	11 February 2021
Income Tax (Subdivision of Land Incentives) (Amendment) (No. 2) Regulations 2021 (LN 35 of 2021)	11 February 2021
Income Tax (Subdivision of Land Incentives) (Amendment) (No. 3) Regulations 2021 (LN 81 of 2021)	1 August 2021
Income Tax (Subdivision of Land Incentives) (Amendment) Regulations 2022 (LN 29 of 2022)	3 April 2022

PART 1—PRELIMINARY

[Regulation 1] Short title and commencement

(1) These Regulations may be cited as the Income Tax (Subdivision of Land Incentives) Regulations 2020.

(2) These Regulations come into force on 1 August 2020.

[Regulation 2] Interpretation

In these Regulations, unless the context otherwise requires—

"**applicant**" means a person who applies for the tax exemption on developer profits under Part 2;

"**application**" means an application for the tax exemption on developer profits under Part 2;

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

"**final approval**" means the approval granted by the Minister under regulation 8;

"**Minister**" means the Minister responsible for finance;

"**project**" means a project—

a) for the subdivision of land for residential or commercial purposes and includes all the work undertaken to acquire an approval for the subdivision of land under the Subdivision of Land Act 1937; or

b) for the subdivision and development of land for the creation of units for tourism purposes and includes all the work undertaken for the purpose of creating units;

"**provisional approval**" means the approval granted by the CEO under regulation 5;

"**subdivision of land investment**" means a project with the capital investment specified in regulation 3(1) where the project commences within 24 months from the date the provisional approval is granted;

"**subdivision of land investment pa**ckage" means the tax exemption on developer profits under Part 2; and

"units" means units under the Unit Titles Act 1985 or under a legal arrangement for a similar type of property ownership.

PART 2—SUBDIVISION OF LAND INCENTIVE

[Regulation 3] Investment allowance

[Repealed]

[Reg 3 deleted by LN 81 of 2021, reg 3, effective 1 August 2021]

[Regulation 4] Power to approve applications

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

(a) reject the application;

(b) approve the application, with or without any conditions; 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 applicant;

(b) the nature and extent of the project; and

(c) such other matters the Minister 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.

[reg 4(3) amended LN 81 of 2021, reg 5. Effective 1 August 2021]

[Regulation 5] Application for provisional approval

A person wishing to carry out a project may apply in writing before 31 July 2024 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 location and description of the land;

(d) a sketch plan showing the proposed project;

(e) the estimated cost of the project;

(ea) the proposed timetable for the completion 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.

[Regulation 6] Effect of provisional approval

(1) When a provisional approval is granted, all capital goods imported by or on behalf of the applicant and used in the carrying out of the subdivision of land investment, is exempt from all duties payable in respect of their importation.

(2) Before capital goods are allowed to be 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 Minister, 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.

[Regulation 7] Commencement of project

(1) Any applicant who has been granted provisional approval must—

a) commence the project within 24 months from the date of provisional approval;
b) provide a report on the progress of the project every 6 months from the date of provisional approval; and
c) complete the project in accordance with the proposed timetable

under regulation 5(ea). (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 Director of Town and Country Planning; and

(c) a final plan showing the site, layout and surrounding areas of the project.

(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.

[Regulation 8] Final approval if completed

(1) An application for final approval must 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).

[Regulation 9] Effect of final approval

If the Minister grants final approval, the income of the applicant is to be exempt from tax on developer profits derived from the subdivision of land investment.

[reg 9 amended LN 81 of 2021, reg 5. Effective 1 August 2021]

[Regulation 10] Extension of time for commencement

If an applicant to whom provisional approval has been granted is unable to commence the project within the period specified in regulation 7(1) 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.

[Regulation 11] Application of the subdivision of land investment package

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 subdivision of land investment package.

[Regulation 12] Revocation of subdivision of land investment package

The Minister or CEO, as applicable, may revoke the subdivision of land investment package if the applicant 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 any written law relating to taxation, customs or excise.

[Regulation 13] Specification of particular requirements

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

INCOME TAX (GOVERNMENT BUILDING INVESTMENT INCENTIVES) REGULATIONS 2020

Table of Amendments

Income Tax (Government Building Investment Incentives) Regulations 2020 (LN 72 of 2020) commenced on 1 August 2020, as amended by:

Amending Legislation	Date of Commencement

PART 1—PRELIMINARY

[Regulation 1] Short title and commencement

(1) These Regulations may be cited as the Income Tax (Government Building Investment Incentives) Regulations 2020.

(2) These Regulations are deemed to have come into force on 1 August 2020.

[Regulation 2] Interpretation

In these Regulations, unless the context otherwise requires—

"**applicant**" means a person who applies for provisional approval under Part 2;

"**application**" means an application for provisional approval under Part 2;

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

"**final approval**" means the approval granted by the Minister under regulation 7;

"**Minister**" means the Minister responsible for finance;

"**project**" means a project on or after 1 August 2020 for the establishment, including the construction, renovation or refurbishment, of a building to be used by the Government or an entity approved by the Government;

"**provisional approval**" means the approval granted by the Minister under regulation 4; and

"**Government building investment incentive**" means the exemption of income tax on rent derived from the lease of a building to the Government or an entity approved by the Government.

PART 2—GOVERNMENT BUILDING INVESTMENT INCENTIVE

[Regulation 3] Power to approve applications

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

a) the assets and liabilities of the applicant;

b) the nature and extent of the project;

c) evidence that the Government or an entity approved by the Government has given the applicant a written undertaking to use the building on completion of the project; and

d) such other matters the Minister may consider relevant to the desirability of the project and the capability of the applicant to complete it.

(3) The decision of the Minister under this regulation is final.

(4) Notwithstanding subregulation (3), a person whose application, including a partially rejected application, has been rejected may make a new application or amend and resubmit the original application.

[Regulation 4] Application for provisional approval

A person wishing to carry out a project may apply in writing to the Minister for provisional approval of the proposed project, and the 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 location and description of the proposed building site;

d) a sketch 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) evidence of the person's ability to undertake the project;

h) details of the proposed method of financing the project;

i) estimates of the projected rental income of the person;

j) evidence that the Government or an entity approved by the Government has given the person a written undertaking to use the building on completion of the project; and

k) any other information the Minister may require.

[Regulation 5] Effect of provisional approval

(1) When a provisional approval is granted, all capital goods, imported by or on behalf of the applicant and used in the carrying out of the project, is exempt from all duties payable in respect of their importation.

(2) Before capital goods are allowed to be 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 Minister, 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.

[Regulation 6] Completion of project

(1) Any applicant who has been granted provisional approval must complete the project in accordance with the terms agreed to by the applicant and the Government or entity approved by the Government.

(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 final plan showing the site, layout and surrounding areas of the project; and

c) a certificate of completion and permit to occupy issued by a building surveyor in accordance with the Public Health (Building) Regulations 1959, as applicable.

(4) Subject to regulation 7, 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.

[Regulation 7] Final approval if completed

(1) An application for final approval must 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 applicant in writing of the decision made under subregulation (1).

[Regulation 8] Effect of final approval

If the Minister grants final approval, the rental income derived from the lease of the building to the Government or entity approved by the Government is to be exempt from income tax.

[Regulation 9] Application of the Government building investment incentive

If the Minister has granted a provisional or final approval in relation to a project, the applicant is only entitled to the Government building investment incentive if the building is rented to the Government or an entity approved by the Government.

[Regulation 10] Revocation of Government building investment incentive

The Minister may revoke the Government building investment incentive if the applicant 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 any written law relating to taxation, customs or excise.

[Regulation 11] Specification of particular requirements

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

INCOME TAX (RECYCLING BUSINESS INVESTMENT INCENTIVES) REGULATIONS 2021

Table of Amendments

Income Tax (Recycling Business Investment Incentives) Regulations 2021 (LN 61 of 2021) commenced on 1 August 2021, as amended by:

Amending Legislation	Date of Commencement

PART 1—PRELIMINARY

[Regulation 1] Short title and commencement

(1) These Regulations may be cited as the Income Tax (Recycling Business Investment Incentives) Regulations 2021.

(2) These Regulations come into force on 1 August 2021.

[Regulation 2] Interpretation

(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;

"**Minister**" means the Minister responsible for finance;

"**provisional approval**" means the approval granted by the Minister under regulation 4;

"**recycling business investment incentive**" means the duty exemption under regulation 5 and the exemption of tax on income under regulation 9 for a recycling business established on or after 1 August 2021;

"**project**" means a project on or after 1 August 2021 for the establishment of a new recycling business building, factory or plant that meets the minimum investment threshold under regulation 9 including the construction, renovation or refurbishment of a building, factory or plant;

"**recycled product**" means a product, material or substance created through the recycling process;

"**recycling process**" means any activity the principal result of which is waste serving a useful purpose, whether for the original or other purposes, by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil a particular function;

"**recycling**" means any recycling process by which waste materials are reprocessed into a recycled product; and

"**waste**" has the meaning given to that term under section 2 of the Environment Management Act 2005.

PART 2—RECYCLING BUSINESS INVESTMENT INCENTIVE

[Regulation 3] Application for provisional approval

(1) A company ("applicant") may apply in writing to the Minister 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 their percentage of ownership of shares in the company;

c) a current statement of all assets and liabilities of the company;

d) the details of the recycled product and the recycling process to be undertaken to create the recycled product;

e) the location and description of the proposed building, plant or factory site;

f) a sketch plan showing the project;

g) the estimated cost of the project;

h) 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;

i) evidence of the company's ability to undertake the project;

j) details of the proposed method of financing the project;

k) estimates of the projected income from the project;

l) a letter from the Department of Environment confirming—

   i. that the screening process for an Environmental Impact Assessment has been undertaken and there is no need for an Environmental Impact Assessment to undertake the project; or

   ii. that an Environmental Impact Assessment has been undertaken and the project has been approved by the Department of Environment; and

m) any other information the Minister may require.

[Regulation 4] Power to approve applications

(1) The Minister in concurrence with the Minister responsible for environment 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 Minister 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 findings of the Environmental Impact Assessment, if applicable;

e) the sustainability of the project and the proposed recycling process;

f) the potential contribution of the project and the proposed recycling business to the economy;

g) whether the recycled product meets an applicable national or international quality standard for such product as may be determined by the Minister in consultation with the Minister responsible for industry and trade; and

h) such other matters the Minister may consider relevant to the desirability of the project and the capability of the applicant to complete it.

(3) The decision of the Minister under this regulation is final.

(4) Notwithstanding subregulation (3), an applicant whose application has been rejected, including a partially rejected application, may make a new application or amend and resubmit the original application.

[Regulation 5] Effect of provisional approval

(1) When a 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 306 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 Minister, 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.

[Regulation 6] Completion of project

(1) An applicant that has been granted provisional approval must complete the project within 24 months from the date 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) proof of the successful production of the recycled product;

d) proof that the recycled product meets the applicable standard referred to in regulation 4(2)*(g)*;

e) the applicable permit under the Environment Management (Waste Disposal and Recycling) Regulations 2007; and

f) a certificate of completion and permit to occupy issued by a building surveyor in accordance with the Public Health (Building) Regulations 1959, as applicable.

[Regulation 7] Extension of time for completion

(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 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 for by regulation 5 during the extended period.

[Regulation 8] Final approval if completed

(1) An application for final approval must not be granted unless—

a) the applicant holds the applicable permit under the Environment Management (Waste Disposal and Recycling) Regulations 2007;

b) 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, as applicable;

c) the Minister is satisfied that the applicant has in all respects completed the requirements of the project; and has complied with any condition upon which provisional approval was granted;

d) the Minister is satisfied that the recycled product meets the applicable standard referred to in regulation 4(2)*(g)*; and

e) the project is fully completed.

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

[Regulation 9] Effect of final approval

From the first day of commercial operation of the recycling business or such other date as the Minister may specify, final approval entitles a company to the following tax exemption on the income of the recycling business—

a) in the case of a capital investment from $250,000 to $500,000, for a period of 3 consecutive fiscal years;

b) in the case of a capital investment from $500,001 to $2,000,000, for a period of 5 consecutive fiscal years;

c) in the case of a capital investment from $2,000,001 to $5,000,000, for a period of 10 consecutive fiscal years;

d) in the case of a capital investment from $5,000,001 to $10,000,000, for a period of 15 consecutive fiscal years; or

e) in the case of a capital investment of more than $10,000,000, for a period of 20 consecutive fiscal years.

[Regulation 10] Revocation of recycling business investment incentive

The Minister may revoke the recycling business investment incentive if the applicant—

a) breaches any condition of provisional or final approval;

b) fails to produce a recycled product to the standard referred to in regulation 4(2)*(g)*;

c) fails to comply with any of the requirements of these Regulations; or

d) is convicted of an offence under any written law relating to taxation, customs or excise,

and any tax or duty foregone is payable with the appropriate penalties.

[Regulation 11] Transferability of package

If the company in respect of which a recycling business investment incentive 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 recycling business investment incentive.

[Regulation 12] Specification of particular requirements

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

INCOME TAX (SUBMARINE NETWORK CABLE INVESTMENT INCENTIVES) REGULATIONS 2021

Table of Amendments

Income Tax (Submarine Network Cable Investment Incentives) Regulations 2021 (LN 77 of 2021) commenced on 1 August 2021, as amended by:

Amending Legislation	Date of Commencement

PART 1—PRELIMINARY

[Regulation 1] Short title and commencement

(1) These Regulations may be cited as the Income Tax (Submarine Network Cable Investment Incentives) Regulations 2021.

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

[Regulation 2] Interpretation

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

"**cable landing station**" means the first point at which the submarine network cable is connected or terminated in Fiji;

"**capital goods**" means raw materials, capital equipment, plant, machinery, spare parts and any other goods employed in the submarine network cable business 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;

"**Minister**" means the Minister responsible for finance;

"**project**" means a project on or after 1 August 2021 for the establishment of a new submarine network cable business including the construction, renovation or refurbishment of a building, factory or plant into a cable landing station or other associated infrastructure development;

"**provisional approval**" means the approval granted by the CEO under regulation 4;

"**submarine network cable**" means an integrated system of communication cables laid on or below the floor of the ocean or other body of water, that collectively provides data transfer from one land-based location to another;

"**submarine network cable business**" means a business investing in submarine network cables and any associated infrastructure development; and

"**submarine network cable investment incentive**" means the duty exemption under regulation 5 and the exemption of tax on income under regulation 9 for a submarine network cable business established on or after 1 August 2021.

PART 2—SUBMARINE NETWORK CABLE INVESTMENT INCENTIVE

[Regulation 3] Application for provisional approval

(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 proposed project;

(f) the estimated cost of the proposed project;

(g) if the proposed 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 proposed project;

(i) details of the proposed method of financing the proposed project;

(j) estimates of the projected income from the proposed project;

(k) a letter from the Department of Environment confirming—

(i) that the screening process for an Environmental Impact Assessment has been undertaken and there is no need for an Environmental Impact Assessment to undertake the proposed project; or

(ii) that an Environmental Impact Assessment has been undertaken and the proposed project has been approved by the Department of Environment;

(l) any other relevant permit, licence, certificate, approval or authorisation for submarine network cable business, construction or development required under any written law, as and when applicable; and

(m) any other information the CEO may require.

[Regulation 4] Power to approve applications

(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 proposed project;

(b) the assets and liabilities of the applicant;

(c) the nature and extent of the proposed project;

(d) the findings of the Environmental Impact Assessment, if applicable;

(e) the sustainability of the proposed project;

(f) the potential contribution of the proposed project to the economy;

(g) all necessary requirements have been met and all necessary approvals have been obtained; and

(h) such other matters the CEO may consider relevant to the desirability of the proposed 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.

[Regulation 5] Effect of provisional approval

(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 305 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.

[Regulation 6] Commencement of project

(1) An applicant that has been granted provisional approval must commence 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) a certificate of completion and permit to occupy issued by a building surveyor in accordance with the Public Health (Building) Regulations 1959, as applicable; and

(d) any other relevant permit, licence, certificate, approval or authorisation for submarine network cable business, construction or development required under any written law, as and when applicable.

(4) Subject to regulation 8, the Minister must refuse to grant final approval if the applicant has failed to commence the project or has failed to comply with any condition upon which provisional approval was granted.

[Regulation 7] Extension of time for commencement of project

(1) If a company to which provisional approval has been granted is unable to commence the project within the period provided in regulation 6(1) 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 project must commence.

(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 for by regulation 5 during the extended period.

[Regulation 8] Final approval if completed

(1) An application for final approval must not be granted unless—

(a) 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, as applicable;

(b) the Minister is satisfied that the applicant has in all respects completed the requirements of the project;

(c) the Minister is satisfied that the project meets the applicable standards; 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).

[Regulation 9] Effect of final approval

9. From the first day of commercial operation of the submarine network cable business or such other date as the Minister may specify, final approval entitles the company to a tax exemption for a period of 30 consecutive fiscal years, on the income of the submarine network cable business in the case of capital investment of more than $40,000,000.

[Regulation 10] Revocation of submarine network cable investment incentive

10. The Minister may revoke the submarine network cable investment incentive if the applicant—

(a) breaches any condition of provisional or final approval;

(b) fails to setup and install the submarine network cable;

(c) fails to comply with any of the requirements of these Regulations; or

(d) is convicted of an offence under any written law relating to taxation, customs or excise,

and any tax or duty foregone is payable.

[Regulation 11] Transferability of package

If the company in respect of which a submarine network cable investment incentive 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 submarine network cable investment incentive.

[Regulation 12] Specification of particular requirements

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

INCOME TAX (ICT INFRASTRUCTURE INVESTMENT INCENTIVES) REGULATIONS 2021

Table of Amendments

Income Tax (ICT Infrastructure Investment Incentives) Regulations 2021 (LN 78 of 2021) commenced on 1 August 2021, as amended by:

Amending Legislation	Date of Commencement

PART 1—PRELIMINARY

[Regulation 1] Short title and commencement

(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.

[Regulation 2] Interpretation

(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

[Regulation 3] Application for provisional approval

(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.

[Regulation 4] Power to approve applications

(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.

[Regulation 5] Effect of provisional approval

(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.

[Regulation 6] Completion of project

(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.

[Regulation 7] Extension of time for completion

(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.

[Regulation 8] Final approval if completed

(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).

[Regulation 9] Effect of final approval

(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.

[Regulation 10] Revocation of ICT infrastructure investment incentive

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.

[Regulation 11] Transferability of package

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.

[Regulation 12] Specification of particular requirements

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

INCOME TAX (COMMERCIAL AGRICULTURAL FARMING AND AGRO-PROCESSING BUSINESS INVESTMENT INCENTIVES) REGULATIONS 2021

Table of Amendments

Income Tax (Commercial Agricultural Farming and Agro-processing Business Investment Incentives) Regulations 2021 (LN 80 of 2021) commenced on 1 August 2021, as amended by:

Amending Legislation	Date of Commencement

PART 1—PRELIMINARY

[Regulation 1] Short title and commencement

(1) These Regulations may be cited as the Income Tax (Commercial Agricultural Farming and Agro-processing Business Investment Incentives) Regulations 2021.

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

[Regulation 2] Interpretation

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

"**agro-processing**" means the value addition activities that transform agricultural products or commodities into different forms for sale purposes;

"**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;

"**commercial agricultural farming**" means the large scale cultivation of agricultural produce or livestock farming for sale purposes;

"**company**" means a company registered under the Companies Act 2015;

"**final approval**" means the approval granted by the Minister under regulation 7;

"**Minister**" means the Minister responsible for finance;

"**provisional approval**" means the approval granted by the CEO under regulation 4;

"**commercial agricultural farming and agro-processing business investment incentive**" means the duty exemption under regulation 5 and the exemption of tax on income under regulation 9 for a commercial agricultural farming and agro-processing business established on or after 1 August 2021;

"**product**" means a product created through commercial agricultural farming and agro-processing by a commercial agricultural farming and agro-processing business; and

"**project**" means a project on or after 1 August 2021 for the establishment of a new commercial agricultural farming and agro-processing business building, factory, plant or farm that meets the minimum investment threshold under regulation 9 including the construction, renovation or refurbishment, of a building, factory, plant or farm.

PART 2—COMMERCIAL AGRICULTURAL FARMING AND AGRO-PROCESSING BUSINESS INVESTMENT INCENTIVE

[Regulation 3] Application for provisional approval

(1) A person ("applicant") may apply in writing to the Minister for provisional approval of the proposed project.

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

(a) the name and details of the applicant;

(b) if the applicant is a company, the names of all directors and shareholders, including the percentage of ownership of shares in the company;

(c) a current statement of all assets and liabilities of the applicant;

(d) the details of the product;

(e) the location and description of the project;

(f) a sketch plan showing the project, as applicable;

(g) the nature and extent of the project;

(h) the estimated cost of the project;

(i) 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;

(j) evidence of the applicant's ability to undertake the project;

(k) details of the proposed method of financing the project;

(l) estimates of the projected income from the project; and

(m) any other information the CEO may require.

[Regulation 4] Power to approve applications

(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 sustainability of the project;

(e) the potential contribution of the project and the proposed commercial agricultural farming and agro-processing business to the economy; and

(f) 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.

[Regulation 5] Effect of provisional approval

(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.

(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.

[Regulation 6] Completion of project

(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 the schedule of expenditure relating to the project;

(b) an approved plan showing the site, layout and surrounding areas of the project;

(c) proof of the successful production of the product;

(d) proof that the product meets the applicable standard; and

(e) a certificate of completion and permit to occupy issued by a building surveyor in accordance with the Public Health (Building) Regulations 1959, as applicable.

(4) Subject to regulation 7, 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.

[Regulation 7] Final approval if completed

(1) An application for final approval must not be granted unless—

(a) 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, as applicable;

(b) the Minister is satisfied that the applicant has in all respects completed the requirements of the project;

(c) the Minister is satisfied that the product meets the applicable standard; 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).

[Regulation 8] Extension of time for completion

(1) If a person 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 beyond the control of the person, the person 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 person continues to enjoy the duty free concession provided for by regulation 5 during the extended period.

[Regulation 9] Effect of final approval

From the first day of commercial operation of the commercial agricultural farming and agro-processing business or such other date as the Minister may specify, final approval entitles a person to the following tax exemption on the income of the business—

(a) in the case of a capital investment from $100,000 to $250,000, for a period of 5 consecutive fiscal years;

(b) in the case of a capital investment from $250,001 to $1,000,000, for a period of 10 consecutive fiscal years;

(c) in the case of a capital investment from $1,000,001 to $2,000,000, for a period of 15 consecutive fiscal years; and

(d) in the case of a capital investment of more than $2,000,000, for a period of 20 consecutive fiscal years.

[Regulation 10] Revocation of commercial agricultural farming and agro-processing business investment incentive

The Minister may revoke the commercial agricultural farming and agro-processing business investment incentive if the applicant—

(a) breaches any condition of provisional or final approval;

(b) fails to produce a product to the applicable standard;

(c) fails to comply with any of the requirements of these Regulations; or

(d) is convicted of an offence under any written law relating to taxation, customs or excise,

and any tax or duty foregone is payable.

[Regulation 11] Transferability of package

If the person in respect of which a commercial agricultural farming and agro-processing business investment incentive has been granted is a company and that company 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 commercial agricultural farming and agro-processing business investment incentive.

[Regulation 12] Specification of particular requirements

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