Income Tax (Depreciation Rates) Regulations 2016

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

Short title and commencement

1.—(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.

Interpretation

2.—(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.

Depreciation rates

3. For the purposes of sections 32 and 33 of the Act, the depreciation rates are specified in the Schedule.

Made this 1st day of January 2016.

F. S. KOYA
Acting Minister for Finance
## DEPRECIATION RATES

<table>
<thead>
<tr>
<th>Asset</th>
<th>Depreciation Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Diminishing value</td>
</tr>
<tr>
<td>Motor vehicles; buses and minibuses with a seating capacity of less</td>
<td>40%</td>
</tr>
<tr>
<td>than 30 passengers; goods vehicles with a load capacity of less than</td>
<td></td>
</tr>
<tr>
<td>7 tonnes; computers and data handling equipment; and construction</td>
<td></td>
</tr>
<tr>
<td>equipment and earthmoving equipment</td>
<td></td>
</tr>
<tr>
<td>Buses with a seating capacity of 30 or more passengers; goods</td>
<td>30%</td>
</tr>
<tr>
<td>vehicles designed to carry or pull loads of more than 7 or more</td>
<td></td>
</tr>
<tr>
<td>tonnes; specialised trucks; tractors; trailers and trailer-mounted</td>
<td></td>
</tr>
<tr>
<td>containers; and plant and machinery used in manufacturing, mining,</td>
<td></td>
</tr>
<tr>
<td>or farming operations</td>
<td></td>
</tr>
<tr>
<td>Vessels, barges, tugs, and similar water transportation equipment;</td>
<td>20%</td>
</tr>
<tr>
<td>aircraft; specialised public utility plant, equipment, and machinery</td>
<td></td>
</tr>
<tr>
<td>; office furniture, fixtures, and equipment; and any depreciable</td>
<td></td>
</tr>
<tr>
<td>asset not included in another category</td>
<td></td>
</tr>
<tr>
<td>Buildings</td>
<td></td>
</tr>
<tr>
<td>– Brick, stone or concrete</td>
<td>2.5%</td>
</tr>
<tr>
<td>– Timber buildings</td>
<td>4%</td>
</tr>
<tr>
<td>– Steel or steel prefabricated</td>
<td>4%</td>
</tr>
<tr>
<td>– Steel or steel prefabricated on copra plantations</td>
<td>7%</td>
</tr>
<tr>
<td>– Bure</td>
<td>15%</td>
</tr>
<tr>
<td>– Other</td>
<td>2.5%</td>
</tr>
</tbody>
</table>
INCOME TAX ACT 2015  
(Act No. 32 of 2015)

Income Tax (Exempt Income) Regulations 2016

IN exercise of the powers conferred on me by section 20(1) of the Income Tax Act 2015, I hereby make these Regulations—

Short title and commencement

1.—(1) These Regulations may be cited as the Income Tax (Exempt Income) Regulations 2016.

(2) These Regulations shall come into force on 1 January 2016.

Interpretation

2.—(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.

Exempt income

3.—(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.

Made this 1st day of January 2016.

F. S. KOYA
Acting Minister for Finance
SCHEDULE
(Regulation 3)

EXEMPT INCOME

PART 1—GOVERNMENT

The following amounts are exempt income—

(1) The official allowances paid to Members of Parliament.

(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) of this Schedule.

(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.

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.

(3) The Government of a foreign country or foreign territory to the extent specified under the Diplomatic Privileges and Immunities Act (Cap. 8).

(4) An international organisation declared pursuant to section 6 of the Diplomatic Privileges and Immunities Act (Cap. 8) 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 Fiji is broader than provided under the Diplomatic Privileges and Immunities Act (Cap. 8), the exemption under the agreement applies, provided that the agreement has been approved by Cabinet.
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 31st 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.

(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 Fiji.

(4) The employment income of a member of the State’s 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 Fiji.

(5) The employment income of a member of the State’s 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.
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.

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 person’s employment income during the secondment and the employment income is not exempt income in the foreign country or territory.

A scholarship awarded to a person for full-time instruction at a university, college, school, or other educational institution.

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.

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.

The income of a member of the American Peace Corps working in Fiji.

The foreign income, other than employment income, of a temporary resident.

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.

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.

Alimony or maintenance.

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 Fiji Government that is payable under a scheme of supplementation by virtue of an agreement between the Fiji Government and the Government of another State if such income is paid, and subject to tax in the other State.

An inducement or education allowance received by an employee.

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 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 Decree (Allowances to Witnesses and Assessors) Rules 2010 to—

(a) a witness attending at a trial or enquiry before a Magistrate’s 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 (Cap. 8) 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 Fiji is broader than provided under the Diplomatic Privileges and Immunities Act (Cap. 8), the exemption under the agreement applies, provided that the agreement has been approved by Cabinet.

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 non-resident 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 Fiji 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 Decree 2011.

(4) The first $200 of interest derived by a resident individual in a tax year from a financial institution in Fiji.

(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 one hundred and fifty thousand dollars (FJD$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 one hundred thousand dollars (FJD$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 fifty thousand dollars (FJD$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 one hundred and fifty thousand dollars (FJD$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 $16,000; 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) sub paragraph (a) of this part, shall be entitled to the exemption; and

   (c) the interest derived from a licensed Bank, by an individual taxpayer gross income $16,000 or less in a year.

PART 5—EXEMPT DIVIDENDS

(1) A dividend paid by a resident company listed on the South Pacific Stock Exchange, to a resident or non-resident shareholder.

(2) The nominal value of bonus shares provided to a shareholder to the extent that the shares have been paid up out of profits arising from the reconstruction or
reorganisation of the company’s equity structure undertaken solely for the purpose of listing on the South Pacific Stock Exchange if the company—

(a) is listed on the South Pacific Stock Exchange within 12 months of such reconstruction or reorganisation or such longer period as the CEO may allow; and

(b) remains listed on the South Pacific Stock Exchange for a period of not less than 3 years.

(3) A dividend paid to a resident person from the Unit Trust of Fiji, the Colonial First State Income and Growth Fund, Fijian Holdings Unit Trust and the Fijian Holdings Property Trust Fund.

(4) A dividend paid or credited in favour of a resident from any other Unit Trust company approved by the CEO.

(5) A dividend paid by a resident company to another resident company. Despite the treatment of the dividend as exempt income, the resident company receiving the dividend is entitled to a deduction for expenditure incurred in deriving the dividend to the extent allowed under the Act.

(6) Any dividend paid out by a resident company listed on SPSE shall not be subject to section 143(7) of the Act.

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 Decree 2011.

(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 (Cap. 123).

(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 (Cap. 119) 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 13 years from the date of issue of the licence,

provided that the business employs fifty employees or more for at least 6 months of the tax year and at least 60% of the total value of services provided in the tax year is exported.

A business granted a licence referred to in subparagraph (a) must pay an annual licence fee of one thousand dollars (FJD$1,000) to the CEO for the period of the licence.

For the purposes of this paragraph, “Information Communication Technology business” means services provided by a person by way of software development,
call centres, or internet 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 FJD$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) The income of a person derived from a new activity in commercial agricultural farming and agro-processing approved by the CEO during the period 1 January 2009 to 31 December 2014 and employing thirty local employees or more for every tax year—

(a) for a new activity approved and established from 1 January 2009 to 31 December 2009, the income is exempt income—

(i) in the case of capital investment from FJD$250,000 to $1,000,000, for a period of 4 consecutive tax years;

(ii) in the case of capital investment from FJD$1,000,001 to FJD$2,000,000, for a period of 7 consecutive tax years; or

(iii) in the case of capital investment of more than FJD$2,000,000, for a period of 10 consecutive tax years; or

(b) for a new activity approved and established from 1 January 2010 to 31 December 2014 with a capital investment of more than FJD$2,000,000, the income is exempt income for a period of 10 consecutive tax years.

(7) The income of a person derived from a new activity in processing agricultural commodities into bio-fuels for a period of 10 years is exempt income if—

(a) the person with a minimum level of investment in the activity of FJD$1,000,000;

(b) the person employs twenty or more local employees for each year of the ten-year period; and

(c) the exemption is approved by the CEO during the period 1 January 2009—31 December 2018.

(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 Fiji Citizen derived from a local backpacker operation that is wholly owned by the Fiji 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 1st January, 2015 to 31st 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 13 consecutive fiscal years.

PART 10—LISTING IN SOUTH PACIFIC STOCK EXCHANGE

(1) Subject to paragraph (2), the income made from the gain of the sale of shares that may arise from the re-organisation, re-construction or amalgamation of a private 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 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 company.

(3) If the private 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 company shall be taxable under the Act.
INCOME TAX ACT 2015
(Act No. 32 of 2015)

Income Tax (Hotel Investment Incentives) Regulations 2016

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

PART 1—GENERAL

Short title and commencement

1.—(1) These Regulations may be cited as the Income Tax (Hotel Investment Incentives) Regulations 2016.

(2) These Regulations shall come into force on 1 January 2016.

Interpretation

2. 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, 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 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
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” means 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;

“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 project with capital investment (including the cost of support infrastructure and overseas consultant fees but excluding the cost of land) over $7,000,000 and the project commences on or after 1 January 2009 and the building is completed within 24 months from the date the provisional approval was granted;

“short life investment package” means the various exemptions, concessions and allowances given under a short life investment.
3. 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

Specification of particular requirements

4. The Minister may prescribe particular requirements applicable to any particular area of Fiji.

Power to approve application

5.—(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 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.

(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.

Application for provisional approval

6. 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 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 Minister may require.

Completion of project

7.—(1) Any hotel or integrated tourism development owner who has been granted provisional approval on or after 1 January 2016 shall complete the project within 24 months from the date of provisional approval.

(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.

Final approval if completed

8. 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.

Investment allowance

9.—(1) Subject to subregulation (3), a hotel owner is entitled to the following allowance—

(a) an amount of taxable income equal to 25% 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) 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.

(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 Fiji 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) The capital expenditure allowable under refurbishment and renovation shall be given only to a hotel, which has been in operation for a period of not less than 5 years.

Procedure on sale of hotel

10. 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.

Procedure in case of loss

11. If a loss is incurred in connection with a hotel in respect of which investment allowance has been approved under regulation 9, any loss incurred in the operation of the hotel may be carried forward and set off against the total income of that hotel business or the total income from that hotel premises for the next 4 years in succession.
Applicability of standard allowance

12.—(1) Notwithstanding any other provision in this part, standard allowance shall cease to apply to an existing hotel from 1 January 2017, but shall continue to apply to new hotels provided that the standard allowance is granted only once to the hotel or integrated tourism development owner within that period.

(2) In this regulation—

“existing hotel” means a hotel which is licensed under the Hotels and Guest Houses Act (Cap. 195) and is operational prior to 1 January 2017;

“new hotel” means a hotel which is licensed under the Hotels and Guest Houses Act (Cap. 195) and is operational on or after 1 January 2017.

PART 3—SHORT LIFE INVESTMENT

Power to grant short life investment package

13.—(1) Subject to subregulations (2) and (3), the Minister 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.

(2) The Minister shall not grant a short life investment package to an existing hotel from 1 January 2017.

(3) The Minister may continue to grant a short life investment package to a new hotel on or after 1 January 2017, provided that the short life investment package is granted only once to the hotel or integrated tourism development owner within that period.

(4) In this regulation—

“existing hotel” means a hotel which is licensed under the Hotels and Guest Houses Act (Cap. 195) and is operational prior to 1 January 2017;

“new hotel” means a hotel which is licensed under the Hotels and Guest Houses Act (Cap. 195) and is operational on or after 1 January 2017.

Provisional approval

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

(a) reject the application for provisional approval for short life 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 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.
(3) When considering an application for short life 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 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 Minister may consider relevant to the desirability or otherwise of the short life 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.

Application for short life investment

15.—(1) A company (“applicant”) may, in writing, apply to the Minister 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;
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 company’s 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.

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

(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 short life investment package.

Effect of provisional approval

16.—(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 code 244 of Schedule 2 to the Customs Tariff Act 1986.

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

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

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

Completion of short life investment

17.—(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 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.

Extension of time for completion

18.—(1) If a company to which provisional approval has been granted is unable to complete 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.

(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.

Final approval if completed

19. 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 hotel is fully completed.

Effect of final approval

20.—(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 percent 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 percent 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.

Exemption from tax

21. 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 approved prior to 1 January 2017, for a period of 10 years;

(b) in the case of a company approved on or after 1 January 2017, for a period of 4 years.

Depreciation

22.—(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.

Carry forward losses

23. Subject to the other provisions of these Regulations, any loss incurred by the company in the operation of the hotel may be carried forward and set off against the total income of that hotel business or the total income from that hotel premises for the next 4 years in succession.

Electricity generation

24.—(1) The company is entitled to be issued with a licence under the Electricity Act (Cap. 180) to operate a generating station for the purposes of providing electricity for the hotel.
(2) Any electricity generated by the company and surplus to the company’s requirements may be sold.

(3) The company shall comply with all requirements of the Electricity Act (Cap. 180) in respect of its generating station.

Annual accounts

25. 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.

Transferability of package

26. 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.

Revocation of package

27. The Minister 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 Part 3; or

(c) been convicted of an offence under any written law relating to taxation, customs or excise.

Applicability of incentives

28. 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.

Transitional

29. Any approval for hotel or integrated tourism development investment granted before 1 January 2016 will continue to ensure the benefits provided thereof.

Made this 1st day of January 2016.

F. S. KOYA
Acting Minister for Finance
Income Tax (Medical Investment Incentives) Regulations 2016

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

PART 1—GENERAL

Short title and commencement

1.—(1) These Regulations may be cited as the Income Tax (Medical Investment Incentives) Regulations 2016.

(2) These Regulations shall come into force on 1 January 2016.

Interpretation

2. 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 $2,000,000;

“ancillary medical services investment allowance” means the allowance of an amount of taxable income equal to 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 $500,000;

“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;

“extension” means any additional amenity to an existing private hospital or existing ancillary medical centre;

“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 $7,000,000 and the project commences on or after 1 January 2016 and the building is completed within 24 months from the date the provisional approval was granted;

“medical investment allowance” means the allowance of an amount of taxable income equal to 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;

“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, the building of a new private hospital;

(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 building of centres for the provision of ancillary medical services;

“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 private hospital and existing ancillary medical centre (excluding its mere repainting or redecorating) which—

(a) have the effect of restoring the private hospital and ancillary medical centre to a sound and new state; or
(b) reconstruct, remodel, alter, upgrade or amend the interior of an existing private hospital and ancillary medical centre so as to form new rooms or alter the sizes of existing rooms.

PART 2—MEDICAL INVESTMENT ALLOWANCE

Specification of particular requirements

3. The Minister may prescribe particular requirements applicable to any particular area of Fiji.

Power to approve application

4.—(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.

Application for provisional approval

5. 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.

Effect of provisional approval

6. 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.

Completion of project

7.—(1) Any owner of a private hospital who has been granted provisional approval on or after 1 January 2016 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 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.

Final approval if completed

8. 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.
9.—(1) Subject to subregulation (3), a hospital owner is entitled to the following allowance—

(a) 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 less the cost of any land acquired for the project or refurbishment and renovation, is not chargeable to tax;

(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 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 Fiji 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.

Procedure in case of loss

10. 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

Power to grant medical investment package

11. 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.

Provisional approval

12.—(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 company intends to complete and is capable of completing such medical investment; and

(c) the medical investment will benefit the economic development of Fiji.

(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.

Effect of provisional approval

13. 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.
14.—(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.

15.—(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.

Extension of time for completion

16.—(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.

Final approval if completed

17. 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.

Effect of final approval

18.—(1) The final approval entitles the company to the benefits of a medical investment package from the first day of commercial operation of the private hospital or such other date as the Minister may specify.
(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.

Exemption from tax

19. 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 more than $7,000,000 for a period of 10 years.

Depreciation

20. — (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.

Carry forward losses

21. 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.

Annual accounts

22. 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.

Transferability of package

23. 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.
Revocation of package

24. 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.

Applicability of incentives

25. 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

Specification of particular requirements

26. The Minister may prescribe particular requirements applicable to any particular area of Fiji.

Power to approve application

27.—(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.
Application for provisional approval

28. 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.

Effect of provisional approval

29. 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.

Completion of project

30.—(1) Any owner of an ancillary medical centre who has been granted provisional approval on or after 1 January 2016 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.
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.

**Final approval if completed**

31. 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.

**Investment allowance**

32.—(1) Subject to subregulation (3), an ancillary medical centre owner is entitled to the following allowance—

(a) 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 less the cost of any land acquired for the project or refurbishment and renovation, is not chargeable to tax;

(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 ancillary medical center 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 ancillary medical centre 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 Fiji 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 center 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.

Procedure in case of loss

33. 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

Power to grant ancillary medical services investment package

34. 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.

Provisional approval

35.—(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) to 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 ancillary medical services investment;

(b) the company intends to complete and is capable of completing such ancillary medical services investment; and

(c) the ancillary medical services investment will benefit the economic development of Fiji.

(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;
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.

Application for ancillary medical services investment

36.—(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 center 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.

Effect of provisional approval

37. 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.

Completion of ancillary medical services investment

38.—(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.
Extension of time for completion

39.—(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.

Final approval if completed

40. 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 center is fully completed.

Effect of final approval

41.—(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.

Exemption from tax

42. 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 more than $2,000,000 for a period of 4 years.
Depreciation

43.—(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.

Carry forward losses

44. 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 center business or the total income from that ancillary medical centre premises for the next 8 years in succession.

Annual accounts

45. 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.

Transferability of package

46. 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.

Revocation of package

47. 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.

Applicability of incentives

48. 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.

Made this 1st day of January 2016.

F. S. KOYA
Acting Minister for Finance
INCOME TAX ACT 2015
(ACT NO. 32 OF 2015)

Income Tax (Rates of Tax and Levies)
Regulations 2016

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

Short title and commencement
1.—(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.

Interpretation
2.—(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.

Rates of tax and levies
3. For the purposes of sections 8, 10, 11, 57, 65, 69, 70, 98, 99, 100 and 113 of the Act,
the rates of tax and levies are specified in the Schedule.

Made this 1st day of January 2016.

F. S. KOYA
Acting Minister for Finance
(1) Subject to paragraph (2), the rates of Income Tax and Social Responsibility Tax for individuals are—

<table>
<thead>
<tr>
<th>Chargeable income (FJD$)</th>
<th>Income Tax Payable (FJD$)</th>
<th>Social Responsibility Tax (FJD$)</th>
</tr>
</thead>
<tbody>
<tr>
<td>0—16,000</td>
<td>Nil</td>
<td>Nil</td>
</tr>
<tr>
<td>16,001—22,000</td>
<td>7% of excess over $16,000</td>
<td>Nil</td>
</tr>
<tr>
<td>22,001—50,000</td>
<td>$420 + 18% of excess over $22,000</td>
<td>Nil</td>
</tr>
<tr>
<td>50,001—270,000</td>
<td>$5,460 + 20% of excess over $50,000</td>
<td>Nil</td>
</tr>
<tr>
<td>270,001—300,000</td>
<td>$49,460 + 20% of excess over $270,000</td>
<td>23% of excess over $270,000</td>
</tr>
<tr>
<td>300,001—350,000</td>
<td>$55,460 + 20% of excess over $300,000</td>
<td>$6,900 + 24% of excess over $300,000</td>
</tr>
<tr>
<td>350,001—400,000</td>
<td>$65,460 + 20% of excess over $350,000</td>
<td>$18,900 + 25% of excess over $350,000</td>
</tr>
<tr>
<td>400,001—450,000</td>
<td>$75,460 + 20% of excess over $400,000</td>
<td>$31,400 + 26% of excess over $400,000</td>
</tr>
<tr>
<td>450,001—500,000</td>
<td>$85,460 + 20% of excess over $450,000</td>
<td>$44,400 + 27% of excess over $450,000</td>
</tr>
<tr>
<td>500,001—1,000,000</td>
<td>$95,460 + 20% of excess over $500,000</td>
<td>$57,900 + 28% of excess over $500,000</td>
</tr>
<tr>
<td>1,000,001 +</td>
<td>$195,460 + 20% of excess over $1,000,000</td>
<td>$197,900 + 29% of excess over $1,000,000</td>
</tr>
</tbody>
</table>
### Non-resident individuals

<table>
<thead>
<tr>
<th>Chargeable income</th>
<th>Tax payable</th>
<th>Social Responsibility Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>FJD$</strong></td>
<td><strong>FJD$</strong></td>
<td><strong>FJD$</strong></td>
</tr>
<tr>
<td>0—16,000</td>
<td>20% of excess over $0</td>
<td>Nil</td>
</tr>
<tr>
<td>16,001—22,000</td>
<td>$3,200 + 20% of excess over $16,000</td>
<td>Nil</td>
</tr>
<tr>
<td>22,001—50,000</td>
<td>$4,400 + 20% of excess over $22,000</td>
<td>Nil</td>
</tr>
<tr>
<td>50,001—270,000</td>
<td>$10,000 + 20% of excess over $50,000</td>
<td>Nil</td>
</tr>
<tr>
<td>270,001—300,000</td>
<td>$54,000 + 20% of excess over $270,000</td>
<td>23% of excess over $270,000</td>
</tr>
<tr>
<td>300,001—350,000</td>
<td>$60,000 + 20% of excess over $300,000</td>
<td>$6,900 + 24% of excess over $300,000</td>
</tr>
<tr>
<td>350,001—400,000</td>
<td>$70,000 + 20% of excess over $350,000</td>
<td>$18,900 + 25% of excess over $350,000</td>
</tr>
<tr>
<td>400,001—450,000</td>
<td>$80,000 + 20% of excess over $400,000</td>
<td>$31,400 + 26% of excess over $400,000</td>
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<td>450,001—500,000</td>
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<td>$44,400 + 27% of excess over $450,000</td>
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<tr>
<td>500,001—1,000,000</td>
<td>$100,000 + 20% of excess over $500,000</td>
<td>$57,900 + 28% of excess over $500,000</td>
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<tr>
<td>1,000,001 +</td>
<td>$200,000 + 20% of excess over $1,000,000</td>
<td>$197,900 + 29% of excess over $1,000,000</td>
</tr>
</tbody>
</table>

(2) The rates of Income Tax for a redundancy payment derived by an individual are—

<table>
<thead>
<tr>
<th>Amount of Redundancy Payment</th>
<th>Tax Payable</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>FJD$</strong></td>
<td><strong>FJD$</strong></td>
</tr>
<tr>
<td>0—15,000</td>
<td>Nil</td>
</tr>
<tr>
<td>15,001 +</td>
<td>15% of excess over $15,000</td>
</tr>
</tbody>
</table>
(3) The rates of Income Tax for companies are—

(a) in respect of a company that has established or relocated its headquarters to Fiji ................................................................. 17%

(b) in respect of a company listed on the South Pacific Stock Exchange.. 10%

(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) in respect of a dividend .................................................................. 9%

(d) in respect of an insurance premium.................................................. 3%

(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) The Credit Card Levy at the rate of................................................ 3%

(11) The Third Party Insurance Levy at the rate of................................. 20%

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[LEGAL NOTICE NO. 6]

INCOME TAX ACT 2015
(Act No. 32 of 2015)

Income Tax (Residential Housing Development Package) Regulations 2016

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

PART 1—GENERAL

Short title and commencement

1.—(1) These Regulations may be cited as the Income Tax (Residential Housing Development Package) Regulations 2016.

(2) These Regulations shall come into force on 1 January 2016.
2. In these Regulations, unless the context otherwise requires—

“capital goods” for the purpose of regulation 5, means capital equipment, plant, machinery and any other goods employed in the production of other goods but does not include furniture or motor vehicles;

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

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

“Minister” means the Minister responsible for Finance;

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

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

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

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

“residential housing development investment” means a project with capital investment (including the cost of support infrastructure and overseas consultant fees but excluding the cost of land) over $2,000,000 with at least 20 residential housing units and the project commences on or after 1 January 2016 and the building is completed 24 months from the date the provisional approval was granted;

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

PART 2—RESIDENTIAL HOUSING DEVELOPMENT INVESTMENT PACKAGE

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

Provisional approval

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

(a) reject the application for provisional approval for residential housing development investment; or

(b) grant provisional approval to such application, with or without any condition.
(2) The Minister shall not grant provisional approval under subregulation (1) unless the Minister is satisfied that—

(a) the application is for residential housing development investment

(b) the company intends to complete and is capable of completing such residential housing development investment; and

(c) the residential housing development investment will benefit the economic development of Fiji.

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

(a) the assets and liabilities of the company;

(b) the nature and extent of the residential housing development investment;

(c) the requirements for residential housing development in the area concerned;

(d) whether the residential housing development complies with the Housing Authority requirements;

(e) whether the residential housing development investment will adequately contribute to the area concerned;

(f) whether the proposed residential housing development is of a suitable size and standard for the area concerned;

(g) whether adequate amenities would be provided as part of the proposed residential housing development;

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

(4) The decision of the Minister under this regulation is final.

(5) Notwithstanding subregulation (4), a person whose application (including partial rejected application) has been rejected may make a new application or amend and resubmit the original application.

Effect of provisional approval

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

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

(3) Nothing in this regulation shall apply to any tax payable under the Value Added Tax Decree 1991.
(4) For the purposes of this regulation, capital equipment, plant and machinery does not include kitchenware, raw materials, furniture and fittings and other prescribed goods.

Application for residential housing development investment

6.—(1) A company ("applicant") may, in writing, apply to the Minister for provisional approval to carry out a residential housing development investment, setting out the following—

(a) the name and registered office of the company;
(b) the names of all directors and shareholders of the company together, including shareholdings of the directors and shareholders;
(c) a recent statement of all assets and liabilities of the company;
(d) the location and description of the residential housing development site;
(e) the number and description of residential units in the residential housing development;
(f) the number and description of proposed rooms and beds and the toilet facilities in a residential unit;
(g) the detailed description of all proposed amenities, such as swimming pools, tennis courts, fitness centres and recreation facilities;
(h) a sketch plan showing in sufficient detail the site and layout of the proposed residential housing development and its amenities;
(i) an estimate of the total cost of the residential housing development investment;
(j) the description, and an estimate of the cost, of each individual stage of construction and details of the proposed timetable for completion of the residential housing development investment;
(k) details of the proposed method of financing the residential housing development investment;
(l) evidence of the company’s ability to complete the residential housing development investment;
(m) estimates of the projected income from the new residential housing development;
(n) the nature and extent of residential housing development investment.

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

(3) The Minister may—

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

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

(2) Subject to the other provisions of this regulation, where a company has been granted provisional approval and has completed the project, the company may apply to the Minister for final approval.

(3) An application under subregulation (2) shall be made in writing and supported by the following—

(a) fully audited final accounts showing the total cost of the project;
(b) a completion certificate from the local authority; and
(c) a final plan showing the site, layout and surrounding areas of the residential housing development.

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

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

(5) Subject to regulations 8 and 9, no approval shall be granted under this regulation if the Minister is satisfied that the company has failed to complete the residential housing development investment or has failed to comply with any condition upon which provisional approval was granted.

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

(7) The Minister must, in writing, notify the following persons of the decision to reject or grant the application—

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

Extension of time for completion

8.—(1) If a company to which provisional approval has been granted is unable to complete its residential housing development investment within the period specified in the definition of “residential housing development investment” in regulation 2 due to unforeseen circumstances or some other act beyond the control of the company, the company may apply in writing to the Minister to extend the time by which the residential housing development must be completed.

(2) If the Minister extends the time under subregulation (1), the company shall continue to enjoy the duty free concession provided for by regulation 5 during the extended period.
9. An application for final approval shall not be granted unless—

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

(b) the hotel is fully completed.

Effect of final approval

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

(2) Where the owner has—

(a) been granted provisional approval; and

(b) completed the project in accordance with the provisional approval,

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

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

(ii) 7% of the total capital expenditure incurred in the residential housing development provided that the capital expenditure is more than $10,000,000.

Revocation of package

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

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

(b) failed to comply with any of the requirements of these Regulations; or

(c) been convicted of an offence under these Regulations or any other written law relating to taxation, customs or excise.

Made this 1st day of January 2016.

F. S. KOYA
Acting Minister for Finance
INCOME TAX ACT 2015  
(Act No. 32 of 2015)

Income Tax (Maritime Vessels Investment Allowance) Regulations 2016

In exercise of the powers conferred upon me under section 142(1) of the Income Tax Act 2015, I hereby make these Regulations—

Short title and commencement

1.—(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.

Interpretation

2. 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);

“Maritime Safety Authority of Fiji” means Maritime Safety Authority of Fiji, established under the Maritime Safety Authority of Fiji Decree 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;

“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; and

“Minister” means the Minister responsible for Finance.

Applications for investment allowance

3.—(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 three 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.

Approval

4.—(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 for , 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.

Allowance

5.—(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 CEO, 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 CEO so directs, an amount ascertained on such other basis as the CEO 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 CEO 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 per cent 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 per cent 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.

Depreciation

6. 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.
7.—(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.

Application to certain vessels

8. 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.

Made this 1st day of January 2016.

F. S. KOYA
Acting Minister for Finance
**Legal Notice No. 8**

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

**Income Tax (Film-making and Audio-visual Incentives) Regulations 2016**

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In exercise of the powers conferred upon me under section 142(1) of the Income Tax Act 2015, I hereby make these Regulations—

PART 1—GENERAL

Short title and commencement

1.—(1) The Regulations may be cited as the Income Tax (Film-making and Audio-visual Incentives) Regulations 2016.

(2) These Regulations shall come into force on 1 January 2016.

Interpretation

2.—(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;

“FRCA” means the Fiji Revenue and Customs Authority; and

“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 Decree 2009.

(3) For the avoidance of doubt, a certificate issued under the Sixth Schedule to the Income Tax Act (Cap. 201) shall be deemed to have been issued under these Regulations.

Regulations

3. Film Fiji may with the concurrence of the Minister make regulations to prescribe—

(a) forms and fees payable for the purpose of these Regulations; and

(b) the type of expenditure to be specified for the purpose of regulations 73, 74, 75, 76 and 77 of Part 5.

Limitation on applications for incentives

4.—(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.

Audits to be in a form approved by Film Fiji

5.—(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 FRCA.

PART 2—NON-RESIDENT EMPLOYEE TAX WAIVER

Interpretation

6. 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 non-resident company engaged, or intending to be engaged, in making a film in Fiji;

“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.

Non-resident tax incentive

7. 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 company’s 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.

Application for approval

8.—(1) A film company seeking exemption or reduction of the rate of tax under this part may apply to Film Fiji for the Minister’s 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.

Film Fiji to consider applications and make recommendations

9.—(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.

Minister must approve or reject an application

10. 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.

Approval must specify details of exemption or reduction

11.—(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.

Film Fiji to inform applicant

12.—(1) Film Fiji shall inform the applicant in writing of the Minister’s decision.

(2) If the Minister approves an application, Film Fiji shall provide the CEO with a copy of the approval.
Method of relief if final certificate is granted

13. 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 the general provisions of this Act; or

(b) the amount of tax assessed in accordance with the Minister’s approval under regulation 7.

Film Fiji may require security

14. 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—F1 /F2 AUDIO-VISUAL INCENTIVE

Division 1—Interpretation

Interpretation

15.—(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 license in television or radio in Fiji or any associated company or individual with substantial holdings in a broadcast license 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 audio-visual 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;

“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 audio-visual 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;
“bank” means a financial institution licensed under the Banking Act 1995;

“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 Fiji Government or an authority of the Fiji Government and the
Government or an authority of the Government of another country
under a co-production agreement or arrangement;

“resident” has the meaning given to it under this Act;
“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;

“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.

Audio-visual productions

16. 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.

Exclusions from references to audio-visual productions

17. 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.
Further exclusions from references to audio-visual productions

18.—(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 1 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

Reference to audio-visual production

19. In this part, unless a contrary intention appears, a reference to an audio-visual production includes a reference to a proposed audio-visual production.

Application for provisional certificate

20. 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.

Application for another provisional certificate

21.—(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.

Form of application

22. 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.

Film Fiji to consider and decide applications

23.—(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.

Film Fiji to issue provisional certificate or give notice of refusal

24. 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.

Information to be provided to Film Fiji

25. 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.

Film Fiji may revoke or vary certificate in certain circumstances

26. 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 audio-visual production status from FL to F2.

Revocation does not prevent subsequent issue of certificate

27. 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.

Certificate deemed to be in force from time of issue

28. 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.

Certificate lapses unless application for final certificate made

29.—(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

Application for final certificate

30. An applicant may apply to Film Fiji for a final certificate stating that an audio-visual production that has been completed is a qualifying audio-visual production for the purposes of this part.

Method of application

31. 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.

Film Fiji to consider and decide applications

32. —(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.

Film Fiji to issue final certificate or give notice of refusal

33. 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.

Information to be provided to Film Fiji

34. 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.

Final certificate deemed to be in force from time of issue

35. A final certificate is irrevocable and deemed to have been in force from the date of its issue.
Division 4—Qualifying Audio–visual Productions

AVP may qualify as F1 AVP or F2 AVP

36. 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.

Minimum prerequisites for F1 AVPs and F2 AVPs

37.—(1) The minimum prerequisites for an audio-visual production to qualify as an F1 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 Commissioner 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 audio-visual 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.

Additional criteria to be satisfied for F1 status

38.—(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 F1 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 F1 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 F1 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 “F1 incentive”.


39.—(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 (1)(b) be read as or to mean “F2 incentive”.

Criteria for determining Fiji’s content of AVP

40. 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 audio-visual 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

Deduction for capital expenditure

41. 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.

Deduction in event of taxpayer’s death

42. If a taxpayer dies before he 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.

Licensees may not claim deduction

43. 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

Tax exemption of income derived from qualifying AVP

44. 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 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.

Sale of copyright interest

45. 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 total income.

PART 4—STUDIO CITY ZONE

Division 1—Studio City Zone Definitions

Interpretation

46. 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 subregulation 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 audio-visual 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 in 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.

Minister may declare studio city zone

47.—(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, 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.

Film Fiji may approve application for operating licence in studio city zone

48.—(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.

Method of application

49. 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.

Film Fiji to consider and decide applications

50.—(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.

_Film Fiji to issue audio-visual operating licence or give notice of refusal_

51. 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.

_Film Fiji may vary conditions of audio-visual operating licence_

52.—(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.

_Film Fiji may approve transfer of audio-visual operating licence_

53.—(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).

_Film Fiji may revoke an audio-visual operating licence_

54.—(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 Decree 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).

Register of operating licence

55.—(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.

Transfer must be registered within 7 days

56. 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.

Exemption from tax of licensee’s production activity income

57. 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.

Non-AVP and distribution income subject to tax

58. 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.

Tax assessable on sale of company or business in studio city zone

59.—(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 -21/2%.

Division 2—Taxation Concessions to Residents of the Studio City Zone

Interpretation

60. 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.

Film Fiji may approve individuals for studio city zone benefits

61.—(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.

Applications by non-residents

62. 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.

Requirements and conditions for tax exemption

63. 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.

Applications by residents

64. 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.

Requirements and conditions for tax exemption

65. 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 Commissioner 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.

Film Fiji must consider and decide application

66.—(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

Division 1—Interpretation

Interpretation

67. In this part, unless the context otherwise requires—

“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;

“qualifying Fiji production expenditure” has the meaning given by regulations 74 to 77;

“short film” has the meaning given by regulation 15 in Part 3; and

“total Fiji expenditure” or “Fiji expenditure” means the production expenditure on goods and services purchased from and paid to a Fiji resident.

Division 2—Tax Rebate for Fiji Expenditure in Making a Film

Film production company entitled to tax rebate

68.—(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 Fiji resident; or

(ii) is not a Fiji 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 Fiji 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

(b) 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.

Amount of tax rebate

69.—(1) Subject to subregulation (2), the amount of the tax rebate is 47% of the total of the company’s qualifying Fiji production expenditure on the film (worked out using Division 3).

(2) If the qualifying Fiji production expenditure on the film exceeds $60 million, the maximum allowable tax rebate is $28.2 million.

Film Fiji may issue certificate for a film

70.—(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 Fiji resident; or

(ii) is not a Fiji 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 1 significant international market;

(e) the total of the company’s qualifying Fiji production 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 Fiji 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.
Division 3—Production Expenditure and Qualifying Fiji Production Expenditure

Production expenditure—general test

71.—(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 tax rebate 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) Instructions 1998;

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.
72. 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.

**Production expenditure—specific exclusions**

73. Notwithstanding regulations 71 and 72, the following expenditure of a company is not production expenditure of the company on a film—

<table>
<thead>
<tr>
<th>Item</th>
<th>This kind of expenditure by the company is not production expenditure except to the extent to which the expenditure is</th>
</tr>
</thead>
</table>
| 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 |
| 3.   | Copyright acquisition expenditure  
Expenditure incurred in acquiring copyright, or a licence in relation to copyright, in a pre-existing work for use in the film |
| 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 |
| 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) |
<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td><strong>Deferments</strong>  &lt;br&gt;Amounts that are payable only out of the receipts, earnings or profits from the film</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td><strong>Profit participation</strong>  &lt;br&gt;Amounts that—  &lt;br&gt;(a) depend on the receipts, earnings or profits from the film; or  &lt;br&gt;(b) are otherwise dependent on the commercial performance of the film</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td><strong>Residuals</strong>  &lt;br&gt;Amounts payable in satisfaction of the residual rights of a person who is a member of the cast  &lt;br&gt;Paid out by the company before the film is completed</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td><strong>Advances</strong>  &lt;br&gt;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</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td><strong>Acquisition of depreciable asset</strong>  &lt;br&gt;Expenditure to the extent to which it sets, or increases, the cost of a depreciable asset. This item has effect subject to regulation 71(6)  &lt;br&gt;Qualifying Fiji production expenditure under item 2 in the table in regulation 754(1)</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td><strong>Regulations</strong>  &lt;br&gt;Expenditure specified in regulations</td>
<td></td>
</tr>
</tbody>
</table>

**Qualifying Fiji production expenditure—general test**

74. A company’s qualifying Fiji production 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; or

(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.
75.—(1) The following expenditure of a company is also qualifying Fiji production expenditure of the company on a film—

<table>
<thead>
<tr>
<th>Item</th>
<th>Type of expenditure</th>
</tr>
</thead>
</table>
| 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) 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 film;  
(e) 75% of the expenditure incurred to purchase costumes, make-up and set design properties not available in Fiji that will be used in relation to the film production in Fiji, provided that any such costumes, make-up and set design properties shall be left in Fiji at the end of the production, and if a film production company requires the use of any such costumes left in Fiji for the purpose of re-shooting the film outside of Fiji, that production company shall make a written request to the Minister, and all expenditure incurred in obtaining any such costumes shall be borne by the production company and shall not qualify for film tax rebate;  
(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**  
(a) Expenditure incurred to acquire copyright, or a licence in relation to copyright, in a pre-existing work for use in the film 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 bank account; and  
(iii) receipt or acknowledgement of payment received.

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—  
(a) 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  
(b) 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; and  
(b) 15% of the expenditure included in travelling to and from any aircraft not operated by Air Pacific Limited.

5. **Approved post-production expenditure**  
Approved post-production expenditure on the film paid from a Fiji bank account to the extent that it is incurred or reasonably attributable to approved post-production services in relation to the completing of the film made in Fiji. The maximum amount payable as rebate under these expenditure items shall be as follows, upon the production of documentary evidence of the expenditure—  
(a) budget up to FJ$3 million – up to $75,000;  
(b) budget up to FJ$5 million – up to $100,000;  
(c) budget up to FJ$7 million – up to $150,000;  
(d) budget up to FJ$10 million – up to $200,000; and  
(e) budget more than FJ$10 million – up to $250,000.
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.

(2) Legal costs will be covered by item 1 in the table in subregulation (1) only if they relate to—

   (a) writers contracts; or
   (b) chain of title and other copyright issues.

(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) FJD$250,000.

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76. Notwithstanding regulations 74 and 75, the following expenditure of a company is not qualifying Fiji production expenditure of a company on a film—

   (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 film; 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;

   (b) expenditure prescribed by the regulations.

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77. 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.

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78. —(1) Expenditure that is incurred in foreign currencies is to be converted into Fiji dollars for the purposes of quantifying the total of the company’s qualifying Fiji production 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.

Expenditure to be worked out on an arm’s length basis

79. For the purposes of this part, if any two 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.

Expenditure incurred by prior production companies

80.—(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.
81.—(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.

(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.

Refusal to issue certificate

82. If Film Fiji, with the concurrence of the Minister, decides not to issue a certificate for a film, Film Fiji must give the applicant written notice of the decision and reasons for the decision.

Issue of certificate

83.—(1) A certificate issued to a company under regulation 70 must be in writing. Film Fiji must give FRCA notice of the issue of a certificate for a film within 30 days after issuing the certificate.

(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; and

(c) specify other matters agreed to between Film Fiji and FRCA.

Revocation of certificate

84.—(1) Film Fiji may, with the concurrence of the Minister, revoke a certificate issued to a company for a film under regulation 70 if Film Fiji is satisfied that the issue of the certificate was obtained by fraud or serious misrepresentation.

(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) Sub-regulation (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.

Notice of decision

85.—(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.
86. 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.

Film Fiji may make rules

87.—(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

88.—(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 five years unless the 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 organization 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 three 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**

**Tax rebate amount**

89.—(1) A company entitled to a tax rebate under regulation 68 must lodge a return of income with FRCA for the relevant year in which the production was complete.

(2) The company that is entitled to a tax rebate under regulation 68 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.

(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 FRCA.

Made this 1st day of January 2016.

F. S. KOYA
Acting Minister for Finance

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**Income Tax (Collection of Provisional Tax) Regulations 2016**

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

**Short title and commencement**

1.—(1) These Regulations may be cited as the Income Tax (Collection of Provisional Tax) Regulations 2016.

(2) These Regulations shall come into force on 1 January 2016.

**Interpretation**

2.—(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.

**Provisional tax on commissions, and on payments for services**

3.—(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 per cent 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.

Recovery of tax
4. 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.

Date of payment
5. 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 guilty of an offence and is liable to penalties prescribed in the Tax Administration Decree 2009.

Deduction of lawful sums
6. 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.

Recoverable of tax lawfully deducted of tax
7. 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.

Circumstances where deduction of Provisional Tax not required
8. 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.

Revocation
9. The Income Tax (Collection of Provisional Tax) Regulations are hereby revoked.

Made this 1st day of January 2016.

F. S. KOYA
Acting Minister for Finance
LEGAL NOTICE NO. 10

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

Income Tax (Tax Free Region Incentives)
Regulations 2016

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

PART I—GENERAL

Short title and commencement

1.—(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.

Laws to be read together

2. 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 Decree 1991.

Interpretation

3. 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);

   “enforcement officer” means any FRCA officer or any officer of the Ministry of Finance designated in writing by his or her respective Minister as an enforcement officer for the purpose of these Regulations;

   “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 (Cap.133);

   “Minister” means the Minister responsible for Finance;

   “provisional licence” means a licence granted by the Minister under regulation 7(2);

   “Tax Free Region” means any area under regulation 4(1);

   “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).

PART 2—ESTABLISHMENT OF TAX FREE REGION

Declaration of Tax Free Region

4.—(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; and

(f) Lau.

(2) For the purposes of subregulation (1), Vanua Levu includes Taveuni, Rabi, Kioa and other islands generally included for government’s 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.

Development, management and control of Tax Free Region

5.—(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

Application for a provisional licence in Tax Free Region

6.—(1) Any company may apply to the Minister for a provisional licence.

(2) Every application under subregulation (1) shall be made on a form approved by the CEO.

Grant of Tax Free Region provisional licence and criteria for grant of provisional licence

7.—(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 Fiji 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.

(2) The Minister may, in concurrence with the Minister 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.

Conditions of provisional licence

8. 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.

Final approval

9. 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.

Revocation of licence

10.—(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 twenty one 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.

Variation of conditions and transfer of Licence

11.—(1) The Minister, in concurrence with the Minister for Industry and Trade, may—

(a) vary at any time the conditions of a licence; and

(b) approve the transfer of a licence to another company fulfilling the requirements set out at regulation 7(3).

(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 two consecutive years from the date of the transfer.

(3) The transferee shall only enjoy the balance of the exemptions granted under regulation 13.

Register of licences

12.—(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 Finance 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

Duty and tax exemptions for licensed activities in Tax Free Region

13.—(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) 1st January 2009 to 31st December, 2014 for Rotuma, Kadavu, Levuka, Lomaiviti and Lau;

(ii) 1st January 2014 to 31st December, 2018 for Korovou to Tavua;

(iii) 1st January 2016 to 31st December 2018 from the airport side of the Rewa Bridge excluding the town boundary of Nausori, up to the Ba side of the Matawalu River.

(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.

(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) insofar 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).

Exemption for licence holder having beneficial iTaukei landowner equity

14.—(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 five 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 seven 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.
15. 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.

End of tax free period

16. 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

Disposal of goods taken into Tax Free Region

17.—(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.

Utilisation of exempted goods

18. 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

Enforcement officers

19. Enforcement officers shall be responsible for the proper and efficient administration and control of the provisions of these Regulations.

Made this 1st day of January 2016.

F. S. KOYA
Acting Minister for Finance
SCHEDULE 1
(Regulation 4(3))

MAP
GRANT OF TAX FREE REGION LICENCE

By virtue of powers vested in me under regulation 7(2) and in concurrence with the Minister for Industry and Trade, I hereby grant a provisional licence to

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(Company Name, Address, etc.)
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To operate the business described below, in the TAX FREE REGION on the following terms and conditions

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(Description of business)
This Licence shall remain valid until it is surrendered or revoked.

Dated:...........................................

MINISTER FOR FINANCE