



STANDARD INTERPRETATION GUIDELINE 2019-01

Value Added Tax – New Dwelling House

This Standard Interpretation Guideline ('SIG') sets out Fiji Revenue and Customs Service's (FRCS) policy and operational practice in relation to VAT refund for New Dwelling House acquired or constructed by an eligible person.

It is issued with the authority of the Chief Executive Officer of FRCS.

All legislative references in this SIG are to the *Value Added Tax Act 1991 (VAT Act)* (unless otherwise stated).

This SIG is in effect from 21st January 2019 and may need to be reviewed in the event of any relevant legislative amendments.

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EXECUTIVE SUMMARY

1. The New Dwelling House (NDH) VAT Refund scheme is a tax incentive to encourage Fiji citizens to build and own homes. This incentive is available to an eligible person which includes citizens of Fiji and a non-profit body approved by the CEO for acquisition or construction of NDH.
2. If NDH is constructed or acquired from a VAT registered person, VAT paid by an eligible person for the purpose of acquisition or construction of the NDH can be claimed for refund. The NDH also includes any land or appurtenances which forms part of the first residential property of that eligible person.
3. VAT refund for NDH will be refunded for materials and services acquired and used in the construction for NDH.
4. Any NDH constructed or acquired as the first residential property of an eligible person can be partly or wholly rented out for residential purpose and the NDH will still qualify for the VAT refund.
5. Amount of refund which can be claimed by an eligible person in respect of the amount of VAT paid on acquisition or construction of NDH is:
 - an amount equal to the tax fraction of \$120,000 if the amount of VAT paid is more than the tax fraction of \$120,000, or
 - an amount equal to tax fraction of consideration for acquisition or construction of NDH, if the amount of VAT paid is less than tax fraction of \$120,000.
6. An eligible person must lodge an application for refund to CEO within 3 years from the date NDH is acquired from the registered person or in case of construction of NDH from the date completion certificate is issued after completion of construction.
7. Applications for NDH claim must be made on approved form prescribed by the CEO, supported by original tax invoices or other evidence as the CEO deems necessary, processing of application will include verification of documents and site inspection of properties before the refund is released.
8. Amount of VAT refund approved for an eligible person for NDH will be first adjusted against the amount of tax and penalties owed by eligible person to FRCS.
9. Any NDH commenced before and completed after 1st January, 2012, CEO will only consider tax invoices issued on or after 1 January, 2012 for the purpose of NDH claim.

INTRODUCTION

10. The New Dwelling House (NDH) VAT Refund scheme is a tax incentive to encourage Fiji citizens to build and own homes. It allows an eligible person who acquires or constructs first residential property for the purpose of living in it, to claim, VAT paid within the guidelines issued by the CEO.

11. An eligible person includes a Fiji citizen and a non-profit body approved by the CEO that provides homes for the under-privileged in Fiji.
12. If an eligible person acquires a NDH or land for the purpose of building a NDH, that eligible person is entitled to claim a refund of an amount of VAT paid in the acquisition or construction of NDH. For any VAT paid on acquisition of land, refund cannot be claimed, until a NDH is built on that land.
13. A person is entitled for a refund of all or part of the VAT paid up to the maximum VAT inclusive amount of \$120,000.
14. A dwelling house for which a claim is made, must be acquired for eligible person's household, for an eligible person to live in it and includes:
 - a new house acquired from a registered person;
 - an existing house acquired from a registered person;
 - a new house built by the eligible person;
 - a new house built by a contractor hired by the eligible person;
 - land on which the NDH is built; and
 - anything included in the approved or initial plan that is attached to the house e.g. a garage.
15. Claim for NDH refund made by an eligible individual can only be made once. A non-profit body involved in the provision of free housing for the underprivileged may claim for a NDH refund for each NDH constructed.
16. Application for a NDH VAT refund must be lodged in the approved form prescribed by the CEO, submitted with tax invoices and supporting evidence within 3 years of acquisition or from the date completion certificate is issued after completion of construction.
17. For the purpose of NDH, VAT can only be claimed on goods and services acquired from the registered person which are used by eligible person for purpose of constructing the NDH.
18. A dwelling house means a building constructed solely as a first residential property of the eligible person.

LEGISLATIVE ANALYSIS

19. If an eligible person acquires NDH or land for the purpose of building a NDH, from a registered person, section 70 of the VAT Act 1991 allows the eligible person to claim VAT refund for the amount of VAT paid on the acquisition of NDH.
20. "*Dwelling house*"¹ means any building constructed solely as a first residential property of that eligible person and includes any land or appurtenances belonging to the dwelling house or usually enjoyed with it.
21. Dwelling house basically means a suitable place of residence for an eligible person.

¹ Reference is made to section 70(9) of the VAT Act 1991.

22. Appurtenances is anything attached to a piece of land or building such that it becomes a part of that property and these include a garage, septic system, water tank, fence, swimming pool etcetera.
23. *“Eligible person”*² is a natural person who is a citizen of Fiji or a non-profit organization for purpose of income tax as approved by the CEO under the applicable provision of Income Tax Act 2015, engaged in the provision of residential accommodation to the underprivileged.
24. An individual who is a Fiji Citizen can claim VAT only once on the first residential property.
25. For a non-profit organization, claim can be made on each NDH constructed or acquired for underprivileged.
26. *“New”*³ means newly constructed dwelling house not used by any person or held by any person for use of that person, it also includes an existing dwelling house that passes from the possession of a registered person to an eligible person.

NDH Acquired from Registered Person

27. For the purpose of section 70 of the VAT Act, a house is considered to be new (NDH) in the hands of acquirer, if it has been acquired from registered person.
28. Amount of VAT paid to the registered person for NDH can be claimed by an eligible person.

Example 1

On 1st June, 2015, Mr. A who is a Fiji Citizen acquired a residential property as his first residential property from a VAT registered person, who charged VAT on the sale of the property. Property was acquired for \$500,000 VIP. Will Mr. A qualify for the VAT refund under section 70 of the VAT Act?

CEO’s position:

Yes, Mr. A will qualify for the VAT refund under section 70 of the VAT Act for the following reasons:

- Mr. A will be classified as an “eligible person” as he is a citizen of Fiji.
- The acquired property will meet the definition of “dwelling house” and “new” as this is Mr. A’s first residential property and it is an existing dwelling house which is transferred from the possession of a registered person.

29. Any eligible person acquiring strata title property as a first residential property from the VAT registered person will also qualify for VAT refund.
30. Strata title are also classified as dwelling house because it is treated as a place of residence for an eligible person.

² Reference is made to section 70(9) of the VAT Act 1991.

³ Reference is made to section 70(9) of the VAT Act 1991.

NDH Constructed by Eligible Person

31. For the purpose of section 70 of the VAT Act, VAT paid on the goods (materials) and services acquired from a registered person and used for the purpose of constructing the NDH can be claimed by an eligible person.
32. Any materials purchased from a registered person by an eligible person for the purpose of constructing NDH must be used in constructing that NDH, only then VAT paid on acquisition of these materials can be claimed.
33. An eligible person may hire a contractor on agreed amount to construct the NDH, contractor will be responsible to purchase required materials and provide required services to construct the NDH. If the contractor is a registered person who will charge VAT on the services supplied, the amount of VAT paid by the eligible person can be claimed.

Example 2

Mr. B is a Fiji citizen, who hired a contractor responsible for constructing a house as per Mr. B's house plan. The contractor is a registered person who will charge Mr. B \$300,000 VIP for supplying the required materials and services in order to construct Mr. B's house. This will be Mr. B's first residential property. Will Mr. B qualify for the VAT refund under section 70 of the VAT Act?

CEO's position:

Yes, Mr. B will qualify for the VAT refund under section 70 of the VAT Act and he will be able to claim VAT paid to the contractor for the following reasons:

- Mr. B will be classified as an "eligible person" as he is the citizen of Fiji.
- The constructed property meets the definition of "dwelling house" and "new" as this is Mr. B's first residential property and newly constructed dwelling house not used by any person.
- The contractor is the VAT registered person.

Note:

If the contractor was an unregistered person for VAT purposes, Mr. B will not qualify for the VAT refund under section 70 of the VAT Act because no VAT will be paid by Mr. B, also Mr. B will not qualify for the VAT refund on materials used because those materials are acquired by contractor.

34. An eligible person can hire the contractor who will just be responsible for constructing the NDH and required materials will be purchased by the eligible person. Eligible person can claim the VAT if:
 - The materials are acquired from the registered person; and
 - The contractor responsible for constructing the NDH is registered person.

Example 3

Mr. C is a Fiji citizen, who hired a contractor responsible for constructing a house as per Mr. C's house plan. The contractor is a registered person, who will charge Mr. C \$100,000 VIP for supplying the required services in order to construct Mr. C's house. Required materials for \$100,000 VIP will be purchased by Mr. C from a registered person. House being constructed will

be Mr. C's first residential property. Will Mr. C qualify for the VAT refund under section 70 of the VAT Act?

CEO's position

Yes, Mr. C will qualify for the VAT refund under section 70 of the VAT Act and he will claim the VAT paid to contractor and VAT paid for acquisition of the materials for the following reasons:

- Mr. C will be classified as an "eligible person" as he is a citizen of Fiji.
- Constructed property will meet the definition of "dwelling house" and "new" as this is Mr. C's first residential property and newly constructed dwelling house not used by any person.
- Contractor is the VAT registered person.
- Materials are purchased from the VAT registered person.

35. For purpose of constructing the NDH, materials will be purchased by an eligible person and eligible person can hire its own employees to construct NDH. Eligible person can claim VAT on materials if it is acquired from the registered person but no VAT can be claimed for salaries and wages paid to employees for purpose of constructing the NDH.
36. According to section 15 of the VAT Act, VAT is charged on the supply (but not including an exempt supply) of goods and services in Fiji by a registered person in the course or furtherance of a "**taxable activity**" carried on by that person, by reference to the value of that supply.
37. Taxable activity is defined in section 4 of the VAT Act and it does not include any employment activity.
38. If an eligible person is providing employment in order to obtain the service for constructing the NDH, activity of employment cannot be classified as a taxable activity, hence VAT cannot be charged or paid in this circumstances.

Example 4

Mr. D is a Fiji citizen, who hired employees to construct his first residential property and all the required materials will be purchased by Mr. D from a VAT registered person which will cost him \$100,000 VIP. Will Mr. D qualify for the VAT refund under section 70 of the VAT Act?

CEO's position:

Yes, Mr. D will qualify for the VAT refund under section 70 of the VAT Act and he will claim VAT paid for purchases of materials for the following reasons:

- Mr. D will be classified as an "eligible person" as he is a citizen of Fiji.
- constructed property will meet the definition of "dwelling house" and "new" as this is Mr. D's first residential property and newly constructed dwelling house not used by any person.
- materials are acquired from the VAT registered person.

Salary and wages paid by Mr. D to its employees will not attract VAT because employment activity cannot be classified as taxable activity.

39. In the cases where eligible person has never claimed VAT refund for the purpose of NDH, and his current residential property is being destroyed by the means of cyclone, fire, termite or by any other cause and as a result a new house is being build, eligible person will qualify for the NDH claim.
40. If an eligible person constructs a house which is just an extension to the existing property, such an extension will not be considered as NDH. A house constructed as an extension to the existing property does not satisfy the definition of "New" under section 70(9) of the VAT Act.

NDH Being Rented Out

41. If an NDH is acquired or constructed for the purpose of residential accommodation which is the first residential property of an eligible person and if that NDH also have flats which are being rented out for residential purpose, the whole NDH will qualify for the VAT refund.
42. If an eligible person constructing or acquiring the first residential property for purpose of residential accommodation, does not occupy the NDH for valid reasons such as employment or family commitment and opts to rent out the NDH for residential purposes, the NDH acquired or constructed will still qualify for VAT refund.

Limit on Claim Amount

42. The amount of refund which can be claimed by an eligible person for the amount of VAT paid on acquisition or construction of NDH is the lesser of:
 - an amount equal to the tax fraction of \$120,000 if the amount of VAT paid is more than the tax fraction of \$120,000, or
 - an amount equal to tax fraction of consideration for acquisition or construction of NDH, if the amount of VAT paid is less than tax fraction of \$120,000.
43. An eligible person can claim a refund for the amount of VAT paid for goods and services but only up to a maximum VAT inclusive price of \$120,000. Based on the NDH refund formula given in section 70(4), this will be applied as follows:
 - if an eligible person acquired a NDH costing below \$120,000, all of the VAT paid may be refunded;
 - if an eligible person acquired a NDH costing \$120,000 or more, the maximum refund allowable is, \$9,908.25 ($\$120,000 \times 9/109$).

Example 5

This example is based on the VIP amount spent by an eligible person for purpose of constructing or acquiring the NDH. The VAT paid column shows the amount of VAT paid either for construction or acquisition of NDH and VAT refundable column shows amount of VAT which will be refunded by FRCS.

	VAT Paid	VAT Refundable
Example 1	$(\$ 500,000 \times 9/109) = \$41,284$	$(\$120,000 \times 9/109) = \$9,908.25$
Example 2	$(\$ 300,000 \times 9/109) = \$24,771$	$(\$120,000 \times 9/109) = \$9,908.25$
Example 3	$(\$200,000 \times 9/109) = \$16,514$	$(\$120,000 \times 9/109) = \$9,908.25$

Example 4	$(\$100,000 \times 9/109) = \$8,257$	$(\$100,000 \times 9/109) = \mathbf{\$8,257.00}$
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In example 1, 2 and 3, eligible person Mr. A, B and C either acquired or constructed NDH costing more than \$120,000 VIP, the maximum refund allowable is, \$9,908.25 ($\$120,000 \times 9/109$).

In example 4, eligible person Mr. D constructed NDH costing less than \$120,000 VIP, all the VAT paid for purpose of constructing the NDH will be refunded.

44. An eligible person will only be entitled for refund of VAT paid on any land acquired from the registered person until a new dwelling house is built on that land.
45. Renovations, extensions to existing dwelling and acquisition of commercial property for purpose of the business are not covered under section 70 of the VAT Act.

Time of Supply and Time Bar for Claim

46. For the purpose of NDH time of supply will be as follows:
 - if NDH was supplied by a registered person, the date invoice is issued for supply of NDH; or
 - for self-constructed NDH, the date completion certificate is issued after completion of construction.
47. For NDH constructed on mataqali land, letter from mataqali head ("*Turaga ni Koro*") will serve as a completion certificate.
48. The time frame for claiming refunds is set out in section 70(7). An application for a refund must be made as follows:
 - if NDH was supplied by a registered person, an eligible person must lodge an application for refund to CEO within 3 years from the date NDH was supplied; or
 - for self-constructed NDH, an eligible person must lodge an application for refund to CEO within 3 years from the date completion certificate is issued after completion of construction.
49. As required under section 70(7) CEO is not required to refund any tax to an eligible person if application for VAT refund for purpose of NDH is lodged after 3 years from the date of acquisition or from the date completion certificate is issued after completion of construction.

Partial Completion

50. Eligible person engaged in constructing the NDH which has more than one flat, if eligible person wishes to claim VAT refund after successful completion of one flat, eligible person will be entitled to claim VAT refund after obtaining the partial completion certificate.
51. Eligible person will only be entitled to claim VAT refund once, even though claim amount of an eligible person for the partially completed NDH is less than an amount equal to the tax fraction of \$120,000 VIP.

Example 6

This example is based on either date of acquisition or date completion certificate is issued after completion of construction for NDH of an eligible person and the mandatory requirement for the last day of application.

Date of acquisition/completion certificate column shows either date of acquisition or date completion certificate is issued after completion for construction of NDH of an eligible person and last day for application column shows the date by which an eligible person must make an application for refund to CEO.

	Date of Acquisition/Completion Certificate	Last Date for Application	Date of Application
Example 1	1 st June, 2015	31 st May, 2018	30 th September, 2018
Example 2	30 th September, 2018	29 th September, 2021	20 th August, 2019
Example 3	9 th October, 2017	8 th October, 2020	30 th October, 2020
Example 4	15 th December, 2017	14 th December, 2020	30 th January, 2018

In example 2 and 4 eligible person Mr. B and D makes an application for VAT refund for NDH within 3 years from the date of acquisition or date completion certificate is issued after completion for construction of NDH, their application will be processed and VAT refund will be made accordingly, however for example 1 and 3, Mr. A and C will not receive any VAT refund for constructing the NDH because they failed to make an application for VAT refund within the 3 years after date, completion certificate is issued for completion of construction of their NDH.

Application for Claim

52. An eligible person making a claim for VAT refund for the purpose of NDH must have a valid Taxpayer Identification Number.
53. The CEO has prescribed an approved form (*FORM IRS032- VAT*) for an eligible person to make an application for VAT refund for acquiring NDH.
54. Applications made for NDH claim must be supported by original tax invoices or other evidence as the CEO deems necessary.
55. Processing of application made by eligible person for NDH will include verification of documents and site inspection of properties before the refund is released. The intention is to eliminate any possible fraudulent activities occurring towards the release of the refund.

Offsetting refunds

56. If an eligible person who is entitled to a VAT refund for NDH, has an amount owing in respect of any tax and penalty under VAT Act or any other tax under the Tax Administration Act 2009, the tax payable amount will be offsetted first from the refund and the balance of refund if any will then be paid to the eligible person.

Example 7

On 30th September, CEO approved \$9,908 VAT refund for NDH of Mr. A, on the same day tax ledgers showed Mr. A had \$5,000 as tax arrears for his income tax, tax arrears will be offsetted first from the VAT refund.

CEO's Position:

Mr. A will be refunded the amount of \$4,908 after offsetting \$5,000 tax arrears from \$9,908 NDH VAT refund.

Cut-off Date

57. Any eligible person who commenced the construction of NDH prior to 1st January, 2012 and the completion certificate was issued after 1st January, 2012 any application for NDH by an eligible person, CEO will only consider tax invoices issued on or after 1 January, 2012 for the purpose of NDH claim.

Offences by Tax Officers and Eligible Person

58. Any person who is an approving officer for the processing of a completion certificate, permits or conceals any act to connive or collude, directly or indirectly with any eligible person for any payment or reward, commits an offence and is liable for a fine not exceeding \$50,000 or 10 years imprisonment or both.
59. For the purpose of section 57 of the Tax Administration Act "tax officer" means any person employed or engaged by the Service in any capacity, and includes a former officer or employee of the Service.
60. A tax officer who directly or indirectly ask for or receive any payment or reward in cash or kind for which the officer is not entitled to receive law fully, commits an offence and is liable to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years or to both a fine and imprisonment.
61. Any tax officer who enters into or agrees to any agreement to act, abstain from doing any act, permit or connive in the doing of any act and conceals any act whereby the government is defrauded of revenue, contrary to the provisions of a tax law or to the proper execution of the officer's duty commits an offence and is liable to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years or to both a fine and imprisonment.
62. Any eligible person who directly or indirectly offers or gives any payment or reward in cash or kind for which the officer is not entitled to receive law fully, commits an offence and is liable to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years or to both a fine and imprisonment.
63. Any eligible person who enters into or agrees to any agreement with a tax officer to induce the officer to act, abstain from doing any act, permit or connive in the doing of any act and conceals any act whereby the government is defrauded of revenue, contrary to the provisions of a tax law or to the proper execution of the officer's duty commits an offence and is liable to a fine not

exceeding \$25,000 or to imprisonment for a term not exceeding 10 years or to both a fine and imprisonment.

APPENDIX ONE – Value Added Tax Act 1991

Section 70 Dwelling House

70(1) Where –

- (a) a new dwelling house; or
- (b) land acquired for the purpose of building a new dwelling house, is a taxable supply to an eligible person by a registered person in the course or furtherance of a taxable activity carried on by that registered person,

the Chief Executive Officer upon application by the eligible person shall refund an amount of tax paid in respect of that supply calculated with subsection (4).

(2) Any claim under subsection (1) by an eligible person can only be made once.

(3) The Chief Executive Officer shall prescribe a form for applications made under subsection (1) and such applications must be supported by tax invoices or other evidence as the Chief Executive Officer deems necessary.

(4) For the purpose of subsection (1), the amount of refund of the tax paid in respect of the supply shall be lesser of –

- (i) an amount equal to the tax fraction of \$120,000 or such other amount as the Minister may declare in the Gazette; or
- (ii) an amount equal to the tax fraction of the consideration in money for the supply.

(5) The Chief Executive Officer shall not refund any tax paid on any land under subsection (1) paragraph (b), until a new dwelling house is built on that land.

(6) Any eligible person may apply to the Chief Executive Officer for a refund of tax paid for goods and services purchased for the purpose of this section, provided the eligible person has –

- (a) acquired the goods and services necessary to build a new dwelling house; or
- (b) either constructed or arranged for construction of a new dwelling house,

and the Chief Executive Officer is satisfied that those goods and services have been used in the construction of that new dwelling house.

(7) The Chief Executive Officer shall not be required to refund any tax to an eligible person unless, within 3 years after the time of supply of the new dwelling house or land on which a new dwelling house will be built for the eligible person, the eligible person has applied to the Chief Executive Officer for the refund of tax in the prescribed form.

(8) If an eligible person who is entitled to a refund under subsection (4), has an amount owing to the Chief Executive Officer by that person in respect of any tax, penalty, interest or costs under this Act or any other tax under the Tax Administration Act 2009, the Chief Executive Officer shall deduct that refund to pay for such other liability and the remaining excess be refunded to the eligible person.

(9) For the purpose of this section –

“dwelling house” in relation to an eligible person, means a building constructed solely as a first residential property of that eligible person and includes any land or appurtenances belonging to the dwelling house or usually enjoyed with it; and

“eligible person” means a natural person who is a citizen of Fiji and includes a non-profitable body approved by the Chief Executive Officer engaged in the provision of residential accommodation to the underprivileged; and

“new” means not having either used by any person acquired or held by any person for use of that person, or an existing dwelling house that passes from the possession of a registered person to an eligible person.

(10) Notwithstanding this section, where a new dwelling house commenced building prior to 1 January 2012 and the completion certificate is issued after the commencement of this Act, any application under this section by an eligible person, the Chief Executive Officer shall consider only tax invoices issued on or after 1 January, 2012 for the purposes of subsection (4).

(11) (a) Any person who is an approving officer for the processing of a completion certificate, who permits or conceals any act to connive or collude, directly or indirectly with any eligible person for any payment or reward whatsoever, commits an offence and is liable to a fine not exceeding \$50,000 or 10 years imprisonment or both.

(b) Any tax officer who commits an offence under paragraph (a) shall be subject to section 57 under the Tax Administration Act 2009.

APPENDIX TWO – Tax Administration Act 2009

Offences by tax officers

57.(1) In this section, “tax officer” means any person employed or engaged by the Authority in any capacity, and includes a former officer or employee of the Authority.

(2) A tax officer who directly or indirectly asks for, or takes in connection with any of the officer’s duties, any payment or reward whatsoever, whether pecuniary or otherwise, or promise or security for any such payment or reward, not being a payment or reward that the officer was lawfully entitled to receive, commits an offence and is liable to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 24 months or to both a fine and imprisonment.

(3) A tax officer who enters into or acquiesces in any agreement to -

- (a) do any act or thing;
- (b) abstain from doing any act or thing;
- (c) permit or connive in the doing of any act or thing; or
- (d) conceals any act or thing,

whereby the Government is or may be defrauded of revenue, or that is contrary to the provisions of a tax law or to the proper execution of the officer’s duty commits an offence and is liable to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 24 months or to both a fine and imprisonment.

(4) A person who directly or indirectly offers or gives to a tax officer any payment or reward whatsoever, whether pecuniary or otherwise, or any promise or security for any payment or reward, not being a payment or reward that the officer was lawfully entitled to receive, commits an offence and is liable to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 24 months or to both a fine and imprisonment.

(5) A person who proposes or enters into any agreement with a tax officer in order to induce the officer to -

- (a) do any act or thing;
- (b) abstain from doing any act or thing;
- (c) permit or connive in the doing of any act or thing; or
- (d) conceals any act or thing,

whereby the Government is or may be defrauded of revenue, or that is contrary to the provisions of a tax law or to the proper execution of the officer’s duty commits an offence and is liable to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 24 months or to both a fine and imprisonment.