

[LEGAL NOTICE NO. 62]

INCOME TAX ACT 2015

Income Tax (Film-making and Audio-visual Incentives) (Amendment) Regulations 2019

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

Short title and commencement

1.—(1) These Regulations may be cited as the Income Tax (Film-making and Audio-visual Incentives) (Amendment) Regulations 2019.

(2) These Regulations come into force on 1 August 2019.

(3) In these Regulations, the Income Tax (Film-making and Audio-visual Incentives) Regulations 2016 is referred to as the “Principal Regulations”.

Regulation 3 amended

2. The Principal Regulations is amended by deleting regulation 3 and substituting the following—

“Laws to be read together

3. These Regulations shall *inter alia* be read together in conjunction with the—

- (a) Customs Act 1986 and the Customs Tariff Act 1986 in so far as it relates to customs and duties;
- (b) Excise Act 1986 in so far as it relates to excise; and
- (c) Value Added Tax Act 1991.”.

Regulation 13 amended

3. Regulation 13(a) of the Principal Regulations is amended by deleting “the general provisions of this Act” and substituting “these Regulations”.

Regulation 37 amended

4. Regulation 37(1)(b) of the Principal Regulations is amended by deleting “Commissioner” and substituting “CEO”.

Regulation 65 amended

5. Regulation 65(c) of the Principal Regulations is amended by deleting “Commissioner” and substituting “CEO”.

Regulation 67 amended

6. Regulation 67 of the Principal Regulations is amended by deleting the definition of “qualifying Fiji production expenditure”.

Regulation 69 amended

7. The Principal Regulations is amended by deleting regulation 69 and substituting the following—

“Amount of tax rebate

69.—(1) Subject to subregulation (2), the amount of tax rebate is 75% of the company’s total Fiji expenditure on the film.

(2) If the total Fiji expenditure on the film exceeds \$20 million, the maximum allowable tax rebate is \$15 million.”.

Regulation 70 amended

8. Regulation 70 of the Principal Regulations is amended by—

(a) in subregulation (1)(e), deleting “qualifying Fiji production expenditure” and substituting “total Fiji expenditure”;

(b) after subregulation (2), inserting the following new subregulations—

“(3) Film Fiji may revoke a provisional approval under regulation 70(1)(b) at any time if—

(a) it is satisfied that the provisional approval was obtained by fraud or serious misrepresentation;

(b) the applicant does not comply with the conditions or requirements in respect of which the provisional approval was issued;

(c) the company fails to furnish any information required by Film Fiji in relation to the film within a period specified by Film Fiji; or

(d) in the case of a company provided with a provisional approval prior to 1 June 2019, the company has not commenced filming by 1 June 2019.

(4) A revocation of a provisional approval made under subregulation (3) does not prevent the re-issuance of a provisional approval in respect of the same proposed film by the same applicant.”.

Regulation 70B amended

9. The Principal Regulations is amended by deleting regulation 70B and substituting the following—

“Amount of tax rebate

70B.—(1) Subject to subregulation (2), the amount of tax rebate is 75% of the company’s total Fiji expenditure on the television commercial.

(2) If the total Fiji expenditure on the film exceeds \$20 million, the maximum allowable tax rebate is \$15 million.”.

Regulation 70D amended

10. Regulation 70D(1)(e) of the Principal Regulations is amended by deleting “qualifying Fiji production” and substituting “Fiji”.

Division 3 heading of Part 5 amended

11. The Principal Regulations are amended in Part 5 in Division 3 in the heading by deleting “QUALIFYING FIJI PRODUCTION” and substituting “TOTAL FIJI”.

Regulation 71 amended

12. Regulation 71(5)(a) of the Principal Regulations is amended by deleting “tax rebate” and substituting “incentive”.

Regulation 72 amended

13. Regulation 72 of the Principal Regulations is amended by—

- (a) in the heading, deleting “qualifying Fiji production” and substituting “total Fiji”; and
- (b) deleting “qualifying Fiji production” and substituting “total Fiji”.

Regulation 73 amended

14. Regulation 73 of the Principal Regulations is amended by deleting “Qualifying Fiji production” wherever it appears and substituting “Total Fiji”.

Regulation 74 amended

15. Regulation 74 of the Principal Regulations is amended by—

- (a) in the heading, deleting “Qualifying Fiji production” and substituting “Total Fiji”; and
- (b) deleting “qualifying Fiji production” and substituting “total Fiji”.

Regulation 75 amended

16. Regulation 75 of the Principal Regulations is amended by—

- (a) in the heading, deleting “Qualifying Fiji production” and substituting “Total Fiji”;
- (b) in subregulation (1)—
 - (i) deleting “qualifying Fiji production” and substituting “total Fiji”;
 - (ii) in the table—
 - (A) in item 1—
 - (AA) deleting paragraphs (d) and (e); and
 - (BB) in paragraph (g), deleting “qualifying Fiji production” and substituting “Fiji”;
 - (B) deleting item 2;
 - (C) in item 4—
 - (AA) in paragraph (a), deleting “; and” and substituting “.”; and
 - (BB) deleting paragraph (b); and
 - (D) deleting item 5; and
- (c) deleting subregulation (2).

Regulation 76 amended

17. Regulation 76 of the Principal Regulations is amended by—

- (a) in the heading, deleting “Qualifying Fiji production” and substituting “Total Fiji”;
- (b) deleting “qualifying Fiji production” and substituting “total Fiji”;

- (c) in paragraph (a)—
 - (i) deleting subparagraph (i); and
 - (ii) after subparagraph (ii), inserting the following new subparagraphs—
 - “(iii) Service Turnover Tax, Environment and Climate Adaptation Levy, prize monies, penalties applied by authorities on the company, damages as a result of the company’s negligence incurred at any time from the commencement of the production and any other taxes deemed by FRCS; or
 - (iv) any sporting competitions or tournaments.”; and
- (d) deleting paragraph (b).

Regulation 77 amended

18. Regulation 77 of the Principal Regulations is amended in the heading by deleting “Qualifying Fiji production” and substituting “Total Fiji”.

Regulation 78 amended

19. Regulation 78 of the Principal Regulations is amended by deleting “qualifying Fiji production” and substituting “Total Fiji”.

Division 3A of Part 5 amended

20. The Principal Regulations are amended in Part 5 in Division 3 in the heading by deleting “QUALIFYING FIJI PRODUCTION” and substituting “TOTAL FIJI”.

Regulation 80B amended

21. Regulation 80B of the Principal Regulations is amended by deleting “qualifying Fiji production” wherever it appears and substituting “total Fiji”.

Regulation 80C amended

22. Regulation 80C of the Principal Regulations is amended by deleting “Qualifying Fiji’s production” wherever it appears and substituting “Total Fiji”.

Regulation 80D amended

23. Regulation 80D of the Principal Regulations is amended in the heading by deleting “Qualifying Fiji’s production” and substituting “Total Fiji”.

Regulation 80E amended

24. Regulation 80E of the Principal Regulations is amended by—
- (a) in the heading, deleting “Qualifying Fiji’s production” and substituting “Total Fiji”; and
 - (b) in subregulation (1) —
 - (i) deleting “qualifying Fiji’s production” and substituting “total Fiji”; and
 - (ii) deleting “qualifying Fiji production” and substituting “total Fiji”.

Regulation 80F amended

25. Regulation 80F of the Principal Regulations is amended by—
- (a) in the heading, deleting “Qualifying Fiji’s production” and substituting “Total Fiji”; and

- (b) deleting “qualifying Fiji production” and substituting “total Fiji”.

Regulation 80G amended

26. Regulation 80G of the Principal Regulations is amended in the heading by deleting “Qualifying Fiji’s production” and substituting “Total Fiji”.

Regulation 80H amended

27. Regulation 80H of the Principal Regulations is amended by deleting “qualifying Fiji production” and substituting “Fiji”.

Regulation 89 amended

28. Regulation 89 of the Principal Regulations is amended by deleting “regulation 68 and 70A” wherever it appears and substituting “this Part”.

New Part inserted

29. The Principal Regulations is amended after regulation 89 by inserting the following new Part—

“PART 6—OTHER INCENTIVES

Division 1—Tax incentive

Tax deduction

90.—(1) A person is allowed a deduction of 200% of the amount of expenses incurred in a tax year on filming equipment imported into Fiji for film making and audio-visual production.

(2) For the purpose of subregulation (1), the filming equipment must be owned by a business registered in Fiji.

Division 2—Post-production facility investment package

Interpretation

91. In this Division, unless the context otherwise requires—

“exempt goods” means raw materials, plant, machinery and equipment (including spare parts) required for the setting up of a post-production facility;

“post-production facility” means a facility which includes filming equipment, cameras, editing and post production studio equipment;

“post-production facility investment package” means the incentives under this Division;

“production facility investment” means a project with a capital investment of \$2 million or more, and the project commences on or after 1 August 2019 and the production facility is completed within 24 months from the date the provisional approval is granted;

“project” means the setting up of a post-production facility; and

“provisional approval” means a provisional approval granted under this Division.

Power to grant post-production investment package

92. The Minister or CEO, as applicable, may grant or refuse to grant a post-production investment under this Division to a person who has completed a project and who has complied with this Division.

Provisional approval

93.—(1) The Minister or CEO, as applicable, may—

- (a) reject the application for provisional approval for a post-production investment package; or
- (b) grant provisional approval to such application, with or without any condition.

(2) The Minister or CEO, as applicable, must not grant provisional approval under subregulation (1) unless the Minister is satisfied that—

- (a) the application is for a post-production investment; and
- (b) the person intends to complete and is capable of completing such post-production investment.

(3) When considering an application for a post-production investment package under subregulation (1), the Minister or CEO, as applicable, must take into account the following matters—

- (a) the assets and liabilities of the person;
- (b) the nature and extent of the post-production investment;
- (c) whether adequate amenities would be provided as part of the proposed post-production investment;
- (d) such other matters as the Minister may consider relevant to the desirability or otherwise of the post-production investment for Fiji and the capability of the person to complete it.

(4) The decision of the Minister or CEO, as applicable, under this regulation is final.

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

Application for post-production investment

94.—(1) A person (“applicant”) may, in writing, apply to the CEO for provisional approval to carry out a post-production investment, setting out the following—

- (a) the name and registered office of the business;
- (b) the names of all directors and shareholders of the business together, if applicable, including shareholdings of the directors and shareholders;
- (c) a recent statement of all assets and liabilities of the business;
- (d) the location and description of the project site;

- (e) the detailed description of the proposed post-production facility;
- (f) a sketch plan showing in sufficient detail the site and layout of the proposed project;
- (g) an estimate of the total cost of the project;
- (h) details of the proposed method of financing the project;
- (i) evidence of the business ability to complete the post-production investment; and
- (j) estimates of the projected income from the new post-production investment.

(2) The CEO may require the applicant to provide other information he or she may consider necessary in relation to the application.

Effect of provisional approval

95.—(1) When a provisional approval is granted, all exempt goods, imported within the period specified in the definition of “post-production investment” under regulation 91, by or on behalf of the person and used in the carrying out of the post-production investment, are exempt from all duties payable in respect of their importation.

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

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

Completion of post-production investment

96.—(1) If a person has been granted provisional approval, the person must complete the project within 24 months from the date on which the provisional approval is granted.

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

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

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

(4) Upon receiving an application under subregulation (2), the Minister may—

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

(5) Subject to regulations 97 and 98, no approval must be granted under this regulation if the Minister is satisfied that the person has failed to complete the project or has failed to comply with any condition upon which provisional approval was granted.

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

(7) The Minister must, in writing, notify the applicant and CEO of the decision to reject or grant the application.

Extension of time for completion

97.—(1) If a person to which provisional approval has been granted is unable to complete its post-production investment within the period specified in the definition of “post-production investment” in regulation 91 due to unforeseen circumstances or some other act beyond the control of the person, the person may apply in writing to the Minister to extend the time by which the post-production investment must be completed.

(2) If the Minister extends the time under subregulation (1), the person continues to enjoy the duty free concession provided for by regulation 95 during the extended period.

Final approval if completed

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

- (a) the Minister in concurrence of the Minister responsible for industry and trade is satisfied that the company has in all respects completed the requirements of the project; and
- (b) the post-production facility is fully operational.

Effect of final approval

99. Notwithstanding anything contained in these Regulations, the income of a person will be exempt from tax for a period of 7 consecutive tax years provided that the capital investment of the post-production investment is more than \$2 million.

Revocation of post-production investment package

100. The Minister may revoke any post-production investment if the person has —

- (a) breached any condition of the provisional or final approval;
- (b) failed to comply with any of the requirements of these Regulations; or
- (c) been convicted of an offence under these Regulations or any other written law relating to taxation, customs or excise.”.

Made this 31st day of July 2019.

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