



## **STANDARD INTERPRETATION GUIDELINE 2020-15**

### **INCOME TAX ACT 2015 - INCOME TAX (RESIDENTIAL HOUSING DEVELOPMENT PACKAGE) REGULATIONS 2016 – RESIDENTIAL HOUSING DEVELOPMENT PACKAGE INCENTIVES**

This Standard Interpretation Guideline (SIG) sets out Fiji Revenue and Customs Service's (FRCS) policy and operational practice in relation to the residential housing development package incentives which was introduced in 2016 and later amended in the 2019/2020 National Budget of Fiji.

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

All legislative references in this SIG are to the Income Tax Act 2015 and the Income Tax (Residential Housing Development Package) Regulations 2016 (unless otherwise stated).

This SIG is in effect from 16<sup>th</sup> June 2020 and may need to be reviewed in the event of any relevant legislative amendments.

#### **CONTENT**

Purpose	2
Introduction	2
Legislative Analysis	2
Residential Housing Development Package	2
Provisional Approval	3
VAT Implications	5
Completion of Residential Housing Development Package	5
Final Approval	6
Revocation of Residential Housing Development Package	6
Appendix One: Concession Code 293 - Schedule 2 Of Customs Tariff Act 1986	7
Appendix Two: Income Tax (Residential Housing Development Investment Package) Regulations 2019	8
Appendix Three: Flowchart	10

## **PURPOSE**

1. The purpose of this Standard Interpretation Guideline (SIG) is to discuss CEO's interpretation and application of the residential housing development package which is available under the Income Tax (Residential Housing Development Package) Regulations 2016.
2. As the incentive is quite new, the CEO finds it necessary to provide the awareness and clarity on the requirements to qualify for the incentive, the legislated procedural requirements and the tax benefits associated with the incentive.

## **INTRODUCTION**

3. An incentive package which was amended in the National Budget 2019-2020 is applicable to companies who carry out residential housing development in Fiji.
4. The incentive package has been outlined in Income Tax (Residential Housing Development Package) Regulations 2016 which is discussed henceforth.
5. The residential housing incentive is available to companies that are registered under the Companies Act 2015. It also provides for the exemption from paying of duty on approved capital goods and income tax exemptions based on capital investment levels.
6. Examples illustrated in this SIG demonstrates the CEO's interpretation and application of the prescribed procedural rules in order to qualify for the Residential Housing Development Package.
7. In this SIG, any reference to the term "Minister" is a reference to the Minister responsible for Finance<sup>1</sup>. However, for certain procedural requirements, the Minister may also consult with the Minister responsible for Housing.<sup>2</sup>
8. The full text of the legislative provisions is contained in the Appendix.

## **LEGISLATIVE ANALYSIS**

### **RESIDENTIAL HOUSING DEVELOPMENT INVESTMENT PACKAGE**

9. The Regulation provides the Minister the powers to grant or refuse to grant a residential housing development package to a company which has completed a residential housing development investment<sup>3</sup>.

### **What is the Residential Housing Development Investment Package?**

10. The investment package is only available to companies which commence engagement in residential housing development investment projects from 1 January 2016<sup>4</sup>. This means that a company that has already commenced with their residential housing development investment project or package and has already completed the project prior to the aforementioned effective date will not qualify for the incentive. In addition to this, the company must make a capital investment over \$2,000,000 or more in relation to the project.

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<sup>1</sup> Regulation 2 – definition of "Minister"

<sup>2</sup> Regulation 4 – Provisional Approval

<sup>3</sup> Regulation 3 – "Power to grant residential housing development investment package"

<sup>4</sup> Regulation 3 – definition of "residential housing development investment"

### **What is Residential Housing Development?**

11. Residential Housing Development<sup>5</sup> means –  
the development of buildings for residential purposes, including the subdivision of residential lots, where more than one residential housing units are developed.
12. The residential housing development package is available in two stages:
  - a. Provisional approval; and
  - b. Final approval.

### **Provisional Approval**

13. A company may apply in writing to the Minister for provisional approval to carry out a residential housing development investment<sup>6</sup>. The application must set 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.<sup>7</sup>
14. The Minister may also require the applicant to provide further documents or information deemed necessary in relation to the application<sup>8</sup>.
15. The Minister may also prescribe particular requirement to applications arising out of a particular geographical location, for example, an application arising out of or relating to a particular area of Fiji on residential housing development investment package<sup>9</sup>.
16. For a provisional approval to be provided by the Minister, the Minister must be satisfied that:

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<sup>5</sup> Regulation 2 – definition of “residential housing development”

<sup>6</sup> Regulation 2 – definition of “residential housing development investment”

<sup>7</sup> Regulation 6(1)

<sup>8</sup> Regulation 6(3)(a)

<sup>9</sup> Regulation 6(3)(b)

- a. the application is for residential housing development investment;
- b. the company intends to complete the investment project and is capable of completing such residential housing development investment; and
- c. the residential housing development investment will benefit the economic development of Fiji; and
- d. in the case of a residential housing development, the sale price of a unit is below \$300,000 (VIP) –
  - (i) in the case of a ground level development, for at least 15% of the units in the development; and
  - (ii) in the case of a multi-storey development, for at least 15% of the units on each storey for the first 5 storeys of the development.<sup>10</sup>

This is achieved by assessing the following:

- 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.

17. If the Minister (may also upon consultation with the Minister responsible for housing) is not satisfied that the application is for the residential housing development investment or that the company intends to or is capable of completing the investment, the Minister may reject the application for provisional approval for residential housing development investment<sup>11</sup>.

The decision of the Minister to reject an application is final<sup>12</sup>. This means that the rejection is not a tax decision which can be objected to under the Tax Administration Act 2009.

However, a company whose application has been rejected (either wholly or partially) may make a new application or amend and resubmit the original application.<sup>13</sup>

18. Once a provisional approval is granted, the importation of all “capital goods” by the company or on behalf of the company which would be used in carrying out of the residential housing development investment is exempt from all duties payable in respect of their importation<sup>14</sup>.

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<sup>10</sup> Regulation 4(2)

<sup>11</sup> Regulation 4(1)(a) and Regulation 4(1)(b)

<sup>12</sup> Regulation 4(4)

<sup>13</sup> Regulation 4(5)

<sup>14</sup> Regulation 5(1)

“Capital Goods” means capital equipment, plant, machinery and any other goods employed in the production of other goods but does not include furniture or motor vehicles.<sup>15</sup> Capital equipment, plant and machinery do not include kitchenware, raw materials, furniture and fittings and other prescribed goods.<sup>16</sup>

19. It is noted that even if a good that is being imported qualifies as a capital good, the applicant must satisfy the Minister that such good cannot be produced locally. The Minister will then decide whether such goods are to be imported<sup>17</sup>.

For example, a company which has been granted provisional approval intends to import machineries that will be used for residential housing development. The company must write to the Minister seeking approval for the importation of the specialised machineries by demonstrating that particular specification of machineries is not and cannot be produced locally in Fiji.

If such specialised machineries can be produced in Fiji, the Minister would most likely not give approval for the importation of such good.

20. Moreover, the exemption is only applicable to all duty payable on the importation, which includes fiscal and excise duty only. VAT would still apply on the importation of capital goods<sup>18</sup>.

### **VAT implications**

21. It is important to note that the exemption only applies to duty payable on the importation of capital goods, provided approval has been granted to such an applicant.
22. VAT paid in relation to the importation of capital goods would still apply, however, the same can only be claimed as an input VAT if such company is registered for VAT.
23. In situations where the applicant is registered for VAT and suppose the Minister extends the project timeline, the normal VAT rules would continue to apply.

### **Completion of Residential Housing Development Investment [The Timeline]**

24. If a company has been granted provisional approval, the company must complete the Residential Housing Development Investment Package project within 24 months from the date the provisional approval was granted.<sup>19</sup>
25. If the company is unable to complete the project within the 24-month timeline due to unforeseen circumstances (such as natural disasters or unavailability of construction material in the market), the company may write to the Minister for an extension of time under which the project must be completed<sup>20</sup>.
26. There is no timeline prescribed for the extension of the project therefore the discretion for the extended timeline lies solely with the Minister.

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<sup>15</sup> Regulation 2 – definition of “capital goods”

<sup>16</sup> Regulation 5(4)

<sup>17</sup> Regulation 5(2)

<sup>18</sup> Regulation 5(3)

<sup>19</sup> Regulation 7(1)

<sup>20</sup> Regulation 10(1)

27. If an extension is granted under the Regulations, the company continues to enjoy the duty free concession provided for the exemption of imported exempt goods during the extended period<sup>21</sup>.

### **Final Approval**

28. Subject to the Regulations, 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.<sup>22</sup>

### **Effect of final approval**

29. Notwithstanding anything contained in the regulations, the income of the company shall be exempt from tax on developer profits derived from the sale of residential units.
30. In situation where the owner has:
- a. been granted provisional approval; and
  - b. completed the project in accordance with the provisional approval, the owner shall be granted a rebate of:
    - i. 7% of the TCE attributed to the development of the units that are sold by the owner for a sale price per unit of less than \$100,000; plus
    - ii. 5% of the TCE attributed to the development of the units that are sold by the owner for a sale price per unit of \$100,000 to \$200,000; plus
    - iii. 3% of the TCE attributed to the development of the units that are sold by the owner for a sale price per unit of more than \$200,000 but not more than \$300,000.
31. For the purpose of the regulation, "TCE" is the total capital expenditure incurred in the residential housing development.

### **Revocation of Residential Housing Development Investment Package**

32. 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.<sup>23</sup>
33. For further information and clarification in regard to this SIG, please email us at [tipu@frcs.org.fj](mailto:tipu@frcs.org.fj)

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<sup>21</sup> Regulation 10(2)

<sup>22</sup> Regulation 9

<sup>23</sup> Regulation 11

## APPENDIX ONE

### CONCESSION CODE 293 - SCHEDULE 2 OF CUSTOMS TARIFF ACT 1986

Part 3  
Codes 293/294

Code No.	Persons or Bodies	Goods Eligible for duty Conc.	Duty Rates			Conditions	Certificate To Be Signed By
			Fiscal	Excise	VAT		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
293	Approved companies under the Income Tax (Residential Housing Development Package) Regulations 2016	Capital goods (capital equipment, plant, machinery and any other goods as approved by the Comptroller. This does not include kitchenware, raw materials, furniture and other prescribed goods)	Free	Free	9%	(a) That a provisional Approval for the project is issued by the Minister;  (b) That the goods are not for sale and are used exclusively for the project for which the concession is granted;  (c) That the disposal or use of the goods for the purposes other than that for which the concessions are granted shall be subject to the condition determined by the Comptroller.	

INCOME TAX ACT 2015

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## **Income Tax (Residential Housing Development Package) (Amendment) Regulations 2019**

IN exercise of the powers conferred on me by section 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 (Residential Housing Development Package) (Amendment) Regulations 2019.

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

(3) In these Regulations, the Income Tax (Residential Housing Development Package) Regulations 2016 is referred to as the “Principal Regulations”.

*Regulation 2 amended*

2. Regulation 2 of the Principal Regulations is amended in the definition of “residential housing development” after “lots” by inserting “, where more than one residential housing units are developed.”.

*Regulation 4 amended*

3. Regulation 4(2) of the Principal Regulations is amended by—

(a) in paragraph (b), deleting “and”;

(b) in paragraph (c), deleting “.” and substituting “; and”;

(c) after paragraph (c), inserting the following new paragraph—

“(d) in the case of a residential housing development, the sale price of a unit is below \$300,000 (VIP)—

(i) in the case of a ground level development, for at least 15% of the units in the development; and

(ii) in the case of a multi-storey development, for at least 15% of the units on each storey for the first 5 storeys of the development.”.

*Regulation 10 amended*

4. The Principal Regulations are amended in regulation 10 by deleting subregulation (2) and inserting the following new subregulations—

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“(2) Where the owner has—

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

the owner shall be granted a rebate of—

- (i) 7% of the TCE attributed to the development of the units that are sold by the owner for a sale price per unit of less than \$100,000; plus
  - (ii) 5% of the TCE attributed to the development of the units that are sold by the owner for a sale price per unit of \$100,000 to \$200,000; plus
  - (iii) 3% of the TCE attributed to the development of the units that are sold by the owner for a sale price per unit of more than \$200,000 but not more than \$300,000.
- (3) For the purpose of this regulation, “TCE” is the total capital expenditure incurred in the residential housing development.”.

*Part 3 inserted*

5. The Principal Regulations are amended after regulation 11 by inserting the following new Part—

“PART 3—DEVELOPMENT OF HOUSING FOR PUBLIC RENTAL

*Public-private partnership for an affordable housing project*

12. The income of a person derived from a public private partnership investment for a residential housing development as approved by the CEO is exempt income for the term of the public private partnership.”.

Made this 1st day of August 2019.

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

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**APPENDIX THREE**  
**FLOWCHART**

