



## **STANDARD INTERPRETATION GUIDELINE 2020-46**

### **INCOME TAX ACT 2015 - INCOME TAX (GOVERNMENT BUILDING INVESTMENT INCENTIVES) REGULATIONS 2020 – GOVERNMENT BUILDING INVESTMENT INCENTIVES**

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This Standard Interpretation Guideline (SIG) sets out Fiji Revenue and Customs Service's (FRCS) policy and operational practice in relation to the Government Building Investment Incentives which was introduced in 2020/2021 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 (Government Building Investment Incentives) Regulations 2020 (unless otherwise stated).

This SIG is in effect from 1<sup>st</sup> August, 2020 and may need to be reviewed in the event of any relevant legislative amendments.

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## **PURPOSE**

1. The purpose of this Standard Interpretation Guideline (SIG) is to discuss CEO's interpretation and application of the Government Building Investment Incentives (GBII) which is available under the Income Tax (Government Building Investment Incentives) Regulations 2020.
2. As this is a new incentive introduced by government, the CEO finds it necessary to provide the much needed 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. The GBII was introduced in 2020/2021 National Budget, where a person upon approval by the Minister derives the rental income from the building rented out to government or any entity approved by the government, rental derived will be treated as exempt income for purpose of income tax.
4. The investment package is only available to taxpayer which commence the engagement in Government Building Investment project on or after 1 August 2020.
5. Before making an application for provisional approval a person must obtain the undertaking in writing from Government or any entity approved by the Government confirming the building will be occupied by them upon completion of the project.
6. If provisional approval is granted, all capital goods, imported by or on behalf of the applicant and used in the carrying out of the project will be exempt from all duties payable in respect of their importation.
7. Person must obtain the final approval form the Minister after the completion of the project.
8. The Minister has the powers under the Income Tax (Government Building Investment Incentive) Regulation 2020 to approve or reject the application for request of provisional or final approval on the project.

## **LEGISLATIVE ANALYSIS**

### **GOVERNMENT BUILDING INVESTMENT INCENTIVE PACKAGE**

9. The Regulations provides the power to Minister to grant or refuse a (GBII) to an applicant who has applied for GBII package.
10. For the purpose of Income Tax Act (Government Building Investment Incentive) Regulation 2020:
  - Minister means Minister responsible for Finance who is the Minister for Economy,
  - Applicant means person who applies for provisional approval for GBII,
  - Application means an application for provisional approval for GBII.
11. Minister has powers to approve the whole application with or without any conditions, approve the part of the application with or without any condition and reject the other parts of the application.

12. The investment package is only available to taxpayer which commence engagement in GBII projects on or after 1 August 2020. This means that a person that has already commenced with their GBII project or has already completed the project will not qualify for the incentive.
13. The GBII is available in two stages:
  - a. Provisional approval; and
  - b. Final approval.

### **Provisional Approval**

14. A person may apply in writing to the Minister for provisional approval to carry out a GBII project. The application must set out the following:
  - a. the name and details of the person;
  - b. a current statement of all assets and liabilities of the person;
  - c. the location and description of the proposed building site;
  - d. a sketch showing the project;
  - e. the estimated cost of the project;
  - f. if the project is to be carried out in stages, a description and the estimated cost, of each stage and details of the proposed timetable;
  - g. evidence of the person's ability to undertake the project;
  - h. details of the proposed method of financing the project;
  - i. estimates of the projected rental income of the person;
  - j. evidence that the Government or an entity approved by the Government has given the person a written undertaking to use the building on completion of the project; and
  - k. any other information the Minister may require.

### **Matters to be Considered for Provisional Approval**

15. Upon application Minister will take into account the following matters when assessing the application for the approval:
  - I. **Assets and Liabilities of the applicant:** it is important for the applicant to provide the details and the market value of the asset & liabilities of the applicant endorsed by the external recognized auditor.
  - II. **Nature and the extent of the project:** the following needs to be provided under the following requirement:
    - The type of ownership of land on which building will be constructed;
    - Building plan approved by the required authority;
    - Scope of work;
    - Estimated project cost;

- Contractors and sub-contractors that will undertake the work; and
  - Estimated date of completion of the project.
- III. Other matters the Minister may consider relevant to the desirability of the project and the capability of the applicant to complete it.

#### **Approval & Rejection of Provisional Approval**

16. Any applicant's application either rejected wholly or partially is eligible for a new application or can amend and resubmit the original application.
17. Decision made by the Minister under this regulation will be final.

#### **Importation of Raw Materials & Capital Goods**

18. When a provisional approval is granted, capital goods imported by or on behalf of the applicant and used in the carrying out of the project, is exempt from all duties payable in respect of their importation under Concession Code 300 of Part 3 of Schedule 2 to Customs Tariff (Budget Amendment) Act 2020.
19. Project for the purpose of GBII means a project on or after 1 August 2020 for the establishment, including the construction, renovation or refurbishment of building to be used by the Government or an entity approved by the Government.
20. Capital goods for the purpose GBII means raw materials, capital equipment, plant, machinery and any other goods employed in the production of other goods but does not include furniture or motor vehicles.
21. According to specific regulation under the Income Tax (Government Building Investment Incentive) Regulation 2020, raw materials include the materials that will be used in the buildings for construction of the building. Capital equipment, plant, machinery and any other goods employed in the production of the other goods that will used in the construction of the building.
22. Capital goods for the purpose of the GBII does not include motor vehicles and furniture.
23. Before capital goods are allowed to be imported by the applicant, the applicant is required to provide the evidence that those goods cannot be produced locally.
24. Such goods will only be imported if Minister is satisfied that those goods cannot be produced locally.
25. The exemption of the duty on capital goods is applicable until the initial development project and goods that are imported under the concession code 300 cannot be used for other purpose.
26. Concession will be subject to such other conditions as the Comptroller may impose. If there is any disposal of the goods imported under concession code 300, will be subject to section 17 of the Customs Tariff Act 1986.
27. In accordance to section 17 of the Customs Tariff Act 1986:
  - if any capital goods imported under the Concession Code 300 for the purpose of the GBII is being disposed or used for any other purpose apart from GBII within 5 years from the date of

importation or delivered from warehouse, such importation will be liable for the import duty at the rate upon the value subsisting at the date of disposal or goods may be put to such other use as determined by the comptroller,

- any person who disposes the goods imported under the Concession Code 300 or uses the goods for any other purpose apart from GBII project must pay the duty with a report in such a manner as comptroller may require within 14 days,
  - a person who fails to pay the duty within 14 days is guilty of an offence and is liable to pay the fine not exceeding \$25,000 or to imprisonment for the term not exceeding 10 years or both and the goods will be treated as the subject matter of the offence and will be forfeited,
  - any person who knowingly acquires, uses or otherwise deals with the goods imported under concession code 300 within 5 years from the date of importation of such goods is liable for fine not exceeding \$25,000 or to the imprisonment for the term not exceeding 10 years or both and goods will be treated as the subject matter of the offence and will be forfeited,
  - concession granted under the Concession Code 300 can be transferred from one concession holder to another concession holder with the approval from the comptroller.
28. For the respective importation, exemption is only applicable to import duties under Customs Tariff Act, VAT on these import will still be applicable under respective provisions of the VAT Act 1992.

#### **Specification of Particular Requirements**

29. The Minister has the powers under Income Tax (Government Building Investment Incentive Regulation) 2020 to prescribe particular requirements for GBII applicable to any particular area of Fiji.

#### **Completion of Project and Final Approval**

30. Applicant who has been granted provisional approval must complete the project in accordance with the terms agreed by the:
- Applicant; and
  - Government or entity approved by the Government.
31. An applicant who has been granted provisional approval and has completed the project, the applicant may apply to the Minister for final approval. The application for the final approval must be made in writing and supported by the following documents:
- fully audited final accounts showing the total cost of the project;
  - a final plan showing the site, layout and surrounding areas of the project;
  - a certificate of completion; and
  - permit to occupy issued by a building surveyor in accordance with the Public Health (Building) Regulations 1959, as applicable.
32. As per the powers granted to the Minister under the Regulation 3 of the Income Tax Act (Government Building Investment Incentive) 2020, Minister will refuse to grant final approval if the applicant has failed to complete the project or has failed to comply with any condition upon which provisional approval was granted.

33. Before the Minister grants the final approval following condition will be considered as mandatory requirements:
  - project is fully completed; and
  - the Minister is satisfied that the applicant has in all respects completed the requirements of the project.
34. Minister will notify in writing to the applicant on the decision made for the final approval.
35. If final approval is rejected, applicant will be liable to pay the duty on the capital goods imported under the concession code 300.

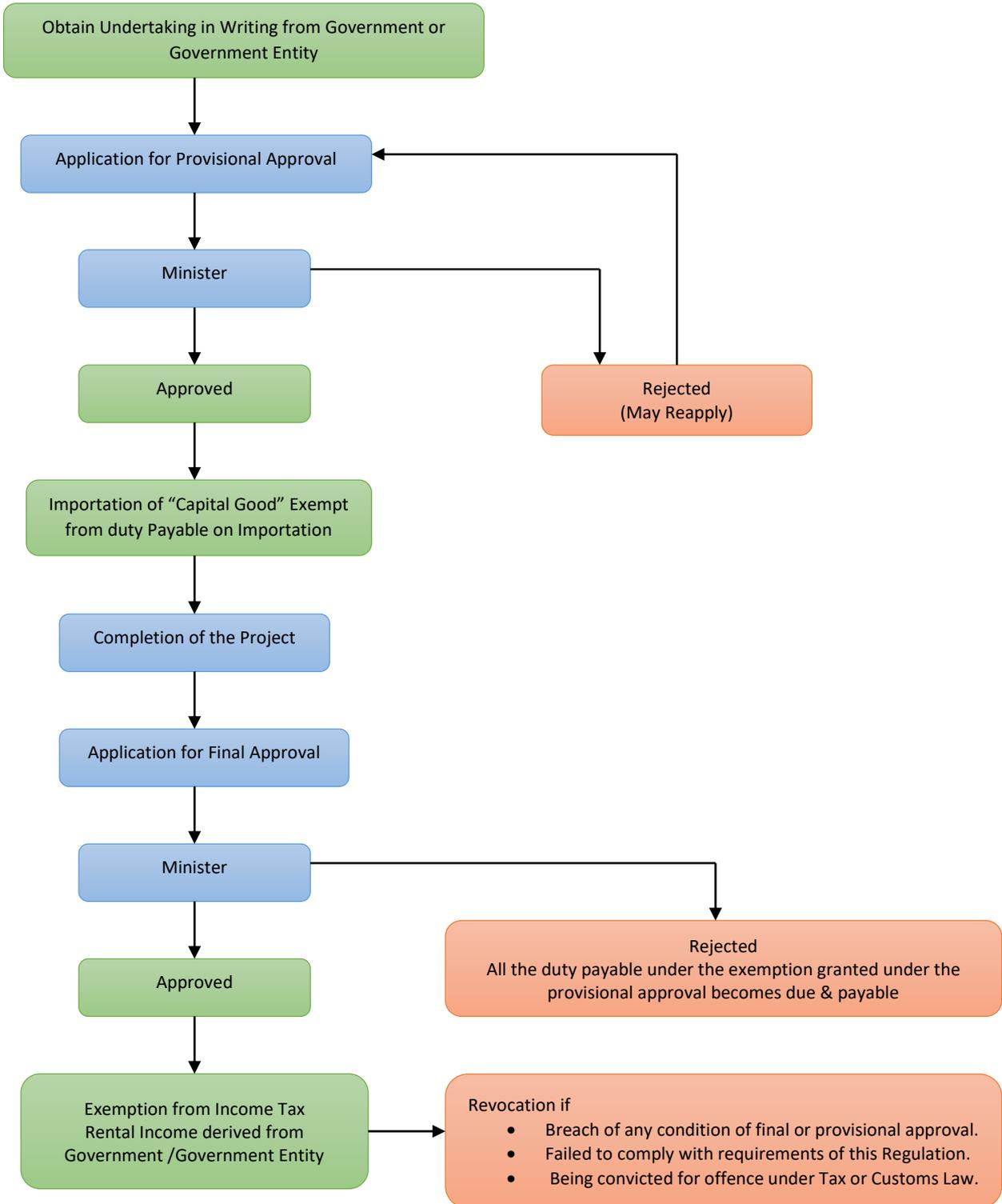
#### **Effect of Final Approval**

36. Once the final approval is granted the rental income derived from the lease of the building to the Government or entity approved by the Government is to be exempt from income tax.
37. The person who has been given the final approval, the exemption of rental income will only be granted if the building is rented to the Government or an entity approved by the Government.

#### **Revocation of Government Building Investment Incentive**

38. The Minister may revoke the GBII if the applicant has:
  - breached any condition of provisional or final approval;
  - failed to comply with any of the requirements of Income Tax Act (Government Building Investment Incentive) Regulation 2020; or
  - been convicted of an offence under any written law relating to taxation, customs or excise.

**APPENDIX ONE: FLOW CHART**



**INCOME TAX (GOVERNMENT BUILDING INVESTMENT INCENTIVES)  
REGULATIONS 2020**

Table of Amendments

Income Tax (Government Building Investment Incentives) Regulations 2020 (LN 72 of 2020)  
commenced on 1 August 2020, as amended by:

Amending Legislation	Date of Commencement

## PART 1—PRELIMINARY

### [Regulation 1] Short title and commencement

(1) These Regulations may be cited as the Income Tax (Government Building Investment Incentives) Regulations 2020.

(2) These Regulations are deemed to have come into force on 1 August 2020.

### [Regulation 2] Interpretation

In these Regulations, unless the context otherwise requires—

“**applicant**” means a person who applies for provisional approval under Part 2;

“**application**” means an application for provisional approval under Part 2;

“**capital goods**” means raw materials, capital equipment, plant, machinery and any other goods employed in the production of other goods but does not include furniture or motor vehicles;

“**final approval**” means the approval granted by the Minister under regulation 7;

“**Minister**” means the Minister responsible for finance;

“**project**” means a project on or after 1 August 2020 for the establishment, including the construction, renovation or refurbishment, of a building to be used by the Government or an entity approved by the Government;

“**provisional approval**” means the approval granted by the Minister under regulation 4; and

“**Government building investment incentive**” means the exemption of income tax on rent derived from the lease of a building to the Government or an entity approved by the Government.

## **PART 2—GOVERNMENT BUILDING INVESTMENT INCENTIVE**

### **[Regulation 3] Power to approve applications**

(1) The Minister may—

- a) reject the application;
- b) approve the application, with or without any condition; or
- c) approve part of the application, with or without any condition, and reject other parts of the application.

(2) The Minister must take into account the following matters when determining an application under sub regulation (1)—

- a) the assets and liabilities of the applicant;
- b) the nature and extent of the project;
- c) evidence that the Government or an entity approved by the Government has given the applicant a written undertaking to use the building on completion of the project; and
- d) such other matters the Minister may consider relevant to the desirability of the project and the capability of the applicant to complete it.

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

(4) Notwithstanding sub regulation (3), a person whose application, including a partially rejected application, has been rejected may make a new application or amend and resubmit the original application.

### **[Regulation 4] Application for provisional approval**

A person wishing to carry out a project may apply in writing to the Minister for provisional approval of the proposed project, and the application must set out the following matters—

- a) the name and details of the person;
- b) a current statement of all assets and liabilities of the person;
- c) the location and description of the proposed building site;
- d) a sketch showing the project;
- e) the estimated cost of the project;
- f) if the project is to be carried out in stages, a description and the estimated cost, of each stage and details of the proposed timetable;
- g) evidence of the person's ability to undertake the project;
- h) details of the proposed method of financing the project;

- i) estimates of the projected rental income of the person;
- j) evidence that the Government or an entity approved by the Government has given the person a written undertaking to use the building on completion of the project; and
- k) any other information the Minister may require.

#### **[Regulation 5] Effect of provisional approval**

(1) When a provisional approval is granted, all capital goods, imported by or on behalf of the applicant and used in the carrying out of the project, is exempt from all duties payable in respect of their importation.

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

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

#### **[Regulation 6] Completion of project**

(1) Any applicant who has been granted provisional approval must complete the project in accordance with the terms agreed to by the applicant and the Government or entity approved by the Government.

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

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

- a) fully audited final accounts showing the total cost of the project;
- b) a final plan showing the site, layout and surrounding areas of the project; and
- c) a certificate of completion and permit to occupy issued by a building surveyor in accordance with the Public Health (Building) Regulations 1959, as applicable.

(4) Subject to regulation 7, the Minister must refuse to grant final approval if the applicant has failed to complete the project or has failed to comply with any condition upon which provisional approval was granted.

#### **[Regulation 7] Final approval if completed**

(1) An application for final approval must not be granted unless—

- a) the Minister is satisfied that the applicant has in all respects completed the requirements of the project; and
- b) the project is fully completed.

(2) The Minister must notify the applicant in writing of the decision made under sub regulation (1).

**[Regulation 8] Effect of final approval**

If the Minister grants final approval, the rental income derived from the lease of the building to the Government or entity approved by the Government is to be exempt from income tax.

**[Regulation 9] Application of the Government building investment incentive**

If the Minister has granted a provisional or final approval in relation to a project, the applicant is only entitled to the Government building investment incentive if the building is rented to the Government or an entity approved by the Government.

**[Regulation 10] Revocation of Government building investment incentive**

The Minister may revoke the Government building investment incentive if the applicant has—

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

**[Regulation 11] Specification of particular requirements**

The Minister may prescribe particular requirements under these Regulations applicable to any particular area of Fiji.

**APPENDIX THREE: CONCESSION CODE 300**

300	Approved companies under regulations made in relation to a private sector building investment package under the Income Tax Act 2015	Importation of raw materials, plant, equipment, and machinery	Free	Free	9%	<p>(a) That a provisional approval for the project is issued by the Minister;</p> <p>(b) That the concessions are applicable until the initial development project;</p> <p>(c) That the goods are not to be used for other purposes;</p> <p>(d) That the disposal of the goods imported under this concession shall be subject to section 17 of the Customs Tariff Act 1986;</p> <p>(e) That the concession be subject to such other conditions as the Comptroller may impose.</p>	The person approved by the Comptroller
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