
[LEGAL NOTICE NO. 80]

INCOME TAX ACT 2015

Income Tax (Commercial Agricultural Farming and Agro-processing Business Investment Incentives) Regulations 2021

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

PART 1—PRELIMINARY

Short title and commencement

- 1.—(1) These Regulations may be cited as the Income Tax (Commercial Agricultural Farming and Agro-processing Business Investment Incentives) Regulations 2021.
- (2) These Regulations are deemed to have come into force on 1 August 2021.

Interpretation

- 2.—(1) In these Regulations, unless the context otherwise requires—

“agro-processing” means the value addition activities that transform agricultural products or commodities into different forms for sale purposes;

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

“commercial agricultural farming” means the large scale cultivation of agricultural produce or livestock farming for sale purposes;

- “company” means a company registered under the Companies Act 2015;
- “final approval” means the approval granted by the Minister under regulation 7;
- “Minister” means the Minister responsible for finance;
- “provisional approval” means the approval granted by the CEO under regulation 4;
- “commercial agricultural farming and agro-processing business investment incentive” means the duty exemption under regulation 5 and the exemption of tax on income under regulation 9 for a commercial agricultural farming and agro-processing business established on or after 1 August 2021;
- “product” means a product created through commercial agricultural farming and agro-processing by a commercial agricultural farming and agro-processing business; and
- “project” means a project on or after 1 August 2021 for the establishment of a new commercial agricultural farming and agro-processing business building, factory, plant or farm that meets the minimum investment threshold under regulation 9 including the construction, renovation or refurbishment, of a building, factory, plant or farm.

PART 2—COMMERCIAL AGRICULTURAL FARMING AND AGRO-PROCESSING BUSINESS INVESTMENT INCENTIVE

Application for provisional approval

3.—(1) A person (“applicant”) may apply in writing to the Minister for provisional approval of the proposed project.

(2) The application must set out and be supported by the following—

- (a) the name and details of the applicant;
- (b) if the applicant is a company, the names of all directors and shareholders, including the percentage of ownership of shares in the company;
- (c) a current statement of all assets and liabilities of the applicant;
- (d) the details of the product;
- (e) the location and description of the project;
- (f) a sketch plan showing the project, as applicable;
- (g) the nature and extent of the project;
- (h) the estimated cost of the project;
- (i) 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;
- (j) evidence of the applicant’s ability to undertake the project;
- (k) details of the proposed method of financing the project;

- (l) estimates of the projected income from the project; and
- (m) any other information the CEO may require.

Power to approve applications

4.—(1) The CEO 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 CEO must take into account the following matters when determining an application under subregulation (1)—

- (a) the ability of the applicant to undertake the project;
- (b) the assets and liabilities of the applicant;
- (c) the nature and extent of the project;
- (d) the sustainability of the project;
- (e) the potential contribution of the project and the proposed commercial agricultural farming and agro-processing business to the economy; and
- (f) such other matters the CEO may consider relevant to the desirability of the project and the capability of the applicant to complete it.

(3) An applicant whose application has been rejected, including a partially rejected application, may—

- (a) make a new application to the CEO;
- (b) amend and resubmit the original application to the CEO; or
- (c) appeal the decision of the CEO to the Minister.

Effect of provisional approval

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

(2) Before capital goods are 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 CEO, 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.

Completion of project

6.—(1) An applicant that has been granted provisional approval must 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 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 subregulation (2) must be made in writing and be supported by the following—

- (a) copies of invoices and the schedule of expenditure relating to the project;
- (b) an approved plan showing the site, layout and surrounding areas of the project;
- (c) proof of the successful production of the product;
- (d) proof that the product meets the applicable standard; and
- (e) 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.

Final approval if completed

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

- (a) the applicant produces a certificate of completion and permit to occupy issued by a building surveyor in accordance with the Public Health (Building) Regulations 1959, as applicable;
- (b) the Minister is satisfied that the applicant has in all respects completed the requirements of the project;
- (c) the Minister is satisfied that the product meets the applicable standard; and
- (d) the project is fully completed.

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

Extension of time for completion

8.—(1) If a person to which provisional approval has been granted is unable to complete the project within the period provided in regulation 6(1) 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 project must be completed.

(2) The application must be made within 30 days before the end of the time period provided in regulation 6(1).

(3) If the Minister extends the time under subregulation (1), the person continues to enjoy the duty free concession provided for by regulation 5 during the extended period.

Effect of final approval

9. From the first day of commercial operation of the commercial agricultural farming and agro-processing business or such other date as the Minister may specify, final approval entitles a person to the following tax exemption on the income of the business—

- (a) in the case of a capital investment from \$100,000 to \$250,000, for a period of 5 consecutive fiscal years;

- (b) in the case of a capital investment from \$250,001 to \$1,000,000, for a period of 10 consecutive fiscal years;
- (c) in the case of a capital investment from \$1,000,001 to \$2,000,000, for a period of 15 consecutive fiscal years; and
- (d) in the case of a capital investment of more than \$2,000,000, for a period of 20 consecutive fiscal years.

Revocation of commercial agricultural farming and agro-processing business investment incentive

10. The Minister may revoke the commercial agricultural farming and agro-processing business investment incentive if the applicant—

- (a) breaches any condition of provisional or final approval;
- (b) fails to produce a product to the applicable standard;
- (c) fails to comply with any of the requirements of these Regulations; or
- (d) is convicted of an offence under any written law relating to taxation, customs or excise,

and any tax or duty foregone is payable.

Transferability of package

11. If the person in respect of which a commercial agricultural farming and agro-processing business investment incentive has been granted is a company and that company 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 commercial agricultural farming and agro-processing business investment incentive.

Specification of particular requirements

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

Made this 3rd day of August 2021.

AIYAZ SAYED-KHAIYUM
Attorney-General and Minister for Economy
