

[LEGAL NOTICE NO. 10]

INCOME TAX ACT 2015
(ACT NO. 32 OF 2015)

Income Tax (Tax Free Region Incentives) Regulations 2016

IN exercise of the powers conferred on me by section 142(1) of the Income Tax Act 2015, I hereby make these Regulations—

PART 1—GENERAL

Short title and commencement

1.—(1) These Regulations may be cited as the Income Tax (Tax Free Region Incentives) Regulations 2016.

(2) These Regulations shall come into force on 1 January 2016.

Laws to be read together

2. These Regulations shall inter alia be read 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 Decree 1991.

Interpretation

3. In these Regulations, unless the context otherwise requires—

“Act” means the Income Tax Act 2015;

“authorised officer” means any person appointed under regulation 8(c);

“enforcement officer” means any FRCA officer or any officer of the Ministry of Finance designated in writing by his or her respective Minister as an enforcement officer for the purpose of these Regulations;

“iTaukei landowner” means any iTaukei who holds a proprietary landowning unit in the Tax Free Region and who is registered in the iTaukei Lands Commission (Vola ni Kawa Bula) under the iTaukei Lands Act (Cap.133);

“Minister” means the Minister responsible for Finance;

“provisional licence” means a licence granted by the Minister under regulation 7(2);

“Tax Free Region” means any area under regulation 4(1);

“business” includes—

- (a) trade, commerce, agriculture, manufacture, profession or vocation, but does not include employment;

- (b) a venture or concern in the nature of a trade, commerce, agriculture, or manufacture; or
- (c) a profit-making undertaking or scheme not covered by paragraphs (a) or (b).

PART 2—ESTABLISHMENT OF TAX FREE REGION

Declaration of Tax Free Region

4.—(1) The following areas have been declared as the Tax Free Region—

- (a) Vanua Levu;
- (b) Rotuma;
- (c) Kadavu;
- (d) the airport side of the Rewa Bridge, excluding the town boundary of Nausori, up to the Ba side of the Matawalu River;
- (e) Lomaiviti; and
- (f) Lau.

(2) For the purposes of subregulation (1), Vanua Levu includes Taveuni, Rabi, Kioa and other islands generally included for government's administrative purpose as being in the Northern Division.

(3) For the purposes of subregulation (1)(d), the areas from the airport side of the Rewa Bridge, excluding the town boundary of Nausori, up to the Ba side of the Matawalu River, are specified on the map in Schedule 1.

(4) Areas that may be declared Tax Free Region under subregulation (1) shall include office and other facilities required for the proper customs supervision of goods entering or leaving the Region and shall conform to the requirements of a bonded Customs Area as stipulated under section 6 of the Customs Act.

Development, management and control of Tax Free Region

5.—(1) Responsibility for the development, management and control of Tax Free Region shall vest in the Minister.

(2) The Minister may delegate responsibility for the development, management, or control of Tax Free Region to any statutory body, Government Department or company.

PART 3—LICENSING OF TAX FREE REGION ACTIVITIES

Application for a provisional licence in Tax Free Region

6.—(1) Any company may apply to the Minister for a provisional licence.

(2) Every application under subregulation (1) shall be made on a form approved by the CEO.

Grant of Tax Free Region provisional licence and criteria for grant of provisional licence

7.—(1) The Minister shall, when considering an application, take into account that the company is a newly incorporated entity engaged in a new business in Fiji with the following level of investment—

- (a) capital investment from \$250,000 to \$1,000,000;

- (b) capital investment from \$1,000,001 to \$2,000,000;
- (c) capital investment above \$2,000,000.

(2) The Minister may, in concurrence with the Minister for Industry and Trade, grant to any company a provisional licence in the form in Schedule 2 authorising the carrying on of any business in a Tax Free Region.

(3) Any company seeking a provisional licence for the carrying on of business in a Tax Free Region shall be required to—

- (a) derive all of its income from business carried out in a Tax Free Region;
- (b) generate employment opportunities for the people of Fiji;
- (c) enhance, expand and improve the technological and trading capability and capacity of the economy of Fiji; and
- (d) comply with any other condition deemed by the Minister to be appropriate under the circumstances.

Conditions of provisional licence

8. The Minister may attach to a provisional licence certain conditions including conditions in regard to the following matters—

- (a) the date, fixed by the Minister after consultation with the licensee, on or before which the licensee shall commence the business authorised by the licence. The date should be no longer than 18 months from the date of the project approval;
- (b) the revocation of the licence if the licensee should at any time after the grant of the licence, undertake in a Tax Free Region any business not authorised by the licence; and
- (c) the appointment by the licensee of an authorised officer who shall be an individual person and who shall be a resident as defined under the Act.

Final approval

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

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

Revocation of licence

10.—(1) The Minister may revoke a licence if the company—

- (a) has breached any condition of the licence;
- (b) has failed to comply with any of the requirements of the Act; or
- (c) has been convicted of an offence under the Act or any other written law relating to taxation, customs or excise.

(2) The Minister shall not revoke a provisional licence unless a notice in writing is given informing the licensee of the intention to revoke the licence, the reasons for revoking the licence and giving the licensee at least twenty one days within which the licensee may make representation to the Minister.

(3) The Minister shall consider any representation made by the licensee and make a decision whether or not to revoke a licence.

(4) If a licensee fails to commence operations or complete establishment of the project within 18 months from the date on which provisional approval was granted, the Minister shall revoke the concession and any duty foregone shall be payable with the appropriate penalties.

Variation of conditions and transfer of Licence

11.—(1) The Minister, in concurrence with the Minister for Industry and Trade, may—

- (a) vary at any time the conditions of a licence; and
- (b) approve the transfer of a licence to another company fulfilling the requirements set out at regulation 7(3).

(2) The approval for the transfer of the licence shall only be made if the CEO is satisfied that the former company has been in operation for two consecutive years from the date of the transfer.

(3) The transferee shall only enjoy the balance of the exemptions granted under regulation 13.

Register of licences

12.—(1) The Minister shall establish and maintain a register of the licences granted under regulation 7(3).

(2) There shall be entered in the register in respect of each licence—

- (a) the date of commencement of the licence;
- (b) the name, registered address and the authorised officer of the company to which the licence was granted; and
- (c) the business to which the licence relates.

(3) The register shall be kept in the Ministry of Finance in Suva and shall be open to inspection during such times as the Minister may direct.

(4) Where a licence is transferred by the licensee in accordance with regulation 11(1) (b), the Company to which it is transferred shall submit its name, and registered address and authorised officer for inclusion in the register.

PART 4—DUTY AND TAX EXEMPTIONS

Duty and tax exemptions for licensed activities in Tax Free Region

13.—(1) A licence granted by the Minister under regulation 7(2) from the commencement year of such a licence, shall be provided in the following periods—

- (a) Any new activity approved and established between the following regions shall be exempt from tax in accordance with paragraph (b)—

- (i) 1st January 2009 to 31st December, 2014 for Rotuma, Kadavu, Levuka, Lomaiviti and Lau;
 - (ii) 1st January 2014 to 31st December, 2018 for Korovou to Tavua;
 - (iii) 1st January 2016 to 31st December 2018 from the airport side of the Rewa Bridge excluding the town boundary of Nausori, up to the Ba side of the Matawalu River.
- (b) The exemption from tax for any licensed activities in the Tax Free Region in accordance with paragraph (a), shall be exempt in the following manner—
- (i) capital investment from \$250,000 to \$1,000,000, for a period of 5 consecutive fiscal years;
 - (ii) capital investment from \$1,000,001 to \$2,000,000 for a period of 7 consecutive fiscal years; or
 - (iii) capital investment above \$2,000,000 for a period of 13 consecutive fiscal years.

(2) Subject to subregulation (1) and in accordance with the Customs Tariff Act 1986, the Excise Act 1986 and the Act, the licensee shall be exempt from the following payment—

- (a) duties leviable on the importation or purchase ex bond or excise duty leviable on purchase ex-excise factory of raw materials, machinery and equipment (including parts and materials) insofar as they are required for the establishment of the business in the Tax Free Region; and
- (b) tax normally leviable on chargeable income under the Act in respect of a company licensed under regulation 7(2).

Exemption for licence holder having beneficial iTaukei landowner equity

14.—(1) Notwithstanding the exemptions granted under regulation 13—

- (a) the income of any company granted a licence under regulation 7(2) and having beneficial iTaukei landowner equity of at least 25%, shall be exempted from tax on profits for an additional five consecutive fiscal years; and
- (b) the income of any hotel developer granted a licence under regulation 7(2) and having beneficial iTaukei landowner equity of at least 25% shall be exempted from tax on profits for an additional seven consecutive fiscal years,

provided further that no concession shall be granted under this regulation for any year, if the CEO is not satisfied that the shareholders of the company are substantially the same as on the date when the concession was granted. For the purposes of this regulation, the shareholders of a company shall not be deemed to be substantially the same if 25% or more of the voting power or the right to receive dividends is not held by the same person.

(2) Where such income is subjected to tax under the laws of the State of that person, then tax exemption under this regulation will not apply.

Computation of profits and gains

15. During the period from the appointed day to the end of the accounting period in which the last day of the tax concession period falls, such depreciation shall be written off the assets of that company in calculating its profits or gains as would have been available to it under the provisions of the Act if the company were not in receipt of the concession in respect of the approved enterprise, and the written down values of such depreciable assets at the end of the accounting period in which the last day of the tax concession period falls shall be calculated accordingly, provided that the company shall not be obliged to claim initial allowances but such election shall in that event continue for the whole of the tax free period.

End of tax free period

16. If the end of the tax concession period does not coincide with the end of an accounting period of the company, the profits or gains for the accounting period in which the last day of the tax concession falls will be apportioned between the parts of the accounting period which precede and follow the end of such tax concession period on a time basis, and the profits or gains so attributed to the part which precedes the end of the tax concession period shall be subject to the concessions set out in these Regulations which shall also be apportioned on a time basis.

PART 5—CUSTOMS CONTROL AND DISPOSAL OF GOODS IN TAX FREE REGION

Disposal of goods taken into Tax Free Region

17.—(1) No person shall deal with or otherwise dispose of any goods taken into a Tax Free Region except in the manner hereinafter provided.

(2) Goods in a Tax Free Region may be—

- (a) removed from such Tax Free Region for export or sent into another Tax Free Region either in the original pack or otherwise; or
- (b) stored, exhibited, processed or manufactured or put to other uses in accordance with the provisions of these Regulations, or
- (c) destroyed or be disposed of as the Comptroller may direct.

Utilisation of exempted goods

18. Subject to the provisions of regulation 17 all goods exempted under regulation 13 shall be utilised only in a Tax Free Region.

PART 6—MISCELLANEOUS

Enforcement officers

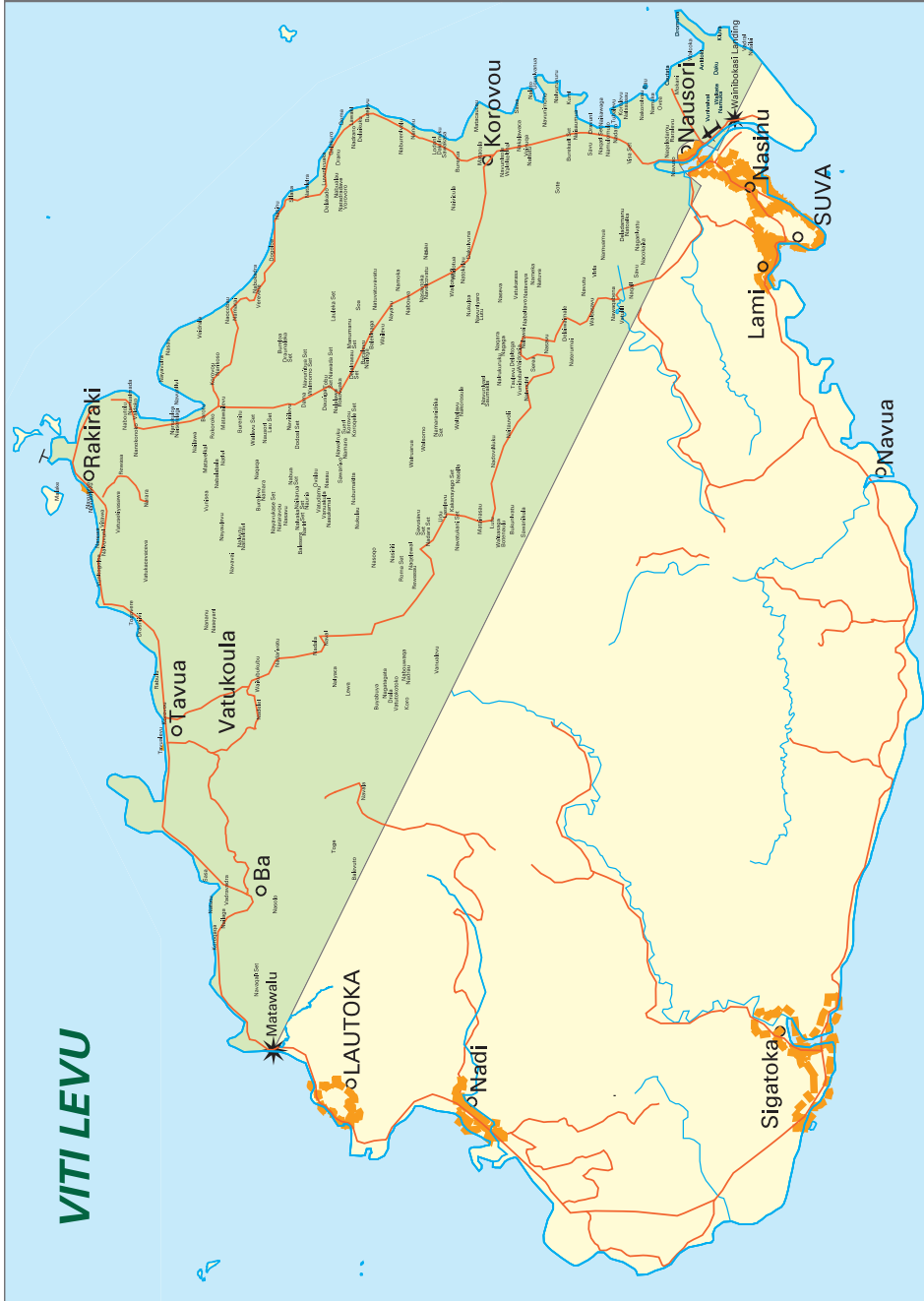
19. Enforcement officers shall be responsible for the proper and efficient administration and control of the provisions of these Regulations.

Made this 1st day of January 2016.

F. S. KOYA
Acting Minister for Finance

SCHEDULE 1
(Regulation 4(3))

MAP



SCHEDULE 2
(Regulation 7(2))

GRANT OF TAX FREE REGION LICENCE

By virtue of powers vested in me under regulation 7(2) and in concurrence with the Minister for Industry and Trade, I hereby grant a provisional licence to

.....
(Company Name, Address, etc.)
.....

.....
To operate the business described below, in the TAX FREE REGION
on the following terms and conditions
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(Description of business)

This Licence shall remain valid until it is surrendered or revoked.

Dated:.....

.....
MINISTER FOR FINANCE