

[LEGAL NOTICE NO. 4]

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

**Income Tax (Medical Investment 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 (Medical Investment Incentives) Regulations 2016.

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

Interpretation

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

“amenity” includes features and facilities that contribute to the well-being of patients in a private hospital;

“ancillary medical centre owner” means the owner of an ancillary medical centre;

“ancillary medical services” means those ancillary medical services provided by a company, including pathology lab services, magnetic resonance imaging services (MRI) and other diagnostic services;

“ancillary medical services investment” means a project with capital investment (including the cost of support infrastructure and overseas consultant fees but excluding the cost of land) over \$2,000,000;

“ancillary medical services investment allowance” means the allowance of an amount of taxable income equal to 60% of the total expenditure incurred in the project with capital investment (including the cost of support infrastructure and overseas consultant fees but excluding the cost of land) over \$500,000;

“ancillary medical services investment package” means various exemptions, concessions and allowances given under an ancillary medical services investment;

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

“company” means a company registered under the Companies Act 2015;

“consultant fees” includes salaries, allowances, *per diem* and incidental expenses, food and accommodation, and any other fees that directly or indirectly

relate to the medical investment, paid or provided to a local and an overseas consultant;

“extension” means any additional amenity to an existing private hospital or existing ancillary medical centre;

“hospital owner” means the owner of a private hospital;

“medical investment” means a project with capital investment (including the cost of support infrastructure and overseas consultant fees but excluding the cost of land) over \$7,000,000 and the project commences on or after 1 January 2016 and the building is completed within 24 months from the date the provisional approval was granted;

“medical investment allowance” means the allowance of an amount of taxable income equal to 60% of the total expenditure incurred in the project with capital investment (including the cost of support infrastructure and overseas consultant fees but excluding the cost of land) over \$1,000,000;

“medical investment package” means the various exemptions, concessions and allowances given under a medical investment;

“Minister” means the Minister responsible for Finance;

“private hospital” means a building or premises where persons suffering from any sickness, injury or infirmity are given medical or surgical treatment, but does not include a hospital or other establishment or institution operated or maintained by the Government or a sick bay or first aid post maintained by a commercial or industrial undertaking for the benefit of its employees and their families;

“project” means—

- (a) for the purposes of Part 2, the extension of an existing private hospital or any refurbishment or renovation;
- (b) for the purposes of Part 3, the building of a new private hospital;
- (c) for the purposes of Part 4, the extension of an existing ancillary medical centre or any refurbishment or renovation;
- (d) for the purposes of Part 5, the building of centres for the provision of ancillary medical services;

“refurbishment and renovation” means any substantial construction works (which the estimated cost per square metre of floor area is determined under regulations 9 and 32(5) for an existing private hospital and existing ancillary medical centre (excluding its mere repainting or redecorating) which—

- (a) have the effect of restoring the private hospital and ancillary medical centre to a sound and new state; or

- (b) reconstruct, remodel, alter, upgrade or amend the interior of an existing private hospital and ancillary medical centre so as to form new rooms or alter the sizes of existing rooms.

PART 2—MEDICAL INVESTMENT ALLOWANCE

Specification of particular requirements

3. The Minister may prescribe particular requirements applicable to any particular area of Fiji.

Power to approve application

4.—(1) The Minister may —

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

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

- (a) the requirements for a private hospital in the area concerned;
- (b) whether the extension, refurbishment or renovation of the private hospital will make an adequate contribution to the requirements of the area concerned;
- (c) whether the proposed accommodation is of a suitable size and standard for the area;
- (d) whether adequate amenities would be provided by the project.

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

(4) The decision of the Minister 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 provisional approval

5. A person wishing to carry out a project may apply in writing to the Minister for approval of the proposed project, and such 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 site of the private hospital;
- (d) the number and description of wards, rooms and beds and of the toilet facilities;

- (e) the number and description of proposed new wards, rooms and beds and the toilet facilities proposed to be established in connection with them;
- (f) a description of each public room for the proposed project;
- (g) a detailed description of existing or proposed amenities;
- (h) a sketch plan showing in sufficient detail the site and layout of the private hospital;
- (i) the estimate cost of the project;
- (j) if the project is to be carried out in stages, a description and the estimate cost, of each stage and details of the proposed timetable;
- (k) details of the proposed method of financing the project;
- (l) any other information the Minister may require.

Effect of provisional approval

6. When a provisional approval is granted, all capital goods, imported within the period specified in the definition of “medical investment” under regulation 2, by or on behalf of the company and used in the carrying out of the medical investment, shall be exempt from all duties, including Value Added Tax payable in respect of their importation.

Completion of project

7.—(1) Any owner of a private hospital who has been granted provisional approval on or after 1 January 2016 shall 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 a hospital owner has been granted provisional approval and has completed the project, the hospital owner may apply to the Minister for final approval.

(3) An application under subregulation (2) shall 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 private hospital.

(4) Subject to the provision of regulation 8, the Minister shall refuse to grant final approval if the hospital owner has failed to complete the project or has failed to comply with any condition upon which provisional approval was granted.

Final approval if completed

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

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

Investment allowance

9.—(1) Subject to subregulation (3), a hospital owner is entitled to the following allowance—

- (a) an amount of taxable income equal to 60% of the total capital expenditure incurred in the project including the provision of amenities approved by the Minister, but less the cost of any land acquired for the project or refurbishment and renovation, is not chargeable to tax;
- (b) so much of the amount not charged to tax under subregulation (1)(a) and which cannot be set off against the taxable income of the hospital owner for the first year of income after the commencement of operation or after the completion of the extension must be carried forward and be set off against the taxable income of the next successive fiscal years of income of the hospital owner until the amount is wholly set off.

(2) Notwithstanding subregulation (1), a hospital owner who has claimed an investment allowance under this section may claim depreciation under these Regulations and, for such purpose, the investment allowance must not be taken into account.

(3) In the case of Fiji residents or non-residents, the investment allowance shall only be given if there is no shift of tax revenue to other countries.

(4) Subject to this part, if—

- (a) a project has been completed; and
- (b) an investment allowance under this section exceeds the taxable income of the hospital owner from the private hospital business; or
- (c) the taxable income from the private hospital business for the period ended on the next year of income after the project has been completed,

the balance must be carried forward and set off against the taxable income of that private hospital business or the taxable income from the private hospital premises, for the next successive years of income.

(5) For the purpose of the definition of “refurbishment and renovation” in regulation 2, the Minister may prescribe the cost per square metre of not less than 40% of the estimated cost per square metre of the floor area or a newly built equivalent private hospital building.

(6) The capital expenditure allowable shall be given only to a private hospital, which has been in operation for a period of not less than 3 years.

Procedure in case of loss

10. If a loss is incurred in connection with a private hospital in respect of which investment allowance has been approved under regulation 9, any loss incurred in the operation of the private hospital may be carried forward and set off against the total income of that private hospital business or the total income from that private hospital premises for the next 8 years in succession.

PART 3—MEDICAL INVESTMENT PACKAGE

Power to grant medical investment package

11. The Minister may grant or refuse to grant a medical investment package to a company, which has completed a medical investment and has complied with this part.

Provisional approval

12.—(1) The Minister may, after consulting the Minister responsible for Health and Medical Services—

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

(2) The Minister shall not grant provisional approval under subregulation (1) unless the Minister is satisfied that—

- (a) the application is for medical investment;
- (b) the company intends to complete and is capable of completing such medical investment; and
- (c) the medical investment will benefit the economic development of Fiji.

(3) When considering an application for medical investment under subregulation (1), the Minister shall take into account the following matters—

- (a) the assets and liabilities of the company;
- (b) the nature and extent of the medical investment;
- (c) the requirements for private hospitals in the area concerned;
- (d) whether the medical investment will adequately contribute to the requirements of the area concerned;
- (e) whether the proposed private hospital is a suitable size and standard for the area concerned;
- (f) whether adequate amenities would be provided as part of the proposed private hospital;
- (g) such other matters as the Minister may consider relevant to the desirability or otherwise of the medical investment for Fiji and the capability of the company to complete it.

(4) The decision of the Minister 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.

Effect of provisional approval

13. When a provisional approval is granted, all capital goods, imported within the period specified in the definition of “medical investment” under regulation 2, by or on behalf of the company and used in the carrying out of the medical investment, shall be exempt from all duties, including Value Added Tax payable in respect of their importation.

Application for medical investment

14.—(1) A company (“applicant”) may, in writing, apply to the Minister for provisional approval to carry out a medical investment, setting 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 private hospital site;
- (e) the number and description of proposed wards, rooms and beds and the toilet facilities;
- (f) the description of each proposed public room;
- (g) a sketch plan showing in sufficient detail the site and layout of the proposed private hospital and its amenities;
- (h) an estimate of the total cost of the medical investment;
- (i) the description, and an estimate of the cost, of each individual stage of construction and details of the proposed timetable for completion of the medical investment;
- (j) details of the proposed method of financing the medical investment;
- (k) evidence of the company’s ability to complete the medical investment;
- (l) estimates of the projected income from the new private hospital;
- (m) the requirement of a private hospital in the area;
- (n) the contribution of the medical investment into the area;
- (o) the nature and extent of medical investment.

(2) The applicant must also send a copy of the application together with supporting documents to the Minister responsible for Health and Medical Services.

(3) The Minister may—

- (a) require the applicant to provide other information as he or she may consider necessary in relation to the application; or
- (b) prescribe particular requirements applicable to any particular area of Fiji on a medical investment package.

Completion of medical investment

15.—(1) If a company has been granted provisional approval, the company shall complete the project within 24 months from the date the provisional approval was granted.

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

(3) An application under subregulation (2) shall 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 private hospital.

(4) Upon receiving an application under subregulation (1), the Minister may, after consulting with the Minister responsible for Health and Medical Services—

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

(5) Subject to regulations 17 and 18, no approval shall be granted under this regulation if the Minister is satisfied that the company has failed to complete the medical investment 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 company.

(7) The Minister must, in writing, notify the following persons of the decision to reject or grant the application—

- (a) the applicant;
- (b) the Minister responsible for Health and Medical Services; and
- (c) the CEO.

Extension of time for completion

16.—(1) If a company to which provisional approval has been granted is unable to complete its medical investment within the period specified in the definition of “medical investment” in regulation 2 due to unforeseen circumstances or some other act beyond the control of the company, the company may apply in writing to the Minister to extend the time by which the medical investment must be completed.

(2) If the Minister extends the time under subregulation (1), the company shall continue to enjoy the duty free concession provided for by regulation 15 during the extended period.

Final approval if completed

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

- (a) the Minister, after consulting the Minister responsible for Health and Medical Services, is satisfied that the company has in all respects completed the requirements of a medical investment; and
- (b) the private hospital is fully completed.

Effect of final approval

18.—(1) The final approval entitles the company to the benefits of a medical investment package from the first day of commercial operation of the private hospital or such other date as the Minister may specify.

(2) The company is not entitled to claim the benefits of a medical investment package in any year unless it has been granted final approval and the Minister is satisfied that the shareholders of the company are substantially the same as the shareholders of the company when provisional approval was granted.

(3) For the purposes of subregulation (2), the shareholders of the company shall be deemed not to be substantially the same as the shareholders on the date when provisional approval was granted unless—

- (a) not less than 51% of the voting power in and the right to receive dividends from the company is held by or on behalf of the same persons; or
- (b) not less than 50% of the nominal value of the allotted shares in the company are held by or on behalf of the same persons.

(4) Notwithstanding subregulations (2) and (3), the company may, in writing, apply for exemption from those regulations to the Minister who may grant or refuse to grant the exemption.

Exemption from tax

19. If final approval is granted under this part to a company, the income of the company is exempt from tax on profits derived from the operation of the private hospital if the capital investment in the private hospital is more than \$7,000,000 for a period of 10 years.

Depreciation

20.—(1) During the period from the date appointed by the Minister under regulation 18 to the end of the accounting period in which the last day of the tax-free 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 these Regulations if the company were not in receipt of the concession provided by this part, and the written down values of such depreciable assets at the end of the accounting period in which the last day of the tax-free period falls shall be calculated accordingly.

(2) For the purpose of subregulation (1), 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.

Carry forward losses

21. Subject to these Regulations, any loss incurred by the company in the operation of the private hospital may be carried forward and set off against the total income of that private hospital business or the total income from that private hospital premises for the next 8 years in succession.

Annual accounts

22. Within 6 months after the end of each financial year a company which is entitled to the benefits of a medical investment package shall submit to the Minister fully audited accounts, including other information that the Minister may require.

Transferability of package

23. If the private hospital in respect of which a medical investment package has been granted is sold or 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 medical investment package.

Revocation of package

24. The Minister may revoke any Part 2 or Part 3 investment if the hospital owner—
- (a) has breached any condition of provisional or final approval;
 - (b) has failed to comply with any of the requirements of these Regulations; or
 - (c) has been convicted of an offence under these Regulations or any other written law relating to taxation, customs or excise.

Applicability of incentives

25. A hospital owner or a company is only entitled to either Part 2 medical investment allowance or Part 3 medical investment package for the same project, but not both.

PART 4—ANCILLARY MEDICAL SERVICES INVESTMENT ALLOWANCE

Specification of particular requirements

26. The Minister may prescribe particular requirements applicable to any particular area of Fiji.

Power to approve application

- 27.—(1) The Minister may—
- (a) reject the application;
 - (b) approve the application, with or without any condition; or
 - (c) approve a part of the application, with or without any condition, and reject other parts of such application.
- (2) The Minister must take into account the following matters when determining an application under subregulation (1)—
- (a) the requirements of ancillary medical centres in the area concerned;
 - (b) whether the extension, refurbishment or renovation of the ancillary medical centre will make an adequate contribution to the requirements of the area concerned;
 - (c) whether the proposed ancillary medical service centre is of a suitable size and standard for the area;
 - (d) whether adequate amenities would be provided by the project.
- (3) The Minister must, in writing, notify the CEO of the decision made under subregulation (1).
- (4) The decision of the Minister 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 provisional approval

28. A person wishing to carry out a project may apply in writing to the Minister for approval of the proposed project, and such 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 site of the ancillary medical centre;
- (d) the number and description of wards, rooms and beds and of the toilet facilities;
- (e) the number and description of proposed new wards, rooms and beds and the toilet facilities proposed to be established in connection with them;
- (f) a description of each public room for the proposed project;
- (g) a detailed description of existing or proposed amenities;
- (h) a sketch plan showing in sufficient detail the site and layout of the ancillary medical centre;
- (i) the estimate cost of the project;
- (j) if the project is to be carried out in stages, a description and the estimate cost, of each stage and details of the proposed timetable;
- (k) details of the proposed method of financing the project;
- (l) any other information, the Minister may require.

Effect of provisional approval

29. When a provisional approval is granted, all capital goods, imported within the period specified in the definition of “medical investment” under regulation 2, by or on behalf of the company and used in the carrying out of the medical investment, shall be exempt from all duties, including Value Added Tax payable in respect of their importation.

Completion of project

30.—(1) Any owner of an ancillary medical centre who has been granted provisional approval on or after 1 January 2016 shall 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 ancillary medical centre owner has been granted provisional approval and has completed the project, the ancillary medical centre owner may apply to the Minister for final approval.

(3) An application under subregulation (2) shall 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 ancillary medical centre.

(4) Subject to the provision of regulation 31, the Minister shall refuse to grant final approval if the ancillary medical centre owner has failed to complete the project or has failed to comply with any condition upon which provisional approval was granted.

Final approval if completed

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

- (a) the Minister is satisfied that the ancillary medical centre owner has in all respects completed the requirements of the project; and
- (b) the project is fully completed.

Investment allowance

32.—(1) Subject to subregulation (3), an ancillary medical centre owner is entitled to the following allowance—

- (a) an amount of taxable income equal to 60% of the total capital expenditure incurred in the project including the provision of amenities approved by the Minister, but less the cost of any land acquired for the project or refurbishment and renovation, is not chargeable to tax;
- (b) so much of the amount not charged to tax under subregulation (1)(a) and which cannot be set off against the taxable income of the ancillary medical center owner for the first year of income after the commencement of operation or after the completion of the extension must be carried forward and be set off against the taxable income of the next successive fiscal years of income of the ancillary medical centre owner until the amount is wholly set off.

(2) Notwithstanding subregulation (1), an ancillary medical centre owner who has claimed an investment allowance under this section may claim depreciation under these Regulations and, for such purpose, the investment allowance must not be taken into account.

(3) In the case of Fiji residents or non-residents, the investment allowance shall only be given if there is no shift of tax revenue to other countries.

(4) Subject to this part, if—

- (a) a project has been completed; and
- (b) an investment allowance under this section exceeds the taxable income of the ancillary medical centre owner from the ancillary medical center business; or
- (c) the taxable income from the ancillary medical centre business for the period ended on the next year of income after the project has been completed,

the balance must be carried forward and set off against the taxable income of that ancillary medical centre business or the taxable income from the ancillary medical centre premises, for the next successive years of income.

(5) For the purpose of the definition of “refurbishment and renovation” in regulation 2, the Minister may prescribe the cost per square metre of not less than 40% of the estimated cost per square metre of the floor area or a newly built equivalent ancillary medical centre building.

(6) The capital expenditure allowable shall be given only to an ancillary medical centre, which has been in operation for a period of not less than 3 years.

Procedure in case of loss

33. If a loss is incurred in connection with an ancillary medical centre in respect of which investment allowance has been approved under regulation 32, any loss incurred in the operation of the ancillary medical centre may be carried forward and set off against the total income of that ancillary medical centre business or the total income from that ancillary medical centre premises for the next 8 years in succession.

PART 5—ANCILLARY MEDICAL SERVICES INVESTMENT PACKAGE

Power to grant ancillary medical services investment package

34. The Minister may grant or refuse to grant an ancillary medical services investment package to a company, which has completed an ancillary medical services investment and has complied with this part.

Provisional approval

35.—(1) The Minister may, after consulting the Minister responsible for Health and Medical Services—

- (a) reject the application for provisional approval for ancillary medical services investment; or
- (b) to grant provisional approval to such application, with or without any condition.

(2) The Minister shall not grant provisional approval under subregulation (1) unless the Minister is satisfied that—

- (a) the application is for ancillary medical services investment;
- (b) the company intends to complete and is capable of completing such ancillary medical services investment; and
- (c) the ancillary medical services investment will benefit the economic development of Fiji.

(3) When considering an application for ancillary medical services investment under subregulation (1), the Minister shall take into account the following matters—

- (a) the assets and liabilities of the company;
- (b) the nature and extent of the ancillary medical services investment;
- (c) the requirements for an ancillary medical center in the area concerned;
- (d) whether the ancillary medical services investment will adequately contribute to the requirements of the area concerned;
- (e) whether the proposed ancillary medical centre is a suitable size and standard for the area concerned;
- (f) whether adequate amenities would be provided as part of the proposed ancillary medical centre;

- (g) such other matters as the Minister may consider relevant to the desirability or otherwise of the ancillary medical services investment for Fiji and the capability of the company to complete it.

(4) The decision of the Minister 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 ancillary medical services investment

36.—(1) A company (“applicant”) may, in writing, apply to the Minister for provisional approval to carry out an ancillary medical services investment, setting 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 ancillary medical centre site;
- (e) the number and description of proposed wards, rooms and beds and the toilet facilities;
- (f) the description of each proposed public room;
- (g) a sketch plan showing in sufficient detail the site and layout of the proposed ancillary medical center and its amenities;
- (h) an estimate of the total cost of the ancillary medical services investment;
- (i) the description, and an estimate of the cost, of each individual stage of construction and details of the proposed timetable for completion of the ancillary medical services investment;
- (j) details of the proposed method of financing the ancillary medical services investment;
- (k) evidence of the company’s ability to complete the ancillary medical services investment;
- (l) estimates of the projected income from the new ancillary medical centre;
- (m) the requirement of an ancillary medical centre in the area;
- (n) the contribution of the ancillary medical services investment into the area;
- (o) the nature and extent of ancillary medical services investment.

(2) The applicant must also send a copy of the application together with supporting documents to the Minister responsible for Health and Medical Services.

(3) The Minister may—

- (a) require the applicant to provide other information he or she may consider necessary in relation to the application; or

- (b) prescribe particular requirements applicable to any particular area of Fiji on an ancillary medical services investment package.

Effect of provisional approval

37. When a provisional approval is granted, all capital goods, imported within the period specified in the definition of “ancillary medical services investment” under regulation 2, by or on behalf of the company and used in the carrying out of the ancillary medical services investment, shall be exempt from all duties, including Value Added Tax payable in respect of their importation.

Completion of ancillary medical services investment

38.—(1) If a company has been granted provisional approval, the company shall 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 a company has been granted provisional approval and has completed the project, the company may apply to the Minister for final approval.

(3) An application under subregulation (2) shall 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 ancillary medical centre.

(4) Upon receiving an application under subregulation (2), the Minister may, after consulting with the Minister responsible for Health and Medical Services—

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

(5) Subject to regulations 40 and 41, no approval shall be granted under this regulation if the Minister is satisfied that the company has failed to complete the ancillary medical services investment 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 company.

(7) The Minister must, in writing, notify the following persons of the decision to reject or grant the application—

- (a) the applicant;
- (b) the Minister responsible for Health and Medical Services; and
- (c) the CEO.

Extension of time for completion

39.—(1) If a company to which provisional approval has been granted is unable to complete its ancillary medical services investment within the period specified in the definition of “ancillary medical services investment” in regulation 2 due to unforeseen circumstances or some other act beyond the control of the company, the company may apply in writing to the Minister to extend the time by which the ancillary medical services investment must be completed.

(2) If the Minister extends the time under subregulation (1), the company shall continue to enjoy the duty free concession provided for by regulation 15 during the extended period.

Final approval if completed

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

- (a) the Minister, after consulting the Minister responsible for Health and Medical Services, is satisfied that the company has in all respects completed the requirements of an ancillary medical services investment; and
- (b) the ancillary medical center is fully completed.

Effect of final approval

41.—(1) The final approval entitles the company to the benefits of an ancillary medical services investment package from the first day of commercial operation of the ancillary medical centre or such other date as the Minister may specify.

(2) The company is not entitled to claim the benefits of an ancillary medical services investment package in any year unless it has been granted final approval and the Minister is satisfied that the shareholders of the company are substantially the same as the shareholders of the company when provisional approval was granted.

(3) For the purposes of subregulation (2), the shareholders of the company shall be deemed not to be substantially the same as the shareholders on the date when provisional approval was granted unless—

- (a) not less than 51% of the voting power in and the right to receive dividends from the company is held by or on behalf of the same persons; or
- (b) not less than 50% of the nominal value of the allotted shares in the company are held by or on behalf of the same persons.

(4) Notwithstanding subregulations (2) and (3), the company may, in writing, apply for exemption from those regulations to the Minister who may grant or refuse to grant the exemption.

Exemption from tax

42. If final approval is granted under this part to a company, the income of the company is exempt from tax on profits derived from the operation of the ancillary medical centre if the capital investment in the ancillary medical centre is more than \$2,000,000 for a period of 4 years.

Depreciation

43.—(1) During the period from the date appointed by the Minister under regulation 41 to the end of the accounting period in which the last day of the tax-free 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 these Regulations if the company were not in receipt of the concession provided by this part, and the written down values of such depreciable assets at the end of the accounting period in which the last day of the tax-free period falls shall be calculated accordingly.

(2) For the purpose of subregulation (1), 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.

Carry forward losses

44. Subject to these Regulations, any loss incurred by the company in the operation of the ancillary medical centre may be carried forward and set off against the total income of that ancillary medical centre business or the total income from that ancillary medical centre premises for the next 8 years in succession.

Annual accounts

45. Within 6 months after the end of each financial year a company which is entitled to the benefits of an ancillary medical services investment package shall submit to the Minister fully audited accounts, including other information that the Minister may require.

Transferability of package

46. If the ancillary medical centre in respect of which an ancillary medical services investment package has been granted 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 ancillary medical services investment package.

Revocation of package

47. The Minister may revoke any Part 4 or Part 5 investment if the ancillary medical centre 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.

Applicability of incentives

48. The owner of an ancillary medical centre is only entitled to either Part 4 ancillary medical services investment allowance or Part 5 ancillary medical services investment package for the same project, but not both.

Made this 1st day of January 2016.

F. S. KOYA
Acting Minister for Finance