

[LEGAL NOTICE NO. 3]

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

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**Income Tax (Hotel 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 (Hotel 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 physical and material comfort of a tourist in a hotel or a resort;

“capital goods”, for the purpose of regulation 16, means capital equipment, plant, machinery 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 short life investment, paid or provided to a local or an overseas consultant;

“extension” means any additional accommodation or additional amenity to an existing hotel;

“hotel” means any premises in which accommodation is supplied to or is available to be supplied to persons in exchange for money or other valuable consideration, including—

(a) a villa for resort purposes;

(b) a retirement resort constructed with facilities, services and amenities for retirement, including facilities for health services for such resort, and the villa or retirement resort will provide accommodation for guests for hire or reward or for the owner or occupier, for a period of not more than 12 weeks; or

- (c) for the purpose of Part 2, quarters constructed for the workers of the hotel in an island resort,

but for the purpose of Part 3, does not include quarters and any facility constructed for the residence of the owner or for managers or workers of the hotel;

“hotel owner” means the owner of a hotel who has been granted an approval under Part 2;

“integrated tourism development” means the development of a hotel and the subdivision and sale of residential lots, including the development of jetties, moorings, recreational facilities and other amenities;

“island resort” means any resort separated by 15km or more of sea from Viti Levu;

“Minister” means the Minister responsible for Finance;

“new apartments” means any premises with a minimum capital investment of \$7,000,000 in which accommodation is supplied to or is available to be supplied to a person or persons in exchange for money or other valuable consideration and the apartment will provide accommodation for guests for hire or reward or for the owner or occupier, for a period of not more than 6 months;

“project” means the building of a new hotel, the extension of an existing hotel or any refurbishment and renovation or buying of units in a hotel or integrated tourism development;

“provisional approval” means a provisional approval granted under Part 2;

“refurbishment and renovation” means any substantial construction works (which the estimated cost per square metre of floor area is determined under regulation 9(5)) of an existing hotel building (excluding its mere repainting or redecorating) which—

- (a) have the effect of restoring the hotel building to a sound and new state; or
- (b) reconstruct, remodel, alter, upgrade or amend the interior of an existing hotel building so as to form new rooms or alter the sizes of existing rooms;

“short life 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 2009 and the building is completed within 24 months from the date the provisional approval was granted;

“short life investment package” means the various exemptions, concessions and allowances given under a short life investment.

*Objective*

3. The purpose of these Regulations is to provide hotel investors with certainty about the way these Regulations are to be applied and to encourage hotels by the provision of financial inducements.

## PART 2—STANDARD ALLOWANCE

*Specification of particular requirements*

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

*Power to approve application*

5.—(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 the accommodation of travellers in the area concerned;
- (b) whether the proposed hotel or extension will make an adequate contribution to the requirements of the area concerned;
- (c) whether the proposed accommodation is of 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*

6. 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 hotel;
- (d) in the case of an existing hotel, the number and description of bedrooms and beds and of the toilet facilities;

- (e) the number and description of proposed new bedrooms and beds and the toilet facilities proposed to be established in connection with them;
- (f) a description of each public room for the proposed new hotel or extension of an existing hotel;
- (g) a detailed description of existing or proposed amenities;
- (h) a sketch plan showing in sufficient detail the site and lay out of the proposed hotel or extension and the amenities;
- (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.

*Completion of project*

7.—(1) Any hotel or integrated tourism development owner who has been granted provisional approval on or after 1 January 2016 shall complete the project within 24 months from the date of provisional approval.

(2) Subject to the other provisions of this regulation, where a hotel owner has been granted provisional approval and has completed the project, the hotel 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 hotel.

(4) Subject to regulation 8, the Minister shall refuse to grant final approval if the hotel 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 hotel 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 hotel owner is entitled to the following allowance—

- (a) an amount of taxable income equal to 25% 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 hotel 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 hotel owner until the amount is wholly set off.

(2) Notwithstanding subregulation (1), a hotel owner who has claimed an investment allowance under this regulation may claim depreciation under the Act 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 regulation exceeds the taxable income of the hotel owner from the hotel business; or
- (c) the taxable income from the hotel 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 hotel business or the taxable income from the hotel 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 hotel building.

(6) The capital expenditure allowable under refurbishment and renovation shall be given only to a hotel, which has been in operation for a period of not less than 5 years.

*Procedure on sale of hotel*

10. If the property of a hotel has been sold and the investment allowance in respect of such hotel has in accordance with regulation 7, been wholly or partly set off against income, the like consequences shall ensue as respects both the vendor and the purchaser with regard to section 34 of the Act, as would have ensued if the transaction were the sale and purchase of depreciable property in the normal course of events.

*Procedure in case of loss*

11. If a loss is incurred in connection with a hotel in respect of which investment allowance has been approved under regulation 9, any loss incurred in the operation of the hotel may be carried forward and set off against the total income of that hotel business or the total income from that hotel premises for the next 4 years in succession.

*Applicability of standard allowance*

12.—(1) Notwithstanding any other provision in this part, standard allowance shall cease to apply to an existing hotel from 1 January 2017, but shall continue to apply to new hotels provided that the standard allowance is granted only once to the hotel or integrated tourism development owner within that period.

(2) In this regulation—

“existing hotel” means a hotel which is licensed under the Hotels and Guest Houses Act (Cap. 195) and is operational prior to 1 January 2017;

“new hotel” means a hotel which is licensed under the Hotels and Guest Houses Act (Cap. 195) and is operational on or after 1 January 2017.

## PART 3—SHORT LIFE INVESTMENT

*Power to grant short life investment package*

13.—(1) Subject to subregulations (2) and (3), the Minister may grant or refuse to grant a short life investment package to a company, which has completed a short life investment and has complied with this part.

(2) The Minister shall not grant a short life investment package to an existing hotel from 1 January 2017.

(3) The Minister may continue to grant a short life investment package to a new hotel on or after 1 January 2017, provided that the short life investment package is granted only once to the hotel or integrated tourism development owner within that period.

(4) In this regulation—

“existing hotel” means a hotel which is licensed under the Hotels and Guest Houses Act (Cap. 195) and is operational prior to 1 January 2017;

“new hotel” means a hotel which is licensed under the Hotels and Guest Houses Act (Cap. 195) and is operational on or after 1 January 2017.

*Provisional approval*

14.—(1) The Minister may, after consulting the Minister responsible for Tourism—

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

(3) When considering an application for short life 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 short life investment;
- (c) the requirements for hotel accommodation or integrated tourism development or new apartments in the area concerned;
- (d) whether the short life investment will adequately contribute to the requirements of the area concerned;
- (e) whether the proposed hotel or integrated tourism development or new apartments are a suitable size and standard for the area concerned;
- (f) whether adequate amenities would be provided as part of the proposed hotel;
- (g) such other matters as the Minister may consider relevant to the desirability or otherwise of the short life 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 short life investment*

15.—(1) A company (“applicant”) may, in writing, apply to the Minister for provisional approval to carry out a short life 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 hotel site;
- (e) the number and description of proposed bedrooms and beds and the toilet facilities;
- (f) the description of each proposed public room;
- (g) the detailed description of all proposed amenities, such as swimming pools, tennis courts, golf courses and recreation facilities;
- (h) a sketch plan showing in sufficient detail the site and layout of the proposed hotel and its amenities;
- (i) an estimate of the total cost of the short life 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 short life investment;
- (k) details of the proposed method of financing the short life investment;
- (l) evidence of the company's ability to complete the short life investment;
- (m) estimates of the projected income from the new hotel;
- (n) the requirement of a hotel in the area;
- (o) the contribution of the short life investment into the area;
- (p) the nature and extent of short life investment;
- (q) the project must provide evidence that proceeds from the sale of lots which form part of the integrated tourism development or new apartments is reinvested in that project.

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

(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 short life investment package.

*Effect of provisional approval*

16.—(1) When a provisional approval is granted, all capital goods, imported within the period specified in the definition of “short life investment” under regulation 2, by or on behalf of the company and used in the carrying out of the short life investment, shall be exempt from all duties payable in respect of their importation under concession code 244 of Schedule 2 to the Customs Tariff Act 1986.

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

(3) Nothing in this regulation shall apply to any tax payable under the Value Added Tax Decree 1991.

(4) For the purposes of this regulation, capital equipment, plant and machinery does not include kitchenware, raw materials, furniture and fittings and other prescribed goods.

*Completion of short life investment*

17.—(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 short life investment;
- (b) a completion certificate from the local authority; and
- (c) a final plan showing the site, layout and surrounding areas of the hotel.

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

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

(5) Subject to regulations 18 and 19, no approval shall be granted under this regulation if the Minister is satisfied that the company has failed to complete the short life 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 Tourism; and
- (c) the CEO.

*Extension of time for completion*

18.—(1) If a company to which provisional approval has been granted is unable to complete its short life investment within the period specified in the definition of “short life 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 short life 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 16 during the extended period.

*Final approval if completed*

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

- (a) the Minister, after consulting the Minister responsible for Tourism, is satisfied that the company has in all respects completed the requirements of a short life investment; and
- (b) the hotel is fully completed.

*Effect of final approval*

20.—(1) The final approval entitles the company to the benefits of a short life investment package from the first day of commercial operation of the hotel or such other date as the Minister may specify.

(2) The company is not entitled to claim the benefits of a short life 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 percent 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 percent 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*

21. 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 hotel if the capital investment in the hotel is more than \$7,000,000—

- (a) in the case of a company approved prior to 1 January 2017, for a period of 10 years;
- (b) in the case of a company approved on or after 1 January 2017, for a period of 4 years.

*Depreciation*

22.—(1) During the period from the date appointed by the Minister under regulation 20 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 the Act 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*

23. Subject to the other provisions of these Regulations, any loss incurred by the company in the operation of the hotel may be carried forward and set off against the total income of that hotel business or the total income from that hotel premises for the next 4 years in succession.

*Electricity generation*

24.—(1) The company is entitled to be issued with a licence under the Electricity Act (Cap. 180) to operate a generating station for the purposes of providing electricity for the hotel.

(2) Any electricity generated by the company and surplus to the company's requirements may be sold.

(3) The company shall comply with all requirements of the Electricity Act (Cap. 180) in respect of its generating station.

*Annual accounts*

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

*Transferability of package*

26. If the hotel in respect of which a short life 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 short life investment package.

*Revocation of package*

27. The Minister may revoke any Part 2 or Part 3 investment if the company or hotel owner has—

- (a) breached any condition of provisional or final approval;
- (b) failed to comply with any of the requirements of the Act, Part 2 or Part 3; or
- (c) been convicted of an offence under any written law relating to taxation, customs or excise.

*Applicability of incentives*

28. A hotel owner or a company is only entitled to either Part 2 investment allowance or Part 3 short life investment package for the same project, but not both.

*Transitional*

29. Any approval for hotel or integrated tourism development investment granted before 1 January 2016 will continue to ensure the benefits provided thereof.

Made this 1st day of January 2016.

F. S. KOYA  
Acting Minister for Finance