

[LEGAL NOTICE NO. 77]

INCOME TAX ACT 2015

Income Tax (Submarine Network Cable 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 (Submarine Network Cable 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—

“cable landing station” means the first point at which the submarine network cable is connected or terminated in Fiji;

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

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

“final approval” means the approval granted by the Minister under regulation 8;

“Minister” means the Minister responsible for finance;

“project” means a project on or after 1 August 2021 for the establishment of a new submarine network cable business including the construction, renovation or refurbishment of a building, factory or plant into a cable landing station or other associated infrastructure development;

“provisional approval” means the approval granted by the CEO under regulation 4;

“submarine network cable” means an integrated system of communication cables laid on or below the floor of the ocean or other body of water, that collectively provides data transfer from one land-based location to another;

“submarine network cable business” means a business investing in submarine network cables and any associated infrastructure development; and

“submarine network cable investment incentive” means the duty exemption under regulation 5 and the exemption of tax on income under regulation 9 for a submarine network cable business established on or after 1 August 2021.

PART 2—SUBMARINE NETWORK CABLE INVESTMENT INCENTIVE

Application for provisional approval

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

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

- (a) the name and registered office of the company;
- (b) the names of all directors and shareholders of the company, including the percentage of ownership of shares in the company;
- (c) a current statement of all assets and liabilities of the company;
- (d) the location and description of the proposed project;
- (e) a sketch plan showing the proposed project;
- (f) the estimated cost of the proposed project;
- (g) if the proposed project is to be carried out in stages, a description and the estimated cost, of each stage and details of the proposed timetable;
- (h) evidence of the company’s ability to undertake the proposed project;
- (i) details of the proposed method of financing the proposed project;
- (j) estimates of the projected income from the proposed project;
- (k) a letter from the Department of Environment confirming—
 - (i) that the screening process for an Environmental Impact Assessment has been undertaken and there is no need for an Environmental Impact Assessment to undertake the proposed project; or
 - (ii) that an Environmental Impact Assessment has been undertaken and the proposed project has been approved by the Department of Environment;
- (l) any other relevant permit, licence, certificate, approval or authorisation for submarine network cable business, construction or development required under any written law, as and when applicable; 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 proposed project;

- (b) the assets and liabilities of the applicant;
- (c) the nature and extent of the proposed project;
- (d) the findings of the Environmental Impact Assessment, if applicable;
- (e) the sustainability of the proposed project;
- (f) the potential contribution of the proposed project to the economy;
- (g) all necessary requirements have been met and all necessary approvals have been obtained; and
- (h) such other matters the CEO may consider relevant to the desirability of the proposed 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 under concession code 305 of Schedule 2 to the Customs Tariff Act 1986.

(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.

Commencement of project

6.—(1) An applicant that has been granted provisional approval must commence 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 a schedule of expenditure relating to the project;
- (b) an approved plan showing the site, layout and surrounding areas of the project;
- (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; and

- (d) any other relevant permit, licence, certificate, approval or authorisation for submarine network cable business, construction or development required under any written law, as and when applicable.

(4) Subject to regulation 8, the Minister must refuse to grant final approval if the applicant has failed to commence the project or has failed to comply with any condition upon which provisional approval was granted.

Extension of time for commencement of project

7.—(1) If a company to which provisional approval has been granted is unable to commence the project within the period provided in regulation 6(1) 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 project must commence.

(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 company continues to enjoy the duty free concession provided for by regulation 5 during the extended period.

Final approval if completed

8.—(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 project meets the applicable standards; 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).

Effect of final approval

9. From the first day of commercial operation of the submarine network cable business or such other date as the Minister may specify, final approval entitles the company to a tax exemption for a period of 30 consecutive fiscal years, on the income of the submarine network cable business in the case of capital investment of more than \$40,000,000.

Revocation of submarine network cable investment incentive

10. The Minister may revoke the submarine network cable investment incentive if the applicant—

- (a) breaches any condition of provisional or final approval;
- (b) fails to setup and install the submarine network cable;
- (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 company in respect of which a submarine network cable investment incentive 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 submarine network cable 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.

A. SAYED-KHAIYUM
Attorney-General and Minister for Economy
