FIJI REVENUE AND CUSTOMS SERVICE

STANDARD INTERPRETATION GUIDEINE 2024-12

INCOME TAX (EXEMPT INCOME) REGULATIONS 2016 – ICT INCENTIVES

This Standard Interpretation Guideline (SIG) sets out Fiji Revenue and Customs Service's (FRCS) policy and operational practice in relation to the Information Communication and Technology Sector incentives which was announced in the 2023-2024 National Budget.

All legislative references in this SIG are to the Income Tax Act 2015 and Income Tax (Exempt Income) Regulations 2016 (unless otherwise stated).

This SIG is in effect from 1 July 2023 and may need to be reviewed in the event of any relevant legislative amendments.

CONTENT

PURPOSE

1. The purpose of this Standard Interpretation Guideline (SIG) is to discuss CEO's interpretation on the 2023-2024 Budget changes to the incentives for the Information Communication and Technology (ICT) industry which is available under the Income Tax (Exempt Income) Regulations 2016.

INTRODUCTION

2. Regulation 3 of the Income Tax (Exempt Income) Regulations 2016 has been amended with new provisions for the ICT industry.

3. The amendments provide conditions for an ICT business to qualify for the new incentive based on capital investment and minimum number of employees.

4. The new incentive is available to businesses that are registered with the Business Process Outsourcing (BPO) Council of Fiji and provide the qualifying ICT services:
    - Business Process Outsourcing;
    - Knowledge Process Outsourcing;
    - Information Technology Outsourcing; and
    - Shared Services/Global Business Services (GBS).

5. Any ICT incentive granted in Part 9 of the repealed Paragraph 3[1] and Paragraph 14[2] will continue to exist provided the conditions under which they were granted are fulfilled.

6. The examples used throughout this SIG are merely illustrative. They do not cover the number of factual scenarios that may arise. The relevant legislative provisions must be considered and applied to each case on its particular facts. That is, conclusions should not be drawn by determining whether the facts of a particular case may be analogous with examples but rather on the basis of applying the correct tests established by the law.

7. The full text of the legislative provisions is contained in the Appendix.

LEGISLATIVE ANALYSIS

Income tax exemption

8. Regulation 3 of the Income Tax (Exempt Income) Regulations 2016 provides income tax exemption for certain ICT businesses.

[1] The repealed Paragraph 3 provided that the income of an ICT business granted a licence after 1 January 2009 is exempt income for the period of 20 years from the date of issue of the licence [LN 76 of 2021, reg 2, effective 1 August 2021]
[2] Under the repealed Paragraph 14, the income of Information Communications Technology start-ups involved in application design or software development is exempt for a period of 13 years from the date of approval by the CEO

9. Effective from 1st July 2023, ICT businesses may qualify for income tax exemption based on capital invested into the business and the minimum number of staff employed in the business.[3] The amendment states:

"(3) The income of an Information Communications Technology business is exempt income based on capital investment and minimum number of employees as follows—

Capital Investment	*Minimum Employees*	*Exemption Period*
$100,000 to $250,000	*25*	*5 years*
$250,001 to $500,000	*50*	*7 years*
$500,0001 to $1,000,000	*75*	*10 years*
Greater than $1,000,000	*100*	*13 years*

…"

10. The repealed Paragraph 3[4] provided that the income of an ICT business granted a license after 1 January 2009 is exempt for 20 years from the date the license was issued. The incentive already granted to ICT businesses under this repealed provision will continue until the end of the exemption period.

11. The income tax exemption is available to any qualifying ICT business registered with the BPO Council of Fiji that engages in any of the business services explained in paragraphs 15 to 20 below, provided they meet the capital investment and minimum employment level requirements.

12. The types of qualifying ICT business and other terms defined in the Regulations are explained in the following paragraphs.

Information Communications Technology (ICT) business

13. The incentives provided in the ICT industry applies to businesses that are registered with the Business Process Outsourcing (BPO) Council of Fiji[5] and provide the qualifying ICT services:
    - Business Process Outsourcing;
    - Knowledge Process Outsourcing;
    - Information Technology Outsourcing; and
    - Shared Services/Global Business Services (GBS).

14. It does not include services relating to:
    - research and development;
    - internet café;
    - any retail or wholesale of information technology products; and
    - repair, sale or service of any ICT product.

Business Process Outsourcing (BPO)

15. BPO refers to the provision of core business support operations in the main areas of back-office and front-office operations.

---

[3] Regulation 3(b)(i) of Legal Notice No. 54

[4] Repealed Paragraph 3 in Part 9 of the Income Tax (Exempt Income) Regulations 2016

[5] The Fiji BPO Council (BPOC), also known as Outsource Fiji, is the industry body that guides and oversees the development of the outsourcing industry in Fiji. The BPO Council is headed by the private sector and has governmental support from the Ministry of Commerce, Trade, Tourism and Transport, Investment Fiji, and Fiji Commerce and Employers Federation. Source: https://outsourcefiji.com/who-we-are/

16. Back office BPO includes the contracting services including contact centers, accounting, payment processing, human resources, regulatory compliance, and quality assurance.

17. Front-office BPO tasks commonly include customer-related services including tech support, sales, and marketing.

Knowledge Process Outsourcing (KPO)

18. KPO refers to the provision of specific knowledge-based business task or function which require specialized skills and expertise such as :
    - engineering;
    - financial consulting and auditing;
    - legal work; and
    - data analytics.

Information Technology Outsourcing (ITO)

19. ITO refers to the provision of the following IT-related processes to third parties:
    - infrastructure solutions;
    - technical customer service support; and
    - data analytics.

    Most businesses outsource these tasks to reduce costs, access better talent, and ease upscaling.

Shared Services/Global Business Services (GBS)

20. Shared services/GBS refers to the provision of centralised functions such as:
    - finance operations;
    - human resource management including payroll;
    - procurement;
    - engineering;
    - master data;
    - compliance; and
    - IT and legal.

Capital investment

21. "Capital investment" investment is defined in the Regulations and means:
    - raw materials;
    - capital equipment;
    - plant;
    - machinery;
    - spare parts; and
    - any other goods employed in the production of other goods.

22. Capital expenditure on furniture or motor vehicles is specifically excluded from the definition of capital investment.

Example 1

XCo is an ICT business that was set up in August 2023.
At year end 31/12/2023, the number of office staff employed was 37.

The total cost of setting up the business was $363,000 -

- Rent for office space $5,000
- 30 computers $41,000*
- Computer equipment $150,000*
- 30 computer tables $12,000*
- 30 computer chairs $5,000*
- Furniture $35,000
- Air condition system $40,000*
- Motor vehicle $55,000
- Printer $20,000*

***Allowable capital expenditure = $268,000**

What is the allowable exemption period?

There are 2 tests:
1. The amount of allowable capital investment must not be less than $100,000
2. The number of employees must not be less than 25

CEO's position:
1. The 1st test is met (allowable capital expenditure of $268,000 is more than 100,000).
2. The 2nd test is met – the business has 37 employees.

Therefore, XCo qualifies for the 5-year exemption as both conditions are met.

Capital Investment	Minimum employees	Exemption period
$100,000 to $250,000	25	5 years
$250,001 to $500,000	50	7 years

Note - Although capital investment is $268,000, XCo does not qualify for the 7-year exemption as the minimum number of employees for that bracket is 50 therefore, it only qualifies for the 5-year exemption.

Example 2

XCo qualified for the 5-year exemption in the tax year 2023.
A loss of $100,000 was recorded in the first year of operations.

Income and expenditure for the 6 years will be reported as follows:

	Tax Year	Income / (Loss)	Loss c/f	Chargeable Income	Exemption
1	2023	(100,000)	0	(100,000)	0
2	2024	200,000	(100,000)	100,000	100,000
3	2025	600,000	0	600,000	600,000
4	2026	650,000	0	650,000	650,000
5	2027	590,000	0	590,000	590,000
6	2028	700,000	0	700,000	0

23. To support a claim, the taxpayer must attach a summary of qualifying employees, capital expenditure and evidence of registration with the BPO Council.

Deleted Incentive

24. From 1st August 2023, the provision[6] that exempts income of ICT start-ups involved in application design and software development for a period of 13 years has been revoked.[7]

25. The incentive already granted under this repealed provision will continue until the end of the exemption period.

26. For further information and clarification in regard to this SIG, please email tipu@frcs.org.fj

[6] Repealed Paragraph 14 in Part 9 of the Income Tax (Exempt Income) Regulations 2016
[7] Regulation 3(b)(ii) of Legal Notice No. 54

Appendix 1

[LEGAL NOTICE NO. 54]

INCOME TAX ACT 2015

Income Tax (Exempt Income) (Amendment) Regulations 2023

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

Short title and commencement

1.—(1) These Regulations may be cited as the Income Tax (Exempt Income) (Amendment) Regulations 2023.

(2) These Regulations come into force on 1 August 2023 except for regulation (3)*(a)* which comes into force on 1 January 2024 and regulation 3*(b)*(i) which is deemed to have come into force on 1 July 2023.

(3) In these Regulations, the Income Tax (Exempt Income) Regulations 2016 is referred to as the "Principal Regulations".

Regulation 4 deleted

2. The Principal Regulations are amended by deleting regulation 4.

Schedule amended

3. The Schedule to the Principal Regulations is amended by—

(a) in Part 4, deleting paragraph (10); and

(b) in Part 9—

(i) deleting paragraph (3) and substituting the following—

"(3) The income of an Information Communications Technology business is exempt income based on capital investment and minimum number of employees as follows—

Capital Investment	Minimum Employees	Exemption Period
$100,000 to $250,000	25	5 years
$250,001 to $500,000	50	7 years
$500,001 to $1,000,000	75	10 years
greater than $1,000,000	100	13 years

For the purpose of this paragraph—

"business process outsourcing" refers to providing core business support operations such as contact centres, accounting, payment processing, human resources, regulatory compliance, and quality assurance and includes customer-related services such as tech support, sales, and marketing;

"capital investment" 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;

"Information Communications Technology business" means services provided by businesses registered with the Business Process Outsourcing (BPO) Council of Fiji that engage in business process outsourcing, knowledge process outsourcing, information technology outsourcing and shared services/ Global Business Services (GBS) but not including services relating to research and development and internet cafe or any retail or wholesale of information technology products or the repair, sale or service of any such products;

"information technology (IT) outsourcing" refers to providing third party IT related services such as infrastructure solutions, technical customer service support, and data analytics;

"knowledge process outsourcing" refers to providing specific knowledge based business task or function which require specialised skills and expertise such as engineering, financial consulting and auditing, legal work and data analytics; and

"shared services/Global Business Services (GBS)" refers to the provision of centralised functions such as Finance operations, Human Resource Management, including Payroll, Procurement, Engineering, Master data, Compliance, IT and Legal."; and

(ii) deleting paragraph (14).

Made this 31st day of July 2023.

M. S. N. KAMIKAMICA
Deputy Prime Minister and
Acting Minister for Finance

Appendix 2

INCOME TAX (EXEMPT INCOME) REGULATIONS 2016

PART 9 — ECONOMIC DEVELOPMENT EXEMPTIONS

1) The Minister may, either by order, or by written direction to the CEO, if satisfied that it is expedient for the economic development of Fiji, declare that the whole of the income of a mining company is exempt income or taxed at a reduced rate as specified in the order or direction. The period of the exemption or application of a reduced rate is as specified in the order or direction.

2) The income of a co-operative dairy company incorporated in Fiji and registered under the provisions of the Co-operative Dairy Companies Act 1974 is exempt income in so far only as it is derived from the collection, treatment or manufacture and distribution of dairy produce from milk or cream supplied by shareholders, or from the investment of any surplus funds from such activities not distributed to shareholders.

3) The income of an Information Communications Technology business is exempt income based on capital investment and minimum number of employees as follows—

Capital Investment	Minimum Employees	Exemption Period
$100,000 to $250,000	25	5 years
$250,001 to $500,000	50	7 years
$500,001 to $1,000,000	75	10 years
greater than $1,000,000	100	13 years

For the purpose of this paragraph—

"business process outsourcing" refers to providing core business support operations such as contact centres, accounting, payment processing, human resources, regulatory compliance, and quality assurance and includes customer-related services such as tech support, sales, and marketing;

"capital investment" 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;

"Information Communications Technology business" means services provided by businesses registered with the Business Process Outsourcing (BPO) Council of Fiji that engage in business process outsourcing, knowledge process outsourcing, information technology outsourcing and shared services/Global Business Services (GBS) but not including services relating to research and development and internet cafe or any retail or wholesale of information technology products or the repair, sale or service of any such products;

"information technology (IT) outsourcing" refers to providing third party IT related services such as infrastructure solutions, technical customer service support, and data analytics;

"knowledge process outsourcing" refers to providing specific knowledge based business task or function which require specialised skills and expertise such as engineering, financial consulting and auditing, legal work and data analytics; and “shared services/Global Business Services (GBS)” refers to the provision of centralised functions such as Finance operations, Human Resource Management, including Payroll, Procurement, Engineering, Master data, Compliance, IT and Legal. [8]

4) The income of prescribed small and micro enterprises engaged in agriculture, fisheries, or tourism that has a gross turnover not exceeding $500,000 is exempt income.

5) The income of the Hospital Corporation (South Pacific) Limited trading as Apollo Pacific Hospital Project is exempt income for the period 1 January 2008 to 31 December 2017.

6) [Repealed] [para 6 deleted by LN 76 of 2021, reg 2, effective 1 August 2021]

7) The income of a person derived from a new activity in processing agricultural commodities into bio-fuels approved by the CEO during the period 1 January 2009 to 31 December 2028 and employing 20 local employees or more for each year for the duration of the income tax exemption, is exempt income as follows—

a) in the case of capital investment from $250,000 to $1,000,000, for a period of 5 consecutive tax years;

b) in the case of capital investment from $1,000,001 to $2,000,000, for a period of 7 consecutive tax years; or

c) in the case of capital investment of more than $2,000,000, for a period of 13 consecutive tax years.

8) The income of a person derived from a new activity in renewable energy projects and power cogeneration is exempt income for a period of 5 years if the exemption is approved by the CEO.

9) The net gain derived by a resident during the tax year from the trading of shares in a company listed with the South Pacific Stock Exchange is exempt income.

10) The income derived by a person from any new activity approved and established in the declared Tax Free Region from the airport side of the Rewa Bridge, excluding the town boundary of Nausori, up to the Ba side of the Matawalu River is exempt income—

a) $250,000 to $1,000,000, for a period of 5 consecutive fiscal years;

b) $1,000,001 to $2,000,000, for a period of 7 consecutive fiscal years;

c) $2,000,001 or more, for a period 13 consecutive fiscal years.

11) The income derived by Momi Bay Resort Limited is exempt income for a period of 13 consecutive tax years commencing from the 2013 tax year.

12) The income of a shipping company derived from servicing the Rotuma and Lau Group, as approved by the CEO, is exempt income for a period of 7 consecutive tax years.

13) The income of any taxpayer who is a Fijian citizen, global change derived from a local backpacker operation that is wholly owned by the Fijian Citizen, with an annual gross turnover not exceeding $1,000,000, is exempt income.

[8] Regulation 3 repealed wef 1 July 2023
3) The income of an Information Communications Technology business— a) operating on or before 1 January 2007 in the declared Kalabu Tax Free Zone is exempt income for the period 1 January 2007 – 31 December 2016; or
b) granted a licence after 1 January 2009 is exempt income for the period of 20 years from the date of issue of the licence.
[para 3(b) amended by LN 76 of 2021, reg 2, effective 1 August 2021]
For the purposes of this paragraph, “Information Communications Technology business” means services provided by a person which are Information Communications Technology enabled such as software development, call centres, customer contact centres, engineering and design, research and development, animation and content creation, distance learning, market research, travel services, finance and accounting services, human resource services, legal services, complianceand risk services or other administration services, but does not include an internet café or any retail or wholesale of information technology products or the repair, sale or service of any such products.

14) [9]
15) The income of an accredited Information Communications Technology training institution for a period of 13 years from the date of approval by the CEO.
16) The income of a taxpayer derived from a new activity in commercial agricultural farming and agro-processing as approved by the CEO from 1 January 2015 to 31 December 2018—
a) $250,000 to $1,000,000, for a period of 5 consecutive fiscal years;
b) $1,000,001 to $2,000,000, for a period of 7 consecutive fiscal years;
c) $2,000,001 or more, for a period of 13 consecutive fiscal years.

[9] Regulation 14 repealed wef 1 August 2023 The income of Information Communications Technology start-ups involved in application design or software development for a period of 13 years from the date of approval by the CEO.