STANDARD INTERPRETATION GUIDELINE 2024-07

INCOME TAX ACT 2015 - INCOME TAX (WAREHOUSE CONSTRUCTION INCENTIVES) REGULATIONS 2019 – WAREHOUSE INCENTIVES

This Standard Interpretation Guideline (SIG) sets out Fiji Revenue and Customs Service's (FRCS) policy and operational practice in relation to warehouse construction incentives that was introduced in 2019/2020 National Budget of Fiji.

It is issued with the authority of Chief Executive Officer (CEO) of FRCS.

All legislative references in this SIG are to the Income Tax Act 2015 (ITA 2015) and the Income Tax (Warehouse Construction Incentives) Regulations 2019 (unless otherwise stated).

This SIG, which replaces SIG 2020-03 is in effect from 1 July 2023 and may need to be reviewed in the event of any relevant legislative amendments.

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PURPOSE

1. The purpose of this Standard Interpretation Guideline (SIG) is to discuss CEO's interpretation and application of the warehouse construction incentive available under the Income Tax (Warehouse Construction Incentives) Regulations 2019.[1]

2. It also explains the effect of the repealed Regulations which were part of the 2023-2024 National Budget changes.

INTRODUCTION

3. A company engaged in investment in warehouses and storage facilities is eligible for the applicable tax benefits.

4. These Regulations have been repealed through the Income Tax (Warehouse Construction Incentives) (Revocation) Regulations 2023 with effect from 1 July 2023.[2]

5. However, the provisions that were in place prior to the repeal continue to apply to:
   - taxpayers granted provisional or final approval; and
   - applications received before 1 July 2023.

6. The primary objective was to encourage warehouse construction to meet business storage space needs through the following two tax incentives:
   a. **Warehouse Business Incentive Package (WBIP) -** available for companies engaged in the business of hiring out or renting out a warehouse, subject to the conditions in Part 2 of the Regulations; and
   b. **Warehouse Construction Incentive Package (WCIP) -** available to companies engaged in constructing warehouses, subject to conditions in Part 3 of the Regulations.

7. Further guidance is given in this SIG.

8. Any reference to the term "Minister" is a reference to the Minister responsible for Finance.[3]

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

LEGISLATIVE ANALYSIS

Warehouse Business Investment Package (WBIP)

10. WBIP is available to companies engaged in warehouse business. According to the Regulations –
    "Warehouse business means a company engaged in the business of hiring out or renting out a warehouse.[4]"

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[1] National Budget Amendment 2019-2020
[2] LN 61 of 2023 dated 31 July 2023
[3] Regulation 3
[4] Regulation 3

11. *Warehouse business investment* means a project[5] with capital investment over $250, 000, where the project commences on or after 1 August 2019 and the warehouse is completed within 24 months from the date the provisional approval is granted. Capital investment includes the cost of support infrastructure and consultant fees but excludes the cost of land.

12. Part 2 of Regulations lays down the procedure on granting provisional and final approval to companies engaged in the business of hiring out or renting out warehouses.

13. The Regulations provides the Minister or the CEO the powers to grant or refuse to grant a WBIP to a company[6] which has completed the construction of a warehouse.

14. The Minister's or CEO's powers to grant approval to a WBIP is exercised in two stages –
    a. Provisional approval; and
    b. Final approval.

Provisional Approval

15. The Minister or CEO has powers to refuse an application for provisional approval or to grant provisional approval, with or without any conditions.

16. A company may apply in writing to the CEO for provisional approval to carry out a warehouse business investment[7]. The application must set 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. evidence of the company's ability to complete the warehouse business investment; and
    e. estimates of the projected income from the new warehouse.

17. The CEO may also require the applicant to provide further documents or information deemed necessary in relation to the application. Additionally, the CEO may also prescribe particular requirements applicable to any particular areas of Fiji on where the project of warehouse business investment is proposed to be undertaken. This would be on a case by case basis depending on the circumstances surrounding the investment package and the application[8].

18. While considering an application for provisional approval, the Minister or CEO shall consider if the company applying for incentive satisfies certain requirements, such as:

    a. it must be a company registered under the Companies Act 2015;
    b. the company must be engaged in the business of hiring out or renting out a warehouse;

[5] Regulation 3 – "project" means construction of a warehouse
[6] Company means company registered under the Companies Act.
[7] Regulation 7(1)
[8] Regulation 7(2)

c. such a company must make warehouse business investment in a project with capital investment of over $250,000. The capital investment amount includes cost of support infrastructure and consultant fees but excludes the cost of land;
d. the project undertaken by such a company in warehouse investment business must have commenced on or after on or after 1 August 2019;
This means that a company that has already commenced warehouse investment business will not qualify for the incentive.
e. that the application is for a warehouse business investment;[9]
f. that the company intends to complete and is capable of completing the warehouse business investment;[10] and
g. that the warehouse business investment will benefit the economic development of Fiji.[11]

19. Additionally, the Minister or CEO also considers the following matters[12] –
a. assets and liabilities of the company;
b. nature and extent of the investment; and
c. any other matter as the Minister or CEO may consider necessary.

20. The decision of the Minister or the CEO to reject an application is final. This means that the rejection is not a tax decision which can be objected to under the Tax Administration Act 2009.[13]

However, a company whose application has been rejected (either wholly or partially) may make a new application or amend and resubmit the original application.[14]

21. Once a provisional approval is granted for WBIP, the importation of "exempt goods" by the company which would be used in carrying out the warehouse business investment, will be exempt from all duties payable in respect of their importation.[15]

"Exempt Goods" refers to raw materials, plant, machinery and equipment (including spare parts) required for the establishment of a warehouse business.[16]

Concession code 296 (Schedule 2) of Customs Tariff Act 1986, provides clarification on exemption available to companies or entities from payment of duties. According to Code 296, companies or entities that are engaged in the construction of warehouses are exempt from fiscal and excise duty rates, however VAT at the rate of 15% applies. Under this Concession Code, exempt goods refer to raw materials, machinery and equipment (including parts and materials) required or used specifically in initial establishment of the warehouse, as also is explained in this Regulation. The extract of concession code 296 is given under Appendix Three for reference.

22. It is to be noted that even if goods that are being imported qualifies as exempt goods, the company must satisfy the Minister that the goods cannot be produced locally. The Minister will then decide whether such goods are to be imported under the exemption.[17]

[9] Regulation 6(2)
[10] Regulation 6(2)
[11] Regulation 6(2)
[12] Regulation 6(3)
[13] Regulation 6(4)
[14] Regulation 6(5)
[15] Regulation 8(1)
[16] Regulation 3
[17] Regulation 8(2)

For example, a company which has been granted provisional approval intends to import fittings of a particular specification for the construction of the warehouse business. The company must write to the Minister seeking approval for the importation of the fittings demonstrating that particular specification of fittings is not and cannot be produced locally in Fiji.

If the fitting of same specification can be produced in Fiji, the Minister would most likely not give approval for the importation of the item.

23. Moreover, the exemption is only applicable to all duty payable on the importation, which includes fiscal and excise duty only. VAT payable under VAT Act 1991 would still apply on the importation of exempt goods[18].

Completion of Warehouse Business Investment Project [The Timeline]

24. If a company has been granted approval, the company must complete the warehouse business investment within 24 months from the date on which provisional approval is granted.[19]

25. If the company is unable to complete the project within the 24-month timeline due to unforeseen circumstances or circumstances beyond the control of the company, the company may write to the Minister for an extension of the time under which the warehouse construction must be completed.[20]

    This means that the company may only apply for an extension if the delay is due to unforeseen circumstances or circumstances that are beyond the control of the company, such as natural disasters or unavailability of construction material in the market.

26. There is no timeline prescribed for the extension of timeline, therefore the discretion for the extended timeline lies solely with the Minister.

27. If an extension is granted under the Regulations, the company continues to enjoy the duty free concession provided for the exemption of imported exempt goods during the extended period.[21]

Final Approval

28. Subject to the Regulations, a company which has been granted provisional approval and has completed the project within the timeline may apply to the Minister for final approval.[22]

29. The application for final approval must 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.[23]

30. If the Minister is satisfied that the company has not -
    a. completed the project within the 24 month or the approved extended timeline; and

[18] Regulation 8(3)
[19] Regulation 9(1)
[20] Regulation 10(1)
[21] Regulation 10(2)
[22] Regulation 9(2)
23 Regulation 9(3)

b. complied with any conditions upon which provisional approval was granted,

the Minister may reject the application for final approval to the company.[24] The decision to reject the application is made in writing by the Minister to the applicant and to the CEO.

31. In the event that the application for final approval is rejected, the duty payable for the importation of exempt goods under the provisional approval immediately becomes due and payable by the company.[25]

32. The Minister may grant final approval, with or without any conditions, if:
    a. the Minister is satisfied that the company has in all respects completed the requirements of the project; and
    b. the warehouse is fully operational.[26]

33. Once final approval is granted by the Minister, the company's income becomes exempt from tax based on their investment levels. That is:
    a. in the case of a capital investment from $250,000 to $1,000,000, for a period of 5 consecutive fiscal years;
    b. in the case of a capital investment from $1,000,001 to $2,000,000, for a period of 7 consecutive fiscal years; and
    c. in the case of a capital investment of more than $2,000,000, for a period of 13 consecutive fiscal years.[27]

Warehouse Construction Investment Package (WCIP)

34. WCIP is available to companies constructing warehouses for its own business purposes. According to the Regulations –

    "Warehouse construction investment means a project with capital investment over $1 million and the project commences on or after 1 August 2019 and the warehouse is completed within 24 months from the date the provisional approval is granted. Capital investment includes the cost of support infrastructure and consultant fees but excludes the cost of land.[28]"

35. Part 3 of Regulations lays down the procedures of granting provisional and final approval to persons constructing warehouses.

36. The Regulations provides the Minister or the CEO the powers to approve or reject the application or approve or reject in parts, with or without conditions to partial or full approval.[29]

37. The Minister's or CEO's powers to grant approval to a WBIP is exercised in two stages –
    a. Provisional approval; and
    b. Final approval.

[24] Regulation 9(5)
[25] Regulation 9(6)
[26] Regulation 11
[27] Regulation 12
[28] Regulation 3
[29] Regulation 15(1)

Provisional Approval

38. A person wishing to commence a project may apply to the CEO for approval of the proposed project under WCIP. The application must set out the following[30]:
    a. the name and details of the person;
    b. a current statement of all assets and liabilities of the person;
    c. the intended location and description of the project;
    d. a sketch plan showing the project;
    e. the estimated cost of the project;
    f. if the project is to be carried out in stages, a description and the estimated cost, of each stage and details of the proposed timetable;
    g. details of the proposed method of financing the project; and
    h. any other information the CEO may require.

39. While considering an application for provisional approval, the Minister or CEO shall consider if the person applying for WCIP satisfies the following in respect of the project, such as -

    a. the person has made a capital investment in the project of over $1,000,000. The amount includes cost of support infrastructure and consultant fees but excludes the cost of land.
    b. the project must have commenced on or after on or after 1 August 2019;
       This means that a company that has already commenced warehouse investment business will not qualify for the incentive; and
    c. that the person completes the warehouse construction within 24 months from the date of grant of provisional approval.

40. Additionally, the Minister or CEO also considers the following matters[31] –
    a. assets and liabilities of the company;
    b. nature and extent of the investment; and
    c. any other matter as the Minister or CEO may consider necessary.

41. The decision of the Minister or the CEO to reject an application is final. This means that the rejection is not a tax decision which can be objected to under the Tax Administration Act 2009.[32]

    However, a company whose application has been rejected (either wholly or partially) may make a new application or amend and resubmit the original application.[33]

Completion of Warehouse Construction Investment Project [The Timeline]

42. If a person has been granted approval, the person must complete the construction within 24 months from the date on which provisional approval is granted.[34]

[30] Regulation 16
[31] Regulation 15(2)
[32] Regulation 15(3)
[33] Regulation 15(4)
[34] Regulation 17(1)

43. If the person is unable to complete the project within the 24-month timeline due to unforeseen circumstances or circumstances beyond the control of the company, the company may write to the Minister for an extension of the time under which the warehouse construction must be completed.[35]

This means that the person may only apply for an extension if the delay is due to unforeseen circumstances or circumstances that are beyond the control of the person, such as natural disasters or unavailability of construction material in the market.

44. There is no timeline prescribed for the extension therefore the discretion for the extended timeline lies solely with the Minister.

Final Approval

45. Subject to the Regulations, a person who has been granted provisional approval and has completed the project within 24 months from the date of provisional approval, may apply to the Minister for final approval.[36]

46. The application for final approval must be made in writing and supported by the following[37]—
    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 proposed project.

47. The Minister may refuse to grant final approval –
    - if the person has failed to complete the project; or
    - failed to comply with the conditions upon which provisional approval was granted.[38]

48. If the Minister is not satisfied that:
    a. the person has in all respects completed the requirements of the project; and
    b. the project if fully completed

    the application for final approval will not be granted[39]. The Minister must notify the CEO in writing of the decision taken.[40]

49. Once final approval is granted by the Minister, a person is entitled to the following allowance -

	Capital Investment Amount	Amount not chargeable to tax
A	above $1,000,000 to $2,000,000	an amount of taxable income equal to 50% of capital expenditure incurred in the project minus cost of land acquired for the project
B	above $2,000,000	an amount of taxable income equal to 100% of capital expenditure incurred in the project minus cost of land acquired for the project

[35] Regulation 19
[36] Regulation 17(2)
[37] Regulation 17(3)
[38] Regulation 17(4)
[39] Regulation 18 (1)
[40] Regulation 18(2)

Additionally, to the extent of amount not charged to tax under A and B in the table above, and if that amount cannot be set off against taxable income of the person for the first year of income either after the commencement of operation or after the completion of the project –
that amount must be carried forward and be set off against the taxable income of the next successive fiscal years of income until the amount is wholly set off.[41]

Example 1:
Jane Industries Limited owns a supermarket chain. To store its trading stock, they want to build a warehouse. They receive final approval from the Minister for construction of warehouse under Warehouse Construction Investment Package (WCIP). Their total level of investment is given below-

Cost of Land	-	$ 500,000
Cost of Building	-	$2,500,000
TOTAL [42]CAPEX		$3,000,000
		==========

Will Jane Industries Limited be eligible for investment allowance under the WCIP?

CEO's position: As the total capital investment is above $2,000,000, Regulation 14(1)(b) applies under which investment allowance eligibility of Jane Industries Ltd. will be calculated as below:

Investment Allowance	= 100% of total CAPEX minus cost of land
(Taxable Income)	= 100% x ($3,000,000 - $500,000)
	= 100% x 2,500,000
	= $ 2,500,000.

Note: If the amount of capital expenditure is less than $2,000,000 but above $1000,000, a person shall be entitled to investment allowance which will be taxable amount equalling 50% of CAPEX minus cost of the land under Regulation 14(1)(a).

50. Even if a person has claimed investment allowance as per the above, such a person may claim depreciation under Income Tax 2015 and the amount claimed as investment allowance must not be taken in to account.[43]

51. In the case of Fijian residents or non-residents, the investment allowance shall be given only if there is no shift of tax revenue to other countries.[44]

52. It is also a requirement for the WCIP that if a project has been completed and –
    - an investment allowance under this regulation exceeds the taxable income of the applicant; or
    - the taxable income from the applicant 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 the applicant for the next successive years of income.[45]

[41] Regulation 14(1)
[42] Capital Expenditure
[43] Regulation 14(2)
[44] Regulation 14(3)
[45] Regulation 14(4)

Procedure on sale of warehouse

53. Where the warehouse has been sold and the investment allowance in respect of such warehouse has in accordance with regulation 17, been wholly or partly set off against income, the provisions relating to disposal of depreciable assets (section 34 of ITA) shall apply to both the vendor and the purchaser in the same way as would apply if that transaction was a sale and purchase of depreciable property in the normal course of events.[46]

Example 2:

Facts given under Example 1 are used here to explain the provisions relating to procedure on sale of a warehouse.

As per Example 1, Jane Industries was entitled to an investment allowance of $2,500,000. Assuming Jane Industries Ltd. sells its warehouse in Year 2 from the date of construction, the implication of section 34 is explained as below-

Year (A)	Profit before depreciation ($) (B)	Depreciation ($) (C)	Investment Allowance ($) (D)	Chargeable Income ($) (E) = (B)-[(C)+(D)]
Year 1	1,062,500	62,500	2,500,000 (as per Eg.1)	(1,500,000)
Year 2	2,000,000	*62,500*	*1,500,000*	0

Implications –

a. As per section 34(1) of ITA 2015, if the warehouse is sold before completion of 2nd financial year, the depreciation amount of $62,500 in the 2nd financial year cannot be claimed; and

b. As per regulation 20(procedure on sale of warehouse), if the warehouse is sold before completion of 2nd financial year, the investment allowance as at close of 1st financial year amounting to $1,500,000 (balance amount remaining to be set off) cannot be claimed by the seller.

Miscellaneous provisions

Applicability of Incentives

54. A company will be entitled to an investment package under either Part 2 – WBIP or Part 3 – WCIP for the same project but shall not be entitled to both packages.[47]

55. If the Minister or CEO has granted a provisional or final approval in relation to a project, the applicant is only entitled once, in relation to the project, to the investment.[48]

Revocation of Package

56. The Minister or CEO may revoke incentives under WBIP or WCIP if the applicant has:

a. breached any conditions of provisional or final approval;

[46] Regulation 20
[47] Regulation 21(1)
[48] Regulation 21(2)

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.[49]

Specification of particular requirements

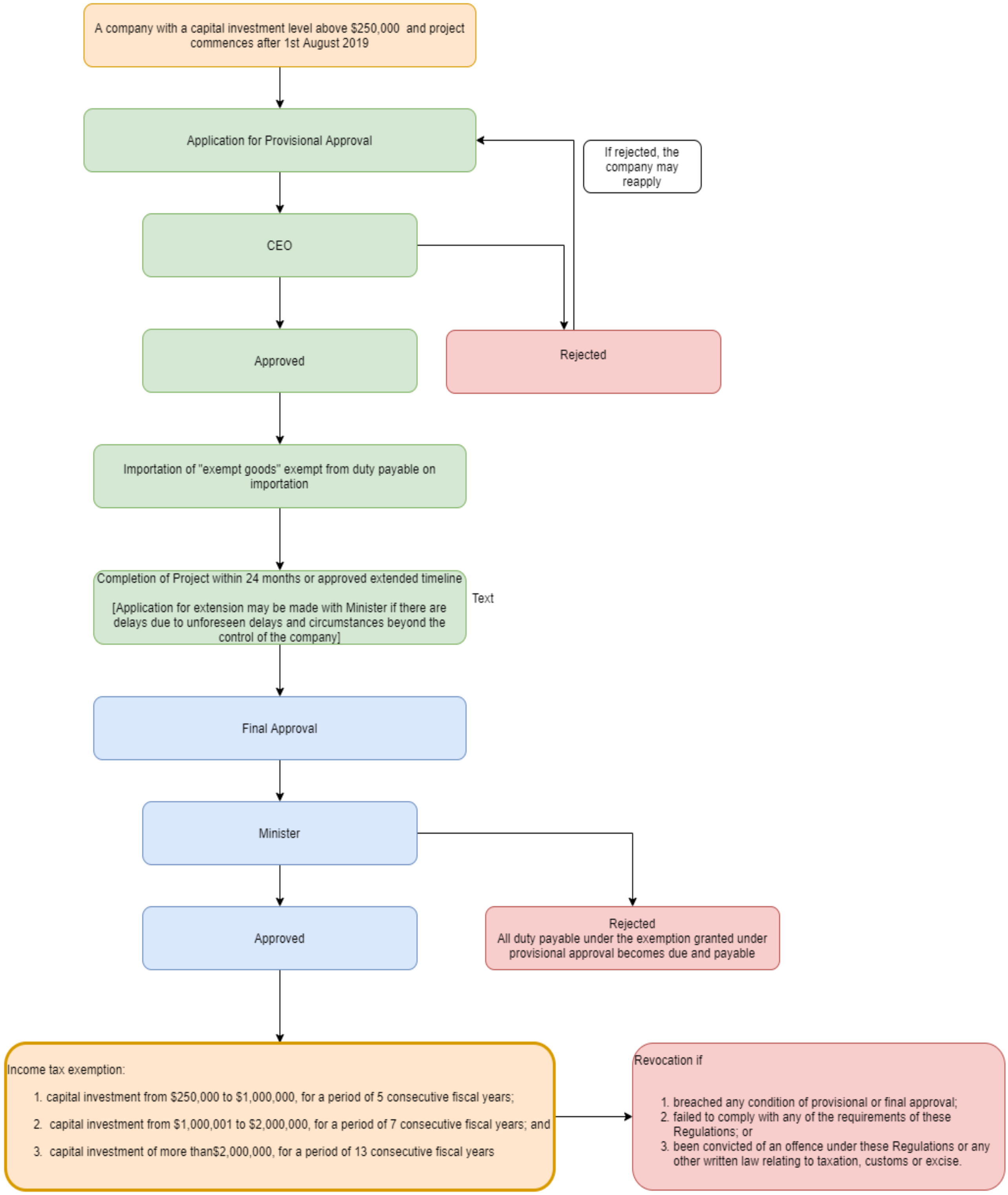
57. The Minister has the powers to prescribe particular requirements under these Regulations applicable to any particular area of Fiji in respect of a project undertaken under WBIP or WCIP.[50]

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

[49] Regulation 22

[50] Regulation 23

APPENDIX ONE: FLOWCHART – Warehouse Business Investment Package [WBIP]



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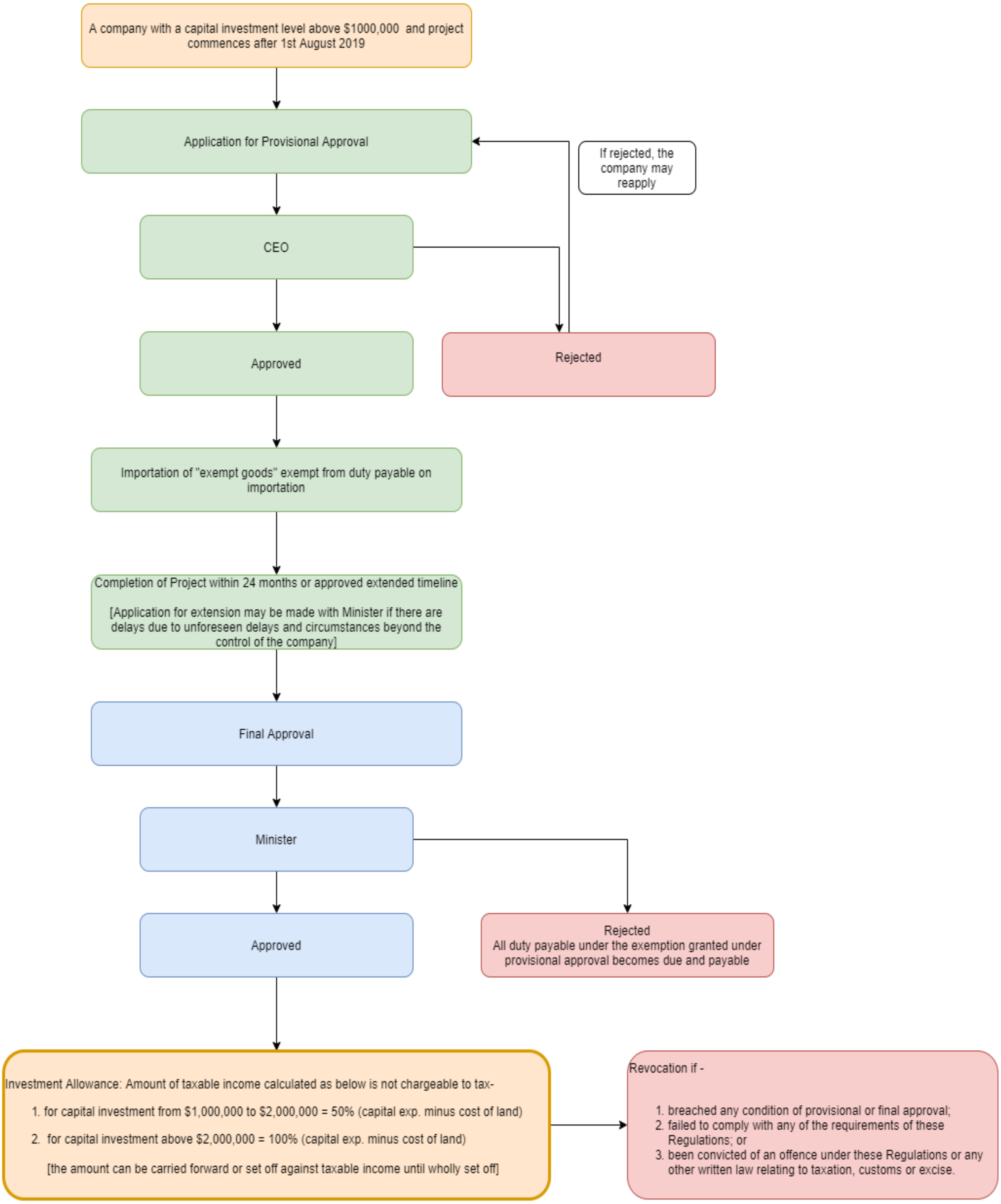
APPENDIX TWO: FLOWCHART – Warehouse Construction Investment Package [WCIP]



APPENDIX THREE: Concession Code 296 - Schedule 2 of Customs Tariff Act 1986

296	Companies or entities for construction of warehouses as approved under the Income Tax (Warehouse Construction Incentives) Regulations 2019	Raw materials, machinery and equipment 9including parts and materials) for the initial establishment of the warehouse	Free	Free	Depending on the type of good, the VAT applicable will be pursuant to Part 1 of Schedule2 to the	(a) That the company or entity is approved by the Comptroller; (b) That the warehouse is to be used exclusively as a storage facility; (c) That this is a new or initial construction	The person approved by the Comptroller

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Code No.	Persons or Bodies	Goods Eligible for duty conc.	Duty Rates			Conditions	Certificate to Be Signed By
			Fiscal	Excise	VAT		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
					Customs Tariff Act	(d) That the goods are to be used specifically for the initial establishment of the warehouse; (e) That the duty exemption will cease immediately within 2 years of the establishment of the warehouse unless the concession is extended by the Comptroller; (f) That the disposal or use of the goods for the purpose other than that for which the concession is granted be subject to the provisions of Section 17 of the Customs Tariff Act 1986.	

APPENDIX FOUR: Income Tax (Warehouse Construction Incentives) (Revocation) Regulations 2023

[LEGAL NOTICE NO. 61]

INCOME TAX ACT 2015

Income Tax (Warehouse Construction Incentives) (Revocation) Regulations 2023

IN exercise of the powers conferred on me by section 25A 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 (Warehouse Construction Incentives) (Revocation) Regulations 2023.

(2) These Regulations are deemed to have come into force on 1 July 2023.

Revocation

2. The Income Tax (Warehouse Construction Incentives) Regulations 2019 are revoked.

Savings and transitional

3. Notwithstanding the revocation of the Income Tax (Warehouse Construction Incentives) Regulations 2019, applications received prior to 1 July 2023 will still be processed.

Made this 31st day of July 2023.

M. S. N. KAMIKAMICA
Deputy Prime Minister and

Acting Minister for Finance

APPENDIX FOUR: Income Tax (Warehouse Construction Incentives) Regulations 2019

[LEGAL NOTICE NO. 57]
INCOME TAX ACT 2015

Income Tax (Warehouse Construction Incentives)
Regulations 2019

REGULATION

PART 1—PRELIMINARY

1. Short title and commencement
2. Laws to be read together
3. Interpretation
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PART 2—WAREHOUSE BUSINESS INVESTMENT PACKAGE

5. Power to grant warehouse business investment package
6. Provisional approval
7. Application for warehouse business investment
8. Effect of provisional approval
9. Completion of warehouse business investment project
10. Extension of time for completion
11. Final approval if completed
12. Effect of final approval
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PART 3—WAREHOUSE CONSTRUCTION INVESTMENT PACKAGE

14. Investment allowance
15. Power to approve applications
16. Application for provisional approval
17. Completion of project
18. Final approval if completed
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20. Procedure on sale of warehouse

PART 4—MISCELLANEOUS

21. Applicability of incentives
22. Revocation of package
23. Specification of particular requirements

IN exercise of the powers conferred on me by section 25A 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 (Warehouse Construction Incentives) Regulations 2019.

(2) These Regulations come into force on 1 August 2019.

Laws to be read together

2. These Regulations shall inter alia be read together in conjunction with the—

(a) Customs Act 1986 and the Customs Tariff Act 1986 in so far as it relates to customs and duties;

(b) Excise Act 1986 in so far as it relates to excise; and

(c) Value Added Tax Act 1991

Interpretation

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

"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 warehouse investment, paid or provided to a consultant;

"exempt goods" means raw materials, plant machinery and equipment (including spare parts) required for the establishment of a warehouse business;

"Minister" means the Minister responsible for finance;

"project" means the construction of a warehouse;

"warehouse" means a storage space, place or a building used for the storage of goods or facilities;

"warehouse business" means a company engaged in the business of hiring out or renting out a warehouse;

"warehouse business investment" means a project with capital investment (including the cost of support infrastructure and consultant fees but excluding the cost of land) over $250, 000 and the project commences on or after 1 August 2019 and the warehouse is completed within 24 months from the date the provisional approval is granted;

"warehouse business investment package" means the incentives under Part 2;

"warehouse construction investment" means a project with capital investment (including the cost of support infrastructure and consultant fees but excluding the cost of land) over $1 million and the project commences on or after 1 August 2019 and the warehouse is completed within 24 months from the date the provisional approval is granted; and

"warehouse construction investment package" means the incentives under Part 3.

Objective

4. The purpose of these Regulations is to encourage the construction of warehouses by the provision of financial inducements.

PART 2—WAREHOUSE BUSINESS INVESTMENT PACKAGE

Power to grant warehouse business investment package

5. The Minister or CEO, as applicable, may grant or refuse to grant a warehouse business investment package to a company which has completed the construction of a warehouse and has complied with this Part.

Provisional approval

6.—(1) The Minister or CEO, as applicable, may—

(a) reject the application for provisional approval for a warehouse business investment package; or

(b) grant provisional approval to such application, with or without any condition.

(2) The Minister or CEO, as applicable, must not grant provisional approval under subregulation (1) unless he or she is satisfied that—

(a) the application is for a warehouse business investment;

(b) the company intends to complete and is capable of completing such warehouse business investment; and

(c) the warehouse business investment will benefit the economic development of Fiji.

(3) When considering an application for a warehouse business investment package under subregulation (1), the Minister or CEO, as applicable, must take into account the following matters—

(a) the assets and liabilities of the company;

(b) the nature and extent of the warehouse business investment;

(c) such other matters as the Minister or CEO may consider relevant to the desirability or otherwise of the warehouse business investment for Fiji and the capability of the company to complete it.

4) The decision of the Minister or CEO, as applicable, 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 warehouse business investment

7.—(1) A company ("applicant") may, in writing, apply to the CEO for provisional approval to carry out a warehouse business 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) evidence of the company's ability to complete the warehouse business investment; and

(e) estimates of the projected income from the new warehouse.

(2) The CEO 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 the warehouse business investment.

Effect of provisional approval

8.—(1) When a provisional approval is granted, all exempt goods imported within the period specified in the definition of "warehouse business investment" under regulation 3, by or on behalf of the company and used in the carrying out of the warehouse business investment, are exempt from all duties payable in respect of their importation.

(2) Before exempt 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 will decide whether such goods are to be imported.

(3) Nothing in this regulation applies to any tax payable under the Value Added Tax Act 1991.

Completion of warehouse business investment project

9.—(1) If a company has been granted provisional approval, the company must complete the warehouse business investment within 24 months from the date on which the provisional approval is 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) must be made in writing and supported by the following—

(a) fully audited final accounts showing the total cost of the project; and

(b) a completion certificate from the local authority.

(4) Upon receiving an application under subregulation (2), the Minister may—

(a) reject the application; or

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

(5) Subject to regulations 10 and 11, no approval must be granted under this regulation if the Minister is satisfied that the company has failed to complete the project 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 applicant and the CEO of the decision to reject or grant the application.

Extension of time for completion

10.—(1) If a company to which provisional approval has been granted is unable to complete the warehouse business investment within the period specified in the definition of "warehouse business investment" in regulation 3 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 warehouse business investment must be completed.

(2) If the Minister extends the time under subregulation (1), the company continues to enjoy the duty free concession provided for by regulation 8 during the extended period.

Final approval if completed

11. An application for final approval shall not be granted unless—
- *(a)* the Minister is satisfied that the company has in all respects completed the requirements of a warehouse business investment; and
- *(b)* the warehouse is fully operational.

Effect of final approval

12. Notwithstanding anything contained in these Regulations, if the Minister gives final approval to the application, the income of the company will be exempt from tax—
- *(a)* in the case of a capital investment from $250,000 to $1,000,000, for a period of 5 consecutive fiscal years;
- *(b)* in the case of a capital investment from $1,000,001 to $2,000,000, for a period of 7 consecutive fiscal years; and
- *(c)* in the case of a capital investment of more than $2,000,000, for a period of 13 consecutive fiscal years.

Revocation of warehouse business investment package

13. The Minister may revoke any warehouse business investment package if the company or owner has-

(a) breached any condition of provisional or final approval
(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.

PART 3—WAREHOUSE CONSTRUCTION INVESTMENT PACKAGE

Investment allowance

14.—(1) Subject to subregulation (3), a person is entitled to the following allowance—

- *(a)* for a capital investment above $1,000,000 to $2,000,000, an amount of taxable income equal to 50% of the total capital expenditure incurred in the project, but less the cost of any land acquired for the project, is not chargeable to tax;
- *(b)* for a capital investment above $2,000,000, an amount of taxable income equal to 100% of the total capital expenditure incurred in the project, but less the cost of any land acquired for the project, is not chargeable to tax; and
- *(c)* so much of the amount not charged to tax under subregulation (1)(a) and (b) and which cannot be set off against the taxable income of the applicant for the first year of income after the commencement of operation or after the completion of the project must be carried forward and be set off against the taxable income of the next successive fiscal years of income until the amount is wholly set off.

(2) Notwithstanding subregulation (1), a person 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 Fijian 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 incomeof the applicant; or

the taxable income from the applicant 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 the applicant for the next successive years of income.

Power to approve applications

15.—(1) The Minister or CEO, as applicable, 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 or CEO, as applicable, must take into account the following matters when determining an application under subregulation (1)—
(a) the assets and liabilities of the company;
(b) the nature and extent of the warehouse construction investment project;
(c) such other matters as the Minister may consider relevant to the desirability or otherwise of the warehouse construction investment project for Fiji and the capability of the company to complete it.

(3) The decision of the Minister or CEO, as applicable, under this regulation is final.

(4) Notwithstanding subregulation (3), 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

16. A person wishing to carry out a project may apply in writing to the CEO 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 intended location and description of the project;
(d) a sketch plan showing the project;
(e) the estimated cost of the project;
(f) if the project is to be carried out in stages, a description and the estimated cost, of each stage and details of the proposed timetable;
(g) details of the proposed method of financing the project; and
(h) any other information the CEO may require.

Completion of project

17.—(1) Any applicant who has been granted provisional approval on or after 1 August 2019 shall complete the project within 24 months from the date of provisional approval.

(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 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 proposed project.

(4) Subject to regulation 18, the Minister shall refuse to grant final approval if the applicant has failed to complete the project or has failed to comply with any condition upon which provisional approval was granted.

Final approval if completed

18.—(1) An application for final approval shall not be granted unless—
(a) the Minister is satisfied that the applicant has in all respects completed the requirements of the project; and
(b) the project is fully completed.
(2) The Minister must notify the CEO in writing of the decision made under subregulation (1).

Extension of time for completion

19. If an applicant to whom provisional approval has been granted is unable to complete the project within the period specified in regulation 17 due to unforeseen circumstances or some other act beyond the control of the applicant, the applicant may apply in writing to the Minister to extend the time by which the project must be completed.

Procedure on sale of warehouse

20. If the warehouse has been sold and the investment allowance in respect of such warehouse has in accordance with regulation 17, 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.

PART 4—MISCELLANEOUS

Applicability of incentives

21.—(1) A company is entitled to an investment package under either Part 2 or Part 3 for the same project, but not both.

(2) If the Minister or CEO has granted a provisional or final approval in relation to a project, the applicant is only entitled once, in relation to the project, to the investment allowance.

Revocation of package

22. The Minister or CEO, as applicable, may revoke any Part 2 or Part 3 investment if the applicant has—
(a) breached any condition of provisional or final approval;
(b) failed to comply with any of the requirements of the Act or these Regulations; or

(c) been convicted of an offence under any written law relating to taxation,
customs or excise.

Specification of particular requirements

23. The Minister may prescribe particular requirements under these Regulations applicable to any particular area of Fiji.

Made this 31st day of July 2019.

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