



## **STANDARD INTERPRETATION GUIDELINE 2021-25**

### **ICT INFRASTRUCTURE INVESTMENT INCENTIVES**

#### **INCOME TAX (ICT INFRASTRUCTURE INVESTMENT INCENTIVES) REGULATION 2021 CUSTOMS TARIFF ACT 1986 – CONCESSION CODE 303**

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This Standard Interpretation Guideline (“SIG”) sets out Fiji Revenue and Customs Service’s (“FRCS”) policy and operational practice in relation to ICT infrastructure investment incentive which was announced in the 2021-2022 National Budget of Fiji.

It is issued with the authority of the Chief Executive Officer (“CEO”) of FRCS who is also the Comptroller of Customs and Excise.

All legislative references in this SIG are to the Income Tax Act 2015 and Income Tax (ICT Infrastructure Investment Incentives) Regulations 2021 (unless otherwise stated).

This SIG is in effect from 01 August 2021 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 on the ICT infrastructure investment incentives which is available under the Income Tax (ICT Infrastructure Investment Incentives) Regulations 2021.
2. The SIG also aims to provide clarity and FRCS position on the application of the provisions under Concession Code 303 which relates to the duty exemptions provided for the importation of capital goods for the purpose of the project.
3. As the incentive is new, the CEO finds it necessary to provide the awareness and clarity on the requirements to qualify for the incentive, the legislated procedural requirements and the tax and duty exemption benefits associated with the incentive.

## **INTRODUCTION**

4. In the 2021-2022 National Budget, the Minister for Economy stated, *"to incentivize investment in buildings and other infrastructure development for the BPO sector, including costs incurred to meet the specific requirement of BPO operators, a new income tax incentive package will be offered..."*

This incentive package has been announced as ICT Infrastructure Incentive under Income Tax (ICT Infrastructure Incentive) Regulations 2021.

5. The incentive is available to companies that are registered under the Companies Act 2015 and it provides for the exemption from paying duty on approved exempt goods and income tax exemptions subject to required capital investment levels.
6. In this SIG, any reference to the term "Minister" is a reference to the Minister responsible for Finance.
7. 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 particular examples but rather on the basis of applying the correct tests established by the law.
8. The full text of the legislative provisions is contained in the [Appendix](#).

## **LEGISLATIVE ANALYSIS**

### **ICT INFRASTRUCTURE INVESTMENT INCENTIVE**

9. The Regulations provides the Minister or the CEO the powers to grant or refuse to grant a ICT infrastructure investment incentive to a company which has completed the relative project.
10. The investment package is only available to companies which commence the project on or after 1<sup>st</sup> August 2021. This means that a company that has already commenced with the ICT infrastructure project or has already completed the project will not qualify for the incentive.
11. ICT infrastructure project includes the establishment, development, or construction of ICT infrastructure.
12. An ICT infrastructure refers to any form of infrastructure which will be used by an ICT business.

13. An ICT business means a business providing services which are ICT 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, compliance and 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. ICT infrastructure investment incentive is available in two stages:
- Provisional approval; and
  - Final approval.

### **Provisional Approval**

15. A company may apply in writing to the CEO for provisional approval to carry out ICT infrastructure investment. The application must set out and be supported by the following –<sup>1</sup>
- the name and registered office of the company;
  - the names of all directors and shareholders of the company, including the percentage of ownership of shares in the company;
  - a current statement of all assets and liabilities of the company;
  - the location and description of the proposed project;
  - a sketch plan showing the project;
  - the estimated cost of the project;
  - 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;
  - evidence of the company's ability to undertake the project;
  - details of the proposed method of financing the project;
  - estimates of the projected income from the project; and
  - any other information the CEO may require.

### **Power to Approve (Provisional) Applications**

16. The CEO has the power to:<sup>2</sup>
- reject the application;
  - approve the application, with or without any condition; or
  - approve part of the application, with or without any condition, and reject other parts of the application.
17. The CEO will consider the following matters when determining the application for provisional approval:<sup>3</sup>
- The ability of the applicant to undertake the project;
  - The assets and liabilities of the applicant;
  - The nature and extent of the project;
  - The potential contribution of the project to the economy; and
  - Such other matters the CEO may consider relevant to the desirability of the project and the capability of the applicant to complete it.

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<sup>1</sup> Income Tax (ICT Infrastructure Investment Incentives) Regulations 2021

<sup>2</sup> Income Tax (ICT Infrastructure Investment Incentives) Regulations 2021

<sup>3</sup> Income Tax (ICT Infrastructure Investment Incentives) Regulations 2021

18. An applicant whose provisional application has been rejected, including a partially rejected application, may –<sup>4</sup>
- Make a new application to the CEO;
  - Amend and resubmit the original application to the CEO; or
  - Appeal the decision of the CEO to the Minister.

#### Effect of Provisional Approval

19. Once the provisional approval has been granted, the importation of all “capital goods” by or on behalf of the company (applicant) and used in the carrying out of the ICT infrastructure project, is **exempt from all duties** payable in respect of their importation.

**Capital goods** 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.

20. The exemption of duty is legislated under Concession Code 303 of Schedule 2 to the Customs Tariff Act 1986. (Refer to [Appendix](#)).
21. It is noted that even if a good that is being imported qualifies for the exemption, the applicant must satisfy the CEO that the goods cannot be produced locally. The CEO will then decide whether such goods are to be imported under the exemption.
22. The exemption is **only applicable** to all duty payable on the importation, which includes fiscal and excise duty only. VAT, however, would still apply on the importation of capital goods.

#### The Duty Concession – Concession Code 303

Code Number	Persons or Bodies	Goods Eligible for Duty Concession	Import Duty Rates			Conditions	Certificate to be signed by
			Fiscal	Excise	VAT		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
303	Investment in ICT Structure for ICT Purposes as per the Income Tax Regulations relating to this incentive	Raw materials, machinery and equipment including spare parts	Free	Free	9%	<p>(a) That a provisional approval for the project is issued by the Minister;</p> <p>(b) That the goods are imported for the initial establishment of the ICT Structure;</p> <p>(c) That the goods must be used for the purposes for which the concession is granted;</p> <p>(d) That the disposal or use of the goods for purposes other than that for which the concession is</p>	The approved company

<sup>4</sup> Income Tax (ICT Infrastructure Investment Incentives) Regulations 2021

						granted be subject to section 17 of the Customs Tariff Act 1986.	
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23. Under the provisions of the Customs Tariff Act 1986, the concession is claimed at the time of importation or at the time of clearance from the bonded warehouse<sup>5</sup>. This means that once the goods have been cleared, the importer cannot claim the concession under any concession codes.

**Eligible Goods**

24. The goods that can be imported under the concession code are raw materials, machinery and equipment including spare parts, as specified in column (3) but excluding furniture or motor vehicles.

**Conditions**

25. The goods imported under this concession are for the purpose for which the concession is granted and for the initial establishment of the ICT Structure. The disposal or use of the goods for purposes other than that for which the concession is granted will be subject to section 17 of the Customs Tariff Act 1986.

As per Section 17 of the Customs Tariff Act, if within five years from the date of importation, the goods imported are disposed of or used for any other purpose other than that for which the concession is granted, the goods are liable for duty.

26. The CEO may disallow the concession and the tax, and the duty foregone becomes payable in the event where the conditions mentioned in column 7 above are not fulfilled after the clearance of the goods from Customs Control.

**Completion of Project**

25. An applicant who has been granted provisional approval **must complete the project within 24 months** from the date on which the approval (provisional) was granted.

26. After the completion of the project, the applicant may apply to the Minister for final approval.

27. Application for final approval 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) If applicable, a certificate of completion and permit to occupy issued by a building surveyor in accordance with the Public Health (Building) Regulations 1959; and
  - d) If the project is to be leased, used by or rented out to some other person, proof of a valid legal agreement to that effect.

28. Final approval will not be granted by the Minister if the applicant has failed to complete the project or has failed to comply with any of the conditions upon which provisional approval was granted.

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<sup>5</sup> Note 5 to Part II of Schedule to the Customs Tariff Act 1986

### Extension of Time for Completion

29. If the applicant who has been granted provisional approval is unable to complete the project within 24 months due to unforeseen circumstances or some other act or circumstances beyond the control of the applicant may apply in writing to the Minister for an extension of time by which the project must be completed.
30. Application for extension of time must be made within **30 days before** the end of the 24 months initially granted under the provisional approval. This means that the application for extension must be made on the **23<sup>rd</sup> month** from the time the provisional approval was granted.
31. An applicant who has been granted extension of time will continue to enjoy the duty free concession on the importation of capital goods during the extended period.

### Final Approval if Completed

32. An application for final approval will only be granted if –<sup>6</sup>
- a) the applicant produces the documents listed in para 27, and the Minister is satisfied that the documents confirm the matters to which they relate;
  - b) if applicable, 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;
  - c) the Minister is satisfied that the applicant has completed the requirements of the project; and
  - d) the project is fully completed.
33. The Minister’s decision on the final approval will be notified by the CEO in writing to the applicant.

### Effect of Final Approval

34. Final approval entails the applicant to tax exemption from the first day of the use of the ICT infrastructure for commercial purposes or any other date as the Minister may specify.
35. The table below illustrates the period of tax exemption in accordance with the amount of capital investment made by an applicant

Amount of Capital Investment (\$)	Period of Tax Exemption Available
From \$2,000,000 to \$5,000,000	10 consecutive fiscal years
From \$5,000,001 to \$10,000,000	15 consecutive fiscal years
More than \$10,000,000	20 consecutive fiscal years

36. The period of tax exemption is only available to the applicant if at least 90% of the applicant’s income derived from the project within that fiscal year is from an ICT business.
37. If the project relates to the development of units and sale of these unit titles to an ICT business, including a BPO company, then **the proceeds from the sale** are also **exempt from income tax**.

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<sup>6</sup> Income Tax (ICT Infrastructure Investment Incentives) Regulations 2021

### **Example 1 – Tax Exemption on Income Derived from ICT Project**

ABC Co Ltd decides to undertake a project in the ICT infrastructure by investing 8 million FJ dollars. The company receives its provisional approval which is effective from 1 January 2022 and is valid for 24 months, that is up to 31<sup>st</sup> December 2024. Assuming that the project was completed within the 24 months and final approval is granted by the Minister.

**What is the tax benefit which the company is entitled to receive from this incentive in year 2025?**

#### **CEO's Position:**

1. ABC Co Ltd is entitled to tax exemption on its income derived from this project, provided **90% of Total Income in the fiscal year 2025 is from an ICT business**. ABC Co Ltd can continue to enjoy this tax exemption for 15 consecutive years only if 90% of income within that fiscal year is from ICT business.
2. However, if ABC Co Ltd.'s Total Income in the fiscal year 2025 comprises of only 80% income from the project, then ABC Co Ltd will not qualify for any tax exemption for that fiscal year.

### **Example 2**

XYZ Co Ltd decides to undertake a project in the ICT infrastructure by investing 12 million FJ dollars. The company receives its provisional approval which is effective from 1 January 2022 and is valid for 24 months, that is up to 31<sup>st</sup> December 2024. Assuming that the project was completed within the 24 months and final approval is granted by the Minister, and in year 2025 the company sold two (2) units at \$1m each.

**What is the tax benefit which the company is entitled to receive from this incentive?**

#### **CEO's Position:**

1. Assuming XYZ Co Ltd sold both units to a BPO company, then the proceeds from the sale of the two (2) units is entitled to tax exemption, that is \$2m is exempted from tax.
2. However, if XYZ Co Ltd sold only one (1) unit to a BPO company, the proceeds from the sale of that unit is entitled to tax exemption, that is only \$1m is exempted from tax. The sale of the other unit will be subject to tax.

### **Revocation of ICT Infrastructure Investment Incentive**

38. There may be instances where the Minister may revoke ICT infrastructure investment incentive. This would usually occur where the applicant –
- a) Breaches any condition of provisional or final approval;
  - b) Fails to comply with any of the requirements of this regulation; or
  - c) Is convicted of an offence under any written law relating to taxation, customs or excise.
39. Upon the revocation of the investment incentive any tax or duty forgone becomes payable. This means that any duty exempted for the importation of capital goods or any income tax exempted following the final approval becomes payable by the company.

### **Transferability of Package**

22. There may be instances where a company which has been granted the ICT infrastructure investment incentive may sell the ICT infrastructure.
23. In such cases, the purchaser or prospective purchaser may apply in writing to the Minister for the transfer of any remaining investment incentive.

### **Specification of Particular Requirements**

24. The Minister may prescribe any particular requirements in relation to the investment incentive applicable to any particular area of Fiji.

25. For further information and clarification in regard to this SIG, please email us at [tipu@frcs.org.fj](mailto:tipu@frcs.org.fj).



## APPENDIX: LEGISLATION

[LEGAL NOTICE NO. 78]

### INCOME TAX ACT 2015

## Income Tax (ICT Infrastructure 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 (ICT Infrastructure 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—

“capital goods” 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;

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

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

“ICT” means information and communications technology;

“ICT business” means a business providing services which are ICT 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, compliance and 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;

“ICT infrastructure investment incentive” means the duty exemption under regulation 5 and the exemption of tax on income under regulation 9 for an investment in ICT infrastructure on or after 1 August 2021;

“ICT infrastructure” means any form of infrastructure to be used by an ICT business;

“Minister” means the Minister responsible for finance;

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

“project” means a project on or after 1 August 2021 for the establishment, development or construction of ICT infrastructure with an investment that meets the minimum investment threshold provided under regulation 9.

## PART 2—ICT INFRASTRUCTURE 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 project;
- (f) the estimated cost of the project;
- (g) 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;
- (h) evidence of the company’s ability to undertake the project;
- (i) details of the proposed method of financing the project;
- (j) estimates of the projected income from the project; and
- (k) 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 project;
- (b) the assets and liabilities of the applicant;
- (c) the nature and extent of the project;
- (d) the potential contribution of the project to the economy; and
- (e) such other matters the CEO may consider relevant to the desirability of the 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 303 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.

*Completion of project*

6.—(1) An applicant that has been granted provisional approval must complete the project within 24 months from the date on which the provisional approval was granted.

(2) Subject to the other provisions of this regulation, where an 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) if applicable, a certificate of completion and permit to occupy issued by a building surveyor in accordance with the Public Health (Building) Regulations 1959; and
- (d) if the project is to be leased, used by or rented out to some other person, proof of a valid legal agreement to that effect.

(4) Subject to regulation 8, the Minister must 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.

*Extension of time for completion*

7.—(1) If a company to which provisional approval has been granted is unable to complete the project within the period provided in regulation 6(1) due to unforeseen circumstances or some other act or circumstances beyond the control of the company, the company may apply in writing to the Minister to extend the time by which the project must be completed.

(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 by regulation 5 during the extended period.

*Final approval if completed*

8.—(1) An application for final approval may only be granted if—

- (a) the applicant produces the documents required under regulation 6(3), and the Minister is satisfied that the documents confirm the matters to which they relate;

- (b) if applicable, 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;
- (c) the Minister is satisfied that the applicant has in all respects completed the requirements of the project; 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.—(1) From the first day of the use of the ICT infrastructure for commercial purposes or such other date as the Minister may specify, final approval entitles a company to the following tax exemption on the income from the completed project—

- (a) in the case of a capital investment from \$2,000,000 to \$5,000,000, for a period of 10 consecutive fiscal years;
- (b) in the case of a capital investment from \$5,000,001 to \$10,000,000, for a period of 15 consecutive fiscal years;
- (c) in the case of a capital investment of more than \$10,000,000, for a period of 20 consecutive fiscal years.

(2) For each fiscal year within the time period in subregulation (1), the applicable tax exemption applies only if at least 90% of the applicant's income derived from the project within that fiscal year is from an ICT business.

(3) If the project is the development of units to be sold as unit titles to an ICT business, including a Business Process Outsourcing (BPO) company, the proceeds from the sale are also exempt from income tax.

*Revocation of ICT infrastructure investment incentive*

10. The Minister may revoke the ICT infrastructure investment incentive if the applicant—

- (a) breaches any condition of provisional or final approval;
- (b) fails to comply with any of the requirements of these Regulations; or
- (c) 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 an ICT infrastructure investment incentive 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 ICT infrastructure 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