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INTERIM GOVERNMENT OF THE REPUBLIC OF THE FIJI ISLANDS

INCOME TAX ACT (HOTEL INCENTIVES AMENDMENT) PROMULGATION 2007
(PROMULGATION No. 27 OF 2007)

IN EXERCISE of the powers conferred upon the Interim Government, and upon the exercise of my own deliberate judgment as President of the Republic of Fiji Islands as to what is best and good for the people of the Republic of the Fiji Islands, and by the exercise of the executive authority of the State in accordance with paragraph 85 of the Constitution and such other powers as may appertain, and with the approval of Cabinet, I, Josefa Iloilovatu Uluivuda, make this Promulgation—

TO AMEND THE INCOME TAX ACT

Short title and commencement

1.—(1) This Promulgation may be cited as the Income Tax Act (Hotel Incentives Amendment) Promulgation 2007, and is deemed to have come into force on 1 July 2007.

(2) In this Promulgation, the Income Tax Act (Cap. 201) is referred to as the “Act”.

New section 16C inserted

2. The Act is amended by inserting after section 16B the following section—

Hotel investment tax incentives

“16C. The hotel investment allowance and the short life investment package are set out in the Eleventh Schedule.”

New subsection 17(69) inserted

3. Section 17 of the Act is amended by inserting after subsection (68) the following subsection—

“(69) all income of Hospital Corporation (South Pacific) Limited trading as Apollo Pacific Hospital Project earned from 1 January 2008 to 31 December 2017;

Repeal and savings

4.—(1) The Hotels Aid Act (Cap. 215) (“repealed Act”) is repealed.

(2) Any existing approval given under the repealed Act continues with any ensuing benefits, as if such approval were given under the Eleventh Schedule.

(3) Any pending application made under the repealed Act shall be determined by Minister for Finance.

New Eleventh Schedule added

5. The Act is amended by adding after the Tenth Schedule the following Schedule—

“ELEVENTH SCHEDULE
(Section 16C)

HOTEL INVESTMENT TAX INCENTIVES

PART 1—GENERAL

Purpose

1. The purpose of this Schedule is to provide hotel investors with certainty about the way the Minister will apply this Schedule to provide for the encouragement of hotels by the provision of financial inducements.

Interpretation

2. In this Schedule, unless the context otherwise requires—

“capital goods” for the purpose of paragraph 11, means capital equipments, plant, machineries 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 (Cap. 247);

“consultant fees” includes salaries, allowances, *per diem* and incidental expenses, food and accommodation, and any other fees that directly or indirectly relate to the short life investment, paid or provided to an overseas consultant;

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

“hotel”—(a) means any premises in which accommodation is supplied to or is available to be supplied to persons in exchange of money or other valuable consideration;

(b) and includes—

(i) a villa for resort purposes; or

(ii) a retirement resort constructed with facilities, services and amenities for retirement, including facilities for health services for such resort,

and the villa or retirement resort will provide accommodation for guests for hire or reward or for the owner or occupier, for a period of not more than 12 weeks;

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

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

“project” means the building of a new hotel, the extension of an existing hotel or any refurbishment and renovation;

“provisional approval” means a provisional approval given under Part 3;

“refurbishment and renovation” means any substantial construction works (which the estimated cost per square metre of floor area is determined under paragraph 6(5)) of an existing hotel building (excluding its mere repainting or redecorating) which—

(a) have the effect of restoring the hotel building to a sound and new state; or

(b) reconstruct, remodel, alter, upgrade or amend the interior of an existing hotel building so as to form new rooms or alter the sizes of existing rooms;

“short life investment” means a project for the building of a new hotel with capital investment (including the cost of support infrastructure and overseas consultant fees but excluding the cost of land)—

(a) between \$10,000,000 and \$40,000,000, and the building of the new hotel commences on or after 1 July 1998; or

(b) over \$40,000,000, and the building of the new hotel commences on or after 13 February 1996; and

the building under sub-subparagraph (a) or (b) is completed on or before 31 December 2008;

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

PART 2—STANDARD ALLOWANCE

Specification of particular requirements

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

Power to approve application

- 4.—(1) The Minister has the power—
- (a) to reject the application for approval;
 - (b) to approve the application for approval, with or without any conditions; or
 - (c) to approve part of the application for approval, with or without conditions, and reject other part of such application.
- (2) The Minister must take into account following matters when determining an application under subparagraph (1)—
- (a) the requirements for the accommodation of travellers in the area concerned;
 - (b) whether the proposed hotel or extension will make an adequate contribution to the requirements of the area concerned;
 - (c) whether the proposed accommodation is of suitable size and standard for the area;
 - (d) whether adequate amenities would be provided by the project.
- (3) The Minister must, in writing, notify the Commissioner of the decision made under subparagraph (1).
- (4) The decision of the Minister under this paragraph is final.
- (5) Despite subparagraph (4), a person whose application (including partial rejected application) has been rejected has the right to make a new application or to amend and resubmit the original application.

Application for approval

5. A person wishing to carry out a project may apply in writing to the Minister for approval of the proposed project, and such application must set out the following matters—
- (a) the name and details of the person;
 - (b) a recent statement of all assets and liabilities of the person;
 - (c) the location and description of the site of the hotel;
 - (d) in the case of an existing hotel, the number and description of bedrooms and beds and of the toilet facilities;
 - (e) the number and description of proposed new bedrooms and beds and the toilet facilities proposed to be established in connection with them;
 - (f) a description of each public room for proposed new hotel or extension of an existing hotel);
 - (g) a detailed description of existing or proposed amenities;
 - (h) a sketch plan showing in sufficient detail the site and lay out of the proposed hotel or extension and the amenities;
 - (i) the estimate cost of the project;
 - (j) if the project is to be carried out in stages, a description and the estimate cost, of each stage and details of the proposed timetable;
 - (k) details of the proposed method of financing the project;
 - (l) any other information, the Minister may require.

Investment allowance

6.—(1) Subject to subparagraph (3), a hotel owner is entitled the following allowance—

- (a) an amount of taxable income equal to 55% of the total capital expenditure incurred in the project including the provision of amenities approved by the Minister, but less the cost of any land acquired for the project or refurbishment and renovation, is not chargeable to tax;
- (b) so much of the amount not charged to tax under sub-subparagraph (a) and which cannot be set off against the taxable income of the hotel owner for the first year of income after the commencement of operation or after the completion of the extension must be carried forward and be set off against the taxable income of the next successive fiscal years of income of the hotel owner until the amount is wholly set off.

(2) Notwithstanding subparagraph (1), a hotel owner who has claimed an investment allowance under this section may claim depreciation under this Act and, and for such purpose, the investment allowance must not be taken into account.

(3) In the case of Fiji residents or to 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 section exceeds the taxable income of the hotel owner from the hotel business; or
- (c) the taxable income from the hotel business for the period ended on the next year of income after the project has been completed,

the balance must be carried forward and set off against the taxable income of that hotel business or the taxable income from the hotel premises, for the next successive years of income.

(5) For the purpose of the definition of “refurbishment and renovation” in paragraph 2, the Minister has the power to prescribe the cost per square metre of not less than 40% of the estimated cost per square metre of the floor area or a newly built equivalent hotel building.

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

Procedure on sale of hotel

7. If the property of an hotel has been sold and the investment allowance in respect of such hotel has in accordance with paragraph 6, 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 21(a) of the Act, as would have ensued if the transaction were the sale and purchase of depreciable property in the normal course of events.

Procedure in case of loss

8. If a loss is incurred in connection with a hotel in respect of which investment allowance has been approved under paragraph 6, the loss may be set off against the income of any other hotel owned by the hotel for subsequent years, subject to the period specified under section 22 of the Act.

PART 3—SHORT LIFE INVESTMENT

Power to grant short life investment package

9. The Minister has the power to grant or refuse to grant a short life investment package to a company, which has completed a short life investment and has complied with this Part.

Provisional approval

10.—(1) The Minister has the power, after consulting the Minister responsible for Tourism—

- (a) to reject the application for provisional approval for short life investment; or

(b) to give provisional approval to such application, with or without conditions.

(2) The Minister shall not give provisional approval under subparagraph (1) unless the Minister is satisfied that—

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

(3) When considering an application for short life investment under subparagraph (1), the Minister shall take into account the following matters—

- (a) the assets and liabilities of the company;
- (b) the nature and extent of the short life investment;
- (c) the requirements for hotel accommodation in the area concerned;
- (d) whether the short life investment will adequately contribute to the requirements of the area concerned;
- (e) whether the proposed hotel is of suitable size and standard for the area concerned;
- (f) whether adequate amenities would be provided as part of the proposed hotel;
- (g) such other matters as the Minister may consider relevant to the desirability or otherwise of the short life investment for Fiji and the capability of the company to complete it.

(4) The decision of the Minister under this paragraph is final.

(5) Despite subparagraph (4), a person whose application (including partial rejected application) has been rejected has the right to make a new application or to amend and resubmit the original application.

Effect of provisional approval

11.—(1) When a provisional approval is granted, all capital goods, imported within the period specified in the definition of “short life investment” under paragraph 2, by or on behalf of the company and used in the carrying out of the short life investment, shall be exempt from all duties payable in respect of their importation.

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

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

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

Application for short life investment

12.—(1) A company (“applicant”) may, in writing, apply to the Minister for provisional approval to carry out a short life investment, setting out the following—

- (a) the name and registered office of the company;
- (b) the names of all directors and shareholders of the company together, including shareholdings of the directors and shareholders;
- (c) a recent statement of all assets and liabilities of the company;
- (d) the location and description of the hotel site;
- (e) the number and description of proposed bedrooms and beds and the toilet facilities;
- (f) the description of each proposed public room;

- (g) the detailed description of all proposed amenities, such as swimming pools, tennis courts, golf courses and recreation facilities;
- (h) a sketch plan showing in sufficient detail the site and layout of the proposed hotel and its amenities;
- (i) an estimate of the total cost of the short life investment;
- (j) the description, and an estimate of the cost, of each individual stage of construction and details of the proposed timetable for completion of the short life investment;
- (k) details of the proposed method of financing the short life investment;
- (l) evidence of the company's ability to complete the short life investment;
- (m) estimates of the projected income from the new hotel;
- (n) the requirement of a hotel in the area;
- (o) the contribution of the short life investment into the area;
- (p) the nature and extent of short life investment.

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

(3) The Minister may—

- (a) require the applicant to provide other information he may consider necessary in relation to the application; or
- (b) prescribe particular requirements applicable to any particular area of Fiji on short life investment package.

Completion of short life investment

13.—(1) If a company has been given provisional approval and has completed the short life investment, the company may apply to the Minister for final approval.

(2) An application under subparagraph (1) shall be made in writing and be supported by the following—

- (a) fully audited final accounts showing the total cost of the short life investment; and
- (b) a final plan showing the site, layout and surrounding areas of the hotel.

(3) Upon receiving an application under subparagraph (1), the Minister may, after consulting with the Minister responsible for Tourism—

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

(4) Subject to paragraphs 14 and 15, no approval shall be given under this paragraph if the Minister is satisfied that the company has failed to complete the short life investment or has failed to comply with any conditions upon which provisional approval was given.

(5) If an application for final approval is rejected, the duties exempted under this Part immediately become due and payable by the company.

(6) The Minister must, in writing, notify the followings persons of the decision to reject or grant the application—

- (a) the applicant;
- (b) the Minister responsible for Tourism; and
- (c) the Commissioner; and
- (d) the Comptroller of Customs.

Extension of time for completion

14.—(1) If a company to which provisional approval has been given is unable to complete its short life investment within the period specified in the definition of “short life investment” in paragraph 2 due to unforeseen circumstances or some other act beyond the control of the company, the company may apply in writing to the Minister to extend the time by which the short life investment must be completed.

(2) If the Minister extends the time under subparagraph (1), the company shall continue to enjoy the duty free concession provided for by paragraph 11 during the extended period.

Final approval if completed

15. An application for final approval shall not be given unless—

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

Effect of final approval

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

(2) The company is not entitled to claim the benefits of a short life investment package in any year unless it has been granted final approval and the Minister is satisfied that the shareholders of the company are substantially the same as the shareholders of the company when provisional approval was given.

(3) For the purposes of subparagraph (2), the shareholders of the company shall be deemed not to be substantially the same as the shareholders on the date when provisional approval was given unless—

- (a) not less than 51 percent of the voting power in and the right to receive dividends from the company is held by or on behalf of the same persons; or
- (b) not less than 50 percent of the nominal value of the allotted shares in the company are held by or on behalf of the same persons.

(4) Notwithstanding subparagraphs (2) and (3), the company may, in writing, apply for exemption from those paragraphs to the Minister who may grant or refuse to grant the exemption.

Exemption from tax

17. If final approval is given under this Part to a company, the income of the company is exempt from tax on profits derived from the operation of the hotel as follows—

- (a) if the hotel capital investment is from \$10,000,000 to \$40,000,000, for a period of 10 years; or
- (b) if the hotel capital investment is more than \$40,000,000, for a period of 20 years.

Depreciation

18.—(1) During the period from the date appointed by the Minister under paragraph 14 to the end of the accounting period in which the last day of the tax-free period falls, such depreciation shall be written off the assets of that company in calculating its profits or gains as would have been available to it under this Act if the company were not in receipt of the concession provided by this Part, and the written down values of such depreciable assets at the end of the accounting period in which the last day of the tax-free period falls shall be calculated accordingly.

(2) For the purpose of subparagraph (1), the company shall not be obliged to claim initial allowances but such election shall in that event continue for the whole of the tax free period.

Carry forward losses

19. Subject to this Act or this Schedule, any loss incurred by the company in the operation of the hotel may be carried forward and set off against the total income of that hotel business or the total income from that hotel premises for the next 8 years in succession.

Electricity generation

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

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

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

Annual accounts

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

Transferability of package

22. If the hotel in respect of which a short life investment package has been granted is sold or to be sold, the purchaser or prospective purchaser may apply in writing to the Minister for the transfer to it of any remaining benefits of the short life investment package.

Revocation of package

23. The Minister may revoke any short life investment package if the company—

(a) has breached any conditions of provisional or final approval; or

(b) has failed to comply with any of the requirements of this Act or this Part; or

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

Applicability of incentives

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

Regulations

25. The Minister may make regulations to prescribe matters required to be prescribed under this Schedule.

GIVEN UNDER MY HAND this 31st day of August 2007.

J. I. ULUIVUDA
President of the Republic of Fiji Islands