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FEDERAL NEGARIT GAZETTE

OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA

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28th Year No.39
ADDIS ABABA 12th July, 2022

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REGULATION NO. 517/2022

COUNCIL OF MINISTERS REGULATION TO PROVIDE FOR INVESTMENT INCENTIVES

This Regulation is issued by the Council of Ministers pursuant to Article 17 of the Investment Proclamation No. 1180/2020 and Article 129(6) of the Customs Proclamation No. 859/ 2014 (as amended).

PART ONE

GENERAL PROVISIONS

1. Short Title

This Regulation may be cited as “Council of Ministers Investment Incentive Regulation No. 517/2022”.

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2. Definition

Without prejudice to the words and phrases defined under the Proclamation, for the purposes of this Regulation:

1/ **“Tax Incentive”** means any tax or duty incentives right granted to eligible investment under this Regulation;

2/ **“Existing Investment”** means an investment on which an investor has acquired business license or any other license and is engaged in production or service rendering activities;

3/ **“Proclamation”** means the Investment Proclamation No. 1180/2020;

4/ **“Capital Good”** includes equipment and other similar tangible goods used to produce goods or render services for consideration;

5/ **“Construction Material”** means a material or supply that is to be made part of a building or any other construction;

6/ **“Regulatory Institution”** means the Ethiopian Investment Commission, Ministry of Mines, Regional Governments and Addis Ababa and Dire Dawa City administrations Investment Organs, Ministry of Trade and Regional Integration, Ministry of Revenue and other Institutions mandated to regulate the implementation of tax incentives;

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7/ **“Tax Authority”** means the Ministry of Revenue or the tax authorities of the Regional Governments as well as the Addis Ababa and Dire Dawa City Administrations;

8/ **“Income Tax”** means the income tax imposed on schedule “C” under the Income tax laws of the Federal or Regional governments;

9/ **“Duty”** shall have the meaning provided to it under Customs Proclamation No. 859/2014;

10/ **“Ministry or Minister”** means the Ministry or the Minister of Finance respectively.

3. Scope of Application

1/ The provisions of this Regulation shall apply to Income Tax and Duty incentives granted to encourage investment in sectors eligible for incentives;

2/ Without prejudice to the provisions of Part Four of this Regulation, other provisions of this Regulation shall also apply on investments in mining, petroleum and geothermal sectors.

PART TWO

INCOME TAX EXEMPTION INCENTIVE

4. Income Tax Exemption for New Investment

1/ Any investor who invests to establish a new business shall be entitled to income tax exemption as provided for in the schedule attached hereto.

- 2/ An investor who invests in areas far from the center and/or with very low infrastructure development that are listed in a Directive to be issued by the Ministry of Finance in consultation with concerned stakeholders shall:
 - a) be entitled to an income tax deduction of 30% for three consecutive years after the expiry of the income tax exemption period specified in the schedule attached hereto;
 - b) be entitled for a five year income tax exemption if invests in new, atypical and selected tourist destination areas in hotels, lodges and resorts with a rank of a star.
- 3/ Without prejudice to the Schedule attached to this Regulation Income Tax exemption shall not be granted to mining and petroleum activities;
- 4/ An investor who provides employment opportunities outside of Ethiopia to Ethiopians who have obtained qualification certificate from an institution recognized for providing training to persons who are to be placed in a foreign country shall:

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5. Income Tax Exemption for Expansion or Upgrading of Existing Investment

1/ Any investor expanding or upgrading his existing investment pursuant to Sub-Article (2) of this Article shall, with respect to the additional income generated by the expansion or upgrading, be entitled to income tax exemption as provided in a Directive to be issued by the Ministry of Finance on the basis of the schedule attached hereto;

2/ An investor expanding existing investment shall be entitled to income tax exemption for the expansion or upgrading of existing investment upon ascertaining by the relevant Regulatory Institution that:

- a) the existing investment has achieved the type and volume of product and other preconditions as per the investment license;
- b) the expansion or upgrading fulfills the eligibility criteria provided in the Directive issued by the Ministry;
- c) the investor has submitted audit reports that shows the proper fulfillment of the obligation of the existing investment;

and such incentive shall be allowed only for the income from the expansion and upgrading which shall be shown in a separate books of account.

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6. Additional income Tax Exemption for Investors Exporting Products or Services

1/ Any investor who has invested outside of the industrial parks and who exports or supplies to an exporter as production or service input, at least 60% of his products or services shall be entitled to a one time income tax exemption for two years in addition to the exemption provided for in the schedule attached hereto;

2/ An investor who has invested within an industrial parks shall be entitled, to a one time income tax exemption for two years in addition to the exemption provided for in the schedule attached hereto provided that he exports 80% or above of the product from his manufacturing industry or supplies as production input to an investor who exports his products.

7. Replacement of the Income Tax Incentive

The Council of Ministers may replace the income tax incentive provided under this Regulation by a new type of tax incentive system.

8. Declaration of Income During Income Tax Exemption Period

1/ An investor shall only be entitled to the exemptions specified under Articles 4, 5 and 6 of this Regulation if he submits to the relevant Tax Authority his books of account as provided under the Income Tax Proclamation;

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2/ If an investor is engaged in two or more investment activities to which he is entitled to tax incentives for the purpose of the tax incentive shall separately declare his income from each investment activity;

3/ If the beneficiary of the tax incentive fails to submit its books of account as provided in the Income Tax Proclamation, in addition to paying penalty and interest provided under the Income Tax Proclamation shall not be granted the tax holiday in the year it failed to fulfill its obligations;

4/ If the failure of the investor to fulfill its obligations under Sub-Article (1) of this Article is due to force majeure as defined by a Directive to be issued by the Ministry he shall not be subject to measures provided under Sub-Article (3) of this Article.

9. Commencement of Period of Income Tax Exemption

1/ The period of exemption from income tax under this Regulation shall begin from the date the investor obtained a business license or from the date the investor obtained expansion permit;

2/ For the purposes of Sub-Article (1) of this Article, the appropriate organ shall notify the Ministry of Revenue the date on which the business license or the expansion permit is issued to the investor;

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11. Limitation or Restriction on Entitlement to Tax Exemption

Where an investor ceases to operate its investment and re-engages in another investment activity which qualifies for tax exemption shall not be entitled to a tax holiday for a period which he has already used for the closed business. The details shall be provided under a Directive to be issued by the Ministry.

PART THREE

CUSTOM DUTY INCENTIVES

12. Exemption of Capital Goods and Construction Materials from Customs Duty

- 1/ New investor or an investor expanding or upgrading existing investment engaged in one of the areas of investment specified in the Schedule attached hereto, may import duty free capital goods and construction materials necessary for the establishment of a new investment or the expansion or upgrading of an existing investment;
- 2/ For the implementation of Sub-Article (1) of this Article, the investor shall submit, the list of capital goods and approved construction materials or as appropriate document that explains the list or the bill of quantities of construction materials to be used as an input to be imported duty-free and get approval of same from the appropriate organ;

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- 3/ If an investor entitled to a duty-free incentive buys capital goods or construction materials from local manufacturing industries, he shall be refunded with the import tax paid for the raw materials or components used as inputs for the production of such goods;
- 4/ An investor eligible to a duty-free incentive pursuant to this Article, shall be allowed to import spare parts the value of which is not greater than 15% of the total value of the capital goods within five years from the date he becomes eligible for the incentives or from the date the business license is issued, as the case may be. The period in which spare parts shall be imported free of duty as per this Regulation shall not in any way exceed a total of five years;
- 5/ Evidences that shall be submitted by an investor who applies to be a beneficiary of tax incentives provided under Sub-Article (1) of this Article for expansion or upgrading of existing investments shall be prescribed in a Directive to be issued by the Ministry.

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13. Exemption of Motor Vehicles from Customs Duties

The total or partial exemptions from customs duties to be granted for motor vehicles used for investment purposes shall be determined by Directives to be issued by the Ministry based on the types and nature of investment projects. The exemption from customs duties to be granted by the Minister in accordance with this Article shall not include pickup and station wagon vehicles.

14. Transfer of Duty Free Imported Goods

- 1/ Capital goods or construction materials imported free of customs duty may be transferred to persons with similar duty-free privileges;
- 2/ Notwithstanding the provisions of Sub-Article (1) of this Article, the capital goods or construction materials imported free of customs duty may be transferred, up on effecting payment of the appropriate customs duty, to persons having no similar duty-free privileges;
- 3/ The investor may re-export the duty-free imported capital goods or construction materials;
- 4/ Transfer of goods imported duty free pursuant to Sub-Article (2) of this Article may only be made to a person who does not have duty-free privileges on conditions prescribed in a Directive to be issued by the Tax Authority which force the investor to transfer such property.

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5/ Any investor who contravenes the provisions of this Article shall be punishable in accordance with the relevant provisions of the Customs Proclamation.

15. Decisions made by the Investment Board on Customs Duties and Taxes

The application of decisions of the Ethiopian Investment Board on tax holiday and customs duty privileges made before the entry into force of the Proclamation that are not included in this Regulation shall be determined by a Directive to be issued by the Ministry.

PART FOUR

MINING, PETROLEUM AND GEOTHERMAL WORKS

16. Incentives for Mining Investment

1/ Mining

- a) Any holder of an exploration license or his contractor may import into Ethiopia equipment, machinery and consumables that are required for its operations in accordance with the work program approved by the Regulatory Institution free from customs duties;
- b) A small scale or large scale mining licensee or his contractor may import into Ethiopia equipment, machinery and consumables that are required to start the mining operation in accordance with the work

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- f) The holder of a mining license who is unable to import equipment and machinery at pre-development stage may import such goods within five years from the commencement of production free of customs duties.

2/ Value Addition on Mining

- a) The holder of a handicraft license or a refinery licensee who is engaged in the export of minerals may import equipment and machinery that are needed for its operations in accordance with the work program approved by the Regulatory Institution free from customs duties;
- b) Notwithstanding the provisions of paragraph (a) of this Sub-Article the privilege to import goods free of customs duties shall remain valid only for three years from the date of issuance of the license;

3/ Petroleum and Geothermal Works

- a) Any holder of an exploration license or his contractor may import into Ethiopia equipment, machinery and consumables that are required for its operations in accordance with the work program approved by the Regulatory Institution free from customs duties;

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b) Notwithstanding the provisions of paragraph (a) of this Sub-Article the privilege to import goods free of customs duties shall remain valid only for 5 years from the date of issuance of the license;

- 5/ Any item imported free of customs duties and taxes into Ethiopia pursuant to the provisions of this Article may not be transferred without having obtained permission from the Ministry and paid the required duties; provided however, that such item may be re-exported free of customs duties or transferred to persons with similar duty free privileges upon the permission of the Regulatory Institution;
- 6/ For purposes of this Part of the Regulation “Consumables” mean chemicals, dynamite and other materials to be used for mining, petroleum and geothermal activities specified in a Directive to be issued by the Ministry.

PART FIVE

ADMINISTRATION OF TAX INCENTIVES

17. Control on Building Materials

- 1/ An investor who is entitled to import building materials free of customs duties and taxes in accordance with this Regulation shall submit every quarter evidence, approved by Government office assigned to give construction permit, which shows that the materials are used for intended purposes;

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2/ The provision of Sub-Article (1) of this Article shall not apply to construction of Industrial Parks;

3/ The Ministry shall by a Directive prescribe the type of evidence and for whom that are required to be submitted in accordance with Sub-Article (1) of this Article.

18. Common Duties and Responsibilities of Regulatory Institutions

The Regulatory Institutions shall:

1/ ascertain the following to the Ministry to enable the investor to be eligible for tax holiday privilege:

a) that the investor has obtained business license and started operations;

b) the date on which the investor started production or rendition of services;

2/ submit a proposal, to the Ministry, regarding the list and their exact and current market prices of equipment, that may be allowed to be imported by Investors that are required for its operation free of duties and taxes in accordance with this Regulation;

3/ participate in setting standards or eligibility criteria for entitlement of tax incentive.

4/ submit to the Ministry quarterly reports that show the items imported free of duties and taxes and the amount of duties and taxes forgone with respect to each investment;

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5/ carry out annual evaluations on the benefits that each investment has brought in terms of creating employment opportunity and earning foreign currency and report the same to the Ministry not later than three months after the end of the fiscal year.

19. Duties and Responsibilities of the Ethiopian Investment Commission

Without prejudice to the provisions of Article 18 of this Regulation, the Ethiopian Investment Commission shall have the following duties and responsibilities:

1/ In accordance with this Regulation:

- a) accept applications for duty free privilege from investors who have acquired investment license through the system developed; verify whether the request for incentives is consistent with the Directive issued by the Ministry, transfer the application with its recommendation for approval by the Ministry;
- b) accept applications for tax holiday from investors who have acquired investment license through the system developed, verify whether the request for incentives is consistent with the Directive issued by the Ministry, transfer the application with its recommendation for approval by the Ministry;

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2/ Through field inspections, reports, by assigning supervisors or through any other means ascertain that the investor granted duty free privileges to import capital goods, building materials and spare parts in accordance with the relevant laws and Directive have used such goods for the designated purposes; and submit annual consolidated reports to the Ministry.

20. Duties and Responsibilities of other Organs with a Mandate to Encourage Investment

Federal and Regional Government Organs with a mandate to encourage investment shall have the same duties and responsibilities granted to the Ethiopian Investment Commission under Article 19 of this Regulation.

21. Duties and Responsibilities of the Ministry of Revenue

The Ministry of Revenue shall:

- 1/ implement the tax holiday incentive after ascertaining that it is consistent with the Directive issued by the Ministry;
- 2/ maintain a record that shows list of investors which are granted income tax exemption, the length of period of such exemption and the time the tax holiday ends;
- 3/ maintain a record that shows the income tax forgone due to the favorable deviation from the income tax law under this Regulation;

- 1/ allow goods to enter into Ethiopia free of taxes and duties after ascertaining that the tax incentive is consistent with the Directive issued by the Ministry;
- 2/ maintain a record that shows the list of investors which are granted custom duties exemption, the area of investment, the price of items they have imported free of customs duties and the tax forgone;
- 3/ carry out post audit to ascertain that items imported by the investor free of taxes and duties are used for intended purposes;
- 4/ take legal measures in accordance with applicable laws if proved through post audit that the investor have used goods imported under incentive scheme for unintended purposes;

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5/ submit to the Ministry quarterly report within 10 days after the end of each quarter and annual report within one month after the end of each fiscal year on activities carried out in accordance with this Article.

23. Duties and Responsibilities of the Ministry of Finance

The Ministry of Finance shall:

- 1/ grant tax incentives to investments eligible under this Regulation which entitles them to tax or duty exemption;
- 2/ issue a Directive on the eligibility criteria for tax incentives, the list of items that can be allowed to be imported free of duties and taxes or purchased locally, and the documentation that shall be provided to be entitled for such privileges;
- 3/ monitor on a regular basis the performance of each Regulatory Institution with respect to ensuring that tax incentives are used for designated purposes;
- 4/ consolidate the forgone revenue and report the tax forgone and the benefit acquired by granting such privileges to the House of Peoples' Representatives with its annual financial report and publish same annually;

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5/ maintain a database for monitoring and analysis of tax incentives granted;

6/ for purposes of monitoring and transparency, shall maintain the aggregate data on a sectoral and per industry basis of:

a) the amount of tax incentives availed for registered investors;

b) the estimate claims of tax incentives immediately preceding the current year;

c) the programmed tax incentives for the current year;

d) the projected tax incentives for the following year;

7/ shall conduct cost-benefit analysis on the investment incentives to determine the impact of tax incentives on the economy of the country.

PART SIX

MISCELLANEOUS PROVISIONS

24. Revocation of Tax Incentives

1/ An Investor whose investment license is revoked shall return all investment incentives acquired;

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2/ The Ministry shall determine, in a Directive, the manner of return of investment incentives improperly acquired.

25. Penalty due to Failure to Submit Report

1/ Without prejudice to the criminal or administrative responsibilities under the laws that are currently in force, any government official or employee who, without good cause, fail to report on the tax incentive performance as provided by this Regulation shall be subject to a fine of up to 3 (three) months of his salary;

2/ The Ministry is authorized to impose and collect the fine provided under Sub-Article (1) of this Article.

26. Power to Issue Directives

The Ministry may issue Directives necessary for the implementation of this Regulation.

27. Transitional Provisions

1/ Directives issued by Regulatory Institutions prior to the enactment of this Regulation shall remain in force until replaced by a new Directive to be issued by the Ministry by the power vested in him under this Regulation.

2/ Tax Incentives granted pursuant to the Investment Incentives and Investment Areas Reserved for Domestic Investors Council of Ministers Regulation No. 270/2012 (as amended) shall remain valid.

28. Repealed and Inapplicable laws

- 1/ Tax Incentives provided under the Investment Incentives and Investment Areas Reserved for Domestic Investors Council of Ministers Regulation No. 270/2012 (as amended) are hereby repealed.
- 2/ No Regulation, Directive or practice shall, in so far as they are inconsistent with this Regulation, be applicable with respect to matters provided for in this Regulation.

29. Effective Date

This Regulation shall enter into force up on the date of its publication in the Federal Negarit Gazette.

**Done at Addis Ababa, On this day of
12th July, 2022.**

ABIY AHMED (DR.)

**PRIME MINISTER OF THE FEDERAL
DEMOCRATIC REPUBLIC OF
ETHIOPIA**