

EXTRAORDINARY



REPUBLIC OF FIJI ISLANDS GOVERNMENT GAZETTE
PUBLISHED BY AUTHORITY OF THE FIJI GOVERNMENT

Vol. 13

TUESDAY, 10th JANUARY 2012

No. 9

[20]

GOVERNMENT OF FIJI

FRINGE BENEFIT TAX DECREE 2012
 (DECREE No. 7 OF 2012)

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IN exercise of the powers vested in me as the President of the Republic of Fiji and the Commander in Chief of the Republic of Fiji Military Forces by virtue of the Executive Authority of Fiji Decree 2009, I hereby make the following Decree—

TO IMPOSE TAX ON FRINGE BENEFITS AND FOR RELATED MATTERS

PART I—PRELIMINARY

Short title and commencement

1.—(1) This Decree may be cited as the Fringe Benefit Tax Decree 2012.

(2) This Decree shall be deemed to have come into force on 1st January, 2012 and shall apply to fringe benefits provided by employers on or after that date.

Interpretation

2.—(1) In this Decree, unless the context otherwise requires—

“associate” has the meaning in section 3;

“Capital Gains Tax Decree” means the Capital Gains Tax Decree 2011;

“company” has the meaning in the Income Tax Act (Cap. 201);

“emoluments” has the meaning in section 79 of the Income Tax Act (Cap. 201), but does not include a fringe benefit subject to tax under this Act or an exempt fringe benefit;

“employee” means an individual engaged in employment;

“employer” means a person who engages or remunerates an employee;

“employment” includes—

(a) a directorship or other office in the management of a company;

(b) a position entitling the holder to a fixed or ascertainable remuneration; or

(c) the holding or acting in any public office;

“executor” includes a person appointed under the laws of intestacy to administer the estate of a deceased person;

“exempt Fringe Benefit” has the meaning in section 7;

“fair market value” has the meaning in section 4;

“Fiji National Provident Fund Act” means the Fiji National Provident Fund Act (Cap. 219);

“Fringe Benefit” has the meaning in section 8;

“Fringe Benefit Tax” means the tax imposed under section 5;

“Government” means the Government of Fiji;

“Income Tax Act” means the Income Tax Act (Cap. 201);

“person” means an individual, company, partnership, trust, government, or political subdivision of a government;

“provide”, in relation to a fringe benefit, includes allow, confer, give, grant, transfer, or perform;

“quarter” means a period of three months ending on 31st March, 30th June, 30th September, and 31st December;

“Trust” has the meaning in the Trustee Act and includes the estate of a deceased person, but does not include a Unit Trust;

“Trustee” has the meaning in the Trustee Act and includes the executor of a the estate of a deceased person, but does not include a trustee of a Unit Trust;

“Trustee Act” means the Trustee Act (Cap. 65); and

“Unit Trust” has the meaning in the Unit Trusts Act (Cap. 228).

(2) Unless the context otherwise requires, a reference in this Decree to an employer, in relation to a benefit, includes a reference to—

- (a) an associate of the employer; or
- (b) a third party, if there is an arrangement with the employer or an associate of the employer that the third party will provide the benefit to an employee of the employer.

(3) Unless the context otherwise requires, a reference in this Decree to an employee, in relation to a benefit, includes an associate of the employee.

Associate

3.—(1) Subject to subsection (2), two persons are associates if the relationship between them is such that one may reasonably be expected to act in accordance with directions, requests, suggestions, or wishes of the other, or both persons may reasonably be expected to act in accordance with the directions, requests, suggestions, or wishes of a third person.

(2) Two persons are not associates solely by reason of the fact that—

- (a) one person is an employee or client of the other; or
- (b) both persons are employees or clients of a third person.

(3) Without limiting the generality of subsection (1), the following persons are treated as associates—

- (a) an individual and a relative of the individual, except if the CEO is satisfied that neither person may reasonably be expected to act in accordance with the intentions of the other;
- (b) a partner in a partnership and the partnership, if the partner, either alone or together with an associate or associates under another application of this section, controls fifty per cent or more of the rights to income or capital of the partnership;
- (c) a trust and a person who benefits or may benefit under the trust;
- (d) a member of a company and the company, if the member, either alone or together with an associate or associates under another application of this section, controls either directly or through one or more interposed persons—
 - (i) fifty per cent or more of the voting power in the company;
 - (ii) fifty per cent or more of the rights to dividends; or
 - (iii) fifty per cent or more of the rights to capital; and
- (e) two companies, if a person, either alone or together with an associate or associates under another application of this section, controls either directly or through one or more interposed persons—
 - (i) fifty per cent or more of the voting power in both companies;
 - (ii) fifty per cent or more of the rights to dividends in both companies; or
 - (iii) fifty per cent or more of the rights to capital in both companies.

(4) In applying paragraphs (b), (d), or (e) of subsection (3), holdings that are attributable to a person from an associate are not reattributed to another associate.

(5) In this section—

“member”, in relation to a company, means a person that has a membership interest in the company, including a shareholder or unit-holder;

“membership interest”, in relation to a company, means an ownership interest in the company, including a share or unit;

“relative”, in relation to an individual, means—

- (a) an ancestor, a descendant of any of the grandparents, or an adopted child, of the individual;
- (b) an ancestor, a descendant of any of the grandparents, or an adopted child of a spouse of the individual; or
- (c) a spouse of the individual or of any person specified in paragraph (a) or (b); and

“spouse”, in relation to an individual, includes another individual who, although not legally married to the first-mentioned individual, lives with the individual on a genuine domestic basis in a relationship as a couple.

Fair Market Value

4.—(1) The fair market value of an asset, property, service, or benefit at a particular time is the ordinary open market value of the asset, property, service, or benefit at that time.

(2) If it is not possible to determine the fair market value of an asset, property, service, or benefit at a particular time under subsection (1), the fair market value is the consideration a similar asset, property, service, or benefit would ordinarily obtain in the open market at that time, adjusted to take account of the differences between the similar asset, property, service, or benefit and the actual asset, property, service, or benefit.

(3) For the purposes of subsection (2), an asset, property, service, or benefit is similar to another asset, property, service, or benefit, as the case may be, if it is the same as, or closely resembles, the other asset, property, service, or benefit in character, quality, quantity, functionality, materials, and reputation.

(4) If the fair market value of an asset, property, service, or benefit cannot be determined under subsection (1) or (2), the fair market value is the amount determined by the Chief Executive Officer provided the valuation is consistent with generally accepted valuation principles.

PART II—IMPOSITION OF TAX

Imposition of Fringe Benefit Tax

5.—(1) Subject to this Decree, a tax to be known as the Fringe Benefit Tax is imposed for each quarter on an employer who has a fringe benefit taxable amount for that quarter.

(2) The Fringe Benefit Tax payable by an employer for a quarter is 20% of the fringe benefit taxable amount of the employer for the quarter.

Fringe Benefit taxable amount

6.—(1) Subject to subsection (2), the fringe benefit taxable amount of an employer for a quarter is computed in accordance with the following formula—

$$\frac{A}{(1-r)}$$

where—

A is the total value of fringe benefits provided by the employer to employees in the quarter; and
r is the rate of Fringe Benefit Tax specified in section 5(2).

(2) The fringe benefit taxable amount of an employer does not include—

- (a) an exempt fringe benefit;
- (b) a fringe benefit provided by an employer to an employee that is not received by the employee from sources in Fiji; or
- (c) a fringe benefit provided by a non-resident employer and received by an employee from sources in Fiji, unless the benefit has been provided by a permanent establishment in Fiji of the employer.

(3) The value of a fringe benefit to which subsection (2) applies, other than an exempt fringe benefit, is subject to tax to the employee in accordance with the Income Tax Act.

(4) A fringe benefit is received by an employee from sources in Fiji—

- (a) to the extent to which it is received in respect of employment exercised in Fiji, wherever paid; or
- (b) if it is paid by, or on behalf of, the Government, wherever the employment is exercised.

(5) In this section—

“non-resident employer” means an employer who is not a resident person;

“permanent establishment” means a fixed place of business through which the business of a person is wholly or partly carried on, and includes a—

- (a) place of management, branch, office, factory, warehouse or workshop;
- (b) mine, oil or gas well, quarry or other place of extraction of natural resources; or
- (c) building site, construction, assembly, installation project, supervisory activities connected with such site or project; and

“resident person” has the meaning in the Capital Gains Tax Decree.

Exempt Fringe Benefits

7.—(1) The following fringe benefits are exempt fringe benefits—

- (a) a fringe benefit, the value of which is exempt from Income Tax or deducted from the chargeable income of the employee under the Income Tax Act;
- (b) a fringe benefit provided to an employee in respect of employment if the emoluments arising from the employment are exempt from Income Tax under the Income Tax Act;
- (c) a fringe benefit the value of which, after taking into account the frequency with which similar benefits are provided by the employer, is so small as to make accounting for it unreasonable or administratively impracticable;
- (d) a meal or refreshment provided in a canteen, cafeteria, or dining room operated by or on behalf of an employer solely for the benefit of employees and which is available to all non-casual employees on equal terms; or
- (e) the provision of accommodation or housing to an employee in a remote area if—
 - (i) the employee’s usual place of employment is in the remote area; and
 - (ii) it is necessary for the employer to provide the accommodation or housing in the remote area because—
 - (A) the nature of the employer’s business is such that the employees are likely to move frequently from one residential location to another;
 - (B) there is insufficient suitable residential accommodation available in the remote area; or
 - (C) it is customary in the employer’s industry to provide accommodation or housing to employees working in a remote area.

(2) In this section, “remote area” means an area that is fifteen kilometres, or more, from a town or city centre, and includes on board a vessel when not berthed.

PART III—FRINGE BENEFITS

Fringe Benefits

8.—(1) Subject to subsections (2) and (3), the following are fringe benefits—

- (a) a debt waiver fringe benefit;
- (b) a household personnel fringe benefit;
- (c) a housing fringe benefit;
- (d) a loan fringe benefit;
- (e) a meal or refreshment fringe benefit;
- (f) a motor vehicle fringe benefit;
- (g) a private expenditure fringe benefit;
- (h) a property fringe benefit; and
- (i) a residual fringe benefit.

(2) A benefit is not a fringe benefit to the extent that, if the employee had acquired the benefit, the expenditure incurred by the employee in acquiring the benefit would have been incurred in deriving emoluments.

(3) In determining—

- (a) whether a benefit is a fringe benefit or not; or
- (b) the value of a fringe benefit,

any restriction on the transfer of the benefit and the fact that the benefit is not otherwise convertible to cash are to be disregarded.

Debt Waiver Fringe Benefit

9.—(1) The waiver by an employer of the obligation of an employee to pay or repay an amount owing to the employer is a debt waiver fringe benefit.

(2) The value of a debt waiver fringe benefit is the amount waived.

Household Personnel Fringe Benefit

10.—(1) The services of a housekeeper, driver, gardener, or other household personnel (referred to as “household personnel”) provided by an employer to an employee is a household personnel fringe benefit.

(2) The value of a household personnel fringe benefit for a quarter is the total emoluments paid to the household personnel in that quarter for services rendered to the employee reduced by any payment made by the employee to the employer for such services

Housing Fringe Benefit

11.—(1) Any accommodation or housing provided by an employer to an employee is a housing fringe benefit.

(2) Subject to subsections (3) and (4), the value of a housing fringe benefit provided by an employer to an employee for a quarter is—

- (a) if the employer or associate owns the accommodation or housing, the fair market rent of the accommodation or housing for the quarter; or
- (b) in any other case, the rent paid by the employer for the accommodation or housing during the quarter,

reduced by any payment made by the employee to the employer for the accommodation or housing.

(3) The value of a housing fringe benefit provided by an employer to an employee for a quarter must not exceed—

- (a) in the case of furnished accommodation or housing, one-eighth of the emoluments paid to the employee for the quarter; or
- (b) in the case of unfurnished accommodation or housing, one-ninth of the emoluments paid to the employee for the quarter.

(4) If the accommodation or housing is standard quarters, the amount determined under subsection (3) for a quarter is reduced by one-third.

Loan Fringe Benefit

12.—(1) A loan provided by an employer to an employee is a loan fringe benefit.

(2) Subject to subsection (3), the value of a loan fringe benefit for a quarter is the difference between the interest paid by the employee on the loan for the quarter, if any, and the interest that would have been paid by the employee on the loan for the quarter if the loan had been made at the market lending rate for that quarter.

(3) The value of a loan fringe benefit is reduced to the extent that the loan funds are used by the employee to derive amounts included in total income.

(4) In this section—

“market lending rate”, in relation to a quarter, means the market lending rate for the quarter as determined by the Chief Executive Officer in consultation with the Governor of the Reserve Bank of Fiji; and

“total income” has the meaning in the Income Tax Act.

Meal and Refreshment Fringe Benefit

13.—(1) A meal or refreshment provided by an employer to an employee is a meal and refreshment fringe benefit.

(2) The value of a meal and refreshment fringe benefit is the total cost of the employer providing the meal or refreshment reduced by any amount paid by the employee to the employer for the meal or refreshment.

Motor Vehicle Fringe Benefit

14.—(1) A motor vehicle provided by an employer to an employee wholly or partly for the private use of the employee is a motor vehicle fringe benefit.

(2) Subject to subsections (3) and (4), the value of a motor vehicle fringe benefit for a quarter is as follows—

<i>Motor vehicle engine capacity</i>	<i>Value per quarter</i>
Under 1,800cc	\$656
1,800cc and < 2,000cc	\$778
2,000cc and above	\$958
Irrespective of engine capacity, if the cost of the vehicle exceeds \$100,000	\$958 plus 2.5% of the excess of the cost above \$100,000.

(3) Subject to subsection (4), if a motor vehicle is provided to an employee partly for private use and partly for use in employment, the value of the benefit is reduced by the proportion of the use of the motor vehicle in employment.

(4) If a motor vehicle referred to in subsection (2) or (3) is not provided for the whole of a quarter, the value of the benefit computed under subsection (2) or (3) for the quarter, as the case may be, is based on the proportion of the quarter that the vehicle was provided wholly or partly for private use.

(5) For the purposes of subsection (2), if the motor vehicle is leased by the employer, the cost of the vehicle is the fair market value of the vehicle at the commencement of the lease.

Private Expenditure Fringe Benefit

15.—(1) The payment of expenditure by an employer is a private expenditure fringe benefit to the extent that the expenditure gives rise to a private benefit to an employee, but not including expenditure covered by another section in this Part, other than section 17.

(2) The value of a private expenditure fringe benefit is the amount of the expenditure paid by the employer treated as a private expenditure fringe benefit under subsection (1).

Property Fringe Benefit

16.—(1) The transfer of property or provision of services by an employer to an employee is a property fringe benefit.

(2) Subject to subsection (3), the value of a property fringe benefit is—

(a) if the employer supplies the property or services to customers in the ordinary course of business, the normal selling price of the property or services; or

(b) in any other case, the cost to the employer of acquiring the property or services, reduced by any payment made by the employee to the employer for the property or services.

(3) If the property fringe benefit is the provision of free or subsidised air travel to an employee by an employer that is an airline operator, travel agent, or tour operator, the value of the benefit is 40% of the standard economy fare for the flight reduced by any payment made by the employee to the employer for the flight.

(4) In this section, “services” include the use of property and the making available of any facility.

Residual Fringe Benefit

17.—(1) Subject to subsection (3), a benefit provided by an employer to an employee not covered by another section in this Part is a residual fringe benefit.

(2) The value of a residual fringe benefit is the fair market value of the benefit determined at the time it is provided reduced by any payment made by the employee to the employer for the benefit.

(3) A residual fringe benefit does not include—

- (a) an allowance;
- (b) a contribution to the Fiji National Provident Fund or a superannuation fund, superannuation scheme, pension or provident fund, or retiring plan benefit; or
- (c) a benefit provided under an employee share scheme as defined in section 21D of the Income Tax Act.

(4) In this section, “Fiji National Provident Fund” means the Fiji National Provident Fund established under the Fiji National Provident Fund Act.

PART IV — ANTI-AVOIDANCE

Avoidance of Fringe Benefit Tax

18. If the Chief Executive Officer has reason to believe that any dealings have the direct or indirect effect of—

- (a) altering the incidence of Fringe Benefit Tax that is payable or suffered by, or which would otherwise have been payable or suffered by any person;
- (b) relieving any person from any liability that has arisen or which would otherwise have arisen to pay Fringe Benefit Tax or file a Fringe Benefit Tax return;
- (c) evading or avoiding any liability which is imposed or would otherwise have been imposed on any person under this Decree; or
- (d) hindering or preventing the operation of this Decree in any respect,

the Chief Executive Officer may, without prejudice to such validity as it may have in any other respect or for any other purpose, disregard or vary the dealings and make such assessments as the Chief Executive Officer considers just and proper in the circumstances.

PART V — FRINGE BENEFIT TAX PROCEDURE

Filing of Fringe Benefit Tax return

19. An employer liable for Fringe Benefit Tax for a quarter must file a Fringe Benefit Tax return for the quarter within one month after the end of the quarter.

Payment of Fringe Benefit Tax

20. The Fringe Benefit Tax payable by an employer for a quarter is due on the due date for filing the taxpayer’s Fringe Benefit Tax return for the quarter.

Fringe Benefit Tax records

21. An employer must keep such accounts, documents, and records to enable the computation of the Fringe Benefit Tax payable by the employer for a quarter.

Collection of Fringe Benefit Tax payable by Partnerships or Trusts

22.—(1) Each trustee of a trust is responsible for performing any duties or obligations imposed by this Decree on the trust, including the payment of Fringe Benefit Tax.

(2) Each partner in a partnership is responsible for performing any duties or obligations imposed by this Decree on the partnership, including the payment of Fringe Benefit Tax.

(3) The duties and obligations imposed under this section on the trustees of a trust or the partners in a partnership apply jointly and severally to the trustees or partners, as the case may be, but may be discharged by any of them.

PART VI—CONSEQUENTIAL AMENDMENTS

Income Tax Act (Cap. 201) amended

23. The Income Tax Act (Cap. 201) is amended—

- (a) in paragraph (z) of section 11, by inserting after “allowance” in the first line of the paragraph the following “, other than a fringe benefit that is either subject to tax, or an exempt fringe benefit, under the Fringe Benefit Tax Decree 2012”;

Tax Administration Decree 2009 amended

24. The Tax Administration Decree 2009 is amended—

- (a) in section 2, by inserting the following definitions in the correct alphabetical order—

“Fringe Benefit Tax” means Fringe Benefit Tax imposed under the Fringe Benefit Tax Decree;

“Fringe Benefit Tax Decree” means the Fringe Benefit Tax Decree 2012;

- (b) in the First Schedule—

- (i) in paragraph (j) by deleting "HTT" and substituting "STT";

- (ii) in paragraph (j), by deleting the full stop at the end of the paragraph and substituting “; and”; and

- (iii) by inserting the following paragraph after paragraph (j)—

“(k) an assessment of Fringe Benefit Tax, including a self-assessment under section 8.”;

- (c) in the Second Schedule—

- (i) in subparagraph (f), by deleting “and”;

- (ii) by inserting the following subparagraph after subparagraph (f)—

“(g) the Fringe Benefit Tax Decree 2012; and”; and

- (iii) by re-lettering existing subparagraph (g) as subparagraph (h); and

- (d) in the Third Schedule—

- (i) in Part A, by inserting after paragraph (5)—

“(6) A return required under section 19 of the Fringe Benefits Tax Decree.”; and

- (ii) in Part B, by inserting at the end “and a return required under section 19 of the Fringe Benefit Tax Decree”.

PART VII—MISCELLANEOUS

Currency Translation

25.—(1) An amount taken into account under this Decree must be expressed in Fijian dollars.

(2) If an amount is in a currency other than Fijian dollars, the amount must be translated to Fijian dollars at the Reserve Bank of Fiji exchange rate applying between the foreign currency and Fijian dollars on the date the amount is taken into account for the purposes of this Decree.

Regulations

26.—(1) The Minister responsible for Finance may make regulations—

- (a) prescribing forms or other matters as required under this Decree; or

- (b) for the proper and efficient administration of this Decree.

(2) Without limiting the general effect of subsection (1), regulations made under that subsection may—

- (a) contain provisions of a savings or transitional nature consequential on the making of this Decree; or

- (b) prescribe penalties for the contravention of the regulations.

(3) If regulations made under this section are of a transitional nature and are made within six months after the commencement of this Decree, the regulations may provide that they take effect from the date on which the Decree comes into force.

Savings

27.—(1) The Income Tax Act continues to apply to fringe benefits provided by an employer to an employee prior to the commencement date of this Decree.

(2) In this section, “commencement date” means the date specified in section 1(2).

GIVEN under my hand this 10th day of January 2012.

EPELI NAILATIKAU
President of the Republic of Fiji