

INCOME TAX ACT (EMPLOYEE SHARE SCHEMES AMENDMENT) DECREE 2001
(DECREE NO. 7 OF 2001)

ARRANGEMENT OF SECTIONS

1. Short title, etc.
2. Sections 11A to 11E inserted
3. Expenses deductible
4. Section 21D inserted

INCOME TAX ACT (EMPLOYEE SHARE SCHEMES AMENDMENT) DECREE 2001

(Interim Civilian Government Decree No. 7)

In exercise of the powers conferred upon the Interim Civilian Government by section 4 of the Interim Civilian Government (Transfer of Executive Authority) Decree No.19 of 2000, I, Ratu Josefa Iloilovatu Uluivuda, President of the Republic of Fiji, acting on the advice of Cabinet, hereby make this Decree to amend the Income Tax Act to provide for the charging to tax of shares acquired by employees through an employee share scheme and to encourage the participation in such schemes by providing for the exemption from tax of benefits derived through such schemes.

Short title, etc.

1.—(1) This Decree may be cited as the Income Tax Act (Employee Share Schemes Amendment) Decree 2001 and is deemed to have come into force on 1st January 2001.

(2) In this Decree “principal Act” means the Income Tax Act (Cap. 201).

Sections 11A to 11E inserted

2. The principal Act is amended by inserting after section 11 the following new sections—

“Shares acquired under employee share schemes

11A.—(1) Without affecting the generality of section 11, “total income” includes, if an individual taxpayer acquires a share or option under an employee share scheme, the discount given in relation to that share or option.

(2) Subject to subsections (6) to (8), for the purposes of this section, sections 11D and 11E and section 21(1)(u), “discount” is the market value of a share or option at the time it was acquired by the taxpayer less any consideration paid or given by the taxpayer for the acquisition of that share or option.

(3) This section applies only to shares or options acquired in a company listed on a stock exchange.

(4) The market value of a share or option is the last price at which it was traded on the stock market of a stock exchange on which the share or option is quoted, either—

(a) on the day the share or option was acquired; or

(b) if no shares or options were traded on the day set out in paragraph (a)— on the last day traded before that day.

(5) Subject to subsections (7) and (8), the discount is included in total income—

(a) if there is no restriction on the sale or disposal of the share or option – the year in which the share or option was acquired; or

(b) if there is a restriction on the sale or disposal of the share or option – the year in which the restriction ceases to apply.

(6) If subsection (5)(b) applies, the value of the discount is the market value of the share or option at the time the restriction on the sale or disposal of the share or option ceases less any consideration paid or given by the taxpayer for the acquisition of that share or option.

(7) If an option, which is not listed on a stock exchange, is sold or otherwise disposed of without the taxpayer exercising that option to purchase shares, the proceeds of the sale or disposal, less any consideration expended by the taxpayer to acquire the option, shall be included in total income in the year when the sale or disposal occurs.

(8) If an option, which is not listed on a stock exchange, is exercised by the purchase of shares, the value of the discount is the market value of the share acquired at the time the option is exercised less any consideration expended by the taxpayer to acquire that share (which includes the cost if any in acquiring that option).

Benefits derived by associates of employees

11B.—(1) If an associate of a taxpayer acquires a share or option in an employee share scheme in respect of, or for or in relation to, directly or indirectly, the employment of a taxpayer, that discount shall be included in the total income of that taxpayer.

(2) For the purposes of this section “associate” means a person who is the spouse, child or relative of an employee and includes—

(a) a parent, grandparent, brother, sister, uncle, aunt, nephew, niece or adopted child of that person or of his or her spouse; and

(b) the spouse of that person or of any other person specified in paragraph (a).

Benefit acquired other than for arm's length consideration

11C.—(1) Notwithstanding section 11A(7), if an option is sold or otherwise disposed of by a taxpayer for other than an arm's length consideration, the value of the benefit to be included in total income in respect of that option is calculated by reference to the market value of the option at the time it is sold or otherwise disposed of less any consideration expended by the taxpayer to acquire that option.

(2) For the purposes of this section, "arm's length consideration" means the consideration that might reasonably be expected to be agreed upon between independent parties operating under the same or similar conditions in the open market.

Benefit received by deceased's estate

11D. Any discount received by a trustee of the estate of a deceased person, which would have been total income in the hands of such deceased person, by operation of section 11A or 11B, if it had been received by the deceased person during the person's lifetime is deemed to be included in the total income of the estate.

Benefit received on loss etc. of office

11E. Any discount received by an individual in respect of the relinquishment, termination, repudiation, loss, cancellation or variation of any office, employment or service, or of the right or claim to be appointed to any office, employment or service is deemed to be included in that person's total income."

Expenses deductible

3. Section 21(1) of the principal Act is amended by deleting the full-stop at the end of paragraph (t), substituting a semi-colon and inserting after that paragraph the following new paragraph—

" (u) subject to section 21D, an amount, not exceeding \$1,000, being the value of discount included in total income under section 11A in respect of shares or options acquired in a qualifying employee share scheme."

Section 21D inserted

4. The principal Act is amended by inserting after section 21C the following new section—

"Employee share schemes

21D.—(1) For the purposes of this section, section 11A and section 21(1)(u), an employee share scheme is a scheme under which an employee may acquire shares or options to acquire shares in the employer in respect of, or for or in relation directly or indirectly to, the taxpayer's employment.

(2) For the purposes of section 21(1)(u), an employee share scheme is a qualifying employee share scheme if—

- (a) the shares or options acquired under the scheme are ordinary shares or options to acquire ordinary shares;
- (b) all employees, whether full-time or part-time employees, who have at least one year's service may participate in the scheme;
- (c) any financial assistance provided by the employer to its employees to assist in the acquisition shall be provided on a non-discriminatory basis; and
- (d) acquired shares or options may not be sold or otherwise disposed of for a period of not less than 2 years, other than if the employee ceases employment.

(3) For the purposes of this section and section 11A—

- (a) "employee" includes a director and any person providing personal services to an employer;
- (b) a share is acquired by an employee on the date it is allotted to the employee in accordance with the rules governing the employee share scheme."

Made at Suva this 23rd day of January 2001.

J. I. ULUIVUDA
President of the Republic of Fiji