



**PRACTICE STATEMENT # 34**

**14 June 2011**

<b>SUBJECT</b>	<b>FIJI ISLANDS REVENUE &amp; CUSTOMS AUTHORITY: Capital Gains Tax</b>
<b>DATE OF EFFECT</b>	1 May 2011
<b>CONFIDENTIALITY STATUS</b>	May be released to the public
<b>LEGISLATIVE REFERENCES</b>	Capital Gains Tax Decree 2011, Income Tax Act, 1974, Land Sales Tax Act, Tax Administration Decree
<b>PRACTICE CO-ORDINATOR</b>	National Manager Revenue Collection

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## **Introduction**

- 1) The purpose of this Practice statement is to provide guidance on the application of the capital gains tax imposed under the Capital Gains Tax Decree 2011 which is effective from 1 May 2011. It is issued with the authority of the Chief Executive Officer of the Fiji Revenue & Customs Authority.
- 2) The capital gains tax which is 10% will apply on the profit or gain on the sale or disposal of 'capital assets' set out in the Decree. For example, if the capital gain on disposal of an asset is \$100,000, the capital gains tax payable is \$10,000. It does not apply on trading stock or assets not listed in the Decree.
- 3) Disposal includes any transaction whereby ownership of an asset is transferred from one person to another such as by sale, gift or where a loss occurs through fire, destruction, cancellation or other means. There are four situations under which a disposal will be exempt from tax and three where the recognition of capital gain is deferred to a later date.
- 4) Where a gain on the disposal of a capital asset is liable to capital gains tax, a return and payment for the tax due must be filed within 30 days after the event. The responsible person is required to make their own calculation of the tax payable (self-assess). A return must be filed each time there is a taxable gain. Persons applying for tax clearance may be required to pay the tax before the due date.
- 5) Confirmation on the taxability of transactions can be obtained from the Authority. Requests must be accompanied by a completed and signed capital gains tax declaration form.
- 6) For Fiji residents the tax applies on gains arising from disposal of taxable assets whether situated in Fiji or not. For non-residents the "capital asset" must be an asset located in Fiji ("Fiji asset").
- 7) Computation of the tax payable involves taking into account a number of factors such as time of acquisition, time of disposal, fair market value (open market value at the time), total consideration received for the asset and expenses.
- 8) The CEO can determine the tax payable if he is not satisfied with a return therefore record keeping supporting valuations and expenses is important. Records in respect of a disposal of an asset subject to capital gains tax must be kept for 5 years.
- 9) The Registrar of Titles is required to withhold registration of an instrument in respect of the transfer or renewal of a capital asset under the Land Transfer Act until the transferor or transferee produces a tax certificate from the CEO stating the transferor's tax status for capital gains tax purposes.

10) The general compliance provisions of the Tax Administration Decree, 2009 relating to the collection of tax, objections, amendments/reviews and penalties apply to the capital gains tax. Based on these provisions the CEO can raise assessments for unreported or false declarations from taxpayers or responsible persons.

**Legislative basis**

11) In the 2011 budget address, the Acting Minister of Finance announced that a capital gains tax is to come into force on 1 January 2011. The date was changed to 1 May 2011.

12) Capital Gains Tax is imposed by the Capital Gains Tax Decree; section 6 states:

*“(1) Subject to this Decree, a tax to be known as “capital gains tax” is imposed on a person who has made a capital gain, other than an exempt capital gain, on the disposal of a capital asset.*

*(2) The capital gains tax payable by a person on the disposal of a capital asset is 10% of the amount of the capital gain arising on the disposal.*

*(3) If the person who has made a capital gain is a non-resident person, subsection (1) applies only if the capital asset is a Fiji asset.”*

**Definition of ‘Capital Asset’ (Section 2)**

13) The capital assets tabled below are the assets that attract capital gains tax upon disposal (subject to exemption and deferral provisions)

**Table 1: Description of ‘Capital Asset’**

	<b>Capital asset</b>	<b>Explanation</b>
(a)	Land, a structural improvement to land, or an interest in land, including a lease	<ul style="list-style-type: none"> <li>• The reference to “land” includes a freehold or other ownership interest in land.</li> <li>• “Structural improvement” is separately defined in section 2 and includes - any building (e.g. house, shop, hotel, factory, warehouse etc.), road, driveway, car park, pipeline, bridge, tunnel, airport runway, canal, dock, wharf, retaining wall, fence, power lines, water or sewerage pipes, drainage, landscaping, or dam.</li> <li>• an interest in land/structural improvement to land includes a lease of land or a structural improvement and will cover any other interest in land/structural improvement.</li> </ul>
(b)	Vessels of over 100 tonnes	<ul style="list-style-type: none"> <li>• Includes all forms of vessels weighing more than 100 tonnes, such as ships, boats, barges etc. excluding</li> </ul>

		yachts
(c)	Yachts	<ul style="list-style-type: none"> <li>This covers all forms of yachts regardless of the tonnage</li> </ul>
(d)	A share, security, equity, or other financial asset.	<ul style="list-style-type: none"> <li>“Share” is separately defined and includes any ownership interest in a company and a unit in a unit trust.</li> <li>“Security” includes debt interest such as debentures</li> <li>“Financial asset” has its ordinary meaning and includes convertible notes, participating loans and similar assets</li> </ul>
(e)	Intangible assets	<ul style="list-style-type: none"> <li>Examples of intangible assets are: - -industrial and intellectual property rights (such as patents, copyrights and designs), -goodwill, know-how and contractual rights (such as the rights obtained under a contract appointing a person as an exclusive distributor).</li> </ul>
(f)	An interest in a partnership or trust.	<ul style="list-style-type: none"> <li>An interest in a trust would include the interest of an income or capital beneficiary, and also the interest of a discretionary beneficiary to have the trust properly administered</li> </ul>
(g)	An airplane, helicopter or other aircraft.	<ul style="list-style-type: none"> <li>This covers all forms of aircraft</li> </ul>
(h)	An option, right, or other interest in an asset referred to in paragraphs (a)-(g).	<ul style="list-style-type: none"> <li>This ensures that both the actual asset and a lesser interest in the asset are treated as capital assets for the purposes of the Decree.</li> </ul>

### Definition of ‘Fiji asset’ (Section 2)

14) This definition is relevant to section 6 (3) which provides that a non-resident person is subject to capital gains tax only in respect of a capital asset that is a Fiji asset. It also applies to section 8 (2), which provides that the deferral of tax under section 8 (1) (a) or (b) applies only to Fiji assets if the recipient of the disposal is a non-resident person. The assets tabled below are Fiji assets for the purpose of the capital gains tax.

**Table 2: Description of ‘Fiji Asset’**

	Capital asset	Explanation
(a)	Land, a structural improvement to land, or an interest in land/structural improvement to land including a lease, where the land is located in Fiji.	<ul style="list-style-type: none"> <li>This is equivalent to the section 2 definition of ‘Capital asset’ except that the land must be located in Fiji</li> </ul>

(b)	A share in a company, or interest in a partnership or trust, if the assets are Fiji assets under paragraph (a)	<ul style="list-style-type: none"> <li>The value of an interest in an entity (such as shares in a company) will reflect the value of the assets owned by the entity. Thus if the assets of an entity comprise primarily of Fijian land, a capital gain arising on the disposal of the interest in the entity will be equivalent of the gain that would have arisen if the land had been sold. It applies to an entity (resident or non resident) as the main concern is the nature of the asset, namely Fijian land.</li> </ul>
(c)	A capital asset of a fixed place of business in Fiji	<ul style="list-style-type: none"> <li>This applies to moveable ‘capital assets’ defined in section 2 which are located in an office, factory, warehouse, shop or other business premises of the non-resident in Fiji.</li> </ul>
(d)	A share, security, equity, or other financial asset issued by a resident person.	<ul style="list-style-type: none"> <li>This covers shares, debentures etc. issued by a resident company.</li> </ul>
(e)	An interest in a resident partnership or resident trust.	<ul style="list-style-type: none"> <li>This includes an interest in a resident partnership or resident trust which are respectively defined in section 2</li> </ul>
(f)	An option, right, or other interest in an asset referred to in paragraphs (a)-(e).	<ul style="list-style-type: none"> <li>This ensures that both the actual Fiji asset and a lesser interest are included.</li> </ul>

### Acquisition (Section 3)

15) The provisions relating to the acquisition of capital assets is relevant when applying fair market value rules. This Section defines what constitutes an acquisition of an asset and states when an acquisition occurs.

16) A person acquires a capital asset :

- a) at the time the person begins to own an asset,
- b) at the time the person acquires legal title, and
- c) when a right or option is granted to the person.

### Disposals (Section 4)

17) Capital gains tax is imposed only if there has been a “disposal” of a capital asset. Disposal includes the disposal of a part of a capital asset and occurs when a

person parts with or ceases to own it. Under Sections 4 (1) (a) and (b), a person makes a disposal when:

- a. a capital asset is sold, exchanged (e.g. a barter transaction), transferred (e.g. gift), a capital asset is distributed (e.g. dividend in-kind)
- b. a capital asset is cancelled, redeemed, relinquished, expired, surrendered (e.g. expiration of a contractual right), destroyed, lost (e.g. by fire).

18) The disposal occurs at the time the person parts with the ownership or ceases to own it or ceases to have legal title. For instance, in the case of the disposal of tangible personal property, a person parts with ownership of the property at the time that the person ceases to have legal title to the asset. (Section 4 (2)).

19) Section 4 (3) applies when a person creates a capital asset in another person and where at the time it was created, the first mentioned person did not own it. The disposal is deemed to have occurred at the time when the asset is created.

### **Example**

A person (A) who owns shares grants an option to another person (B) to acquire the shares. Whilst B now owns the shares, the option to purchase those shares is a capital asset that A created in B by contract. Section 4 (3) ensures that any capital gain arising from this transaction (i.e. the grant of an option) to A is subject to capital gains tax.

20) Section 4 (4) provides that a disposal by a deceased person occurs at the time a capital asset is transmitted to another person by succession or under a will.

21) A disposal includes the disposal of part of an asset (Section 4 (5)). This may include a physical separation and disposal (e.g. sub-division of real property) or any other part disposal possible in law.

### **Fair market value (Section 5)**

22) Fair market value is the value that an asset would ordinarily fetch in the open market at a particular time and is determined on prevailing market conditions. If it is not possible to determine the fair market value of a particular asset the value of a similar asset can be used and adjustments made to take into account differences. The CEO can also determine the fair market value of an asset.

## Imposition of the Tax (Section 6)

- 23) This section provides for the imposition of the tax on a capital gain (except exempt capital gains) on the disposal of a capital asset ('capital asset' as defined in the Decree) by a person at a flat rate of 10%.
- 24) "Person" is defined in section 2 of the Decree to mean an individual, company, trust or partnership. Key points:
- a) in the case of a partnership and trust, the tax is imposed at the entity level
  - b) the definition of company includes unincorporated bodies or associations of persons such as co-operatives, societies, fellowships and clubs.
- 25) When a capital asset is sold or disposed of, the person must work out the gain on each asset separately as the tax is imposed on individual transactions. For non-residents capital gains tax applies only if the capital asset is a 'Fiji asset'.

## Exemptions (Section 7)

- 26) Table 3 shows the four situations under which a gain on disposal is exempt from capital gains tax. Additional explanatory notes on principal place of residence are given in paragraphs 28 – 32.

**Table 3: Exempting provisions**

Section 7 (1) (a)	a capital gain made by a <b>resident individual</b> or a <b>Fiji citizen</b> that does not exceed twenty thousand Fiji dollars;	available to Fiji resident individuals and Fiji citizens only
Section 7 (1) (b)	a capital gain made by a <b>resident individual</b> or a <b>Fiji citizen</b> on disposal of the individual's principal place of residence	available to Fiji resident individuals and Fiji citizens only
7 (1) (c)	a capital gain made by a person on the disposal of shares listed on the South Pacific Stock Exchange;	available to all persons
Section 7 (1) (d)	a capital gain made on disposal of a capital asset that is used solely to derive income exempt from tax under the Income Tax Act	available to all persons whose income or part of income is exempt from tax

- 27) An individual is a resident if he/she is a resident within the meaning given in the Income Tax Act. A Fiji citizen is an individual who is a Fiji citizen within the meaning of the Citizenship of Fiji Decree 2009.
- 28) In terms of Section 7 (1) (a) and (b), the inclusion of Fiji citizens implies that an individual does not have to be physically present in Fiji to enjoy the exemptions. In respect of Section 7 (1) (b), Fiji citizens living abroad can claim the benefit of

exemption provided they can prove that the house located in Fiji which is sold/disposed of is their principal or main place of residence. The following paragraphs outline some of the factors that will be taken into account to assist in decision-making on whether or not a residence is an individual's principal place of residence during the period of ownership.

### **Principal place of residence**

- 29) To qualify for exemption under section 7 (1) (b), the residence must have been the individual's and where applicable, the spouse's or partner's or joint owner's, principal place of residence during the period of ownership. 'Spouse' includes de-facto relationships.
- 30) Section 7 (3) (a) provides that for the purpose of section 7 (1) (b), the principal place of residence of an "individual" is the residence where the individual mainly lives. Therefore, if an individual has more than one residence, the exemption applies only to the residence where he/she lives most of the time.
- 31) Some common scenarios are given in the example below however if two main residences are maintained, a more detailed analysis may be required.

#### **Example 1**

A person may live in a residence for say 5 years, is posted elsewhere (another place in Fiji or overseas) and lives there temporarily for 3 years, returns and lives in the main residence for another 4 years before selling the house. The person has owned the residence for 12 years and occupied it for 9 years. The residence would qualify as the principal place of residence notwithstanding the 3 year absence.

#### **Example 2**

A person occupied a residence for one year and was then posted abroad for two years and sold the residence immediately on their return, the residence has not been occupied by the person principally during the period of ownership.

#### **Example 3**

A resident individual owns a residence in Suva (where they work) and a residence elsewhere where they spend weekends and holidays. Only the Suva residence will be the person's principal place of residence because that is the residence in which they mainly live.

#### **Example 4**

A husband and wife either jointly or separately own more than one residence. They can claim the exemption in section 7 (1) (b) in respect of only one of those

residences. The residence would also have to be the one that either of them mainly lives.

- 32) The principal place of residence includes any form of residential accommodation such as house, apartment, houseboat, but does not include land that is adjacent to the residence.
- 33) If a building is partly used as a principal place of residence and partly for some other use, only that part of the gain relating to use as a principal place of residence is exempt. The capital gain on disposal of the building must be apportioned between the two uses on any reasonable basis.

**Example 5**

A doctor disposes of his principal residence for a capital gain of \$100,000. One-quarter of the floor space of the residence was his surgery. Using floor space as the basis of apportionment, the exempt amount of the capital gain is \$75,000 and the other \$25,000 is taxable.

- 34) In cases where resident individuals dispose of a capital asset in two or more parts to take advantage of the FJ\$20,000 threshold, any disposal arising from such disposal will be exempt from tax only if the total gain from disposal of all parts is below \$FJ20, 000.

**Deferral of Recognition of Capital Gain (Section 8)**

- 35) Apart from the sale of capital assets, some events are regarded as a ‘disposal’ for capital gains tax purposes which can lead to a capital gain. There are three situations where a disposal will not be subject to capital gains tax in the hands of the transferor. In such cases, if the asset is sold or disposed of at a later date, it will be subject to capital gains tax and payable by the present owner making the disposal.

Section 8 (1) (a)	Disposal of a capital asset between spouses (this includes partners in a <i>de facto</i> relationship) as part of a divorce settlement or under a separation agreement)	<p><b><u>Example 1</u></b></p> <p>Under a divorce agreement, A is required to transfer shares to B. A acquired the shares for a cost of \$100,000. At the time of the transfer, the shares have a fair market value of \$200,000. Two years later, B sells the shares for \$300,000.</p> <p><u>Effect of transaction on A</u></p> <p><i>Transfer of the shares is a disposal of a capital asset. After taking into account the fair market value, there is a capital gain of \$100,000 (\$200,000 - \$100,000) in respect of the disposal, However, Section 8(1)(a) provides that no</i></p>
	NB 1) If the acquirer of the asset is a non-resident person,	

	<p>Section 8 (1) applies only if the capital asset is a Fiji asset (section 8 (2))</p> <p>2) at the time of disposal by the acquirer, the acquirer takes on the original cost of the asset. (Section 8 (3))</p>	<p><i>capital gain arises in respect of the disposal.</i></p> <p><u>Effect of transaction on B</u></p> <p><i>B takes over A's cost (\$100,000). Taxation of the capital gain that has accrued in respect of the shares is deferred until B disposes of the shares. When B subsequently sells the shares, B makes a capital gain of \$200,000 (\$300,000 - \$100,000) – this represents \$100,000 of deferred capital gain that accrued while A owned the shares and \$100,000 of capital gain that accrued while B owned the shares.</i></p>
<p>Section 8 (1) (b)</p>	<p>Disposal of a capital asset by transmission of the asset on the death of a person to the executor or beneficiary of the person's estate</p> <p>NB</p> <p>1) If the acquirer of the asset is a non-resident person, section 8 (1) applies only if the capital asset is a Fiji asset (Section 8 (2))</p> <p>2) at the time of disposal by the acquirer, the acquirer takes on the original cost of the asset. (Section 8 (3))</p>	<p>Recognition of the gain on a transmitted capital asset that has accrued prior to the deceased's death is deferred until the executor or beneficiary subsequently disposes of the asset.</p> <p><b>Example 2</b></p> <p>Upon death of A in 2010, a house acquired at a cost of \$70,000 is transmitted to B. At the time of the transmission, the house has a fair market value of \$90,000.</p> <p><u>Effect of transaction on A</u></p> <p><i>No capital gain arises in respect of the \$20,000 gain on disposal</i></p> <p><u>Effect of transaction on B</u></p> <p><i>B takes over the deceased's cost of the asset as at the date of death. The house is sold for \$100,000 in May 2011. When B sells the house, there is a capital gain of \$30,000 (\$100,000 - \$70,000) – this represents \$20,000 of deferred capital gain that accrued while A owned the house and \$10,000 of capital gain that accrued while B owned the house.</i></p>
<p>Section 8 (1) (c)</p>	<p>Disposal of a capital asset by way of loss/destruction /compulsory acquisition if the recipient uses the consideration received to buy a replacement</p>	<p>Subsection (1) (c) provides that no capital gain is taken to arise on the disposal of a capital asset if the person reinvests in a replacement asset within a year of disposal.</p> <p>Received is defined to include receivable and also has its ordinary meaning.</p> <p><b>Note: A person may not receive any consideration if</b></p>

	asset, within one year	<b>insurance payout or other consideration receivable is delayed. - instructions will be issued later.</b>
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### Disposal (Section 8 (1) (c))

36) Where a disposal under section 8 (1) (c) applies, the cost of the replaced asset is 'rolled over' into the replacement asset. The cost of the replacement asset is determined as follows:

Cost of the replaced asset at the time of disposal  
+ (Amount paid for new asset – consideration received for replaced asset)  
- (Consideration received for replaced asset – cost of acquiring the asset)

#### **Example 1**

Rupeni owns a yacht that is destroyed in a fire on 2 May 2011.

- Cost at time of disposal - \$100,000.
- Insurance proceeds received 10 November 2011, \$110,000 and is used to purchase replacement yacht.
- On 3 July 2012, replacement yacht sold for \$130,000
- Capital gain on disposal that occurred on 2 May 2010 - \$10,000 (\$110,000 - \$100,000)

Step 1 - Calculate cost of replacement asset:

\$100,000  
+ (\$110,000 - \$110,000) Nil  
- ( \$110,000 - \$110,000) Nil  
= \$100,000

Note that insurance proceeds = cost of acquiring replacement asset, therefore cost of replacement asset is \$100,000

Step 2 - Calculate capital gain on sale of replacement yacht:

Sale price \$130,000 - \$100,000 = \$30,000 (Capital gain on disposal of first yacht is \$30,000, being \$10,000 deferred and \$20,000 on sale of replacement yacht)

#### **Example 2**

Same details as in Example 1 except that replacement yacht cost \$120,000

- Cost at time of disposal - \$100,000.
- Insurance proceeds received 10 November 2011, \$110,000

- Replacement yacht cost \$120,000
- On 3 July 2012, replacement yacht sold for \$130,000
- Capital gain on disposal that occurred on 2 May 2010 - \$10,000 (\$110,000 - \$100,000)

Step 1 – Calculate cost of replacement asset:

\$100,000  
 + (\$120,000 - \$110,000) \$10,000  
 - ( \$110,000 - \$120,000) negative result so is ignored  
 = \$110,000

Step 2 – Calculate capital gain on sale of replacement yacht:

\$130,000 – 110,000 = \$20,000 (being \$10,000 deferred capital gain on disposal of first yacht and \$10,000 capital gain on disposal of replacement yacht)

**Example 3**

Same details as in example 1 except that replacement yacht cost \$100,000

- Cost at time of disposal - \$100,000
- Insurance proceeds received 10 November 2011, \$110,000
- Replacement yacht cost \$100,000
- On 3 July 2012, replacement yacht sold for \$130,000
- Capital gain on disposal that occurred on 2 May 2010 - \$10,000 (\$110,000 - \$100,000)

Step 1 – Calculate cost of replacement asset:

\$100,000  
 + (\$100,000 - \$110,000) negative result so is ignored  
 - ( \$110,000 - \$100,000) \$10,000  
 = \$90,000

Step 2 – Calculate capital gain on sale of replacement yacht:

\$130,000 – 90,000 = \$40,000 (being \$10,000 deferred capital gain on disposal of first yacht and \$30,000 capital gain on disposal of replacement yacht )

## **Foreign Capital Gains (Section 9)**

37) A resident person is liable for capital gains tax on their worldwide capital gains. A tax credit is allowed if the following conditions are met -

- a) the person that disposed of the capital asset is a resident person
- b) the person has disposed of a capital asset, and
- c) the person has paid foreign tax on the capital gain. “Foreign tax” is defined in the Decree.

38) If these conditions are satisfied, the resident person is entitled to a tax credit equal to the lesser of the foreign tax paid or Fijian capital gains tax payable in respect of the capital gain. The amount of the tax credit is limited to the Fijian capital gains tax payable on the capital gain. The tax credit allowed reduces the amount of capital gains tax payable. This means that if the Fiji dollar equivalent of the foreign tax paid is more than the Fijian tax payable, the credit allowed will not be more than the Fijian tax payable. i.e. no refund is due for the excess.

### **Example 1**

X Co, a company resident in Fiji, holds shares in a non-resident company. X Co sells the shares and makes a \$100,000 capital gain on which foreign tax (equivalent to \$30,000 Fijian dollars) is paid. The shares are a capital asset and, therefore, X Co is liable for capital gains tax in respect of the gain. As foreign tax has been paid in respect of the capital gain, X Co is entitled to a tax credit.

The amount of the credit is the lesser of the foreign tax paid (equivalent to \$FJD 30,000) or the Fijian capital gains tax payable on the gain (\$10,000 (\$100,000 x 10%)) – i.e. \$10,000. The effect of the tax credit is to reduce the Fijian capital gains tax payable to \$0.

### **Example 2**

If only \$5000 of foreign tax was paid in respect of the capital gain, the amount of the tax credit would have been \$5000 (i.e. the lesser of the foreign tax paid (\$5000) and the Fijian capital gains payable (\$10,000)).

39) In cases where foreign tax will be paid in a later period, an amended return should be submitted for reassessment with evidence of foreign tax paid.

## **Capital gain (Section 10)**

40) A capital gain made on disposal of a capital asset is computed as follows:

*Consideration received on disposal of the asset*

*Less: Cost of the asset at the time of disposal*

“Consideration” and “Cost” is determined under sections 11 and 12 of the Decree, respectively; unless a special rule relating to cost is provided elsewhere in the Decree. (e.g. Section 8 deferrals and Section 13 Non- arm’s length transaction)

41) There is no provision for offsetting against capital gains tax payable, losses arising from the disposal of another capital asset (Section 10 (2)). This is because capital gains are taxed at a low rate and is imposed on a transactional basis.

42) Section 10 (3) provides for reconciliation with the Income Tax Act (ITA). The purpose of this section is to ensure that a capital gain which is subject to income tax is not taxed again under the Capital Gains Tax Decree (i.e. it prevents double taxation).

43) A capital gain is reduced by any part of the gain that is included in total income under the ITA in the following circumstances:

- a) Disposal of shares that is subject to non-resident withholding tax – a capital gain is reduced by the amount deemed to be a dividend under section 8 (2) (a) (ii) of the ITA.
- b) If a capital gain is subject to tax under the ITA (e.g. it may be a one - off transaction that is subject to income tax), the gain on disposal of the asset will first be included in the person’s total income under the ITA. Any part of the gain that is included in total income will reduce the capital gain. This ensures that the same gain is not taxed under both the income tax and capital gains tax with priority given to the income tax.
- c) The part of a gain that is treated as exempt income under the Income Tax Act.

## **Cost –tangible assets (Section 11 (2))**

44) The cost of a capital asset that is a tangible asset is calculated as follows:

Total consideration  
+ Incidental expenditure (in acquiring or disposing of the asset)

+ Any expenditure incurred to install, alter, renew, reconstruct or improve the asset

- a) Total consideration given by the person for the asset - *this includes the fair market value of any consideration given in kind. . If the asset is constructed, produced or developed (rather than purchased), the cost of the asset includes the cost of construction, production or development.*
- b) The total amount of any incidental expenditure incurred in acquiring or disposing of the asset. *Examples of incidental expenditure include professional fees (such as for the services of an agent, lawyer, valuer, auctioneer or surveyor), and advertising costs (particularly on disposal).*
- c) The total expenditure incurred to install, alter, renew, reconstruct or improve the asset.

### **Example 1**

Lote purchased a rental property for \$500,000 and, in relation to the purchase, incurred \$2,000 in legal fees. After two years, Lote adds another room onto the property for a cost of \$50,000. Lote then sells the property and incurs \$3,000 in real estate agent fees. At the time of sale, Lote's cost is \$555,000 being the sum of purchase price (\$500,000) legal fees (\$2,000) capital improvement (\$50,000) real estate agent's fees (\$3,000).

### **Cost - intangible assets (Section 11 (3))**

- 45) The cost of an intangible asset (such as an industrial or intellectual property right, or a contractual right) is calculated as follows:

Total expenditure incurred in acquiring, creating, improving or renewing the intangible asset  
+ any incidental expenditure incurred in acquiring or disposing of the intangible asset

### **Example 2**

Willie has been appointed the Fijian distributor of a new children's toy by a US company. It is expected that the toy will sell well in Fiji and Willie has paid the US company \$100,000 to be appointed the exclusive distributor of the toy in Fiji for five years. Willie's rights under the contract are an intangible asset and the cost of the asset is \$100,000.

- 46) Section 11 (4) provides that the cost of a capital asset of a person includes any amount given for the grant of an option to the person to acquire the asset.

**Example 3**

A person has paid \$10,000 to be granted an option to acquire land. The exercise price under the option is \$100,000. The cost of the land once the option is exercised is \$110,000.

- 47) Under Section 11 (5), the cost of a capital asset of a person is reduced by the amount of any deduction allowed to the person under the ITA in respect of amounts included in the cost of the asset. This ensures that a person does not obtain a double benefit, ie. both a deduction under the income tax and inclusion in the cost of the asset under the capital gains tax. It also means that priority is given to allowance of the expenditure as an income tax deduction.

**Example 4**

Lote purchased a rental property for \$500,000 and, in relation to the purchase, incurred \$2,000 in legal fees. If the legal fees are deductible against rental income, they are not included in the cost of the rental property.

- 48) Section 11 (5) also provides that there is no reduction for depreciation deductions allowed under the ITA in respect of a capital asset. This means that a capital gain arises in respect of the disposal of a depreciable asset that is a capital asset only if the consideration received on disposal exceeds the cost of the asset before depreciation. The recapture of depreciation deductions is made under the ITA through the balancing charge rules.

**Example 5**

X Co acquired a yacht - \$100,000.

Sold for \$80,000.

At the time of disposal, X Co had been allowed \$50,000 in depreciation deductions - written down value for tax purposes \$50,000.

The consideration received (\$80,000) exceeds the written down value of the asset for tax purposes at the time of disposal (\$50,000) and the amount of the excess (\$30,000), is included in X Co's total income under the ITA as a balancing charge. This represents depreciation deductions that were recouped on disposal of the plant.

The yacht is also a capital asset and subject to the Capital Gains Tax Decree. The cost of the asset is \$100,000 and while depreciation deductions are allowed in respect of the yacht, they do not reduce the cost

of the yacht for capital gains tax purposes. Consequently, the consideration received (\$80,000) is less than the cost (\$100,000) and, therefore, no capital gain arises on disposal of the asset. The \$20,000 loss has been recognised through the depreciation deductions. The only taxation is the inclusion of the balancing charge in total income under the ITA.

### **Example 6**

X Co acquired a yacht - \$100,000.

Sold for \$125,000.

At the time of disposal, X Co had been allowed \$50,000 in depreciation deductions - written down value for tax purposes \$50,000.

In this case, X Co has, in effect, made two gains:

- 1) Recouped in the sale price all the depreciation deductions allowed under the ITA and, therefore, \$50,000 is included in total income as a balancing charge.
  - 2) In addition, it has made a capital gain as the consideration received (\$125,000) exceeds the cost (\$100,000). The amount of the capital gain is \$25,000, which is taxed under the capital gains tax.
- 49) An amount is included in the cost on the date that it is paid. This is relevant, for example, to the currency translation rules in section 19 applicable to capital gains on foreign assets. (Section 11 (6)).
- 50) Where a person disposes of part of a capital asset, the cost of the asset is apportioned between the part of the asset retained and the part disposed of in accordance with the fair market value rules. (Section 11 (7)).
- 51) Any grant, subsidy, rebate, commission, or other assistance received or receivable by the person in respect of the acquisition of the asset is excluded from the cost of a capital asset of a person unless the amount is included in the person's total income under the ITA (Section 11 (8)). Loans, including low interest and interest-free loans are not treated as "assistance" for this purpose. (Section 11 (9)).
- 52) The acquisition of a capital asset by a person may result in the inclusion of an amount in the total income of the person under the ITA. *For example, an employee may be issued with shares at a discount under an employer share scheme resulting in an amount being included in the total income of the employee.* The amount included in total income is treated as part of the cost of the asset to ensure that there will be no double taxation when the asset is disposed. The cost of the asset also includes any additional amount the person may have paid for the acquisition of the asset. (Section 11 (10) (a)).

53) Section 11 (10) (b) provides a similar rule for the acquisition of an asset that is the derivation of exempt income. The asset has a cost equal to the exempt amount plus any consideration given for the asset. This prevents the income tax exemption being recaptured under the capital gains tax on a subsequent disposal of the asset.

### **Consideration Received (Section 12)**

54) Section 12 sets out the rules for determining the consideration received on disposal of a capital asset for the purposes of the Decree.

55) It includes the total amount received by the person for the asset (including the fair market value of any consideration received in kind) determined at the date of disposal. The fair market value of consideration in kind is determined under Section 5. The consideration received by a person includes an amount actually received and an amount that the person is entitled to receive - refer section 2 definition of received (Section 12 (2)).

56) It includes the consideration received by a person on the grant of an option in relation to the asset if the person has not been subject to tax in respect of any capital gain made on the grant of the option (Section 12 (3)).

### **Example 1**

Joe grants Raju an option to acquire land owned by Joe that cost \$200,000. The exercise price under the option is \$500,000 and the price paid for the option is \$25,000. Raju subsequently exercises the option. Joe has made two capital gains –

- (1) a capital gain of \$25,000 on grant of the option
- (2) a capital gain of \$300,000 on disposal of the land.

As the capital gain on grant of the option is taxable, the consideration received for the option is not included as part of the consideration received for the land.

### **Example 2**

Suppose, instead, that the option price was \$10,000. In this case, there is no capital gain on the grant of the option because of section 7(1) (a) and, therefore, the consideration for the land includes the price of the option to acquire the land.

57) The consideration received in respect of an asset that is lost or destroyed includes any compensation, indemnity or damages received as a result of the loss or destruction of the asset. This includes amounts paid under insurance policies, as

a result of settlements of law suits, or under judicial decisions such as a damages award (Section 12 (4)).

### **Example 3**

Selai is the owner of a yacht used in her charter business that cost \$100,000. The yacht is a “capital asset”. The yacht is completely destroyed in a storm. The yacht is treated as disposed of under section 4(1) (b). The yacht is insured and Selai receives \$125,000 compensation from the insurance company. The insurance payout is treated as the consideration received on disposal of the boat. Consequently, Selai has made a capital gain on disposal of the boat of \$25,000. The recognition of this gain may be deferred under section 8 (1) (c) if Selai invests the insurance proceeds in the purchase of a new yacht within 12 months of the loss of the other yacht.

58) Section 12 (5) requires a person to apportion any undivided consideration provided for two or more assets in proportion to their respective fair market values as determined under section 5 at the time of the disposal.

59) Section 12 (6) provides for the timing of inclusion of amounts in the consideration received for an asset. An amount is included in consideration received on the date that it is paid.

### **Non-arm’s Length Transaction (Section 13)**

60) The consideration received by a person disposing of a capital asset in a non-arm’s length transaction is the fair market value of the asset at the time of the disposal. This amount is treated as the cost of the asset for the person acquiring the asset in the transaction. Thus, the effect of the section is to treat, for all purposes of the Decree, the fair market value of the asset as the consideration given and received under a non-arm’s length transaction.

### **Avoidance of Capital Gains Tax (Section 14)**

61) The CEO has broad powers to deal with arrangements intended to avoid or evade the tax. This is in addition to the non-arm’s length transaction rule.

## **PROCEDURES**

### **Filing of Capital Gains Tax Return and Payment of Capital Gains Tax (Section 15)**

- 62) A person liable for capital gains tax in respect of the disposal of a capital asset must file a capital gains tax return within thirty days after the disposal of the capital asset. A separate return must be filed in respect of each disposal. Capital gains tax is due for payment within thirty days after the disposal of the capital asset giving rise to the gain.
- 63) The obligation to file a capital gains tax return arises only if there is a liability for capital gains tax in respect of the disposal (i.e. the disposal has resulted in a capital gain). There is no obligation to file a return in relation to capital losses. However, for the purpose of calculating whether or not tax is due, a person may submit a return. Such return will be retained by the Authority.
- 64) If a person fails to file a capital gains tax return by the due date, the CEO can make a default assessment of the capital gains tax payable. Failure to file a capital gains tax return by the due date may result in the imposition of penalty under Sections 43 and 44 of the Tax Administration Decree or the prosecution of an offence under section 49 of the Tax Administration Decree.

### **Collection of Tax Payable by Partnerships and Trusts (Section 16)**

- 65) The partners in a partnership are jointly and severally liable for the capital gains tax payable by the partnership and the trustees of a trust are jointly and severally liable for the capital gains tax payable by the trust.

### **Record keeping requirements (Section 17)**

- 66) Records relating to capital gains tax must be kept for five years from the date of disposal of the capital asset. This includes records relating to the acquisition and disposal of the asset, and of the cost of the asset and the consideration received on disposal.
- 67) A person who fails to keep records as required may be liable for a penalty under Section 45 of the Tax Administration Decree or guilty of an offence under Section 51 of the Tax Administration Decree.
- 68) The CEO may disallow the inclusion of an amount of expenditure in the cost of a capital asset if the incurring of the expenditure cannot be properly substantiated.

## **MISCELLANEOUS PROVISIONS**

### **Joint Owners (Section 18)**

69) The Decree provides for the apportionment of a capital gains made on disposal of a jointly-owned capital asset, such as a jointly-owned rental property.

### **Currency Translation (Section 19)**

70) All amounts (consideration received, costs and foreign tax) taken into account under the Decree are to be expressed in Fijian dollars. A foreign currency amount is to be translated to Fijian dollars at the Reserve Bank of Fiji exchange rate applying on the date the amount is taken into account for capital gains tax purposes.

### **Capital Asset Registration and Renewals (Section 20)**

71) Section 20 provides that the Registrar of Titles must not register an instrument relating to the transfer of a capital asset under the Lands Transfer Act or renewal of a capital asset, unless the transferor or transferee has furnished the Registrar of Titles with a certificate from the CEO stating that the capital gains tax due on the transfer has been paid or satisfactory arrangements for payment of the tax have been made, or that no such tax is payable.

### **Amendment of the Tax Administration Decree (Section 21) & Land Sales Act (Section 22)**

72) Amendments have been made to the Tax Administration Decree and parts of the Land Sales Act. However, repealed provisions continue to apply to dealings occurring before the Decree comes into force (i.e. before 1<sup>st</sup> May 2011).

### **Regulations (Section 23)**

73) Section 23 empowers the Minister responsible for finance to make regulations for the purposes of the Decree.

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For comments and enquiries e-mail: [tepu@frca.org.fj](mailto:tepu@frca.org.fj) or call any of the following tax officials:

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