



TD 93/42 - Income tax: employee share acquisition scheme: does section 26AAC of the Income Tax Assessment Act 1936 apply to a situation where shares have been acquired under a scheme by a person who is engaged to provide services on a contract basis?

 This cover sheet is provided for information only. It does not form part of *TD 93/42 - Income tax: employee share acquisition scheme: does section 26AAC of the Income Tax Assessment Act 1936 apply to a situation where shares have been acquired under a scheme by a person who is engaged to provide services on a contract basis?*

 This document has changed over time. This is a consolidated version of the ruling which was published on *18 March 1993*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, this Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Taxation Determination

Income tax: employee share acquisition scheme: does section 26AAC of the *Income Tax Assessment Act 1936* apply to a situation where shares have been acquired under a scheme by a person who is engaged to provide services on a contract basis?

1. Subject to the exceptions below, where a company issues shares under a scheme to a taxpayer who is a contractor or a consultant (not an employee under the common law) for services rendered to the company, the provisions of section 26AAC generally apply.
2. The exceptions are subsections 26AAC(4A) to 26AAC(4F) inclusive which relate to reduction of aggregate discount amount. Broadly, the reduction is available only to permanent employees of a company (subparagraph 26AAC(4A)(d)(v)).
3. Further, if a scheme is open to other than "permanent employees", as defined in subsection 26AAC(18C), such as contractors or consultants that scheme would fall outside of subsections 26AAC(4A) to 26AAC(4F). Employees participating in such a scheme would not be entitled to a reduction in discount.

Example:

1. *Jason is a computer consultant. He is providing consultancy services, under a contract, to XYZ Company. XYZ Company is offering to its employees shares under an employee share acquisition scheme and Jason is invited to apply for shares.*
2. *If Jason acquires shares in XYZ Company, the provisions of section 26AAC will apply to him in the same manner as they will apply to other employees of XYZ Company.*
3. *If Jason is to provide services through a company, the provisions of section 26AAC will not apply.*

Commissioner of Taxation

18/3/93

FOI INDEX DETAIL: Reference No. I 1214393

Previously issued as Draft TD 92/D168

Related Rulings: IT 2516

Subject Ref: contractors; employee share acquisition scheme; employment; non-discriminatory scheme; reduction in discount; services rendered

Legislative Ref: ITAA 26AAC; 26AAC(4A); 26AAC(4B); 26AAC(4F); 26AAC(18C)

ATO Ref: 92/6920-7; 88/2205-1

ISSN 1038 - 8982