INLAND REVENUE BOARD MALAYSIA

EMPLOYEE SHARE SCHEME BENEFIT

PUBLIC RULING NO. 11/2012

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DIRECTOR GENERAL'S PUBLIC RULING

A Public Ruling as provided for under section 138A of the Income Tax Act 1967 is issued for the purpose of providing guidance for the public and officers of the Inland Revenue Board Malaysia. It sets out the interpretation of the Director General of Inland Revenue in respect of the particular tax law, and the policy and procedure that are to be applied.

A Public Ruling may be withdrawn, either wholly or in part, by notice of withdrawal or by publication of a new ruling.

Director General of Inland Revenue,
Inland Revenue Board Malaysia.

1. Objective

The objective of this Ruling is to explain the –

(a) tax treatment in respect of a benefit arising from employee share schemes received by an employee from his employer by reason of his employment,

(b) determination of the amount or value of an employee share scheme benefit which is a perquisite and part of the gross employment income, and

(c) responsibility of the employer when offering a share scheme and the responsibility of the employee when receiving the benefit from the share scheme.

2. Summary Of Changes

This Ruling is published to replace Public Ruling No. 4/2004 issued on 9.12.2004. Among the changes made to the Public Ruling (PR) replaced are summarised as follows:

Paragraph In Public Ruling No. 4/2004	Changes In This Ruling		
	Paragraph	**Item**	**Reference**
1 2	1 3	Replaced	Clarification
3.1 3.2 3.3 3.4		Deleted	
3.5	4.1	Replaced	
3.6		Deleted	
3.7 3.8 3.9 3.10 3.11 3.12 3.13 3.14	4.2 4.4 4.5 4.6 4.7 4.8 4.11 4.13	Renumbered	Clarification

Paragraph In Public Ruling No. 4/2004	Changes In This Ruling		
	Paragraph	Item	Reference
None	4.3 4.9 4.10 4.12 4.14	New	Clarification (new)
4.1 4.2 4.3 4.4 4.5 5 5.2 5.3 5.4 5.5 5.6	5.4 6 5.4 5.2 5.1 7.1	Replaced	Clarification (New)
None	5.3 5.5 5.6 5.7 6 7.2 7.3 7.4 7.5 7.6 7.7	New	Clarification (New)

Paragraph In Public Ruling No. 4/2004	Changes In This Ruling		
	Paragraph	Item	Reference
6 7 8	8 9.1 9.2 9.3 9.4	Replaced	Clarification (New)
None	10	New	Clarification (New)

3. **Related Provisions**

The provisions of the Income Tax Act 1967 (ITA 1967) related to this Ruling are paragraphs 4*(b)* and 13(1)*(a)*, section 25, subsections 25(1A) and 32(1A), sections 77, 83 and 107(2).

4. **Interpretation**

The words used in this Ruling have the following meaning:

4.1 "Offer price" is the price to be paid by the employee for each share offered under an employee share scheme.

4.2 "Employer" in relation to an employment, means –

(a) where the relationship of master and servant subsists, the master;

(b) where the relationship does not subsist, the person who pays or is responsible for paying any remuneration to the employee who has the employment, notwithstanding that that person and the employee may be the same person acting in different capacities.

4.3 "Net asset value" is the value of the assets after deducting the liabilities.

4.4 "Option" is the right offered by the employer to the employee in respect of a number of shares at a specified price to be exercised at a future date.

4.5 "Employee" in relation to an employment, means –

(a) where the relationship of master and servant subsists, the servant;

(b) where the relationship does not subsist, the holder of the appointment or office which constitutes the employment.

4.6 "Employment" means –

(a) employment in which the relationship of master and servant subsists;

(b) any appointment or office, whether public or not and whether or not that relationship subsists, for which remuneration is payable.

4.7 "Perquisites" means benefits that are convertible into money received by an employee from the employer or third parties in respect of having or exercising the employment.

4.8 "Monthly Tax Deductions" (MTD) means income tax deductions from employee's current monthly remuneration in accordance with the Schedule of Monthly Tax Deductions as provided under Rule 3, Income Tax (Deduction from Remuneration) Rules 1994.

4.9 "Share" means –

(a) a fully paid ordinary share in the capital of the company, and

(b) treasury shares in the company itself, its holding company or its subsidiaries.

4.10 "Treasury share" means a share of a company that was previously issued but was repurchased, redeemed or otherwise acquired by such company and not cancelled.

4.11 "Stock" means the capital or principal fund raised by a corporation through subscriber's contributions or sale of shares.

4.12 "Date of offer" means the date employers grant their employees the option to acquire shares in a company, its holding company or its subsidiaries.

4.13 "Exercisable date(s)" means the date(s) an employee is allowed to exercise his right (which had been granted by the employer) to acquire the shares in a company.

4.14 "Date of exercise" means the date an employee exercises his right (which had been granted by the employer) to acquire the shares in a company.

4.15 "Vest" means having an absolute right on the shares.

5. Employee Share Scheme

5.1 Shares offered under an employee share scheme

Shares are offered to employees by employers to recognise the role of employees in the development of the company by inculcating a sense of belonging amongst the employees in that they too have rights in the company by holding shares in that company. Employers may also offer shares to their employees in lieu of part of the remuneration that should be paid in cash. For the purpose of this Ruling, the terms shares and stocks are used interchangeably.

5.2 Employee share scheme by-laws

Share schemes offered to employees are generally governed through by-laws. By-laws refer to the rules governing the scheme and the characteristics of specific schemes that determine the type of scheme offered. By-laws also contain information about the offer letter, consent form and the necessary conditions that should be fulfilled. Among the details specified in the by-laws are as follows:

(a) option offered to accept or purchase shares

(b) fixed price of share at the date of offer

(c) date of offer of the option

(d) vesting period of the shares offered

(e) exercisable date(s) and the exercisable period, and

(f) any other conditions imposed at the time the offer is made.

Different by-laws may use different terminologies but substance should prevail over form.

5.3 Share benefits

When employers offer employees a scheme to acquire shares under favourable terms, that is, shares are offered to employees:

(a) free of charge

(b) at par value whereas the shares have a premium value in the share market, or

(c) at a fixed price (price discount), whereas the shares have a higher market value in the share market,

these employees enjoy a benefit from such share schemes. Share benefits received by employees is a perquisite under paragraph 13(1)*(a)* of the ITA 1967 because it arises by reason of having or exercising an employment and is chargeable to tax under paragraph 4*(b)* of the ITA 1967.

5.4 Common share schemes

Shares offered to employees may consist of shares in the company itself, shares in its holding company or shares in its subsidiaries. Companies implement a variety of ways to enable employees to become shareholders. Implementation of the share offer is given different names but it is similar in substance. Apart from offering rights to actual shares in the company, employers may also offer cash equivalent to the value or appreciation in value of shares without transfer of ownership of shares. Among the common schemes are:

(a) Employee Share Option Scheme
(b) Employee Share Purchase Plan
(c) Share Award Scheme
(d) Share Appreciation Rights Scheme, and
(e) Warrant Scheme.

5.5 Market value of shares

In accordance with the Malaysian Financial Reporting Standards 2 (MFRS 2), transactions involving share-based payments made to employees are to be measured by reference to the fair value of the shares at date of offer. However, for the purpose of determining a taxable benefit, the market value of the share is to be used in the computation of the benefit arising from an employee share scheme,

In the case of a public listed company, the fair value of shares is considered as the market value. On the other hand, for an unlisted company, the fair value of the shares is the net asset value of the share which has to be ascertained according to the formula as explained in paragraph 5.5.2 below.

5.5.1 Market value of listed company shares

The market value of the shares of companies listed on any Stock Exchange on the date the right to acquire shares in the company is exercisable or is exercised is ascertained by averaging the highest and lowest price of the day. The market value per unit of share is summarised as follows:

$$\text{Market value per share} = \frac{\text{Highest price + Lowest price}}{2}$$

5.5.2 Market value of unlisted company shares

There is no market value to be associated with the shares offered by companies that are not listed on any Stock Exchange. The market value of shares in other than a company listed on any recognised Stock Exchange on the date(s) the right to acquire shares in the company is exercisable or is exercised is ascertained by dividing the net asset value of the company by the number of ordinary shares. The net asset value per unit of share is summarised as follows:

$$\text{Net asset value per share} = \frac{\text{Net asset value}^{1}}{\text{Number of ordinary share}}$$

[1]Net asset value (assets less liabilities) is to be determined by extracting the value of the assets and liabilities from the audited accounts of the company whose shares have been offered to the employees. Net asset value based on the company's management accounts is not acceptable for the purpose of ascertaining the net asset value per share in an unlisted company.

5.5.3 If the share scheme's date of offer, vesting date or date of exercise falls on a non-trading day, the market value of shares traded on the next trading day for that company applies.

5.5.4 In the case where a company has undergone delisting from the Stock Exchange, the market value of the share on the last trading day of the shares prior to the date of delisting is applicable.

5.6 Vesting of shares

5.6.1 Vested right to shares

Companies may offer share schemes either with or without vesting imposed. A share scheme offers the right, but not the obligation, to purchase a specific number of shares at a specificed price and at specific time. Before an employee can purchase the shares (or exercise their options to a share scheme) they need the option to purchase. In order to earn the right to purchase these shares, the employee needs to have a vested right to acquire these shares.

The shares are considered vested:

(a) if any condition(s) that must be fulfilled by the employee in order to have the right to exercise the option to the share scheme have been fulfilled, and

(b) the employee's legal or beneficial interest in the share cannot be rescinded even though the employee may not yet possess the share.

An example of a condition imposed is the continuation of employment for a specified period of time in order to acquire the right to exercise the share scheme.

5.6.2 Vesting period and vesting date

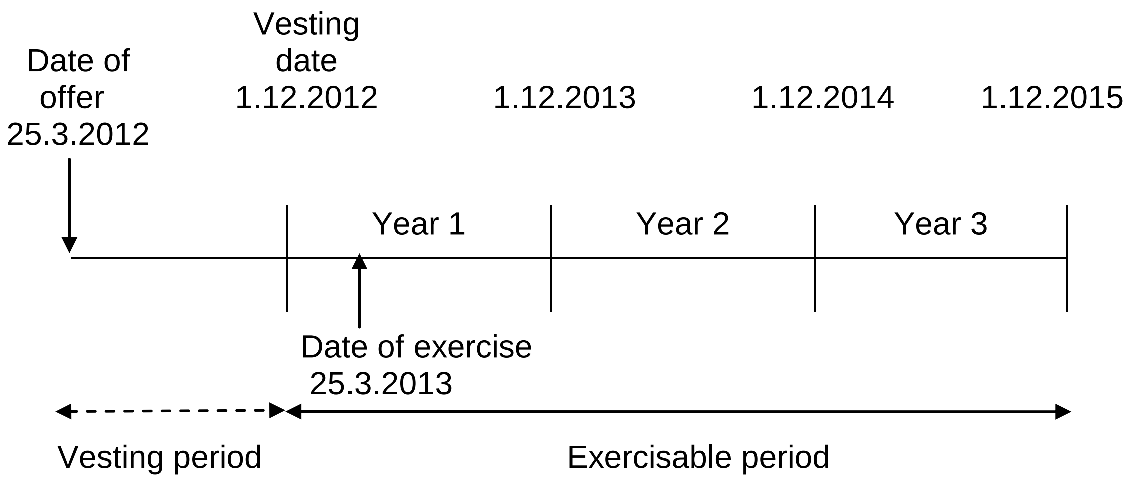
The vesting period (between the date of offer of the share scheme and the vesting date) is the period over which an employee has the ability to realise the rights to acquire the shares. The vesting date for a share is the date when conditions (if any) applying to the shares offered has been fulfilled and becomes partially or wholly exercisable as stated in the by-laws of the share scheme.

5.7 Exercise and exercisable period

The word exercise has not been defined in the ITA 1967. Generally, an employee is considered to have exercised an option to a share scheme when he has taken whatever steps necessary as provided for in the by-laws of the share scheme to purchase the relevant shares. Being offered an option to a share scheme does not require the employee to exercise the option (purchase the shares). Share schemes normally have a specified exercisable period during which an employee can exercise the right to a share scheme. The exercisable period is the period from the first date the employee can exercise the right to the share scheme to the final date the share scheme can be exercised.

Example 1

Company M, a listed company in Malaysia offered its marketing manager Afandi a right to acquire 1,000 units of shares in Company M on 25.3.2012 at the offer price of RM3.00 per share within 3 years from 1.12.2012. Afandi exercised the share scheme on 25.3.2013.



6. Tax Treatment Of Benefit Arising From Share Scheme

6.1 Prior to year of assessment 2006

6.1.1 Prior to the year of assessment 2006, the method of determining the benefit from a share scheme is based on the difference between the market value of shares on the date the option was offered and the price offered by the employer. The amount of benefit from the share option scheme is a perquisite and is considered part of the gross income from employment under paragraph 13(1)*(a)* of the ITA 1967.

The computation of the benefit is as shown below:

	RM
Market value of shares on the date the option is offered	XXX
Less:	
Offer price of the shares on the date the option is offered (if any[2])	XXX
Perquisite under paragraph 13(1)*(a)* of the ITA 1967	XXX

[2]In the case where free shares are awarded by the company, the value is therefore NIL.

6.1.2 The benefit from the share scheme arises on the date the option is exercised. This benefit is related to the basis period in which the option was offered. The date the option is offered depends on the scheme offered.

6.2 With effect from year of assessment 2006

6.2.1 With effect from the year of assessment 2006, the method for the determination of the share benefit for employees is provided for under subsection 25(1A) and subsection 32(1A) of the ITA 1967.

6.2.2 Subsection 25 (1A) of the ITA 1967 provides that a benefit is derived from a share scheme if:

(a) the right to acquire shares in a company exists, and

(b) the right is exercised within the relevant period.

This benefit is considered as part of the gross income from an employment in the relevant period in which the rights are exercised.

6.2.3 Subsection 32(1A) of the ITA 1967 provides specifically for the computation of the share scheme benefit. The amount of benefit from the share scheme that is taken into account is as shown below:

	RM
Market value of share on the date the scheme is exercisable or Market value of share on the date the scheme is exercised whichever is lower	XXX
Less: Price paid for the share (if any)	<u>XXX</u>
Perquisite under paragraph 13(1)*(a)* of the ITA 1967	<u>XXX</u>

6.3 Tax treatment during the transitional period

6.3.1 With effect from year of assessment 2006, the new tax treatment has tax implications for employees who have been offered the employee share option scheme prior to the introduction of the provisions under subsection 25(1A) and subsection 32(1A) of the ITA 1967. Where the option which was offered prior to the introduction of the new provisions is not exercisable yet or has not been exercised, a concession has been granted to allow employees to opt for the tax treatment prior to the introduction of subsection 25(1A) and subsection 32(1A) of the ITA 1967 (tax treatment prior to year of assessment 2006). The election must be made in writing to the employer at the time the option is exercised.

6.3.2 This concession is only applicable to share schemes –

(a) where the offer price has been determined at the time the offer was made to the employee, and

(b) that have features of an Employee Share Option Scheme as explained in paragraph 7.1 of this Ruling.

However, this option is not applicable for share option schemes offered on or after 1.1.2006.

6.3.3 Pursuant to subsection 25(3) of the ITA 1967, should an employee opt for the tax treatment applicable prior to the year of assessment 2006, when he exercises the option 6 years after the date of offer, the share benefit will be taxed in the year of assessment which began 5 years before the beginning of the year of assessment in which he exercised the option.

6.4 Changes in share price after share scheme has been exercised

Any subsequent changes in the value of the shares after the share scheme has been exercised by the employee due to –

(a) fluctuations in the value of the shares

(b) changes in the share price resulting from bonus shares offered based on the shareholding of ordinary shares by the employee, or

(c) gain or loss arising from the disposal of the shares

will not influence and affect the taxable employment income.

6.5 Share benefits of share schemes that are exercised, assigned, released or acquired

6.5.1 Exercise of rights to a share scheme

Employees can only exercise a share scheme in respect of shares of the employer when the right is vested. The benefit arising from the exercise of that right is taxed as a perquisite as explained in paragraph 6.2.3 above.

Example 2

The facts are the same as in Example 1 except that the market value of the shares on the exercisable date and date of exercise are RM5.00 per unit and RM8.00 per unit respectively.

Afandi's right to the shares will vest on 1.12.2012. When Afandi exercises his right to the share scheme on 25.3.2013, he will acquire 1,000 units in respect of the shares of the company.

The benefit is determined as follows:

	RM
1,000 units X RM (5.00 or 8.00 per unit, whichever is lower)	5,000
Less: Price paid for the share	3,000
Perquisite under paragraph 13(1)*(a)* of the ITA 1967	2,000

6.5.2 Assignment of rights to a share scheme

The term assignment refers to the situation where an employee transfers the whole or part of his interest in rights acquired under an option agreement of a share scheme to a third party. An employee may be allowed to do so if there is a provision in the by-laws that allow the rights acquired under the share scheme to be assigned to another person. If the employee receives a consideration for the assignment of his rights acquired under the share scheme, that consideration is a perquisite and considered part of the gross income from employment.

Example 3

The facts are the same as in Example 2 except that in accordance with the by-laws of the share scheme, employees are allowed to assign the rights acquired under the share scheme to another person within the same company. On 25.3.2013, Afandi assigns his right to the share scheme to his colleague, Enon for RM5,000 instead of exercising the share scheme for himself.

As Afandi assigns his right to the share scheme to Enon, the consideration of RM5,000 arising from the assignment of the share scheme is to be included as a taxable perquisite for the year of assessment 2013.

6.5.3 Release of rights to a share scheme

By-laws of some share schemes may provide that an employee may release his right to acquire shares under a share scheme without exercising that right. This is provided for in situations such as those involving a takeover or reconstruction / restructuring or voluntary winding up of the company. If the employee receives a consideration for the release of his rights acquired under the share scheme, that consideration is regarded as a perquisite and considered part of the gross income from employment.

A right to acquire shares of a particular type may be exchanged for a right to acquire shares of another type. This may occur as a result of a takeover, reconstruction / restructuring of a company. If such an exchange takes place, the case would have to be referred to the Inland Revenue Board Malaysia (IRBM) for examination in order to determine the appropriate basis of assessment. It should be noted that after the rights have been received in the exchange, the relevant provisions are applicable when the new rights are subsequently exercised, assigned or released.

. **Example 4**

The facts are the same as in Example 1 except that Company M undergoes a restructuring exercise on 1.10.2013, that is, before Afandi exercises his right to the share scheme. On 31.10.2013, Company M pays Afandi RM20,000 for the release of his right to the share scheme offered to him.

The consideration of RM20,000 arising from the release of Afandi's right to the share scheme constitutes a perquisite and is to be included as part of the gross employment income for the year of assessment 2013.

6.5.4 Acquisition of rights to a share scheme

An employee acquires the right to a share scheme when his right is vested. Upon the acquisition of the right to a share scheme, the employee exercises this right. In other words at the date of acquisition of rights to a share scheme, the employee exercises his right.

Example 5

Rudy was offered an option to a share scheme by his employer on 1.4.2012. Although Rudy was offered the share scheme on 1.4.2012, he can only acquire the right to the share scheme upon satisfying the condition of continuing his employment with the same employer until 1.4.2014.

Rudy exercised his right to the share scheme immediately on 1.4.2014.

7. Computation Of The Value Of The Share Benefit

7.1 Employee Share Option Scheme (ESOS)

ESOS is a scheme that offers employees an option to purchase shares at a price specified at the time the offer is made. The date the option is offered, the date the option is first exercisable and the last date the option can be exercised is stated in the by-laws of the scheme. In the case where an ESOS is granted as follows:

Date of offer of option:	1.6.2012
First exercisable date:	2.1.2013
Final exercisable date:	30.5.2014
Price of share offered:	Stated during the offer

The employee can only exercise the option when they are vested during the exercisable period. When the employee exercises the option, the benefit from ESOS which is taxable as a perquisite will be determined.

7.1.1 Immediate vesting

Employees may be offered by their employer an option to purchase a specified number of shares in the company at a specified exercise price, with 100% immediate vesting on the date of offer.

Example 6

On 1.4.2012, Aaron was offered an option by the company to purchase 1,000 units of shares of the company valued at RM1.00 per unit. Aaron purchased 1,000 units of the shares on 1.4.2012 and the market value on that date was RM1.25 per unit.

The benefit from ESOS which is taxable as a perquisite is determined at 1.4.2012 as follows:

	RM
Market value of shares on 1.4.2012 (1,000 units X RM1.25)	1,250
Less: Share price on 1.4.2012 (1,000 units X RM1.00)	1,000
Perquisite under paragraph 13(1)*(a)* of the ITA 1967	250

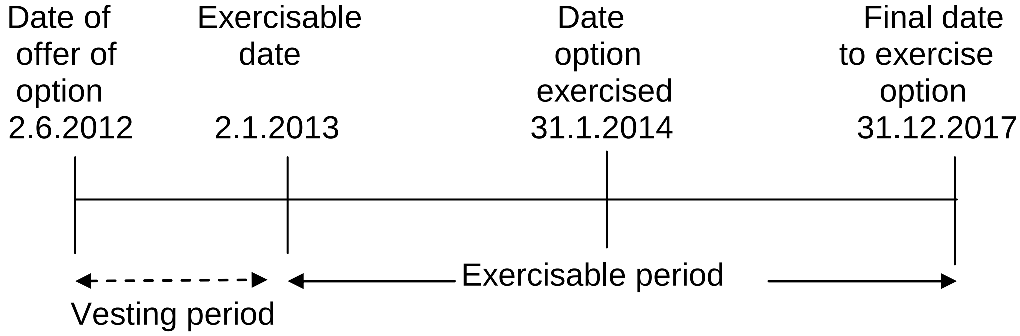
This benefit is taxable as part of Aaron's employment income in the year of assessment 2012.

7.1.2 Time based vesting

Employees may be offered by their employer an option to purchase a specified number of shares in the company at a specified exercise price, at any time within a specified time but only with respect to the vested option.

Example 7

A company offered a share option scheme to its employees on 2.6.2012 at the price of RM1.45 per unit. The market value of the share on 2.6.2012 was RM1.65 per unit. The employees were given 5 years to exercise the option starting from 2.1.2013 to 31.12.2017. The market value of the share on 2.1.2013 is RM1.85 per unit. On 31.1.2014, Govinda exercises that option by purchasing 1,000 units of the company shares. The market value of the shares on 31.1.2014 is RM1.95 per unit.



The benefit is determined at 31.1.2014 as follows:

	RM
1,000 units x RM(1.85 or 1.95 per unit, whichever is lower)	1,850
Less: Price paid for the share (1,000 units x RM1.45)	1,450
Perquisite under paragraph 13(1)*(a)* of the ITA 1967	400

This benefit is taxable as part of Govinda's gross employment income in the year of assessment 2014.

7.1.3 ESOS offered prior to to year of assessment 2006 and exercised 6 years after the date of offer

In some cases employees have been offered by their employer an option to purchase a specified number of shares of the company's stock at a specified exercise price prior to year of assessment 2006 but only exercise the option 6 years after the date of offer. The share benefit will be taxed in the year of assessment which began 5 years before the beginning of the year of assessment in which he exercised the option.

Example 8

Govinda was offered 5,000 units of shares by his employer on 31.8.2005 at the price of RM1.00 per unit. The market value of the share on 31.8.2005 was RM1.30 per unit. Govinda was allowed to exercise his share option from 1.1.2008 to 31.12.2014. He exercised his option on 31.1.2014.

As the share option were offered prior to 1.1.2006, Govinda has the right to choose the method of computation (as explained in paragraph 6.1 above) which is as follows:

	RM
Market value on the date of offer (1,000 units x RM1.30)	1,300
Less: Price offered (1,000 units x RM1.00)	1,000
Perquisite under paragraph 13(1)(a) of the ITA 1967	300

The benefit is considered a perquisite and taxed as part of Govinda's gross employment income in the year of assessment 2009 as explained in paragraph 6.3.3 above.

7.1.4 Scheduled vesting

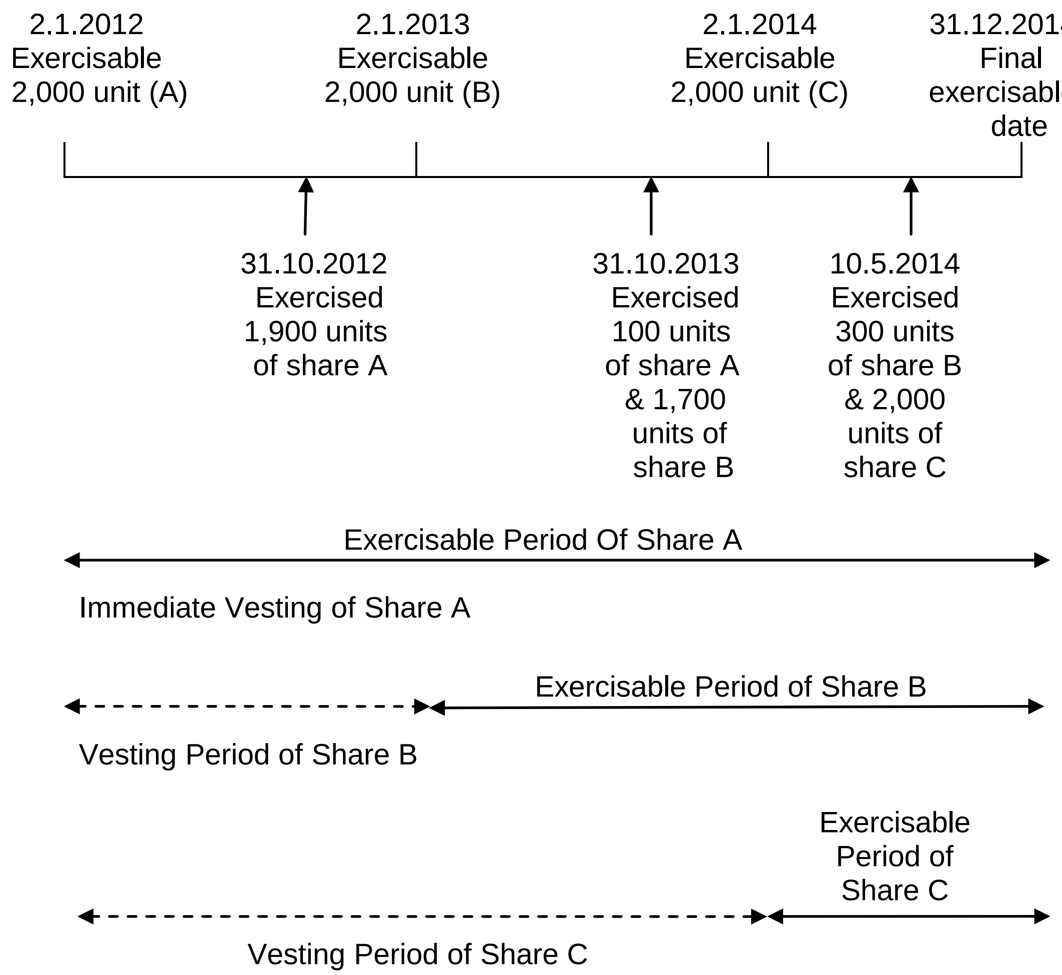
Employees may be offered by their employer an option to purchase a specified number of shares of the company's stock at a specified exercise price at specified dates according to a vesting schedule.

Example 9

An employee is offered by his employer an option to purchase company shares and details are as follows:

Option offered	6,000 units on 2.1.2012 at the price of RM1.50 per unit Final exercisable date is 31.12.2014
Date option and number of shares that are exercisable	2,000 units each year. Option exercisable on the first day of each year as follows: 2.1.2012 – market value RM2.80 per unit 2.1.2013 – market value RM3.50 per unit 2.1.2014 – market value RM4.00 per unit
Date option is exercised	1,900 units on 31.10.2012 – market value RM3.00 1,800 units on 30.9.2013 – market value RM3.80 2,300 units on 10.5.2014 – market value RM4.20

The vesting and exercisable periods are as shown below:



The computation of taxable benefit is as follows:

Year Of Assessment	Share Option Benefit	RM
2012	[3]1,900 units x RM [(3.00 or **2.80** per unit whichever is lower) less 1.50]	2,470.00
2013	100 units x RM [(3.80 or **2.80** per unit whichever is lower) less 1.50] 1,700 units x RM [(3.80 or **3.50** per unit whichever is lower) less 1.50]	130.00 3,400.00
2014	300 units x RM [(4.20 or **3.50** per unit whichever is lower) less 1.50] 2,000 units x RM [(4.20 or **4.00** per unit whichever is lower) less 1.50]	600.00 5,000.00

[3]Note: 1,900 x (RM2.80 less RM1.50) = 1,900 x RM1.30 = RM2,470

7.2 Employee Share Purchase Plan (ESPP)

ESPP scheme has features similar to ESOS except that the payment for the purchase of shares is through salary deduction. Salary deductions are made for a specific period depending on the by-laws of the scheme. The date when the final instalment is made through salary deductions is considered as the date the ESPP is exercised. All other dates stated (if any) are dates for the purpose of the administration of the share scheme only.

Example 10

A company launched ESPP for its employees on 1.2.2012. The option was offered to the employees on 28.2.2012. The market value of the shares on 28.2.2012 was RM1.65 per unit. Employees were offered the right to purchase shares every 12 months through salary deductions. The salary deductions from the month of March 2012 to February 2013 amounting to RM1,390 is utilised to purchase 1,000 units of shares at the price of RM1.39 per unit. The market value of the shares on 28.2.2013 is RM1.75 per unit.

The benefit from ESPP is determined at 28.2.2013 as follows:

	RM
[4]Market value of shares on 28.2.2013 (1,000 units X RM1.75 per unit)	1,750
Less: Price paid for shares (1,000 units X RM1.39 per unit)	1,390
Perquisite under paragraph 13(1)(*a*) of the ITA 1967	360

As the final instalment through salary deductions is on 28.2.2013, this benefit is taxable as part of the employee's employment income for year of assessment 2013.

[4]Market value

The exercisable date is the same as the date of exercise, that is, 28.2.2013. The market value of shares taken (RM1.75) is at the date of the final salary deduction (28.2.2013).

7.3 Share Award Scheme

7.3.1 Share Award

Share award schemes involve giving employees actual shares for free or for less than their market value instead of offering share options. Employers will determine the terms of the scheme in the by-laws and the employees will be given the right to own the shares as promised or cash in lieu of shares on the vesting date. Share award schemes include Restricted Shares Award or Restricted Stock Unit Plan.

(a) Free shares awarded

Employees may be awarded the company's or the holding company's shares free of charge by their employers.

Example 11

A managing director of a company was offered 1,000 units of the holding company's shares free of charge on 1.6.2012 in addition to the salary received by him. The shares were traded on Bursa Saham Malaysia and the market value of the shares on 1.6.2012 was equal to RM6.00 per unit. On 30.8.2012, the director sold his shares at RM8.00 per unit.

The computation of the benefit is as follows:

1,000 units X RM6.00 per unit = RM6,000.

The benefit is a perquisite and taxed as part of the gross employment income of the director for the year of assessment 2012.

Note:

The capital gain obtained from the sale of the shares does not have any tax consequences on the director.

(b) Free shares awarded on scheduled vesting dates

Employees may be awarded the company's or the holding company's shares free of charge by their employers according to scheduled vesting dates.

Example 12

On 1.6.2012, Shah Jihan was offered 20,000 units of company shares free of charge for his service of 5 years. The by-laws of the share scheme states that employees qualify for 20% of the 20,000 units of shares on 30 June on each of the following years. The value of the shares on 30 June each year is the market value of the shares on the vesting date.

Shah Jihan receives 20% of the 20,000 units of shares on 30 June of each of the following year when the conditions of the by-laws are fulfilled. The value of the shares on 30 June each year is the market value of the shares on the vesting date.

Computation of the benefit received on 30 June each year is as follows:

	Share Benefit On 30 June					
Year Of Assessment	2012	2013	2014	2015	2016	2017
Offer (Unit & %)	20,000	20% 4,000	20% 4,000	20% 4,000	20% 4,000	20% 4,000
Exercised (Unit)		4,000	4,000	4,000	[5] 2,000	[6] 6,000
Market Value (RM)		4.00	3.50	2.50	2.00	3.00
Benefit (RM)		16,000	14,000	10,000	4,000	18,000

[5]In the year of assessment 2016 Shah Jihan has the right to 4,000 units of shares. However, only 2,000 units of shares are awarded as the market value of the shares are very low.

As such, the benefit for year of assessment 2016 is as follows:

2,000 units x RM2.00 per unit = RM4,000

[6]In the year of assessment 2017 Shah Jihan has the right to 6,000 units of shares that is the balance of 2,000 units from year of assessment 2016 and 4,000 units for year of assessment

2017. Shah Jihan is awarded the balance of the 6,000 units of shares.

As such, the benefit for year of assessment 2017 is as follows:

6,000 units x RM3.00 per unit = RM18,000

7.3.2 Conditional share award

In cases where conditions are imposed when the share award schemes are offered, employees are only awarded the shares after all the conditions imposed have been met within the specified period of time.

(a) Shares of parent company awarded free

Shares of parent company may be awarded free of charge by employers to their employees subject to certain conditions that have been imposed by the employer.

Example 13

On 1.3.2012, a managing director of a company was offered 1,000 units of the parent company's shares free of charge in addition to the salary received on condition that he remains with the company for at least 2 years. The company is listed on the Singapore Stock Exchange and the market value of the share on 1.3.2012 is equivalent to RM5.40 per unit. The ownership of the shares will only be transferred to the director on 1.3.2015. The market value of the share on 1.3.2015 is RM5.00 per unit.

The benefit that is taxable as a perquisite on the director in the year of assessment 2015 is RM5,000 (1,000 units X RM5.00 per unit).

Note:

If the ownership of the shares are transferred on 8.3.2015, that is, other than the date stated in the by-laws of the share award scheme (1.3.2015), the taxable benefit is to be computed on the vesting date (1.3.2015) which has been specified in the by-laws.

(b) Shares of parent company awarded at a discount

Shares of parent company may be awarded at a discount by employers to their employees subject to certain conditions that have been imposed by the employer.

Example 14

The facts are the same as in Example 13 except that the managing director of the company was offered 1,000 units of the parent company's shares at RM1.00 per unit which is less than the market value of RM5.00 on 1.3.2012.

The benefit that is taxable as a perquisite on the director in the year of assessment 2015 is RM4,000 [1,000 units X (RM5.00 per unit less RM1.00)].

(c) Cash equivalent of shares of parent company awarded

Cash equivalent of shares of parent company may be awarded by employers to their employees subject to certain conditions that have been imposed by the employer.

Example 15

The facts are the same as in Example 13 except that the managing director of the company was offered a cash equivalent to the market value of 1,000 units of the parent company's shares on the vesting date.

The benefit that is taxable as a perquisite on the director in the year of assessment 2015 is RM5,000 (1,000 units X RM5.00 per unit).

7.4 Share Appreciation Rights Scheme (SARS)

Employers offer SARS to employees free of charge, giving the employees the right, at some specified time, to receive a cash award equal to the appreciation in value of a certain number of shares of the company stock. SARS is therefore an award, which provides employees the benefits of stock ownership without any actual transfer of shares occurring and without requiring the employees to pay for the cost of the shares. SARS are offered at a set price and generally have a vesting period and an expiration period. Once the SARS is vested on the employee, the employee will automatically be paid an amount equal to the value of share appreciation in cash, shares or a combination of both cash and shares in accordance with the by-laws of the scheme. The value of the share appreciation is the difference between the values of the company's underlying share price at the date of offer and on the date the rights are vested.

Example 16

On 1.3.2012, Jeswant Singh was offered SARS by his employer whereby he is eligible to obtain a sum equivalent the appreciation in value of 50,000 units of company shares on the date the rights are vested, that is, on 2.3.2016.

The benefit from SARS that is taxable on Jeswant Singh on 2.3.2016 is determined in accordance with the terms and conditions of the scheme, which is as follows:

Offered rights to the appreciation of the value of shares in cash on 1.3.2012 (Units)	50,000
Market value of shares per unit on 1.3.2012 (RM)	3.60
Market value of shares per unit on the date shares are vested 2.3.2016 (RM)	4.00
Benefit received on 2.3.2016 [(4.00 less 3.60) x 50,000] (RM)	20,000

Jeswant Singh will not own the company shares but will receive the benefit from the appreciation of the value of shares in cash, that is, RM20,000. This benefit is taxable as a perquisite in the year of assessment 2016.

7.5 Warrant scheme

A warrant is a security issued by a company giving the holder the right, but not the obligation to acquire the underlying shares at a specific price. That right expires at a specific date in the future. Generally warrants are issued in connection with a share or bond offering and is generally available to the public in the open market where it can be exercised or traded. If tradable warrants are issued by the company, such warrants can be traded on the Stock Exchange and a gain can be realised from the sale of the warrants on the Stock Exchange. The tradable warrants can also be exercised by purchasing the shares, or the warrant can be sold or allowed to expire.

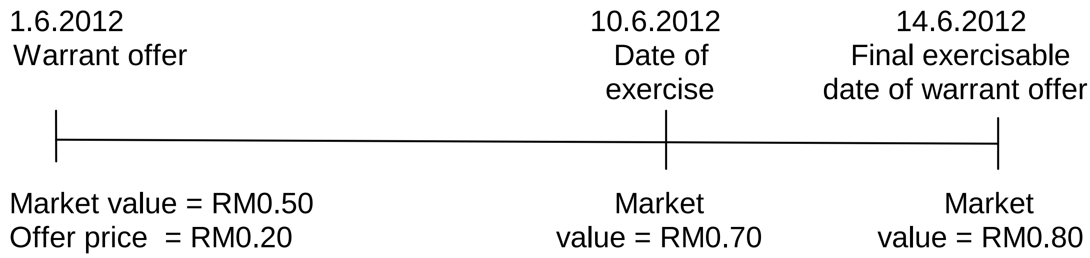
Employees of companies can also be offered rights to warrants as a share option. If tradable warrants are offered at a discount, the difference between the market value of the warrant and the price actually paid for the warrant would be subject to tax. The sale of the warrant will generate capital gains/loss for the employees who have been offered the warrants.

Example 17

On 1.6.2012 the company YY Sdn Bhd offered the subscription of warrants (share) at the price of RM0.20 per unit (market value was RM0.50 per unit) to its employees. Upon the exercise of the warrants, employees can purchase the company's shares at the price of RM5.00 per unit. The exercisable period of the warrants is from 1.6.2012 to 31.5.2016.

Daniel was offered 10,000 units of warrants that qualify him to purchase 10,000 units of shares and under the terms and condition of the subscription, the final exercise date of the warrant offer was 14.6.2012. Daniel exercised the offer on 10.6.2012 where the market value of the warrant was RM0.70. The market value of the warrant on the final exercisable date was RM0.80.

The situation is summarised as follows:



The benefit that is taxable as a perquisite for the year of assessment 2012 is determined as follows:

= Number of units of warrants X (Market value of warrant on the date the warrant is exercised less offer price per unit)

= 10,000 units X RM (0.70 - 0.20)

= 10,000 units X RM0.50

= RM5,000.

7.6 Additional shares (bonus) issued before employees exercise the share scheme offered

In the event that companies want to increase the number of company shares, additional shares (bonus) are issued. These additional shares may be offered to employees who were offered the share scheme in the ratio of the ordinary shares offered.

Example 18

On 2.1.2012 the company offered shares at the price of RM4.62 per unit to the employees. Employees are required to exercise this scheme on 1.10.2012 and 1.10.2013 and the maximum number of shares allowed to be exercised is 50% per annum. On 1.6.2012 additional shares were issued in the ratio of 2 shares for every 5 ordinary shares. The offer price was prorated after the additional shares had been issued at RM3.30 per unit. Farah had been offered 40,000 units ordinary shares on 2.1.2012 and exercises these shares on 1.10.2012 and 1.10.2013. The market value of the shares on 1.10.2012 and 1.10.2013 are RM4.20 and RM5.10 respectively.

Share Position On 2.1.2012

Number Of Shares (Unit) A	Offer Price (RM) B	Amount (RM) C = A X B
40,000	4.62	184,800.00

Share Position After Bonus Share Issue On 1.6.2012

Number Of Ordinary Shares (Unit) A	Ratio Of Bonus Shares (2 : 5) B	After Bonus Shares		
		Number Of Shares (Unit) C = A+B	Offer Price (RM) D	Amount (RM) E = C X D
40,000	40,000/5 X 2 = 16,000	40,000 + 16,000 = 56,000	3.30	184,800

Share benefit for Farah is computed as follows:

Date Exercised	Year Of Assessment	Number Of Ordinary Shares (Unit) A	Market Price (RM) B	Offer Price (RM) C	Share Benefit (RM) D = A x (B-C)
1.10.2012	2012	28,000	4.20	3.30	25,200
1.10.2013	2013	28,000	5.10	3.30	50,400

7.7 Right to acquire shares is replaced

In cases where a share scheme for the right to acquire shares is replaced with cash payments by the employer (as specified in the by-laws), the employee no longer has the right to acquire any shares of the employer. The replacement in the form of cash payments for the release of the right to the share scheme is also considered a gain or profit arising from an employment. As such, the receipt of cash by the employee is a perquisite under paragraph 13(1)*(a)* of the ITA 1967.

Example 19

The facts are the same as in Example 13 except that the shares offered are replaced with cash payments and the closing share price on 1.3.2012 was RM5.20 per unit. The director has been paid cash amounting to RM5,200 in cash by the parent company.

The benefit that is taxable as a perquisite on the director for year of assessment 2012 is the cash received, that is, RM5,200.

8. Responsibility Of Employee

The employee is required to –

(a) make an assessment by including the share benefit as income from employment for the basis period in which that share scheme is exercised,

(b) report in the Income Tax Return Form (ITRF) i.e. Form B, BE or M of the employee, the amount in respect of benefits from the share scheme that have been exercised, and

(c) ensure that income tax on that benefit is paid –

   (i) by deductions from remuneration under the Monthly Tax Deductions scheme (MTD) in the month the option is exercised or that total tax is paid by an instalment scheme based on the MTD (the number of instalments allowed is a maximum of 12 months),

   (ii) upon furnishing the ITRF, or

   (iii) by making an arrangement with IRBM to pay the amount of tax by way of instalments in which case the employer is required to comply with the CP38 directives issued by IRBM.

   Note:

   Should the employee opt to pay the tax on the share benefit by himself upon furnishing the ITRF instead of making payments through MTD, an election has to be made in writing to his employer at the time the share scheme is exercised.

9. Responsibility Of Employer

9.1 Where a company launches a share scheme for its employees, the company as an employer is required within 30 days after the expiry of the period of acceptance of the offer as specified in the by-laws of the share scheme to notify IRBM concerning the launch of the share scheme. The notification of the launch must be made by completing Form BT/MSSP/2012 (Appendix A) to be submitted to the IRBM branch that handles the employer's file. The following supporting documents must be kept for audit purposes:

(a) by-law of the share scheme

(b) Board of Directors' Resolution or the Resolution of the Extraordinary General Meeting which approves the launching of the share scheme

(c) sample copy of offer letter which states the offer price and the number of shares offered

(d) sample copy of letter of acceptance of the offer

(e) proof of market value of share based on the market price on the relevant dates (as mentioned in paragraph 5.5) which can be obtained from the newspaper or downloaded from the website that shows the trading activity of the share on that day, and

(f) in respect of a company offering shares in a company not listed on any Stock Exchange –

  (i) audited balance sheet (on exercisable date or exercise date) of the company offering shares to its employees, and

  (ii) sample copy of the share certificate to be issued to the employee, and

(g) details of employees accepting the offer – Appendix B.

9.2 Where an employee who has been offered a share scheme has exercised his right under the scheme, the employer must:

(a) ensure that the tax to be charged on the benefit that arises from the share scheme is deducted from the employee's salary based on the MTD Schedule (Rule 3) in the month in which the scheme is exercised,

(b) make the tax deductions from the remuneration of the employee who chooses to pay the tax by instalments through the monthly tax deductions (for a maximum of 12 months) commencing from the month in which the scheme is exercised, or

(c) ensure that an election so made by the employee to pay by himself the income tax arising on the perquisite upon furnishing the ITRF is done in writing at the time the share scheme is exercised.

[Where IRBM has agreed to allow the employee to pay tax on the share benefit by instalments with the issuance of a Directive of Tax Deduction CP 38, the employer must comply with the directive].

9.3 Employers are required to report this share benefit in the EA Form of the employee for the year the scheme is exercised. At the same time, employers are also required to submit details of the employees (see Appendix C) who have exercised their rights under a share scheme to the IRBM branch that handles the employer's file.

9.4 Employers are required to comply with the provisions of Section 82A of the ITA 1967 in relation to the responsibility to keep documents for audit purposes.

10. Expenses Related To Newly Issued Shares

10.1 Newly issued shares of a company

When a company fulfills its obligations under an employee share scheme using newly issued shares of its own company, the share issue merely involves a movement in the company's share capital account.

From the perspective of accounting (MFRS 2: Share-Based Payment), the expense (fair value of the shares) recognised for newly issued shares to fulfill the obligations under an employee share scheme is charged to the profit and loss account as staff costs. Although a charge is made to the profit and loss account as staff costs, the company did not incur actual cost that is wholly and exclusively incurred in the production of income. Therefore, no deductions are allowed for expenses claimed as staff costs in the profit and loss account for the issuance of newly issued shares to fulfill the company's obligations under an employee share scheme.

10.2 Newly issued shares of a holding / subsidiary company

A company that offers newly issued shares of its holding / subsidiary company to its employees under an employee share scheme will not be allowed deductions for the costs related to such new shares.

Director General of Inland Revenue,
Inland Revenue Board Malaysia.

APPENDIX A

FORM BT/MSSP/ 2012

NOTIFICATION BY EMPLOYER UNDER SECTION 83 OF THE INCOME TAX ACT 1967 IN RESPECT OF BENEFITS RECEIVED BY EMPLOYEES FROM EMPLOYEE SHARE SCHEME

(This form must be completed by the employer in one (1) copy and submitted to the IRBM branch within 30 days after the expiry date of the offer acceptance period by the employee as provided for in the by-law of the employee shares scheme benefit)

PENGARAH,
CAWANGAN ....
LEMBAGA HASIL DALAM NEGERI, MALAYSIA

1. Name of the employee share scheme launched:

   ____

2. Date of launch of scheme: ____

3. Duration of scheme: ____

4. Number of schemes launch prior to this date (if any):

   ____

5. Number of shares offered under the scheme:

   a. Quantity:- _____________(unit).

   b. Percentage compared to the paid-up share capital of the company: ________(%)

6. Information relating to the company launching the scheme:

   a. Name of company: ____
   b. Address of company:____

   c. Telephone No: ______________________
   d. Facsmile No:______________________

   e Company's Income Tax No.: C___________________________________
   f. IRBM Branch: ____
   g. Employer's Income Tax No.: E___________________________

7. Name of companies whose shares are offered:
____

8. Information of company if it is different from the company which launched the abovementioned scheme:

a. Name of company: ____
b. Country of origin: ____
c. Address: ____
d. Telephone & Facsimile No.:______________________
e. Income Tax No. (if any):C______________________________
f. IRBM Branch:____
g. Employer Income Tax No.: E ______________________________________

9.. Names of subsidiary/related company participating in the scheme above:

No.	Name	Address	Income Tax No	Tel No. & Fax	Employer Income Tax No

10. Summary of the scheme launched:

The summary should include the objectives and main features of the scheme, eligibility criteria, the source of funding including other benefits offered to the employees in connection with the share scheme such as a discount given on share price at the time of purchase, contributions from the employer to fund the purchase, allowance to bear the tax on the benefits arising from the share scheme, etc.

____

(Please prepare a separate sheet as an attachment)

11. Date of offer of share scheme:
____

(If share scheme is offered in stages, state the number and basis for ascertaining the respective dates)

12. Date share scheme is exercisable:

____

13. Date of exercise of share scheme:

____

14. Calculation of share scheme benefit

Date Of Exercise Of Share Scheme	Market Value Of Share (Date Exercisable Or Date Of Exercise Whichever Is Lower) (RM) (a)	Price Paid (RM) (b)	Benefit From Share Scheme (RM) (c) = (a) – (b)

15. Declaration by employer:

I hereby confirm that all the information furnished in this notification is true and correct.

Signature :

Name :

Designation :

Company's Official Seal:

Date:

APPENDIX B

LIST OF NAMES OF EMPLOYEES ACCEPTING THE OFFER UNDER THE EMPLOYEE SHARE SCHEME

1. Name of Scheme :
2. Date Launched :
3. Date Share Scheme Offered :

No.	Name	I.C No./ Passport No.	Income Tax No.	Address	Offer Price (RM)	No. Of Shares Offered

Signature :

Name :

Designation :

Company's Official Seal:

Date:

APPENDIX C

LIST OF NAMES OF EMPLOYEES WHO HAVE EXERCISED THE OFFER UNDER THE EMPLOYEE SHARE SCHEME

1. Scheme Name :
2. Date Launched :
3. Date Share Scheme Offered :

No.	Name	I.C No./ Passport No.	Income Tax No.	Address	Market Value Of Share (Date Of Exercisable Or Date Of Exercised Whichever Is Lower) (RM) **(A)**	Price Paid (RM) **(B)**	Benefit Per Share (RM) **(A – B) = (C)**	No. Of Shares Exercised **(D)**	Total Benefit (RM) **(D x E) = (F)**

Signature :

Name :

Designation:

Company’s Official Seal:

____

Date: