INLAND REVENUE BOARD OF MALAYSIA

SPECIAL DEDUCTION
FOR EXPENDITURE ON
TREASURY SHARES

PUBLIC RULING NO. 9/2013

Translation from the original Bahasa Malaysia text.

DATE OF ISSUE: 27JUNE 2013

Published by
Inland Revenue Board of Malaysia

Published on 27 June 2013

First edition on 27 June 2013

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A Public Ruling may be withdrawn, either wholly or in part, by notice of withdrawal or by publication of a new ruling.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

1. Objective

The objective of this Ruling is to explain the tax treatment of cost incurred by companies in acquiring treasury shares which are offered to employees under an employee share scheme.

2. Related Provisions

The provisions of the Income Tax Act (ITA 1967) related to this Ruling are sections 2 and 34D.

3. Interpretation

The words used in this Ruling have the following meaning:

3.1 “Share”, in relation to a company, includes stock other than debenture stock.

3.2 “Treasury share” means a share of a company that was previously issued but was repurchased, redeemed or otherwise acquired by the company and not cancelled.

3.3 “Company” means a body corporate and includes any body of persons established with a separate legal entity by or under the laws of a territory outside Malaysia and a business trust.

4. Employee Share Schemes

Generally, employee share schemes are offered by companies to gain staff loyalty and retaining key personnel in the organisation, boosting productivity and motivating employees towards higher performance. Employee share schemes may be given in-lieu of salaries or as part of performance-related remuneration. Companies may fulfil their obligations under employee share schemes using newly issued shares or by acquiring treasury shares. Treasury shares can be used by the company to offer Employee Share Option Scheme (ESOS) or share award scheme to employees. Please refer to Public Ruling No. 11/2012 titled Employee Share Scheme Benefit for an explanation on the schemes mentioned.

In the context of a group of companies, it is common for a holding company to offer its own ESOS or share award scheme to employees of its subsidiaries under a group employee share scheme. In return for the group scheme that covers their employees, the subsidiaries often agreed to pay the holding company a certain amount under a recharge agreement between the group of companies.

5. Treasury Shares

Treasury shares may be further explained as follows:

5.1 Repurchase or redemption of companies shares which are not cancelled

A public company with a share capital, if so authorised by its Articles of Association, is allowed to purchase its own shares and holds in treasury instead of cancelling them. The purchase must be made through the Stock Exchange on which the shares of the company are quoted and in accordance with the relevant rules of the Stock Exchange.

Treasury shares also include shares that are redeeemd by a public listed company from its shareholders.

5.2 Treasury shares of a holding company transferred to employees

A holding company may repurchase or redeem its own shares and transfer these treasury shares to its subsidiary companies to fulfil an obligation under its employee share schemes. In such cases, subsidiary companies could be unlisted companies that have been offered the treasury shares of their public listed holding company.

5.3 Treasury shares that are otherwise acquired by a holding company

Treasury shares may also be otherwise acquired by a holding company when the treasury shares of subsidiary companies are transferred to the employees of the holding company.

5.4 Treasury shares purchased by Special Purpose Vehicle (SPV) or trust

Shares of an issuing company listed on the Stock Exchange, which are purchased by a SPV or a trust for distribution to employees of the issuing company's subsidiary, no longer qualifies as treasury shares.

6. Special Deduction For Expenditure On Treasury Shares

6.1 Prior to the year of assessment 2013

The cost of acquiring a company's own shares (treasury shares) through the Stock Exchange for the purpose of fulfilling the company's obligations under employee share schemes was not a deductible expense. It is to be noted that the cost of acquiring treasury shares is not wholly and exclusively incurred in the production of a company's income and therefore it is not allowable as a deductible expense under subsection 33(1) of the ITA 1967.

6.2 From the year of assessment 2013

A new section 34D of the ITA 1967 is introduced to accord a special deduction on cost incurred in acquiring treasury shares by a company having a business source to fulfil its obligations under an employee share scheme. The timing of the deduction and the method of computing the amount that can be allowed as a deduction has been provided in Section 34D of the ITA 1967.

In accordance with the Malaysian Financial Reporting Standards 2 (MFRS 2) on Share-based Payment, the cost of repurchase of a company's shares in the open market to fulfil the obligations under an employee share scheme is charged to the profit and loss account as staff costs (cost of an employees' equity-based remuneration scheme). This cost incurred is meant to retain certain employees in the company and differs from salary payments. Employees are necessary for the operation of the company, therefore salary payments are necessary for the operation and revenue of the company.

6.3 Cost of treasury shares

Among the expenses that are directly related to the acquisition of treasury shares through the Stock Exchange are:

(a) brokerage charges, commission to broker and Central Depository System (CDS) charges,

(b) stamp duty, and

(c) interest costs incurred to finance the acquisition of treasury shares intended for use by company to fulfil obligations under an employee share scheme.

It is to be noted that interest costs incurred to finance the acquisition of treasury shares for purposes other than to fulfil obligations under an employee share scheme do not constitute cost of treasury shares.

For tax purposes, the above expenses should be included as the cost of purchase of the treasury shares. If the above expenses are expensed off to the profit and loss account, the necessary tax adjustments should be made.

7. Determination Of Special Deduction For Expenditure On Treasury Shares

7.1 Special deduction

In ascertaining the adjusted income of a company from a business source for the basis period for a year of assessment, a special deduction is allowable from the gross income for that period for any expenses incurred by that company in acquiring treasury shares [subsection 34D(1) of the ITA 1967].

7.2 Amount deductible

The amount deductible against the gross income of the company is determined as follows:

	RM
Cost of acquiring treasury shares which are transferred to the employee	XX
Less:	
Any amount payable by that employee for such treasury shares	XX
Amount of allowable deduction	XX

7.3 Timing of deduction for treasury shares

The timing of deduction for cost incurred by a company in acquiring treasury shares to be transferred to employees under an employee share scheme occurs when all of the following conditions are fulfilled:

(a) Company incurs cost for treasury shares applied for the benefit of employees

Normally, treasury shares are considered to have been applied for the benefit of employees when the treasury shares vest to the employee under an employee share scheme. This is usually determined as follows:

Type Of Employee Share Scheme	**When Do Shares Vest?**
Employee share option scheme (ESOS)	Date employee exercised option
Share awards (with vesting conditions)	Date shares vested
Share awards (with no vesting conditions)	Date shares offered

(b) Employee exercised his rights to acquire treasury shares [subsection 34D(2)(*b*) of the ITA 1967]

A deduction is allowable to a company in the basis period for a year of assessment when the employee exercised his ESOS to acquire the treasury shares.

(c) The company transfers treasury shares held by it to an employee when the employee acquires the legal and beneficial interest in the treasury shares [subsection 34D(6) of the ITA 1967]

An employee may acquire legal and beneficial interest in the treasury shares when the shares vest to the employee. The company is allowed a tax deduction for the cost of treasury shares acquired when -

(i) the legal and beneficial interest in the treasury shares have been acquired by the employee, and

(ii) the company has transferred the treasury shares held by it to the employee.

7.4 Determination of the cost of treasury shares transferred under an employee share scheme

A company may acquire treasury shares at different prices and at different times. The cost of acquiring treasury shares which are subsequently transferred to the company's employees under an employee share scheme will be determined on the basis that treasury shares acquired by the company at an earlier point in time are deemed to be transferred first [based on the First-in First-out (FIFO)] method.

7.5 Illustrations to show the timing of the special deduction allowable and the computation of the cost of treasury shares deductible based on the FIFO method.

Example 1

Jaya (M) Bhd closes its accounts on 31 December and its acquisitions of treasury shares are as follows:

Date Of Purchase	Number Of Treasury Shares Acquired	Cost Per Share (RM)
13.02.2013	20,000	3.00
15.05.2013	50,000	2.00
21.12.2013	10,000	3.00

Jaya (M) Bhd offered to its employee the above shares on the following dates:

Date Of Grant Of Option And Date Employee Exercised Option	Number Of Shares Exercised	Cost Per Share Exercised (RM)	Amount [Cost To Employee] (RM)
15.07.2013	30,000	1.00	30,000
01.08.2013	25,000	1.50	37,500
25.09.2013	5,000	3.00	15,000
30.10.2013	10,000	2.50	25,000
25.12.2013	5,000	0.50	2,500

Method of computation

(a) Determination of the timing and amount of deduction to be allowed for the expenditure on treasury shares acquired for an employee share scheme

Timing Of Deduction	At the date of exercise – 15.07.2013 01.08.2013 25.09.2013 30.10.2013 25.12.2013 (A deduction is allowable for Year of assessment 2013)	
Amount Of Deduction To Be Allowed	**Upon Exercise Of The Options On 15.7.2013**	
	Cost of 20,000 shares acquired on 13.2.2013	60,000
	Cost of 10,000 shares acquired on 15.5.2013	20,000
	Cost of 30,000 shares transferred on 15.7.2013	80,000
	Less:	
	Exercise price payable by employee	30,000
	Deduction allowable	50,000
	Upon Exercise Of The Options On 1.8.2013	
	Cost of 25,000 shares acquired on 15.5.2013	50,000
	Cost of 25,000 shares transferred on 1.8.2013	50,000
	Less:	
	Exercise price payable by employee	37,500
	Deduction allowable	12,500

<table>
<tr><td rowspan="3">Amount Of Deduction To Be Allowed</td><td>Upon Exercise Of The Options On 25.9.2013
Cost of 5,000 shares acquired on 15.5.2013 — 10,000
Cost of 5,000 shares transferred on 25.9.2013 — 10,000
Less:
Exercise price payable by employee — 15,000
Deduction allowable — NIL

The excess of RM5,000 (15,000 less 10,000) is credited to an account to be kept by the company for the purpose of section 34D of the ITA 1967.</td></tr>
<tr><td>Upon Exercise Of The Options On 30.10.2013
Cost of 10,000 shares acquired on 15.5.2013 — 20,000
Cost of 10,000 shares transferred on 30.10.2013 — 20,000
Less:
Exercise price payable by employee — 25,000
Deduction allowable — NIL

The excess of RM5,000 (25,000 less 20,000) is credited to the account mentioned above.</td></tr>
<tr><td>Upon Exercise Of The Options On 25.12.2013
Cost of 5,000 shares acquired on 21.12.2013 — 15,000
Cost of 5,000 shares transferred on 25.12.2013 — 15,000
Less:
Exercise price payable by employee — 2,500
— 12,500
Less:
Amount in the account — 10,000
Deduction allowable — 2,500

Total tax deduction to be allowed for YA 2013 — 65,000
(50,000 + 12,500 + 2,500)</td></tr>
</table>

(b) Summary of the cost of treasury shares incurred by the company based on FIFO method

Date Employee Exercised Option	Units	Cost Of Shares To The Employer				
		Date Shares Purchased	Units	Cost Per Share / Amount (RM)		Balance Of Units That Can Be Offered
15.07.2013	30,000	13.02.2013 15.05.2013	20,000 10,000 30,000	3.00 2.00	(60,000) (20,000) (80,000)	Nil 40,000 (50,000 - 10,000)
01.08.2013	25,000	15.05.2013	25,000 25,000	2.00	(50,000) (50,000)	15,000 (40,000 - 25,000)
25.09.2013	5,000	15.05.2013	5,000 5,000	2.00	(10,000) (10,000)	10,000 (15,000 - 5,000)
30.10.2013	10,000	15.05.2013	10,000 10,000	2.00	(20,000) (20,000)	Nil (10,000 - 10,000)
25.12.2013	5,000	21.12.2013	5,000 5,000	3.00	(15,000) (15,000)	5,000 (10,000 - 5,000)

(c) Summary of the expenditure on treasury shares that is allowable for deduction to the company for the year of assessment 2013 under Section 34D

Date Employee Exercised Option	Cost Of Treasury Shares (RM) [A]	Payment By Employee (RM) [B]	Allowable Expenditure (RM) [C]	Account[1]
15.07.2013	80,000	30,000	50,000	Nil
01.08.2013	50,000	37,500	12,500	Nil
25.09.2013	10,000	15,000	Nil	5,000
30.10.2013	20,000	25,000	Nil	5,000
25.12.2013	15,000	2,500	2,500	(10,000)
Jumlah	175,000	110,000	65,000	Nil

[1]An account has to be kept by the company to record the excess from the payment made by the employee to exercise the option. The amount in the account is utilised to reduce the cost of future treasury shares. Refer to paragraph 7.6 below for further explanation.

7.6 Treatment of excess of amount payable by an employee over the cost of treasury shares

(a) Account

In the case where any amount payable by an employee for any treasury shares transferred to him exceeds the cost incurred by the company in acquiring the treasury shares transferred, the excess will be credited to an account to be kept by the company. The excess that is credited into the account is applied to reduce the cost of subsequent treasury shares which will be transferred to its employees. The cost to the company will be reduced –

(i) to zero, if the balance in the account is equal to or exceeds the cost, or

(ii) by the balance in the account, if the balance is less than the cost,

and the amount of the reduction is debited to the account.

(b) No deduction due to company

No deduction is due to the company in the case where any amount payable by an employee for any treasury shares transferred to him exceeds the cost incurred by the company in acquiring the treasury shares transferred.

(c) Excess of amount payable is not taxable

The excess of the amount payable by the employee over the cost of the treasury shares incurred by the company will not be subject to tax.

Example 2

The facts are the same as in Example 1.

The application of the excess amount payable by the employee in the account to reduce the cost of treasury shares under the FIFO method is as follows:

Date	Transaction	RM	Account (RM)
15.07.2013	Cost of treasury shares Less: Amount paid by the employee Allowable expenditure Balance to the account	80,000 (30,000) 50,000	 Nil
01.08.2013	Cost of treasury shares Less: Amount paid by the employee Allowable expenditure Balance to the account	50,000 (37,500) 12,500	 Nil
25.09.2013	Cost of treasury shares Less: Amount paid by the employee Allowable expenditure Balance to the account	10,000 (15,000) (5,000) Nil	 5,000
30.10.2013	Cost of treasury shares Less: Amount paid by the employee Allowable expenditure Balance to the account Total amount in the account	20,000 (25,000) (5,000) Nil	 5,000 10,000
25.12.2013	Cost of treasury shares Less: Amount paid by the employee Less: Amount from the account Allowable expenditure Balance in the account	15,000 (2,500) 12,500 (10,000) 2,500	 (10,000) Nil
	Total amount in the account		Nil

(a) The total allowable expenditure for the company for the year of assessment 2013 is RM65,000 (50,000 + 12,500 + 2,500).

(b) The account is only applicable in a situation where a company repurchases its own shares and offers them to its own employees. A subsidiary company that pays the holding company the cost of acquisition of the treasury shares of the holding company need not keep such an account as mentioned in paragraph 7.6 (a) above.

7.7 Recharges from holding company for shares transferred to subsidiary's employees - Timing and amount of deduction to be allowed

Where a holding company repurchased its own shares and transferred them to employees of a subsidiary under an employee share scheme, the subsidiary is allowed a deduction on the –

	RM
Cost recharged to it by the holding company, or Cost of acquisition of treasury shares by the holding company whichever is lower	XX
Less: Amount payable by the employee for the treasury shares	XX
Deduction allowable	XX

The deduction is allowable on the date the shares are transferred or on the date the payment is made to the holding company by the subsidiary company, whichever is later. The deduction allowed for cost recharged is explained below.

(a) Holding company does not recharge its subsidiary company

(i) No deduction is allowed to the holding company

The cost incurred by a holding company in repurchasing its own shares for transfer to the employees of its subsidiary is not wholly and exclusively incurred in the production of the holding company's income. As such, if the holding company does not recharge the subsidiary for the treasury shares transferred to its subsidiary's employees, no deduction is allowed to the holding company for the cost of the shares transferred.

(ii) No deduction is allowed to the subsidiary company

If the cost of treasury shares transferred by a holding company to employees of its subsidiary under an employee share scheme is not recharged by the holding company, the subsidiary is not entitled to claim a deduction for the treasury shares as the subsidiary does not incur any cost for the shares.

(b) Holding company recharges its subsidiary company

(i) Amount of deduction where cost of treasury shares is lower than the amount recharged

A subsidiary company may be recharged by its holding company an amount for treasury shares which is more than the holding company's cost of acquisition of its treasury shares. In such cases, the deduction allowable to the subsidiary is restricted to the holding company's cost of acquisition of treasury shares less the amount payable by the subsidiary's employees.

(ii) Amount payable by employees is higher than cost of treasury shares or amount of recharge

Where the amount payable by the subsidiary's employees is higher than the holding company's actual cost of treasury shares or the amount of recharge, whichever is the lower, no tax deduction is allowed to the subsidiary.

(iii) Treasury shares not applied for the benefit of employees

A holding company may recharge its subsidiaries for treasury shares transferred before an employee share option scheme is exercised by or a share award scheme vest to, the subsidiary's employees. This means that the treasury shares have not yet been applied by the subsidiary for the benefit of its employees. As such, no deduction is allowed to the subsidiary at the point of recharge. A deduction will be allowed when the shares are subsequently transferred to the employees.

(iv) Liability to pay the recharge for treasury shares that have been applied for the benefit of employees

In some instances, the holding company may have transferred its treasury shares to its subsidiary but only recharges the subsidiary some time after the subsidiary has applied the treasury shares for the benefit of its employees. In such cases, the subsidiary may claim a deduction only when it is liable to pay the holding company for the shares transferred.

(v) Date of recharge

The date of recharge is the date of the invoice or the date on which the subsidiary is liable to pay the holding company for the shares transferred, whichever is the later.

Any grace period given by the holding company to the subsidiary to defer the payment is purely an arrangement between the holding company and the subsidiary and does not affect the date of recharge for tax purposes.

(c) Illustration to show the deduction allowed for transfer of treasury shares from the holding company to its subsidiary under an employee share scheme.

Example 3

Gayat Tinggi Holding Bhd is the holding company to Rendah Leper Sdn Bhd. Gayat Tinggi has repurchased 60,000 units of its own shares at RM2 per unit from the open market on 6.7.2013. On 30.7.2013, Gayat Tinggi transferred all the said shares to Rendah Leper for RM240,000. Rendah Leper had offered its employees the shares at the value of RM1.00 per unit on 1.11.2013 and the employees had exercised the options on the same date.

The cost of treasury shares is the comparison between the actual cost and the amount of recharge, whichever is the lower less the amount payable by the employee.

	RM
Actual cost incurred (RM2.00 X 60,000)	120,000
Amount recharged	240,000
Cost of treasury shares (the lower amount)	120,000
Less: Payment by employees	(60,000)
Allowable expenditure (Rendah Leper Sdn Bhd)	60,000

Note:

(a) The recharge by the holding company to its subsidiary is in excess of RM120,000 (RM240,000 less RM120,000). The excess is taxable on the holding company if it is in the business of dealing with shares. If the holding company is in a business other than the business of dealing with shares, the excess is considered capital income to the holding company.

(b) If the recharge by the holding company to the subsidiary is lower than the actual cost of the treasury shares, the deduction allowable to the subsidiary is the lower amount recharged.

(c) In the case of a holding company repurchasing its shares to be given to employees of its subsidiary, the date the subsidiary entitled for the tax deduction is the date the shares are transferred by the holding company to employees of the subsidiary or the date payment is made by the subsidiary to the holding company, whichever is the later.

Example 4

The facts are the same as in Example 3. However, the payment made by the employee upon the exercise of the options on 1.11.2013 is RM130,000 instead of RM60,000.

The cost of treasury shares is the comparison between the actual cost and the amount of recharge, whichever is the lower less the amount payable by the employee.

		RM
Actual cost incurred	(RM2 X 60,000)	120,000
Amount recharged		240,000
Cost of treasury shares (the lower amount)		120,000
Less: Payment by employees		(130,000)
Allowable expenditure (Rendah Leper Sdn Bhd)		Nil

No tax deduction is allowed to Rendah Leper Sdn Bhd as the amount payable by Rendah Leper's employees (RM130,000) is higher than the holding company's actual cost of treasury shares or the amount of recharge, whichever is the lower [as explained in paragraph 7.7(b)(ii) above].

7.8 Illustration to show the deduction of cost of treasury shares against a business source(s).

Example 5

The facts are the same as in Example 3 except that Gayat Tinggi Holding and its subsidiary Rendah Leper are both listed investment holding companies. Rendah Leper's business income from the following sources for year of assessment 2013 (basis period January to December annually) are as follows:

Source of Income	Gross income (RM)	Direct Expenses (RM)
Rental	200,000	80,000
Interest	50,000	60,000
Total	250,000	

Common expenses	RM20,000
Capital allowance	RM8,000
Cost of treasury shares	RM60,000

Computation Of Rendah Leper's Aggregate Income

			RM	RM
(a)	Rental (gross)		200,000	
	Less:			
	Direct expenses	80,000		
	Common expenses			
	200,000 / 250,000 X 20,000	16,000		
	Cost of treasury shares			
	200,000 / 250,000 X 60,000	**48,000**	144,000	
	Adjusted rental income		56,000	
	Less:			
	Capital allowances			
	200,000 / 250,000 X 8,000		6,400	
	Statutory business income from rental			49,600
(b)	Interest (gross)		50,000	
	Less:			
	Direct expenses	60,000		
	Common expenses			
	50,000 / 250,000 X 20,000	4,000		
	Cost of treasury shares			
	50,000 / 250,000 X 60,000	12,000		
		76,000		
	restricted to	50,000	50,000	
	Current year loss (disregarded)	26,000		
	Adjusted income from interest			NIL
	Less:			
	Capital allowances (disregarded)			
	50,000 / 250,000 X 8,000 = 1,600			
	Statutory income from interest			NIL
	Aggregate income			49,600

The amount deductible of RM60,000 for the cost of treasury shares is apportioned and allowed against both business sources. The unabsorbed capital allowance of RM1,600 and the unabsorbed expenses of RM26,000 (RM76,000 less RM50,000) is disregarded [paragraph 60FA(3)(a)(ii) of the ITA 1967].

Example 6

The facts are the same as in Example 5 except that Rendah Leper, an investment holding company listed on Bursa Malaysia also carries on a business activity (not as the main activity) and receives management fees in addition to rental and interest income. Rendah Leper's business income from the following sources for year of assessment 2013 (basis period January to December annually) are as follows:

Source of Income	**Gross income (RM)**	**Direct Expenses (RM)**
Management fees	45,000	48,000
Rental	150,000	80,000
Interest	50,000	42,000
Total	245,000	

Common expenses	RM20,000
Capital allowance	RM8,000
Cost of treasury shares	RM60,000

Computation Of Rendah Leper's Aggregate Income

			RM	**RM**
(a)	Management fees (gross) Less: Direct expenses Common expenses $\frac{45,000}{245,000}$ X 20,000 **Cost of treasury shares** $\frac{45,000}{245,000}$ X 60,000 restricted to Current year business loss Adjusted business income from management fees Less: Capital allowances c/f	 48,000 3,673 11,020 62,693 45,000 17,693	45,000 45,000	 NIL

	45,000 X 8,000 245,000 Statutory income from management fees	1,469		NIL
(b)	Rental (gross) Less: Direct expenses Common expenses 150,000 X 20,000 245,000 **Cost of treasury shares** 150,000 X 60,000 245,000 Adjusted business income from rental Less: Capital allowance 150,000 X 8,000 245,000 Statutory income	 80,000 12,245 36,735	150,000 128,980 21,020 4,898	16,122
(c)	Interest (gross) Less: Direct expenses Common expenses 50,000 X 20,000 245,000 **Cost of treasury shares** 50,000 X 60,000 245,000 restricted to Current year loss (disregarded) Adjusted income from interest Less: Capital allowance(disregarded) 50,000 X 8,000 = 1,633 245,000 Statutory income from interest	 42,000 4,082 12,245 58,327 50,000 8,327	50,000 50,000	 NIL NIL
	Aggregate income Less: Current year business loss [subsection 44(2) of the ITA 1967] restricted to Loss carried forward Total income/Chargeable income		 17,693 16,122 1,571	16,122 16,122 NIL

(i) The amount deductible of RM60,000 for the cost of treasury shares is apportioned and allowed against all sources of income.

(ii) The adjusted loss from the business source of management fees (not the main business activity) can be deducted against the aggregate income for year of assessment 2013. The excess of the adjusted loss of RM1,571 that cannot be absorbed in year of assessment 2013 can be carried forward and deducted against the aggregate of statutory income from business sources for subsequent years of assessment. The unabsorbed capital allowances of RM1,469 can be carried forward to subsequent years of assessment.

(iii) The unabsorbed expenses of RM8,327 and the unabsorbed capital allowance of RM1,633 for interest source is disregarded. [paragraph 60FA(3)(a)(ii) of the ITA 1967].

For further explanation on tax treatment for investment holding company listed on the Bursa Malaysia, refer to Public Ruling No. 3/2011 dated 10.3.2011 titled Investment Holding Company.

8. Non-application Of Special Deduction

The special deduction under section 34D of the ITA 1967 is not applicable to the following:

8.1 Newly issued shares

A company that issues new shares to fulfil its obligations under an employee share scheme has not incurred any cost wholly and exclusively in the production of its income. The issuance of new shares represents a movement in its share capital account. The expense recognised under MFRS 2 is the fair value of the share at the time the shares are transferred to an employee. The fair market value of the shares is not regarded as cost to the company.It does not reperesent a legal or contractual liability to pay the relevant amount as required under subsection 33(1) of the ITA 1967. Therefore, there is no actual cost incurred by the company for its newly issued shares. The expense recognised under MFRS 2 is only a notional cost to the company. As such, the company is not eligible to claim a deduction for the cost of issuing new shares.

8.2 Newly issued shares of a holding or subsidiary company

A company that offers newly issued shares of its holding or subsidiary company to its employees under an employee share scheme will not be allowed deductions for the cost related to the acquisition of such new shares. This is consistent with the treatment as explained in paragraph 8.1.

8.3 Warrants

A company is not eligible to claim a deduction for newly issued warrants or tradable warrants of its own company, its holding or its subsidiary company to fulfil its obligations under an employee share scheme. This is due to the fact that 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.

9. Gains Or Losses Upon Transfer / Disposal Of Treasury Shares

In accordance with MFRS 2, transactions involving share-based payments made to employees are to be measured by reference to the fair value of the shares at the date of offer. In the case of a public listed company, the fair value of shares is that of the market value.

The difference between the purchase cost and the fair value of the treasury shares upon transfer or disposal of these shares can give rise to gains or losses. Such gains or losses arising from treasury shares transferred under an employee share scheme are disregarded for tax purposes. Tax deduction is allowed based on cost of treasury shares. With regards to the gains or losses arising from the disposal of treasury shares under other circumstances, the applicable tax treatment should be detemined based on the facts of each case.

Example 7

The facts are the same as in Example 1 and the market value of the Company's shares on 15.7.2013 is RM4.00 per share.

When the treasury shares were transferred to the employee when ESOS was exercised on 15.7.2013, the gains/loss upon transfer of the treasury shares is as follows:

		RM
Value of treasury shares transferred to employee on 15.7.2013 (30,000 units X RM4.00)		120,000
Purchase cost of treasury shares		
13.02.2013 - 20,000 units X RM3.00	60,000	
15.05.2013 - 10,000 units X RM2.00	20,000	80,000
Gains (Loss) from disposal of treasury shares		40,000

Gains of RM40,000 arising from treasury shares transferred under an employee share scheme are disregarded for tax purposes.

10. Documents Required

Companies claiming a deduction for cost of treasury shares transferred to employees under an employee share scheme are required to furnish the relevant documents upon audit by the Inland Revenue Board of Malaysia. Among the documents include:

(a) A description of the employee share scheme (by-laws of the scheme, source of shares acquired).

(b) Confirmation that no claims are made for newly issued shares of the company or the holding company and that the claims are made in accordance with section 34D of the ITA 1967.

(c) Details of treasury shares acquired (source and date of of acquisition, number of units and price per unit).

(d) Details of the cost of treasury shares incurred based on FIFO method, and

(e) Amount payable by employees for shares transferred to them.

11. Glossary

11.1 “Offer price” is the price to be paid by an employee for each share offered under an employee share scheme.

11.2 “Option” is the right offered by a company to its employee in respect of a number of shares at a specified price to be exercised at a future date.

11.3 ”Stock” constitutes the equity stake of its owner.

11.4 “Public company” means a company other than a private company.

11.5 “Exercisable date” means the date an employee is allowed to exercise his right (which had been granted by the company) to acquire shares in a company.

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

11.7 “Date of offer” means the date a company grants its employee the option to acquire shares in the company, its holding company or its subsidiaries.

11.8 “Vest” means having an absolute right on the shares.

Director General of Inland Revenue,
Inland Revenue Board of Malaysia.