

TECHNICAL

Direct Taxation

SPECIAL DEDUCTION FOR EXPENDITURE ON TREASURY SHARES -- PUBLIC RULING (PR) NO. 9/2013

The Inland Revenue Board (IRB) issued the above [Public Ruling](#) on 27 June 2013. The salient points in the PR are summarized below:-

Subject	Reference
Objective <ul style="list-style-type: none"> The PR explains the tax treatment of cost incurred by companies in acquiring treasury shares (TS) which are offered to employees under an employee share scheme (ESS). 	Para 1
Background <p>The PR explains the following as a prelude to the explanation on the special deduction:</p> <ul style="list-style-type: none"> <i>Employee share scheme</i> – Meaning and general operation of ESS <i>Treasury shares</i> – the following circumstances giving rise to TS are listed in para 5: <ul style="list-style-type: none"> i) Repurchase or redemption of companies' shares which are not cancelled; ii) Holding company purchases or redeems its own shares and transfers these TS to its subsidiaries to fulfill obligations under ESS; iii) TS acquired by holding company when TS of subsidiary are transferred to employees of the holding company; iv) Shares acquired by a Special Purpose Vehicle (SPV) or trust for distribution to employees of the issuing company and its subsidiaries <u>are not qualified</u> as treasury shares. 	Para 4 Para 5.1 to 5.3 Para 5.4
Special deduction <ul style="list-style-type: none"> <i>Prior to the year of assessment (YA) 2013</i> – The IRB is of the view that cost of acquiring TS is not a deductible expense; <i>From YA 2013</i> – a special deduction on cost of acquiring TS to fulfil obligations under an ESS by a company having a business source, is allowed under s.34D of the Income Tax Act 1967 (ITA) Cost of TS includes the following: <ul style="list-style-type: none"> a) brokerage charges, commission to broker and Central Depository System charges; b) stamp duty; c) interest costs to finance the acquisition of TS to fulfil obligations under an ESS. 	Para 6.1 Para 6.2 Para 6.3

<p>Computation and timing</p> <ul style="list-style-type: none"> The amount deductible against gross income is computed as follows: <table border="0" style="width: 100%;"> <tr> <td>Cost of acquiring TS transferred using First-in First-out (FIFO) method</td> <td style="text-align: right;">XX</td> </tr> <tr> <td><u>Less:</u> Amount payable by the employee for the shares</td> <td style="text-align: right;"><u>XX</u></td> </tr> <tr> <td>Amount allowable for deduction</td> <td style="text-align: right;"><u>XX</u></td> </tr> </table> If there is an excess of the amount payable by an employee over the cost of TS, the excess is credited to an account kept by the company and will be applied to reduce the cost of subsequent TS which will be transferred to its employees. Any such excess is not taxable on the company and no deduction is due to the company (See Example 2). A company is allowed a tax deduction for the cost of TS acquired when – <ol style="list-style-type: none"> The cost incurred is for TS applied for the benefit of employees; Employee exercised his rights to acquire TS; The company has transferred the TS held to the employee; and The legal and beneficial interest in the TS has been acquired by the employee. Examples 1, 3, 4, 5 and 6 illustrate the timing of claim and computation of deduction under various scenarios. 	Cost of acquiring TS transferred using First-in First-out (FIFO) method	XX	<u>Less:</u> Amount payable by the employee for the shares	<u>XX</u>	Amount allowable for deduction	<u>XX</u>	<p>Para 7.2 & 7.4</p> <p>Para 7.6 See Example 2.</p> <p>Para 7.3</p>
Cost of acquiring TS transferred using First-in First-out (FIFO) method	XX						
<u>Less:</u> Amount payable by the employee for the shares	<u>XX</u>						
Amount allowable for deduction	<u>XX</u>						
<p>Other points to note</p> <ul style="list-style-type: none"> <u>Non - Application of s.34D:</u> <ul style="list-style-type: none"> when <u>new shares</u> are issued by a company, its holding or subsidiary company to its employees to fulfil its obligations under an ESS; when a company offers <u>newly-issued warrants or tradable warrants</u> of its own, its holding or subsidiary company to fulfil its obligations under an ESS. The difference between the purchase cost and the fair value of TS (treatment in accordance with MFRS 2) upon transfer or disposal of these shares represents a gain or loss to the company. Such gains or losses arising from TS transferred under an ESS are disregarded for tax purposes. (See Example 7.) Supporting documents for a claim for a deduction under s. 34D, including framework of the ESS, details of cost of the TS based on the FIFO method, and amounts payable by employees for shares transferred to them, must be furnished upon audit by the IRB. 	<p>Para 8</p> <p>Para 9</p> <p>Para 10</p>						

You may write to the Institute at technical@ctim.org.my or secretariat@ctim.org.my in respect of any concern or comments you may have on the Public Ruling.

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