



INLAND REVENUE BOARD MALAYSIA

SHARE SCHEMES BENEFIT FOR CROSS BORDER EMPLOYEES

PUBLIC RULING NO. 12/2012

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**Public Ruling No. 12/2012
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SHARE SCHEMES BENEFIT FOR CROSS BORDER EMPLOYEES

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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A Public Ruling may be withdrawn, either wholly or in part, by notice of withdrawal or by publication of a new ruling.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 tax treatment in respect of a benefit arising from an employee share scheme received by –

- (a) employees from Malaysia who are seconded to work overseas, and
- (b) foreign national employees who are seconded to Malaysia.

2. Related Provisions

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

3. Interpretation

The words used in this Ruling have the following meaning:

3.1 “Seconded” means –

- a) an employee is transferred temporarily by the employer to perform related duties elsewhere and
- b) after the completion of his temporary duties the employee returns to the same employer to continue his employment.

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

3.3 “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.

3.4 “Net asset value” is the value of the assets after deducting the liabilities.

3.5 “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.

3.6 “Employee” in relation to an employment, means –

- (a) where the relationship of servant and master subsists, the servant
- (b) where the relationship does not subsist, the holder of the appointment or office which constitutes the employment.

3.7 “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.
- 3.8 “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.
- 3.9 “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.
- 3.10 “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.
- 3.11 “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.
- 3.12 “Stock” means the capital or principal fund raised by a corporation through subscriber’s contributions or sale of shares.
- 3.13 “Date of offer” means the date employers grant their employees the option to acquire shares in a company, its holding company or its subsidiaries.
- 3.14 “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.
- 3.15 “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.
- 3.16 “Vest” means having an absolute right on the shares.

4. Tax Treatment Of Share Scheme Benefits For Cross Border Employees

4.1 Classification of share scheme benefits

The taxation of benefits resulting from share schemes may differ from country to country. Similar to many countries generally, Malaysia classifies the benefits resulting from employee share schemes as income from employment. As such, a benefit arising from employee share schemes is classified as employment income for tax treaty purposes under the Income

from Employment Article in Agreements for the Avoidance of Double Taxation (DTA) concluded by Malaysia.

4.2 Double taxation

When an employee from Malaysia is seconded to work overseas or a foreign national is seconded to work in Malaysia after having received an offer to a share scheme from his employer, he may be charged to tax on the benefit from the employee share scheme in more than one country.

In the case where the same benefit is taxed both in Malaysia and in another country, a bilateral credit can be allowed by the country of residence on the foreign tax paid provided a DTA exists between the two countries. The bilateral credit is allowed in Malaysia pursuant to section 132 of the ITA 1967. In the case where no DTA exists between Malaysia and the other country, a relief can be allowed unilaterally in Malaysia on the foreign tax paid pursuant to section 133 of the ITA 1967.

4.3 Chargeability of the share scheme benefit

The conditions laid down in the Article on Income from Employment in the relevant DTAs allow countries to tax remuneration derived from employment exercised in that country. This applies regardless of when that income may be paid, credited or otherwise definitely acquired by the employee. As such, the employee can be taxed in Malaysia at a later date even when the employee is no longer employed in Malaysia.

4.4 Share schemes

4.4.1 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, employers may also offer cash equivalent to the value or appreciation in value of shares without transfer of ownership of shares. This is discussed further in Public Ruling titled Employee Share Schemes Benefit.

4.4.2 Conditional share scheme

An employer can award shares to an employee with conditions or restrictions attached. For example, there may be a condition that the employee cannot sell the shares for a certain period of time or that the shares will be forfeited if certain performance levels are not achieved.

In the case where a share scheme is offered to an employee on condition that he provides employment services to the same employer or companies within the same group for a specified period, the employment benefit derived from that scheme should not be attributed to services performed after that specified period. This specified period is known as the vesting period in which an employee must work for an employer in order to be eligible for their shares in the company's share scheme.

Example 1

Haikal was offered a conditional share scheme by his employer on 1.3.2011. Haikal is required to serve the company for 3 years (1.3.2011 to 28.2.2014) before he is able to exercise the share scheme on the exercisable date. The vesting period for the conditional share scheme offered is from 1.3.2011 to 28.2.2014.

As Haikal had fulfilled the requirement to exercise his right to the share scheme on or after the exercisable date on 28.2.2014, the share benefit is attributable to the year he actually exercises his option. If Haikal chooses to exercise the scheme in 2014, then he will be taxed on the benefit from the share scheme in the year of assessment (YA) 2014.

4.4.3 Unconditional share scheme

On the other hand, if an employee who has been offered an unconditional share scheme which is exercisable –

- (a) immediately (immediate vesting), or
- (b) at a specific date

is seconded abroad or is given significant new responsibilities, the scheme clearly relates to the new functions to be performed by the employee during a specific future period. In such cases, the scheme relates to these new functions even if the right to exercise the scheme is acquired before these functions are performed. The benefit of the scheme would relate to the services rendered in the whole period between the date of offer and the exercisable date of the share scheme.

4.4.4 Share benefit taxed in the YA share scheme is exercised

Pursuant to subsection 25(1A) of the ITA 1967, if an employee who is offered the option to acquire shares (conditional or unconditional shares) in the company has been seconded overseas, the apportioned share benefit will be treated as gross income from employment in the

year of assessment in which the option to the share scheme is exercised.

4.4.5 Formula

The share scheme benefit is computed in accordance with subsection 32(1A) of the ITA 1967. The computation of 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>

4.5 Allocation of the benefit from share schemes where employment is exercised in more than one country

Where a share scheme is considered to be derived from employment exercised in more than one country, it will be necessary to determine the portions of the share scheme derived from the employment exercised in each country. In such a case, the benefit attributable to the share scheme should be considered to be derived from Malaysia in proportion to the number of days including leave days during which employment has been exercised in Malaysia to the total number of days during which the employment services from which the share scheme derived has been exercised. The formula is as follows:

$$\begin{array}{rcl}
 \text{Share scheme benefit} & & \text{No. of working days in Malaysia} \\
 \text{from date of offer to} & & \text{(including leave days)} \\
 \text{exercisable date} & \times & \text{from date of offer to exercisable date} \\
 & & \hline
 & & \text{No. of working days from date of} \\
 & & \text{offer to exercisable date}
 \end{array}$$

(Refer to Appendix 1 for a guide on the determination of the number of working days in a year)

5. Employees From Malaysia Seconded To Work Overseas

5.1 In relation to share schemes offered to employees working in Malaysia, a charge to Malaysian tax will continue to arise even where the schemes are exercised after these employees stopped working in Malaysia.

- 5.2 If the overseas country where the employee has been sent to work is a treaty country, the treaty provisions relating to the employment income and the domestic tax laws of that overseas country will determine whether the benefit from the exercise of the share scheme will be subject to tax in that country.

For an explanation on taxation of cross border employees, please refer to Public Ruling No.1/2011 titled Taxation Of Malaysian Employees Seconded Overseas.

- 5.3 If part of the benefit which is taxable in Malaysia is also liable to income tax in the other country overseas, bilateral credit relief in accordance with the respective country's tax laws can be allowed by the country of residence.
- 5.4 Where the other country overseas is a non-treaty country, a unilateral credit can be allowed by Malaysia if the benefit from the share scheme is taxed in both countries.
- 5.5 Illustrations of cases where Malaysian employees who have been offered share schemes in Malaysia and are subsequently seconded to work in treaty and non-treaty countries

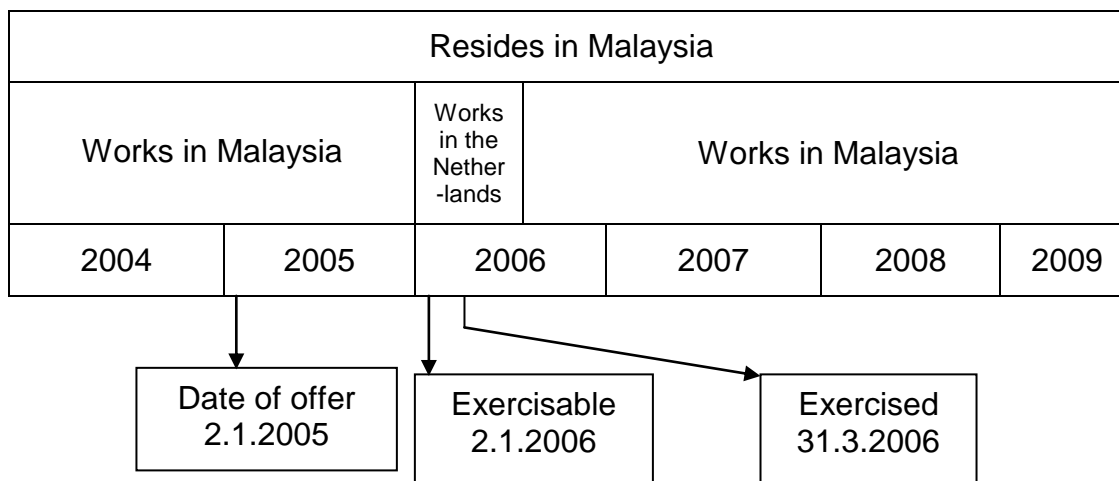
Example 2

Share scheme exercised during secondment to treaty country (where the income attributable to the duties performed in the treaty country is deemed derived from Malaysia)

Johan works for an engineering company in Malaysia which offered a share option scheme to all its employees on 2.1.2005. Johan who resides and works in Malaysia was seconded to work in the Netherlands for 6 months beginning from 1.1.2006. Details are as follows:

Scheme offered in Malaysia	7,500 units on 2.1.2005 @ RM1.50 per unit
Market value of shares	RM5.50 per unit on 2.1.2005
Exercisable date	2.1.2006
Market value of shares	RM6.00 per unit
Seconded to work in a DTA country for 6 months	1.1.2006 to 30.6.2006
Share scheme can be exercised within 6 years (exercisable period)	From 2.1.2006 to 2.1.2012
Date scheme exercised	31.3.2006
Market value of share	RM7.50 per unit on 31.3.2006

The situation can be summarized as follows:



- (a) After examining the facts of the case, it is found that the employment income from the overseas assignment is deemed derived from Malaysia pursuant to paragraph 13(2)(c) of the ITA 1967.
- (b) In this case, since the share scheme was offered in YA 2005 but only exercised in YA 2006, the employee is allowed a concession to opt for the benefit taxable as a perquisite according to the tax treatment prior to YA 2006 (computation as explained in paragraph 6 of the Public Ruling titled Employee Share Schemes Benefit).

Tax Treatment Prior To YA2006

The option was exercised on 31.3.2006. The benefit taxable as a perquisite is computed as follows:

Formula

Number of shares X (market value of share per unit at date of offer less offer price at date of offer)

Year Of Assessment 2005

7,500 units X (RM5.50 less RM1.50 per unit)	RM30,000
Perquisite under paragraph 13(1)(a), ITA 1967	RM30,000

Tax Treatment With Effect From YA 2006

The option was exercised on 31.3.2006. The benefit taxable as a perquisite is computed as follows:

Year of Assessment 2006

(refer to paragraph 4.4.5 of this Ruling for the formula)

7,500 units X [(RM6.00 or RM7.50 per unit whichever is lower) less RM1.50]	RM33,750
Perquisite under paragraph 13(1)(a), ITA 1967	RM33,750

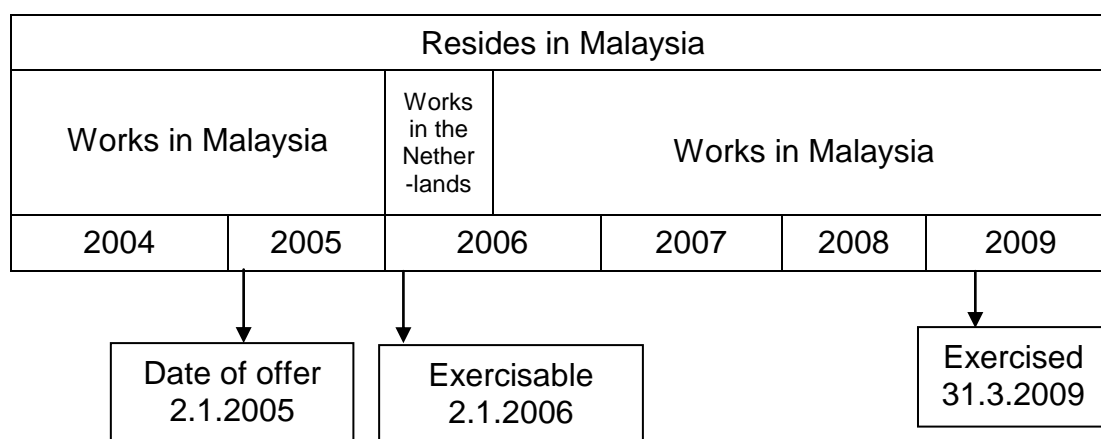
- (c) Although Malaysia has a DTA with the Netherlands, this does not preclude Malaysia from taxing the employment income deemed derived from Malaysia. If the employee is taxable in the Netherlands according to the DTA and the domestic tax laws of that country, a bilateral credit can be given by the country of residence.

Example 3

Share scheme exercised after secondment to treaty country (where the income attributable to the duties performed in the treaty country is deemed derived from Malaysia)

The facts are the same as in Example 2 except that the share option scheme was exercised on 31.3.2009 after Johan completed his secondment to the Netherlands. The market value of share at the exercise date is RM8.00 per unit.

The situation can be summarized as follows:



- (a) After examining the facts of the case, it is found that the employment income from the overseas assignment is deemed derived from Malaysia pursuant to paragraph 13(2)(c) of the ITA 1967.
- (b) In this case, since the share scheme was offered in YA 2005 but only exercised after YA 2006, the employee is allowed a concession to opt for the benefit to be taxed as a perquisite according to the tax treatment prior to YA 2006 (computation as explained in paragraph 6 of the Public Ruling titled Employee Share Scheme Benefit).

Tax Treatment Prior To YA2006

The option was exercised on 31.3.2009. The benefit taxable as a perquisite is computed as follows:

Formula

Number of shares X (market value of share per unit at date of offer less share price at date of offer)

Year Of Assessment 2005

7,500 units X (RM5.50 less RM1.50 per unit)	RM30,000
Perquisite under paragraph 13(1)(a), ITA 1967	RM30,000

Tax Treatment With Effect From YA 2006

The option was exercised on 31.3.2009. The benefit taxable as a perquisite is computed as follows:

Year Of Assessment 2009

(refer to paragraph 4.4.5 of this Ruling for the formula)

7,500 units X (RM6.00 or RM8.00 per unit whichever is lower) less RM1.50	RM33,750
Perquisite under paragraph 13(1)(a), ITA1967	RM33,750

- (c) Although Malaysia has a DTA with the Netherlands, this does not preclude Malaysia from taxing the employment income deemed derived from Malaysia. If the employee is taxable in the Netherlands according to the DTA and the domestic tax laws of that country, a bilateral credit can be allowed by the country of residence.

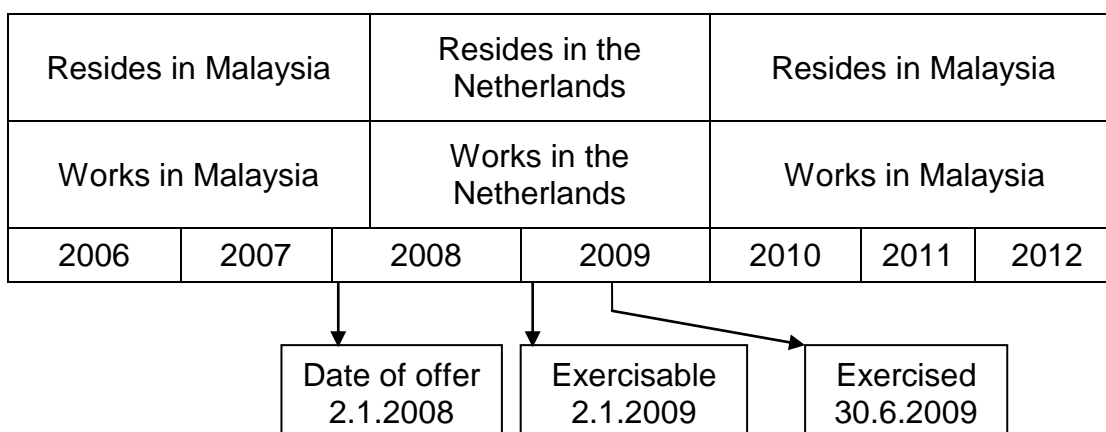
Example 4

**Share scheme exercised during secondment to treaty country
(where the income attributable to the duties performed in the treaty
country is not deemed derived from Malaysia)**

Selva works for an oil and gas company in Malaysia which offered a share option scheme to all its employees on 2.1.2008. Selva who resides and works in Malaysia was seconded by his employer in Malaysia to work at a subsidiary company in the Netherlands for 22 months. Details are as follows:

Scheme offered in Malaysia	7,500 units on 2.1.2008 @ RM1.50 per unit
Market value of shares	RM5.00 per unit on 2.1.2008
Exercisable date	2.1.2009
Market value of shares	RM5.50 per unit
Seconded to work in a DTA country	1.3.2008 to 31.12.2009 (22 months)
Exercisable period	2.1.2009 to 2.1.2012
Date scheme exercised	30.6.2009
Market value of share	RM7.50 per unit on 30.6.2009

The situation can be summarized as follows:



- (a) After examining the facts of the case, it is found that the employment income from the overseas assignment is not deemed derived from Malaysia by virtue of paragraph 13(2)(c) of the ITA 1967. As such, the portion of the share scheme benefit that is related to the employment

carried on in Malaysia prior to the overseas assignment will be taxed in Malaysia.

- (b) The option was exercised on 30.6.2009. The benefit taxable as a perquisite is computed as follows:

Year of Assessment 2009

(refer to paragraph 4.4.5 of this Ruling for the formula)

7,500 units X (RM5.50 or RM7.50 per unit whichever is lower) less RM1.50	RM30,000
Perquisite under paragraph 13(1)(a), ITA 1967	RM30,000

The employee is taxed in Malaysia for the period 2.1.2008 to 28.2.2008 (39 working days). The period from the date of offer to the exercisable date is 2.1.2008 to 2.1.2009 (247 working days).

The proportion of the benefit taxable in Malaysia is computed according to the formula as shown in paragraph 4.5 of this Ruling.

$$30,000 \quad \times \quad \frac{39}{247} \quad = \quad \text{RM4,737}$$

The amount of benefit taxable as a perquisite for YA 2009 is RM4,737.

- (c) The employee's tax liability in the Netherlands will depend on the DTA between Malaysia and the Netherlands, and the domestic tax laws of the Netherlands.

Example 5

Share scheme exercised after secondment to treaty country (where the income attributable to the duties performed in the treaty country is not deemed derived from Malaysia)

The facts are the same as in Example 4 except that Selva exercised his share options on 30.6.2010 after his secondment to the Netherlands. The market value of share at the exercise date was RM8.00 per unit.

The situation can be summarized as follows:

- (c) The employee's tax liability in the Netherlands will depend on the DTA between Malaysia and the Netherlands, and the domestic tax laws of the Netherlands.

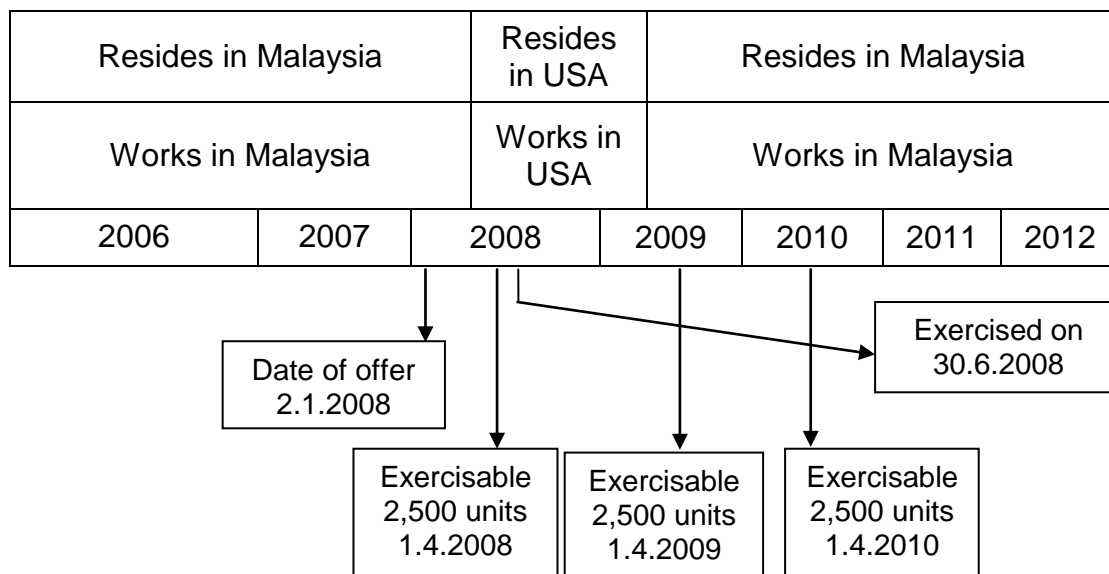
Example 6

Share scheme exercised during secondment to non-treaty country (where the income attributable to the duties performed in the non-treaty country is not deemed derived from Malaysia)

Ethan works with a telecommunication company in Malaysia which offered a share scheme to its employees on 2.1.2008. Ethan who resides and works in Malaysia was seconded by his employer in Malaysia to work at the parent company in United States of America (USA) from 1.3.2008 to 1.3.2009. Details are as follows:

Scheme offered in Malaysia	7,500 units on 2.1.2008 @ RM2.00 per unit
Market value of shares	RM3.00 per unit on 2.1.2008
Seconded to work in a non-DTA country	1.3.2008 to 1.3.2009
Exercisable period	1.4.2008 to 1.4.2011
Exercisable date	2,500 units on 1.4.2008 (market value @ RM2.50 per unit) 2,500 units on 1.4.2009 (market value @ RM3.50 per unit) 2,500 units on 1.4.2010 (market value @ RM4.50 per unit)
Date scheme exercised	2,500 units on 30.6.2008 (market value @ RM5.00 per unit)

The situation can be summarized as follows:



After examining all the facts of the case, it is found that the employment income in the USA is not deemed derived from Malaysia pursuant to paragraph 13(2)(c) of the ITA 1967.

The benefit taxable as a perquisite is computed as follows:

Year of Assessment 2008

(refer to paragraph 4.4.5 of this Ruling for the formula)

2,500 units X (RM2.50 or RM5.00 per unit whichever is lower) less RM2.00	RM1,250
Perquisite under paragraph 13(1)(a), ITA 1967	RM1,250

Apportionment Of The Benefit Taxable In Malaysia

(refer to paragraph 4.5 of this Ruling for the formula)

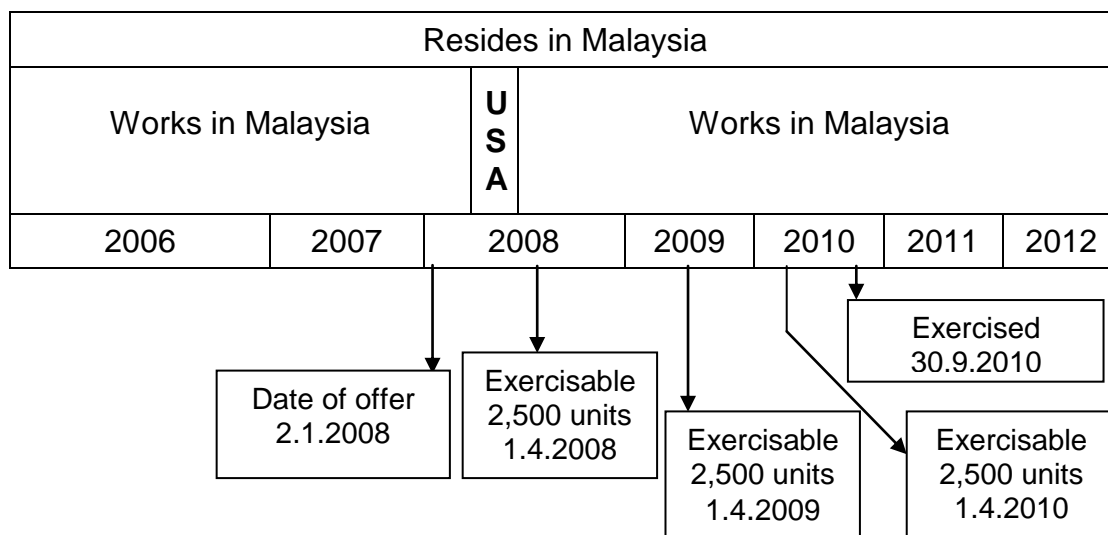
The number of working days from the date of offer (2.1.2008) to the first exercisable date (1.4.2008)	60
The number of working days in Malaysia from date of offer (2.1.2008) to the first exercisable date (1.4.2008)	39
Taxable benefit is RM1,250 X $\frac{39}{60}$	RM812.50

Example 7

Share scheme exercised after secondment to non-treaty country (where income attributable to the duties performed in the non-treaty country are deemed derived from Malaysia)

The facts are the same as example 6 except that Ethan was seconded to work at the parent company in USA beginning from 1.3.2008 to 31.3.2008 (31 days). Ethan exercised his rights to purchase all 7,500 shares on 30.9.2010 (market value @RM5.00 per unit) after his secondment to the USA.

The situation can be summarized as follows:



- (a) After examining the facts of the case, it is found that the employment income from the overseas assignment is deemed derived from Malaysia pursuant to paragraph 13(2)(c) of the ITA 1967.
- (b) The benefit taxable as a perquisite is computed as follows:

Year of assessment 2010

(refer to paragraph 4.4.5 of this Ruling for the formula)

2,500 units X (RM2.50 or RM5.00 per unit whichever is lower) less RM2.00	RM1,250
2,500 units X (RM3.50 or RM5.00 per unit whichever is lower) less RM2.00	RM3,750
2,500 units X (RM4.50 or RM5.00 per unit whichever is lower) less RM2.00	RM6,250
Perquisite under paragraph 13(1)(a), ITA 1967	RM11,250

- (c) The benefit from the share scheme is taxable as a perquisite in Malaysia. Since there is no DTA between Malaysia and USA, an employee who is taxed on the same income in both countries in accordance with the respective domestic tax laws may be allowed a unilateral credit relief in Malaysia.

6. Foreign Nationals Seconded To Work In Malaysia

- 6.1 When foreign nationals are offered share schemes by their employers overseas prior to their secondment to Malaysia, it is necessary to determine whether the benefit from share schemes are in respect of employment exercised in Malaysia or home country overseas. The share benefit that accrues up to the exercise of the scheme will be treated as an employment income to which the Article on Income from employment / Dependent Personal Services (commonly Article 15 of DTA) applies.
- 6.2 Generally, if the duties of an overseas employment are exercised in Malaysia such that the employment income is taxable here, then a charge to Malaysian tax is likely to arise on the benefit from the exercise of the share schemes offered by the employer overseas but exercised while in Malaysia. If the foreign national who is offered a share scheme by his overseas employer prior to his secondment to Malaysia only exercises his right to the share scheme after he returns to his overseas office, a charge to Malaysian tax is also likely to arise.

For an explanation on taxation of foreign nationals working in Malaysia, please refer to:

- (a) Public Ruling No.6/2011 titled Foreign Nationals Working In Malaysia – Tax Treatment, and
- (b) Public Ruling No.2/2012 titled Foreign Nationals Working In Malaysia – Tax Treaty Relief.
- 6.3 Subject to the provisions of the relevant DTA, the charge to Malaysian tax upon exercise will be limited to the proportion of the option gain which relates to working days in Malaysia.
- 6.4 If part of the option gain which is taxable in Malaysia is also taxed in a DTA country, then the country of residence may allow a bilateral credit in respect of income tax paid in the other country.

- 6.5 Illustrations of cases where foreign nationals who have been offered share schemes overseas and are subsequently seconded to work in Malaysia

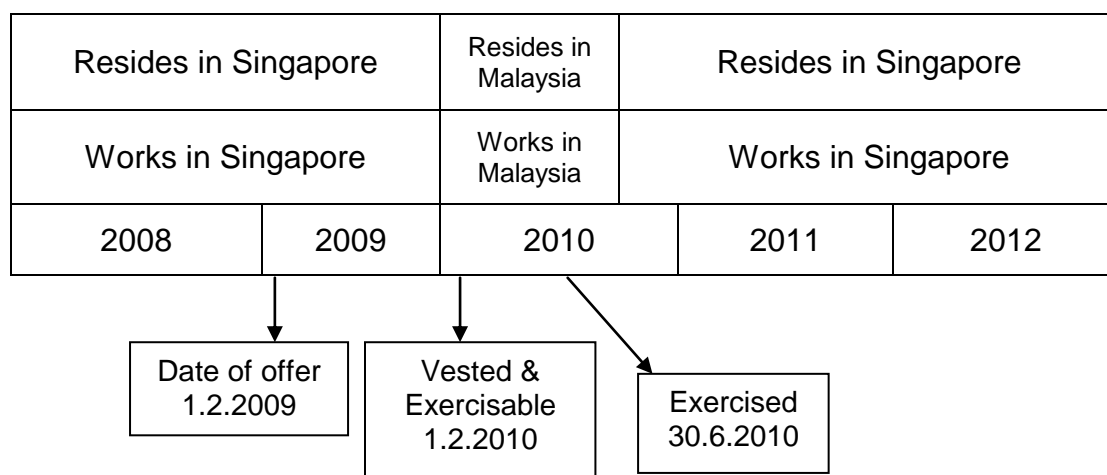
Example 8

Share scheme exercised during secondment to Malaysia

A multinational company in Singapore offered a share scheme to its employee, Randy an engineer on 1.2.2009. Under the conditions of the share scheme, Randy was required to work for the company for at least one year including a secondment overseas. The share scheme vests on 1.2.2010. On 1.1.2010, Randy was seconded to work at an independent power plant in Malaysia for 8 months. Details of the share scheme offered are as follows:

Scheme offered in Singapore	10,000 units on 1.2.2009 @ SGD1.00 per unit
Market value of shares	SGD3.00 per unit on 1.2.2009
Seconded to work in Malaysia, a DTA country	1.1.2010 to 31.8.2010 (8 months)
Exercisable period	From 1.2.2010 to 30.6.2013
Exercisable date	10,000 units on 1.2.2010
Market value of shares	SGD8.00 per unit
Date scheme exercised	30.6.2010
Market value of shares	SGD6.00 per unit

The situation can be summarized as follows:



- (a) All facts of the case have been examined and it has been found that all the conditions of the Income from Employment Article in the DTA between Singapore and Malaysia have been satisfied. Randy is taxed in Malaysia.
- (b) As Randy had exercised his share scheme while he was on secondment in Malaysia, the benefit taxable as a perquisite is computed as follows:

Year of Assessment 2010

(refer to paragraph 4.4.5 of this Ruling for the formula)

10,000 units X (SGD8.00 or SGD6.00 per unit whichever is lower) less SGD1.00	SGD50,000
Perquisite under paragraph 13(1)(a), ITA 1967	SGD50,000

Apportionment Of The Benefit Taxable In Malaysia

(refer to paragraph 4.5 of this Ruling for the formula)

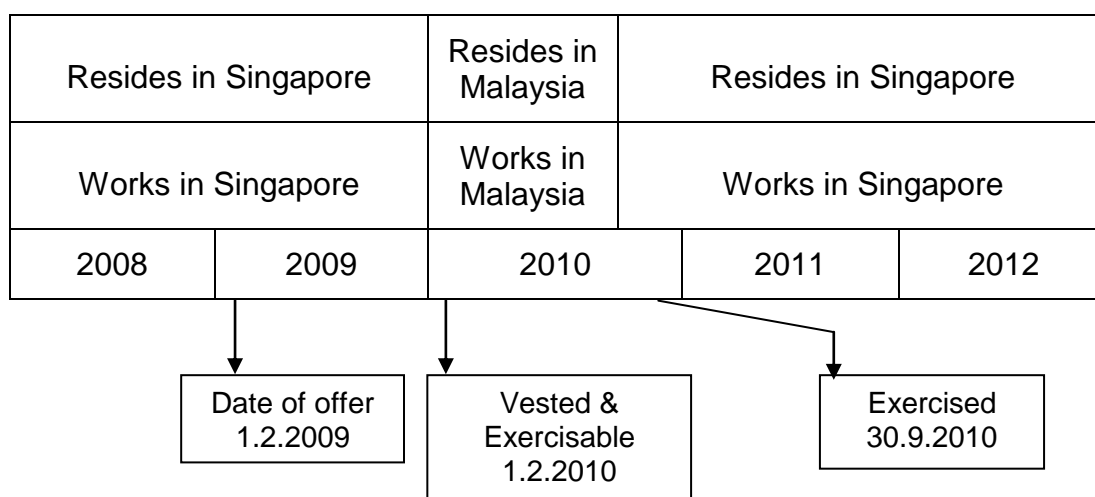
The number of working days from the date of offer (1.2.2009) to the exercisable date (1.2.2010)	249
The number of working days in Malaysia from the date the employment commenced (1.1.2010) to the date of cessation (31.8.2010)	166
The number of working days in Malaysia from the date the employment commenced (1.1.2010) to the exercisable date (1.2.2010)	20
The number of working days in Malaysia from the date the employment commenced (1.1.2010) to the date option is exercised (30.6.2010)	123
Taxable benefit is SGD50,000 X $\frac{20}{249}$	SGD4,016
Currency conversion SGD1 @RM2.3863	RM9,583

Example 9

Share scheme exercised after secondment to Malaysia

The facts are the same as in Example 8 except that Randy exercised his right to the share scheme in Singapore on 30.9.2010 i.e. after his secondment to Malaysia was completed. The market value of shares on 30.9.2010 was SGD 6.00 per unit.

The situation can be summarized as follows:



- (a) All facts of the case have been examined and it has been found that all the conditions of the Income from Employment Article in the DTA between Singapore and Malaysia have been satisfied. Randy is taxed in Malaysia.
- (b) As Randy had exercised his right to the share scheme on his return to Singapore after his secondment to Malaysia was completed, the benefit taxable as a perquisite is computed as follows:

Year of Assessment 2010

(refer to paragraph 4.4.5 of this Ruling for the formula)

10,000 units X (SGD8.00 or SGD6.00 per unit whichever is lower) less SGD1.00	SGD50,000
Perquisite under paragraph 13(1)(a), ITA 1967	SGD50,000

Apportionment Of The Benefit Taxable In Malaysia

(refer to paragraph 4.5 of this Ruling for the formula)

The number of working days from the date of offer (1.2.2009) to the exercisable date (1.2.2010)	249
The number of working days in Malaysia from the date the employment commenced (1.1.2010) to the exercisable date (1.2.2010)	20
Taxable benefit is SGD50,000 X $\frac{20}{249}$	SGD4,016
Currency conversion SGD1 @RM2.3863	RM9,583

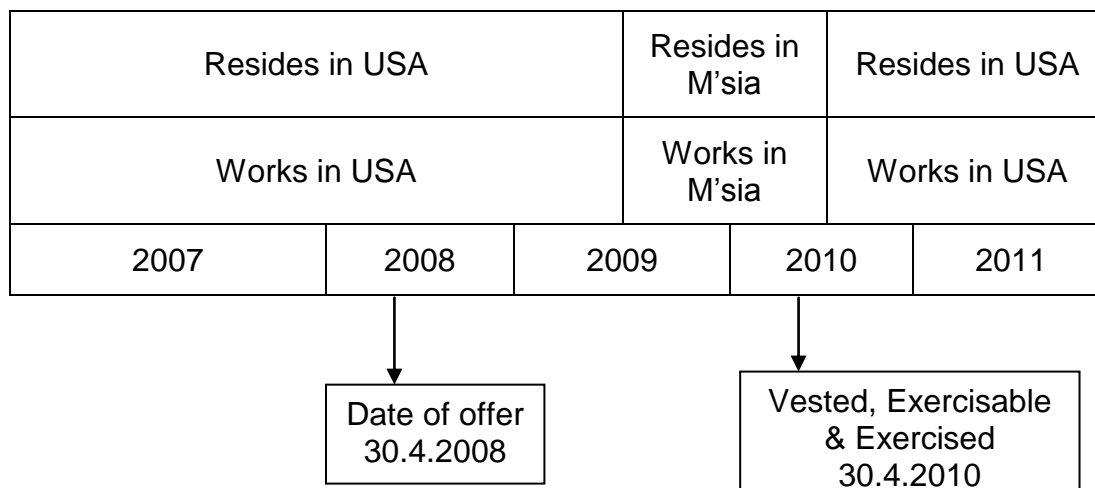
Example 10

Share scheme exercised during secondment to Malaysia

Clarence is a resident of USA and is employed by a multinational company. He was offered a share scheme by the company on 30.4.2008. It was conditional that he remained in the employment for 2 years at the end of which the shares will be vested. On the 1.6.2009, Clarence was transferred to Malaysia where he worked till 31.5.2010. Details of the share scheme are as follows:

Date share scheme was offered in USA	30.4.2008
No. of shares offered	10,000 units
Offer price	USD2.00 per unit
Exercisable date	30.4.2010
Market value of shares	USD8.00 per unit
Date of exercise	30.4.2010
Market value of shares	USD8.00 per unit
No. of shares exercised	10,000

The situation can be summarized as follows:



- (a) Clarence worked in Malaysia for more than 60 days. As there is no DTA between Malaysia and USA, Malaysia's domestic tax laws will prevail. The income derived from the exercise of Clarence's employment in Malaysia is taxable in Malaysia.
- (b) The benefit taxable as a perquisite is computed as follows:

Year of Assessment 2010

(refer to paragraph 4.4.5 of this Ruling for the formula)

10,000 units X (USD8.00 less USD2.00 per unit)	USD60,000
Perquisite under paragraph 13(1)(a), ITA 1967	USD60,000

Apportionment Of The Benefit Taxable In Malaysia

(refer to paragraph 4.5 of this Ruling for the formula)

The number of working days from the date of offer (30.4.2008) to the exercisable date (30.4.2010)	495
The number of working days in Malaysia from the date of commencement of employment (1.6.2009) to the exercisable/exercise date (30.4.2010)	228
Taxable benefit is $USD60,000 \times \frac{228}{495}$	USD27,636
Conversion USD1 @ 3.2546	RM89,944

Example 11

Share scheme exercised after secondment to Malaysia

The facts are the same as in Example 10 except that on 1.6.2009 Clarence was transferred to Malaysia where he worked till 30.9.2009. He returned to work in USA on 1.10.2009. Details of the share scheme are as follows:

Date scheme was offered in USA	30.4.2008
Number of shares offered	10,000 units
Offer price	USD2.00 per unit
Exercisable date	30.4.2010
Market value of shares	USD8.00 per unit
Date of exercise	30.4.2010
Market value of shares	USD8.00 per unit
No. of shares exercised	10,000 units

The situation can be summarized as follows:

Resides in USA		Resides in Malaysia	Resides in USA		
Works in USA		Works in Malaysia	Works in USA		
2007	2008	2009	2010	2011	
	↓		↓		
	Date of offer 30.4.2008		Vested, Exercisable & Exercised 30.4.2010		

- (a) Clarence worked in Malaysia for more than 60 days. As there is no DTA between Malaysia and USA, Malaysia's domestic tax laws will prevail. The income derived from the exercise of Clarence's employment in Malaysia is taxable in Malaysia.

- (b) As Clarence exercised his option to the share scheme on his return to USA after completing his secondment to Malaysia, the benefit taxable as a perquisite is computed as follows:

Year of Assessment 2010

(refer to paragraph 4.4.5 of this Ruling for the formula)

10,000 units X (USD8.00 less USD2.00 per unit)	USD60,000
Perquisite under paragraph 13(1)(a), ITA 1967	USD60,000

Apportionment Of The Benefit Taxable In Malaysia

(refer to paragraph 4.5 of this Ruling for the formula)

The number of working days from the date of offer (30.4.2008) to the exercisable date (30.4.2010)	495
The number of working days in Malaysia (1.6.2009 to 30.9.2009)	85
Taxable benefit is USD 60,000 X $\frac{85}{495}$	USD10,303
Conversion USD1 @ 3.2546	RM33,532

7. Exemption From Malaysian Income Tax

Income tax will not be charged on a benefit arising from a share scheme in the following circumstances:

- (a) The schemes are offered to a non-resident whose employment income is not taxable in Malaysia as the employment exercised in Malaysia is less than 60 days, or
- (b) The share schemes are offered to an individual, who under the terms of a DTA is exempt from Malaysian tax on his employment income for the year in which the gain from the share scheme arises.

8. Responsibility Of The Employee (Cross Border Cases)

In line with the Self Assessment System, it is the employees's responsibility to keep track of the days of his physical presence in Malaysia in order to determine the appropriate amount of income assessable to Malaysian tax. The share scheme offered prior to an expatriate employee's assignment in Malaysia will also need to be

tracked. The employee will be required to furnish the Income Tax Return Form and pay the taxes in relation to the benefit from the share scheme.

9. Responsibility Of The Employer (Cross Border Cases)

9.1 The Malaysian employer will have to -

- (a) keep track of all employees (including non-resident employees and expatriates) who worked in Malaysia during a tax year and who had exercised the share option either in Malaysia or overseas, and
- (b) keep a record of the employees' days of physical presence in Malaysia.

9.2 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.

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

Appendix 1

This Appendix serves as a guide on the determination of the number of working days in a month and calendar year. You are required to compute the number of working days in a month or calendar year (whichever is applicable) for the relevant States and years (whenever necessary).

Number of working days in Wilayah Persekutuan

Months/Year	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
January	22	19	20	18	21	21	19	20	20	19
February	17	18	17	18	17	18	18	15	16	19
March	20	23	23	23	22	20	21	23	23	22
April	22	22	20	19	21	22	22	22	21	21
May	19	19	22	21	22	20	20	21	20	22
June	21	22	22	22	21	21	22	22	22	21
July	23	22	21	21	22	23	23	22	21	22
August	21	21	22	22	22	21	20	21	21	20
September	22	22	22	21	20	21	20	21	20	20
October	22	21	21	20	22	20	22	21	20	22
November	18	19	19	22	21	20	20	20	20	20
December	22	23	21	20	19	20	21	20	21	20
Total	249	251	250	247	250	247	248	248	245	248

Number of non-working days in Wilayah Persekutuan (Saturdays, Sundays and Public holidays in Wilayah Persekutuan)

Months/Year	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
January	9	12	11	13	10 ¹	10	12	11	11	12
February	11	11	11	10	11	11	10	13	12	10
March	11	8	8	8	9	11	10	8	8	9
April	8	8	10	11	9	8	8	8	9	9
May	12	12	9	10	9	11	11	10	11	9
June	9	8	8	8	9	9	8	8	8	9
July	8	9	10	10	9	8	8	9	10	9
August	10	10	9	9	9	10	11	10	10	11
September	8	8	8	9	10	9	10	9	10	10
October	9	10	10	11	9	11	9	10	11	9
November	12	11	11	8	9	10	10	10	10	10
December	9	8	10	11	12	11	10	9	10	11
Total	116	115	115	118	115	119	117	115	120	118

¹31.12.2006 Sunday – Hari Raya Haji, 01.01.2007 (Monday) – Public Holiday, 02.01.2007 replacement for 31.12.2006