



GUIDELINES FOR APPROVAL OF DIRECTOR GENERAL OF INLAND REVENUE UNDER SUBSECTION 44(6) OF THE INCOME TAX ACT 1967

1. INTRODUCTION

- 1.1 The purpose of this guideline is to replace the Guidelines for Application of Approval under Subsection 44(6) of the Income Tax Act 1967 (ITA 1967) issued in January 2005.
- 1.2 These guidelines explain:-
- i. the types of institution or organisation eligible to apply for approval under subsection 44(6) of the ITA 1967;
 - ii. the eligibility criteria of institution or organisation to apply for approval under subsection 44(6) of the ITA 1967;
 - iii. the procedures of application for approval under subsection 44(6) of the ITA 1967;
 - iv. the conditions for approval under subsection 44(6) of the ITA 1967;
 - v. the responsibilities of the institution or organisation after obtaining approval under subsection 44(6) of the ITA 1967;
 - vi. the consequences of a breach of the conditions of approval;
 - vii. the approval period, extension and appeal of applications under subsection 44(6) of the ITA 1967;
 - viii. the power of the Director General of Inland Revenue (DGIR) on approval and imposition of conditions; and
 - x. tax treatment of donors.
- 1.3 These guidelines do not apply to any application related to Houses of Religious Worship and Schools.

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2. TYPES OF INSTITUTIONS OR ORGANISATIONS ELIGIBLE TO APPLY FOR APPROVAL UNDER SUBSECTION 44(6) OF THE ITA 1967

2.1 An institution or organisation which is eligible to apply must be **established in Malaysia** and registered as:-

- i. a company limited by guarantee under the Companies Act 2016 (Companies Commission of Malaysia);
- ii. an organization under the Societies Act 1966 (Registrar of Societies of Malaysia);
- iii. A body corporate under the Trustees (Incorporation) Act 1952 (Legal Affairs Division, Prime Minister's Department); or
- iv. any other recognised registrar bodies.

2.2 In paragraph 2.1 –

Institution means an institution in Malaysia that is not managed or operated for profit seeking purpose such as:-

- i. a hospital;
- ii. a public or charitable institution;
- iii. a university (established under the University and University Colleges Act 1971) or other educational institution (established under a Ministry);
- iv. public authority or association conducting research and activities related to finding the cause, prevention or treatment of human disease;
- v. a Government supported institution that conducts socioeconomic research; or
- vi. a technical or vocational training institute.

Organisation means an organisation in Malaysia that is not operated or conducted for profit seeking purpose such as:-

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- i. an organisation established and maintained solely for administering and increase a public or private fund for:-
 - a. construction, expansion, or improvement of an educational institute in Malaysia, not include sports complexes, recreational place/space, parking lots, and others; or
 - b. granting a scholarship or gift to an individual for study or research work in an institute in Malaysia ;
- ii. an organisation established and maintained solely:-
 - a. to administer and increase public funds/funds to ease the hardships among Malaysian citizens;
 - b. to assist in maintenance of a zoo, museum, art gallery or similar venture, or engaged in something related to the promotion of culture and art;
- iii. an organisation set up specifically to provide sanctuary and protection for animals;
- iv. an organisation assisted by the Government through grants and expertise for:-
 - a. industrial/commercial development, and promoting/improving the relationship between public and private sectors;
 - b. administering and increasing funds to promote national unity;
- v. an organisation set up specifically for the maintenance and protection of the environment;
- vi. an international organisation as defined under the International Organisation (Privileges and Immunities) Act 1992 which carries out charitable activities as determined by the Minister of Finance; or
- vii. an organisation set up specifically to carry out community projects aimed to culturise information and communication technology (ICT) approved by the Minister of Finance.

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3. THE ELIGIBILITY CRITERIA OF AN INSTITUTION OR ORGANISATION TO APPLY FOR APPROVAL UNDER SUBSECTION 44(6), OF THE ITA 1967

3.1 Objective of the Establishment of the Institution or Organisation

The institution or organisation must be established **in Malaysia** and **is not established primarily for profit.**

3.2 Services or Benefits Provided by an Institution or Organisation under Subsection 44(6) of the ITA 1967

- i. Services or benefits which are provided to **Malaysians** irrespective of race, religion or descendant.
- ii. Services or benefits are **not limited** to a target group based on **race, religious affiliation, political affiliation or specific area.**
- iii. Services or benefits are not **enjoyed** by the **founders, Board of Trustees, Board of Directors, committee members or any other party in charge of handling the institution or organisation.**
- iv. Services or benefits are **not enjoyed** by family members or any parties related/connected with the founders/ Board of Trustees/ Board of Directors/ committee members/ any other party in charge of handling the institution or organisation.
- v. The founders/ Board of Trustees/ Board of Directors/ committee members/ any other party in charge of handling the institution or organisation **may not** exercise their power and position for a particular purpose through the approved organisation.

3.3 Institution's or Organisation's Board of Trustees/ Board of Directors/ Committee Members Terms

- i. More than 50% of the members of the Board of Trustees/ Board of Directors/ committee members must consist of outsiders who is not related to the institution or organisation and founder. For

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the purpose of this paragraph, being related includes but not limited to:

- a. parents, children, siblings, including other close family ties;
 - b. employer and employee relationship; or
 - c. a director or employee within the same company or group of companies.
- ii. The founder / member of the Board of Trustees / members of the Board of Directors / committee members shall not receive benefits or remuneration from the institution or organisation including receiving fixed emoluments. However, applications for approval for the acceptance of benefits can be considered in the following circumstances:
- a. the application of disabled person and people with disability due to injury or illnesses. The application must be supported by confirmation document from Social Welfare Department or Government medical officer.
 - b. the application reimbursement of expenses relating to the institution or organisation's official duties are allowed with the support of relevant documents.

3.4 Operational period for institution or organisation to be eligible to apply

To be eligible to apply, an institution or organisation must be in operation for at least 2 years (24 months). This is to ensure that:-

- i. the objectives of institution or organisation planned are carried out; and
- ii. the institution or organisation are registered with the relevant registration bodies in Malaysia.

4. THE PROCEDURE OF APPLICATION FOR APPROVAL UNDER SUBSECTION 44(6) OF THE ITA 1967

- 4.1 A person is eligible to submit the application on behalf of the institution or organisation is as follows:-

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- i. President, Chairman, Director, Secretary of an institution or an organisation; or
 - ii. A certified representative legally appointed by an institution or an organisation.
- 4.2 The application is to be submitted through a letter of application that bears the official letterhead stating clearly the address, email and telephone number attached with the documents as stated in paragraph 4.4.

The complete application should be submitted to:-

Ketua Pengarah Hasil Dalam Negeri
Lembaga Hasil Dalam Negeri Malaysia
Jabatan Dasar Percukaian
Aras 17, Menara Hasil
Persiaran Rimba Permai, Cyber 8
63000 Cyberjaya
Selangor.

- 4.3 The checklist of required documents for each application is as follows:-
- i. Application for Company Limited by Guarantee incorporated under the Companies Act 2016 (as per attachment)
 - ii. Application for Associations incorporated under the Societies Act 1966 (as per attachment)
 - iii. Trust Deed for Institutions or Organisations incorporated through a Trust Deed (as per attachment)
 - iv. For institutions or organisations that provide care centers to cater senior citizens, orphans and other institution alike, the following additional documents are required as follows:-
 - a. certificate of registration from the Department of Social Welfare;
 - b. list of occupants, welfare staffs or heirs;
 - c. background of the care centre; and

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- d. a list of daily/annual activities carried out by the care center.

5. CONDITIONS FOR APPROVAL UNDER SUBSECTION 44(6) OF THE ITA 1967

During the approved period, the institution or organisation shall comply with the following conditions:-

- i. The institution or organisation shall continue to be established not primarily for profit.
- ii. The institution or organisation shall continuously provide services or benefits in accordance with the following conditions:-
 - a. services or benefits are provided to Malaysians irrespective of race, descendant or religion;
 - b. services or benefits is not limited to a target group based on race, religious affiliation, political affiliation or specific area;
 - c. services or benefits shall not be enjoyed by the founders/ board of trustees/ board of directors/ committee members/ any other party in charge of handling the institution or organisation;
 - d. services or benefits shall not be enjoyed by family members or any parties concerned with the founders/ board of trustees/ board of directors/ committee members/ any other party responsible of handling the institution or organisation; and
 - e. the founders/ board of trustees/ board of directors/ committee members/ any other party in charge of handling the institution or organization may not exercise their power and position for a particular interest through the approved institution or organisation.
- iii. The institution's or organisation's board of trustees/ board of directors/ committee members shall continuously comply with the conditions under subparagraphs 3.3(i) and (ii) of these guidelines.

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5.2 **PROHIBITION FOR THE INSTITUTION OR ORGANISATION HAS BEEN APPROVED UNDER SUBSECTION 44 (6) of the ITA 1967**

An approved institution or organisation is prohibited from:

- i. investing in subsidiaries with the total number of shares held not exceeding 49% total paid up capital;
- ii. accepting donations from subsidiaries of which the institution or organisation held more than 49% of the paid up capital;
- iii. using the official logo of LHDNM or performing any form of IRBM modifications of logo in all documents and media; and
- iv. engaging in any political activity or trade union movements or allow the finance, members/staff and premises/properties to be used for such purposes.
- v. purchase of additional asset or property which is not in line with the objectives of an institution or organization.

6. **RESPONSIBILITIES OF AN INSTITUTION OR AN ORGANISATION AFTER OBTAINING AN APPROVAL UNDER SUBSECTION 44(6), OF THE ITA 1967**

6.1 The responsibilities of institution or organisation after obtaining an approval under subsection 44(6), of the ITA 1967 is as follows:-

- i. **Official Receipt –**
 - a. All donations received in form the of cash or via internet banking, cheque/ money order/ postal order/ bank draft must be issued an official receipt,
 - b. The official receipt must include the following information:
 - Name and address of institution or the organisation;
 - Printed serial number on official receipt(*preprinted*);
 - Date of the receipt;

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- Name of the donor with the donor's identity card number, passport number and business registration number;
- Donor's mailing address;
- Collector's designation, such as President or Secretary; and
- The following note –

**“Potongan Di Bawah Subseksyen 44(6) Akta Cukai Pendapatan 1967:
Rujukan: LHDN.01/35/42/51/179-6.XXXX
Tarikh Kuatkuasa: 1 Mei 2019 hingga 31 Jun 2024”**

- c. Receipts **should not be issued to donors who fail to provide** complete personal information. The complete information with the following details are to be provided:-
 - For individual donors:
 - Donor's name;
 - Identity card number, passport number; and
 - Complete address
 - For donors other than individual donors:
 - Donor's name;
 - Registration number; and
 - Complete address
- ii. **Early notification in writing should be made to the Director General Of The Inland Revenue Board Of Malaysia for the following:**
 - a. before ownership of additional assets and properties;

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- b. before disposal of assets and properties ;
 - c. before change in the membership of Board of Directors/Board of Trustees/committee/members of institution or organisation; or
 - d. before amendments to the constitution or trust deed of the institution or organisation.
- iii. **Written Approval/Authorisation from the Minister Of Finance is required prior to** an activity abroad. Institutions or organisations need to send a copy of approval letter from MOF to IRBM.
- iv. **Others –**
- a. At least 50% of the income earned in the previous year must be spent in the following year for activities to achieve the institution's or organisation's objectives.
 - b. Institution or organisation is allowed to engage in business not more than 25% of its accumulated funds on the first day of the assessment year. All incomes earned shall be reinstated into the fund used to achieve its welfare objectives.
 - c. An annual audited financial statement audited by an accredited Public Auditor shall be sent by or on 30 April of each year to –

Jabatan Dasar Percukaian
Lembaga Hasil Dalam Negeri Malaysia
Menara Hasil, Aras 17
Persiaran Rimba Permai,
Cyber 8, 63000 Cyberjaya
Selangor Darul Ehsan

The consolidated financial statements should be submitted by an institution or organisation if it has a branch. The consolidated statement shall contain the information of all the income received and the expenses incurred. Please attach the following information together with the financial statements as follow:

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- The list of donors who donated **RM10,000.00 and above**
- A list of the beneficiaries complete with the following details
 - Beneficiary information
 - Name, identity card number, amount, type of assistance received
 - Parents or guardian's information
 - Name, identity card number and employers of the parents or guardian
 - Information on the institution or organisation that received assistance
 - Name, address and institution or organisation's director's name
- d. All records and documents of the institutions or organisations shall be kept for submission to the DGIR for reference and review if necessary.

The institutions or organisations approved under subsection 44 (6) of the ITA 1967 are required to have :

 - registration number of approvals application under subsection 44 (6) of ITA 1967; and
 - income tax file number under TF which must be registered at the IRBM branch.
- e. The institution or organisation shall submit Income Tax Return Form **(Form TF)** by e-filing to the DGIR latest by 30th of April annually as under section 77 of the ITA 1967.
- f. If the institution or organisation is **dissolved** –
 - All debts and liabilities are to be settled and the balance of assets and money, if any, shall be donated to the government or to another institution or organisation approved by the DGIR.

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- The dissolution must be notified to the DGIR immediately within 14 days from the date of the dissolution.
- The bank account of the institution or the organisation shall be closed immediately. A copy of the bank account closing letter shall be submitted to Jabatan Dasar Percukaian, LHDNM as evidence.

7. CONSEQUENCES OF A BREACH OF THE CONDITIONS OF APPROVAL

- 7.1 In the event the institution or organisation violates any of the conditions of approval stated in these guidelines or the ITA 1967, the DGIR may at his own discretion revoke the approval granted under subsection 44(6) of the ITA 1967.
- 7.2 In paragraph 7.1, the words 'conditions of approval' includes conditions of approval and responsibilities of institution or organisation after obtaining approval under subsection 44(6) of the ITA 1967 issued by DGIR from time to time.

8. THE APPROVAL PERIOD, EXTENSION AND APPEAL OF APPLICATIONS UNDER SUBSECTION 44(6) OF THE ITA 1967

- 8.1 The approval period by the DGIR is for **5 years** to an approved institution or organisation under subsection 44(6) of the ITA 1967.
- 8.2 For the purpose of an extension of the approval period, the institution or organisation shall apply in writing to the DGIR within 6 months before the expiry of the approval period.
- 8.3 The extension of the approval period will be considered by the DGIR based on the compliance record of prior approval terms and conditions.

9. THE POWER OF THE DGIR ON APPROVAL AND IMPOSITION OF CONDITIONS

The power of the DGIR under section 148 of the ITA 1967 in respect of approvals under subsection 44(6) of the ITA 1967 is not limited to the conditions of approval nor responsibilities of the institution or organisation as listed in these guidelines.

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10. TAX TREATMENT OF DONORS

- 10.1 Donors who have contributed and donated to any approved institutions or organisations under subsection 44(6) of the ITA 1967 are entitled to a deduction of their contributions and donations in the calculation of their aggregate incomes.
- 10.2 Only cash contributions and donations supported by official receipts are entitled for tax deduction. Contributions and donations in the form of goods (eg food, clothing, computers, stocks and building materials) are not entitled for tax deduction.
- 10.3 Types of Tax Reliefs:-
- i. donations or contributions to the Federal Government, State Government and Local Government is equivalent to the amount contributed or donated and must be proven with Financial Receipt 38.
 - ii. the amount of donations and contributions under the approval of the DGIR, is limited to 7% of aggregate income for individuals and 10% of aggregate income for companies.

INLAND REVENUE BOARD OF MALAYSIA

Date : 05/09/2019

s.k : LHDN.01/35/42/51/179-aa