

**GUIDELINES FOR APPLICATION OF APPROVAL UNDER  
SUBSECTION 44(6) OF THE INCOME TAX ACT 1967**

1. These Guidelines serve to explain the types of institutions, organisations or funds which may be considered for approval under subsection 44(6) of the Income Tax 1967 and the various steps/procedures involved in the submission of application for approval and the other related matters.
2. **Types Of Institutions, Organisations Or Funds Which Can Apply For Approval Under Subsection 44(6)**

The following institutions, organisations or funds which are not operated or conducted for profit may be considered for approval under subsection 44(6);

**2.1 Institutions**

- (a) a hospital;
- (b) a public or benevolent institution;
- (c) a university or other education institution;
- (d) a public authority or society engaged in research or other related activities connected with the cause, prevention or cure of human disease;
- (e) a Government-assisted institution engaged in socio-economic research.
- (f) a technical or vocational training institution

**2.2 Organisations/Funds**

- (a) an organisation established and maintained exclusively to administer and augment a public or private fund established or held for the sole purpose of the establishment, enlargement or improvement of an institution or solely for the provision of and scholarship, exhibition or prize provision of a scholarship, exhibition or prize for an individual for educational work, research work or other similar work in an institution or in what would be an institution if it were in Malaysia;
- (b) an organisation established and maintained exclusively to administer and augment a public fund established or held solely for the relief or distress among members of the public;
- (c) an organisation established and maintained exclusively to administer and augment a fund established and held solely for the construction, improvement or maintenance of a building in Malaysia which-
  - (i) is intended to be used (and, when constructed, is used)

exclusively for the purposes of religious worship of the advancement or religion; and

- (ii) is intended to be open (and, when constructed, is open) to any member of the public for those purposes;
- (d) an organisation which maintains or assists in maintaining a zoo, museum, art gallery or similar undertaking or is engaged in or in connection with the promotion of culture or the arts;
- (e) an organisation engaged in or in connection with the conservation or protection of animals;
- (f) a Government -assisted organisation engaged solely in addressing problems relating to industrial and commercial development and promoting and enhancing the relationship between the public sector and the private sector;
- (g) a Government -assisted organisation established and maintained exclusively to administer and augment a fund established or held solely for promoting national unity;
- (h) an organisation established exclusively for the conservation or protection of the environment;
  - (i) an international organisation as defined under the International Organisation (Privileges and Immunities) Act 1992 carrying out such charitable activities as determined by a the Minister; or.
  - (j) an organisation established and maintained exclusively to administer or augment a fund established or held for the purpose of carrying out projects towards the acculturation of the community in information and communication technology, approved by the Minister;
- (k) a benevolent fund or trust account established or held for the sole purpose of providing relief or aid to an individual who has no, or insufficient means, or in the case of a dependent individual whose parents or guardian has no, or insufficient means, to pay for the cost of the medical treatment required by such individual to treat a serious disease as defined in subsection 46(2).

Serious disease:

Cancer, heart attack, pulmonary hypertension, chronic kidney disease, chronic liver disease, fulminate viral hepatitis, accidental head injury, tumor, major burns, major organ transplant, Parkinson's disease, HIV and major amputation of limbs.

### 3. **Criteria For Approval Under Subsection 44(6)**

#### 3.1 **Objective**

Organisation must be established in Malaysia for charitable purposes only and its carries out charitable activities within Malaysia.

#### 3.2 **Definition**

Generally, the work 'charitable' can be classified into four heads;

- (a) The relief for poverty;
- (b) The advancement of education;
- (c) The advancement of religion;
- (d) Other purpose beneficial to the community not falling under any of the preceding heads.

#### 3.3 **Benefits**

- (a) The institutions, organisations or funds should serve or benefit Malaysian irrespective of race, creed or religion. The benefits should not be confined to a specific group only.
- (b) Organisation benefits shall not be entitled to any member of the trust board and their families and staff of the organisation. No member of the organisation shall use his/her position and/or authority within the organisation towards furthering his/her own personal interests and benefits.

#### 3.4 **70% Fund Expenses**

This charitable institution / organisation must spend at least 70% (or such percentage as may be determined by the Director General) of its income received in the previous year for purposes of charity for the basis period for a year of assessment.

#### 3.5 **Board Of Trustees**

At least half (50%) of the members of the board are 'outsiders' not immediate members of the family and close relatives of the 'organisation' or 'founder'.

#### 3.6 **Prohibitions**

Organisations shall not support with its fund any political organisation or any objects, or endeavor to impose on or procure to be observed by its members or others, any regulation, restrictions or condition, which if an object of the organisation, would make it a trade union.

### 3.7 **Financial Statement**

An audited set of accounts must be forwarded to IRB Headquarters annually as soon as possible after the end of the organisation's financial year.

### 3.8 **Business**

In general, the institution/organisations is not allowed to carry any type of business.

- (a) Organisation is only allowed to involve in business provided that it may apply not more than twenty-five per cent of its accumulated funds as at the beginning of the basis period for the year of assessment for the carrying on of, or participation in, a business;

Provided that the profits or income derived therefrom shall be used solely for charitable purposes or for the primary purpose for which the institution or organisation was established.

- (b) Restriction of 25% accumulated fund not applicable, if
- (i) the business is carried on in the course of discharging the primarily charitable purpose of the institution or group of people established for; or
- (ii) ensure that the work relating to the business is mainly carried on by persons for whose benefit the institution was established.

### 3.9 **Amendments And Changes Of Constitution/Trust Deed Letter And Memorandum And Articles (M&A)**

No addition, alteration or amendment shall be made to or in the provisions contained in the above documents for the time being in force unless the same shall have been previously submitted to and agreed by the Director-General of Inland Revenue, Malaysia.

### 3.10 **Winding Up Or Dissolution**

- (a) If upon the winding up or dissolution of the institution/organisation, there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid or distributed among members of the above, but shall be donated to the Federal or States Government or to other funds of similar organisation approved by the Director General of Inland Revenue, Malaysia.
- (b) Dissolution of the institution /organisation should be notified the Director-General of Inland Revenue, Malaysia.

### 3.11 **Activities Outside Malaysia**

An institution / organisation may carry out charitable activities outside Malaysia with the prior consent of the Minister of Finance.

#### 4. **Amendments To Memorandum And Articles Of Association/Constitution/Trust Deed Letter**

If the organisation is requested to amend the M&A /Constitution/Trust Deed, the amendment must be approved by the respective agency. Upon approval, documents as listed below must be forwarded to IRB.

- (a) A copy of minute
- (b) A copy of approval letter from the respective body
- (c) A copy of amendment M&A/Constitution /Trust Deed.

#### 5. **Who Can Submit In An Application For Approval**

The President or Secretary of an association, foundation, organisation or building committee and the Headmaster of a School in case of a School-building fund submit an application for approval.

#### 6. **Procedure And Requirements For Application**

There is no special form to submit an application for approval under Subsection 44(6) except in the case of school building funds whereby appendix A can be obtained from the State Education Department. The application can be made through a letter with completed particulars. The procedures and requirement for an application are as follows:

##### 6.1 **Institution Or Organisation**

The institution or organisation must clearly state its objectives in its application and submit the following particulars and documents:

- (a) **An Institution Which Is A Company Limited By Guarantee**
  - (i) A copy or the certificate of registration from the Registrar of companies;
  - (ii) A copy of the certificate issued under Section 24(1) of the Companies Act, 1965.
  - (iii) A copy of the Memorandum & Articles of Associations;
  - (iv) A copy of Form 49 (detailed information on Board of Directors/ Boarding Trustee).
  - (v) Financial statement for two years, if applicable;

- (vi) A List of activities;
  - (vii) Supporting letter from the Departments related to its main objectives.
- (b) **Other Organisation And Institution**
- (i) A copy of the certificate of registration from the Registrar of Societies;
  - (ii) A copy of the constitution/rules;
  - (iii) A list of the committee members stating the name, full address, identity card number, acceptance and the post held in the committee;
  - (iv) Financial statement for two years, if applicable;
  - (v) A list of activities; and
  - (vi) Supporting letter from the Departments related to its main objectives.
- (c) **Specific Fund And Other Organisation Established Under A Trust Deed;**
- (i) A stamped copy of the Trust Deed;
  - (ii) A list of the board of trustees stating the name, full address, identity card number, occupation and the post held in the Board.
  - (iii) Financial statement for two years, if applicable;
  - (iv) A list of activities; and
  - (v) Supporting letter from the Departments related to its main objectives.
- (d) **A Fund Established To Provide Aid To An Individual Who Is Suffering From Chronic Disease And Requires Financial Assistance**

Please refer to the special guidelines issues for this purpose The guidelines can be obtain from all IRB branches and IRB Web *site*  
*http: //www.hasilnet.org.my*

## 6.2 **Building Fund**

### (i) **School Building Fund**

#### (a) **For Fully - Aided Government And Non-Fully - Aided Government Schools**

The application for approval for the above school building fund must be submitted to the Department of Inland Revenue through the State Education Department. One (1) copy of the application form 'Lampiran A' (which can be obtained from the State Education Department) must be completed and submitted with the required document to the State Education Department.

The State Education Department will submit the application to the Director of Inland Revenue.

#### (b) **For Private School**

The application for the above school building fund must be submit to the Department of Inland Revenue through the Ministry Of Education. One (1) copy of the application form 'Lampiran A' (which can be obtained from the State Education Department) must be completed and submitted with the required documents to the State Education Department.

The State Education Department will submit the application to the Ministry of Education which in turn will forward it to the Director General of Inland Revenue.

#### ***Note:***

It should be noted that if the application for school building fund is not recommended by the respective authorities, then the application will not be considered for approval under subsection 44(6).

### (ii) **Building Fund For Mosque, Temple And Church**

Particulars and documents in respect of both the organisation which set up the building fund **and** the building itself must be furnished as follows;

#### (a) **In Respect Of The Organisation Which Sets Up The Building Fund.**

- (i) A copy of the certificate of registration from the Registrar of Societies.

- (ii) A copy of the constitution, rules or by-laws of the organisation as approved by the Registrar of Societies; and
- (iii) A list of the committee members of the organisation stating the name, full address, identity card number, occupation and the post held in the committee.

(b) **In Respect Of The Building Fund Itself**

- (i) A resolution or minutes of the meeting in which the establishment of the building fund was decided upon;
- (ii) Rules and by-laws of the building fund committee. The rules/by-laws should incorporate inter-alia the name, objectives, control and management of finance, auditing and accounting, appointment and responsibilities of the committee members, amendments of the articles and dissolution of the fund;
- (iii) A resolution or minutes of meeting in which the rules and by-laws were approved.
- (iv) A list of the building committee members stating the name, full address, identity card number, occupation and the post held in the committee.
- (v) A copy of the plan approved by the local authority.
- (vi) Total estimated cost of the propose building and a conformation letter from registered Artichect /Contractor.
- (vii) If collection of public donation has already commenced, state the date on which the first donation was made and the amount collected to date;
- (viii) Total donation from the Government or other agency which have been received of pledged if any;
- (ix) A recommended letter by the respective authorities to verify the building is use solely for religious worship and recommended letter form the Majlis Agama Negeri where the application is in respect of a mosque building fund.



7. **To Whom Should The Application Be Addressed/Submitted**

The application for approval under subsection 44(6) income Tax Act 1967 should be addressed /submitted to;

Director,  
Unit 35, Technical Department  
Inland Revenue Board Of Malaysia  
12 th Floor, Block 9,  
Government Buildings Complex  
Jalan Duta, P.O.Box 11833  
**50758 KUALA LUMPUR**

8. **Required Of An Approved Institution/Organisation/Fund**

8.1 **General Requirement**

- (a) Official receipts for all donation received must clearly indicate the following;
  - (i) Name of the organisation
  - (ii) Serial number;
  - (iii) Reference number of the approval i.e. file reference number;
  - (iv) Duration of approval; and
  - (v) Gazette notification number
- (b) A copy of the audited accounts (i. e audited by a public auditor) **must be sent within 6 months annually** after the end of the organisation's financial year to the above mentioned address (see para 6).
- (c) Any amendment to the constitution /rules by-laws shall not come into effect unless prior written approval of Director General Inland Revenue Board has been obtained.

8.2 **Specific Requirements**

(a) **Institution /organisation**

At least 70% of the income and donation received must be spent yearly in carrying out the objectives of the institution / organisation. Failure to meet this condition, steps will be taken by the Department to withdraw the exemption status.

(b) **Building Fund**

- (i) The building fund must be utilised **solely** for the construction of the building mentioned in the application for approval;
- (ii) All donation received must be utilised solely for the construction of the building **Expenses for purchase of equipment's and fittings are not allowed.** After the construction of the building has completed the remaining donations (if any) should be donated to any institutions/organisation approved by DGIR.
- (iii) The building must be completed within 3 (three) years or such further period as may be allowed by the Director General Of Inland Revenue, Malaysia.
- (iv) Separate accounts should be maintained for the building fund and submitted annually to the above mentioned address (see para 6)
- (v) A report on the completed project must be submitted to the Technical Division of Inland Revenue (address see para 6)

(c) **Other Funds Which Are Not Building Funds**

An organisation which has been approved in respect to its scholarship fund or fund for the relief of distress shall maintain separate accounts for the approved fund and submit to the mentioned address (see para 6).

9. **Tax Deduction And Exemption**

Organisations/Institutions or funds approved under Subsection 44(6) will qualify for tax deduction and tax exemption as follows:

(a) **Tax Deduction**

Donors who make donations to an institution or organisation or fund approved under Subsection 44(6) will qualify for deduction in respect of their donation in computing their taxable aggregate income. However, it should be noted that only **cash donations** supported by official receipts will qualify for tax deduction. Donation in kind (e.g. Food, clothing, computers, property, shares and building materials) will not qualify for tax deduction.

(b) **Tax Exemption**

With effect from year of assessment 2001 and subsequent years of assessment, any organisation or institution which are approved for subsection 44(6) status will automatically be granted income tax exemption (except dividend income) under paragraph 13, Schedule 6, without further application.

Unit 35, Technical Department,  
Inland Revenue Board,  
Of Malaysia.

April 2004

**ATTACHMENT A**

**APPLICATION FOR SCHOOL BUILDING FUND**

Application for approval under Section 44(6), Income Tax Act, 1967

A. TO BE COMPLETED BY CLAIMANT

1. Name of School and Address  
.....  
.....

2. Status of school: whether private school / fully goverment-aided school / non-government-aided school (capital grant). If private, state the education department's registration number.  
.....  
.....

3. Current registration and the next five years registration planning.

Year						
Standard 1-6						
Form 1-5						
Form 1-6						
Number of the classrooms required						

4. Type of School (Boys/Girls/Mixed).  
.....  
.....

5. Students' age range ..... year until ..... year.
  
6. Monthly school fees (please give details).  
.....
  
7. Details of present building (number of classroom and others).  
.....  
.....
  
8. Whether the school is used for morning/afternoon session?  
.....
  
9. Whether the school receive aid and also used for private school? Name the school.  
.....
  
10. Additional buildings/proposed building (please give details, e.g., type of building, one storey or multi-storey. Concrete or wooden etc. And space available example number of classrooms, hall, canteen, office, toilet, room for special subject, multipurpose room etc.  
  
Type of building :.....  
Usage of building :.....
  
11. Number of students' (each session) and proposed additional buildings.  
.....  
.....
  
12. Estimated cost for additional buildings certified by Committee/registered consultant. Please forward the confirmation letter on the estimated cost  
.....  
.....

13. State reason for additional aid required ?

.....  
.....

14. If the building/additional buildings certified or approved by the local councils concerned. Please state the approval number and date.

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15. Is there any racial or religious restriction on the registration of students?

.....  
.....

16. If donation received from foreigner/body/overseas government, state the approval date and reference number from Ministry of Foreign Affairs for the collection of donation.

.....

17. If donation has been collected from the public, state the first donation received and total amount of collection until todate.

.....  
.....

Proposed body

Name : .....

Address : .....

Date : .....

.....  
Signature of Claimant /Headmaster

.....  
Name and Designation

The following documents must be enclosed.

1. One copy of income and expenditure account of the school for the complete financial year (not applicable for new schools).
2. One copy of school building fund's committee which comprises of name, full address, identity card number, occupation and designation in the committee.
3. One copy of building plan which approved by the local council.
4. Break down of the estimated cost for the construction of the building and confirmation letter on the construction cost from accredited architect.

B. TO BE COMPLETED BY THE STATE EDUCATION DEPARTMENT

1. Declaration

.....  
.....  
.....

(If the number of students for one session exceed the maximum number approved, state the Ministry approval)

2. If such school is a government-aided school, please state the proposed amount of capital expenditure for the building / proposed additional building.

.....  
.....  
.....

3. Confirmed that:

(a) School does not practice any racial/ religious discrimination for the registration of students.

Yes/No

(b) Eventhough the school is administered by religious body, it does not impose regulations for the students to attend prayers/ religious teachings/ preaching.

Yes/No/Not Applicable

(c) Others:

.....  
.....  
.....

.....  
Signature

Date

.....  
Name and Designation

C. TO BE COMPLETED BY EDUCATION MINISTRY  
*(applicable to private school)*

Declaration:

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.....

.....  
Signature

Date .....

.....  
Name and Designation