



TAX FLASH

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In this Issue

- [Guidelines for Application of Approval as Approved Bodies under Section 44\(6\) of the Act in Relation to House of Religious Worship / Welfare and Education Funds](#)
- [Compliance Audit Framework for Approved Bodies](#)
- [Exemption of RPGT on Chargeable Gain Arising from Disposal of Residential Property](#)
- [Stamp Duty Exemption for Purchase of Residential Properties](#)
- [Exemption from Application of Minimum Number of Full-Time Employees Requirement for Labuan Entity Carrying on Labuan Business Activity](#)
- [Industry Guides](#)

Guidelines for Application of Approval as Approved Bodies under Section 44(6) of the Act in Relation to House of Religious Worship / Welfare and Education Funds

The Inland Revenue Board ["IRB"] has recently issued the following guidelines for approval of Director General of Inland Revenue ["DGIR"] under Section 44(6) of the Income Tax Act 1967 ["the Act"] to provide guidance on the criteria for eligibility, application procedure, responsibilities after obtaining approval, tax treatment for donors, etc.:-

- *Guidelines for Approval of DGIR under Section 44(6) of the Act in Relation to Fund for Acquisition of House of Religious Worship* where the fund established must be used solely for acquisition of a house of religious worship and advancement of religion;

- [Moore Malaysia](#)
- [Moore Global](#)
- [Inland Revenue Board](#)

- *Guidelines for Approval of DGIR under Section 44(6) of the Act in Relation to Fund for Construction of House of Religious Worship* where the fund established must be used solely for construction of a house of religious worship for the purpose of carrying out religious activities and advancement of religion;
- *Guidelines for Approval of DGIR under Section 44(6) of the Act in Relation to Fund for Management of a House of Religious Worship* where the fund established must be set up solely for the purpose of managing a building to be used for religious worship and advancement of religion; and
- *Guidelines for Approval of DGIR under Section 44(6) of the Act in Relation to Fund for Welfare and Education* where the fund must be set up for the purpose of welfare and education to reduce the burdens of the citizen or development of education in Malaysia regardless of race and religion.

Salient points of the abovementioned Guidelines includes:-

i. Other Criteria of Eligibility

- More than 50% of the committee members must be individuals who are not related to each other such as:-
 - related by way of family relationship;
 - related by way of an employer and an employee relationship; and
 - related by way of the institution or organisation that established the fund

ii. Application Procedure

- The application for approval under Section 44(6) of the Act must be submitted together with the relevant supporting documents

iii. Responsibility of the Committee after Obtaining the Approval

- The Guidelines outline the responsibilities of the committee members such as management of the funds, the preparation and submission of audited financial statements, notifying and obtaining the IRB's approval prior to the appointment of or change in committee members (where required) and issuance of official receipts for contribution received

iv. Consequences of a Breach of the Conditions of Approval Obtained

- If any of the conditions of the approval stated in the respective Guidelines or the Act is breached, the DGIR has the discretion to revoke the approval granted

v. Approval Period and Application for Extension

- For acquisition of house of religion worship, the approval period is the earlier of:-
 - 12 months from the date of collection of the fund approved by DGIR is sufficient; or
 - 2 years from the date of approval by DGIR
- For construction of house of religion worship, the approval period is the earlier of:-
 - 3 years from the date of approved construction of house of worship;
 - the construction of house of worship is completed; or
 - the fund raised has reached the amount approved by DGIR
- In respect of fund for welfare and education as well as fund for management of a house of worship, the approval period given is 5 years
- Any application for extension of the approval period is required to be submitted 6 months before expiration of the approval period

vi. Tax Treatment

- Donors will be eligible for tax deduction restricted to 10% of aggregate income in respect of the cash contribution made to the fund

Compliance Audit Framework for Approved Bodies

The IRB has on 15th June 2020, issued a new *Compliance Audit Framework* for compliance with the provisions under Sections 44(6), 44(6B), 44(11D) and P.U. (A) 139/2020, of the Act (in *Bahasa Malaysia*) to provide an understanding of the nature and procedure of tax compliance audit that may be performed on an institution or organisation or fund or religious authority or body or public university or company limited by guarantee that operates a place of religious worship approved under the abovesaid Sections and P.U.(A) 139/2020 of the Act [“hereinafter referred to as “approved bodies”].

Among others, it is noteworthy that:-

- i. Types of Audit
 - The IRB will carry out 2 types of compliance audit i.e. desk audit and field audit.
- ii. Objectives of the Audit
 - To ensure compliance with the conditions of the approval as stipulated in the guidelines.
 - To ensure no mismanagement of public funds in the form of cash donations received by the approved bodies.
 - To ensure that the approved bodies are not profit-oriented and operate based on the intended objectives of their establishment.
- iii. Years of Assessment Covered
 - The audit normally covers a period of 1 to 3 years. However, the IRB may carry out tax audit for prior years, if necessary.
- iv. Basis of Selection for Audit
 - The selection of cases for audit is based on:-
 - failure in submitting the audited account;
 - information received from third parties;
 - selection based on certain objectives

Besides, the framework also explains the audit processes which include the location where the audit will be conducted, notification and commencement of audit, records to be examined and the process for settlement of audit.

The above Compliance Audit Framework takes effect from 15th June 2020.

Exemption of RPGT on Chargeable Gain Arising from Disposal of Residential Property

Following the announcement of Short-Term Economic Recovery Plan [“PENJANA”] on 5th June 2020, the *Real Property Gains Tax (Exemption) Order 2020* has been gazetted to provide exemption of real property gains tax [“RPGT”] on chargeable gain arising from disposal of residential property during the period from 1st June 2020 until 31st December 2021 by a citizen of Malaysia.

The above exemption is granted under the following conditions:-

- i. Restricted to disposal of 3 units of residential property for each disposer. In the event the disposal exceeds 3 units of residential property, the disposer may elect any 3 units of residential property to be exempted from RPGT;

- ii. The residential property disposed of is not acquired during the period from 1st June 2020 until 31st December 2021 by way of:-
 - transfer between spouses; or
 - gift between spouses, parent and child, or grandparents and grandchild.
- iii. The sale and purchase agreement / instrument of transfer of the residential property is executed between 1st June 2020 and 31st December 2021, and duly stamped not later than 31st January 2022.

In the event the disposal of residential property is under a conditional contract which requires approval by the Federal government or State Government:-

- The contract for the disposal of the residential property has to be executed between 1st June 2020 and 31st December 2021, and duly stamped not later than 31st January 2022; and
- The approval by the Federal Government or State Government is obtained on or after 1st June 2020.

“**Residential property**” is defined as a house, a condominium unit, an apartment or a flat in Malaysia, and includes service apartment and a small office home office [“SOHO”], jointly or solely owned by an individual.

The above Order is deemed to have come into operation on 1st June 2020.

Stamp Duty Exemption for Purchase of Residential Properties

Following the announcement of PENJANA on 5th June 2020, the *Stamp Duty (Exemption) (No. 3) Order 2020* and *Stamp Duty (Exemption) (No. 4) Order 2020* have been gazetted to provide exemption from stamp duty on the loan agreement and instrument of transfer (limited to the first RM1 million of the residential property’s price) respectively for the purchase of residential property priced more than RM300,000 up to RM2.5 million, with the following conditions:-

- the sale and purchase agreement for the purchase of the residential property is between an individual and a property developer;
- at least 10% discount from the original price is provided by the developer except for a residential property which is subject to controlled pricing; and
- the sale and purchase agreement must be stamped between 1st June 2020 and 31st May 2021.

The above Orders are deemed to have come into operation on 1st June 2020.

Exemption from Application of Minimum Number of Full-Time Employees Requirement for Labuan Entity Carrying on Labuan Business Activity

Effective 1st January 2019, Section 2B(1)(b) of the Labuan Business Activity Tax Act 1990 provides that Labuan entities carrying on Labuan business activity must have an adequate number of full-time employees in Labuan as specified in the Labuan Business Activity Tax (Requirement for Labuan Business Activity) Regulations 2018, depending on the types of Labuan business activity.

The *Labuan Business Activity Tax (Exemption) Order 2020* has been gazetted to provide that a pure equity holding Labuan entity carrying on a Labuan business activity is exempted from above application of minimum number of full-time employees in Labuan.

The above Order is deemed to have come into operation on 1st January 2019.

Note: For further information on the above Regulations, kindly refer to our *Tax Flash – February 2019 issue*.

Industry Guides

The Royal Malaysian Customs Department has published the *Guide on Digital Services by Foreign Service Provider* as at 1st August 2020.

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