



TAX FLASH

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Guidelines on Application for Approval of the DGIR for Endowment and *Wakaf* under Section 44(11D) of the Act

The Inland Revenue Board [“IRB”] has recently issued the following guidelines for approval of the Director General of Inland Revenue [“DGIR”] for endowment and *wakaf* under Section 44(11D) of the Income Tax Act 1967 [“the Act”] to provide guidance on the criteria for eligibility, application procedure, conditions, responsibilities after obtaining approval, consequences of violation after obtaining approval, approval time period, extension, appeal of application and tax treatment for institution / organisation and donors of endowment and *wakaf*:-

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

- *Guidelines on Application for Approval of the DGIR for Endowment under Section 44(11D) of the Act* i.e. application for approval of endowment fund established by public universities
- *Guidelines on Application for Approval of the DGIR for Wakaf under Section 44(11D) of the Act* i.e. application for approval of *wakaf* fund established by Majlis Agama Islam Negeri ["MAIN"], bodies established by MAIN or public universities

Salient points of the abovementioned Guidelines include:-

- i. Criteria for Eligibility
 - More than 50% of the trustee members / committee 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 directors or employees within the same company or group
- ii. Application Procedure
 - The application for approval under Section 44(11D) of the Act must be submitted together with the relevant supporting documents
- iii. Conditions Within the Approval Period
 - To continue to be established with no intention of making a profit
 - To continue provide services and benefits according to the rules and objective established
 - For *wakaf*, the institution committee / *wakaf* organisation / *mutawalli* shall comply with the approved conditions
- iv. Responsibilities of the Committee after Obtaining the Approval
 - The Guidelines outline the responsibilities of the institution / organisation / public universities such as:-
 - issuance of official receipts for contribution received;
 - written notification to the IRB prior to any appointment or change in committee members, acquisition / disposal of property and asset, amendments to the constitution or deed of trust of the institution or organisation;
 - management of the funds;
 - preparation and submission of audited financial statements; and
 - at least 50% of the income earned in the previous year must be spent in the following 2 years for activities to achieve the institution's or organisation's objectives or based on discretion of DGIR
- v. 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
- vi. Approval Period and Application for Extension
 - The approval period given for institution or organisation is 5 years
 - A written application for extension of the approval period is required to be submitted 6 months before expiration of the approval period
 - Extension of the approval period will be considered by the IRB based on the review of previous records of compliance
- vii. Tax Treatment
 - For the approved institution / organisation / public universities, the income received (i.e. cash endowment and cash *wakaf*) are exempted from tax

- Donors will be eligible for tax deduction restricted to 10% of aggregate income in respect of the cash contribution made to the approved institution / organisation / public universities
- Donors are not eligible for tax deduction from the date of letter of notification of withdrawal of approval if the approval given to the approved institution / organisation / public universities are withdrawn

Tax Exemption for New Food Production Project and Expansion Project

Following the Budget 2016 announcement, the *Income Tax (Exemption) (No. 6) Order 2020* has been gazetted to provide exemption to a qualifying person resident in Malaysia in the basis period for a year of assessment from the payment of income tax in respect of 100% statutory income derived from:-

- new food production project for a period of 10 consecutive years of assessment, commencing from the first year of assessment in which the qualified person derived statutory income in relation to that project; or
- expansion project for a period of 5 consecutive years of assessment, commencing from the first year of assessment in which the qualified person derived statutory income in relation to the expansion projects, and the first year of assessment shall not be earlier than the year of assessment for the basis period in which the date of approval from the Minister falls.

The new food production project as referred to above shall involve the following:-

- planting of industrial crops, vegetables, fruits, herbs, spices and cash crops;
- aquaculture;
- rearing of honey and urena lobata bees;
- rearing of cows, buffaloes, goats, sheep and deer;
- deep-sea fishing; and
- planting of feed mill (cultivated in a project which has been identified by the Minister in charged with the responsibility of that project and approved by the Minister).

The expansion project as referred to above shall:-

- for the purpose of expanding the new food production project mentioned above
- involves a new area of land; and
- be approved by the Minister.

For the purposes of the abovementioned Order, "**qualified person**" means a company incorporated under the Companies Act 2016, an-agro based co-operative society, an Area Farmers' Association, a Federal Farmers' Association, a State Farmers' Association, an Area Fishermen's Association, a Federal Fishermen's Association, a State Fishermen's Association and sole proprietorship, or partnership or association solely engaged in agriculture or fishery.

To be eligible for the above exemption:-

- New food production project
 - Application must be made to the Minister through the Minister in charged with the responsibility of that project from 1st January 2016 until 31st December 2020;
 - The project must not have commenced on the date the application is made to the Minister; and
 - The project must commence within 1 year from the date of approval given by the Minister
- Expansion project
 - Approved must be obtained from the Minister for expanding the new food production project in (i) above.

Tax Deduction of Investment in New Food Production Project or Expansion Project

Following the Budget 2016 announcement, the *Income Tax (Deduction of Investment in New Food Production Project or Expansion Project) Rules 2020* has been gazetted to provide tax deduction equivalent to the value of investment (in the form of cash or holding of paid-up share capital in respect of ordinary shares) made in a related company that undertakes a new food production or expansion project approved under the Income Tax (Exemption) (No. 6) Order 2020.

Salient points of the abovementioned Rules are as follows:-

- i. The deduction of value of investment for a year of assessment shall be equivalent to the expenditure incurred by the related company for the qualifying project in the basis period for the same year of assessment, and for a period and up to amount as approved by the Minister.
- ii. For investment in the form of holding of paid-up share capital in respect of ordinary shares, the deduction claimed will be clawed back if the investment is disposed of within 5 years from the date of last investment made by a company.
- iii. Any consideration received for disposal of such shares by the company shall be added in ascertaining its adjusted income for the year of assessment in basis period in which that amount was received but shall not exceed the total deductions claimed in relation to the investment. This shall not apply where the disposal of shares takes place after 5 years from the date of last investment.
- iv. The deduction shall cease in the basis period for a year of assessment in which the period of exemption of the related company commences i.e. when it derives the first statutory income from the project.

For the purpose of the above Rules, "**related company**" means a company incorporated under the Companies Act 2016 where at least 70% of its paid-up share capital in respect of ordinary shares are directly owned by a company which made an investment for the purpose of a new food production project or an expansion project.

The Rules shall apply to a company resident in Malaysia and incorporated under the Companies Act 2016 which:-

- a. has made an investment in its related company that undertakes a new food production project or an expansion project under the Income Tax (Exemption) (No. 6) Order 2020; and
- b. has made an application within the period from 1st January 2016 to 31st December 2020 to the Minister through the Minister charged with the responsibility of a new food production project or an expansion project.

Deduction for Expenditure on Issuance of *Sukuk* under *Wakalah* Principle

Following the Budget 2020 announcement, the *Income Tax (Deduction for Expenditure on Issuance of *Sukuk* and Retail *Sukuk* Structured Pursuant to the Principle of *Wakalah*) Rules 2021* has been gazetted to allow deduction on the expenditure or additional expenses incurred by a locally incorporated resident company on the issuance of the following:-

- i. approved *sukuk*; and
- ii. approved retail *sukuk* (offered to retail investors),

which are structured pursuant to the principle of *Wakalah* comprising a mixed component of asset and debt.

Allowable additional expenses are: -

- the professional fee relating to due diligence, drafting and preparation of prospectus;
- the printing cost of prospectus;

- the advertisement cost of prospectus;
- the Securities Commission of Malaysia prospectus registration fee;
- the Bursa Malaysia processing fee and initial listing fee;
- the Bursa Malaysia new issue crediting fee; and
- the primary distribution fee.

The deduction allowed in respect of (i) above shall be the amount of expenditure incurred (i.e. single deduction). The total amount of deduction allowed in respect of (ii) above shall be the amount of expenditure incurred (i.e. single deduction) and a double deduction of additional expenses allowed under the above Rules.

The above Rules shall have effect from the year of assessment ["YA"] 2021 to YA 2025.

Extension of Tax Exemption on Director Fees Received from a Labuan Entity

Pursuant to the Income Tax (Exemption) (No. 7) Order 2011, an individual who is a non-Malaysian citizen is exempted from the payment of income tax in respect of fees received in his capacity as a director of a Labuan entity from YA 2011 to YA 2020.

Following the notification made by the Labuan Financial Services Authority via its letter dated 4th December 2020, the *Income Tax (Exemption) (No. 7) (Amendment) Order 2021* has been gazetted to extend the above exemption of director fees for another 5 years i.e. until YA 2025.

Note: For further information, kindly refer to our *Tax Flash – January 2021 issue*.

Extension of Deduction for Expenditure on Issuance or Offering of SRI Sukuk

The Income Tax (Deduction for Expenditure on Issuance or Offering of Sustainable and Responsible ["SRI"] Investment Sukuk) Rules 2017 provides a deduction for expenditure incurred by a company resident in Malaysia on the issuance or offering of *sukuk* from YA 2016 to YA 2020.

Following the 2020 Budget announcement, the *Income Tax (Deduction for Expenditure on Issuance or Offering of Sustainable and Responsible Investment Sukuk) (Amendment) Rules 2021* has been gazetted to extend the tax deduction until YA 2023.

Note: For further information relating to the Deduction for Expenditure on Issuance or Offering of SRI Sukuk, kindly refer to our *Tax Flash – July 2017 issue*.

Stamp Duty Exemption for Financing Programme Between Smallholders of Oil Palm and Agrobank

The *Stamp Duty (Exemption) (No. 7) Order 2020* has been gazetted to provide exemption from stamp duty for financing agreement under *Tanam Semula Pekebun Kecil Sawit* financing programme and Input *Pertanian Pekebun Kecil Sawit* financing programme pursuant to *Tawarruq* concept executed between an individual and Bank Pertanian Malaysia Berhad (Agrobank).

The above exemption applies to the financing agreement executed on or after 24th July 2019 but not later than 31st December 2021.

Stamp Duty Exemption for Purchase of a Flat

The *Stamp Duty (Exemption) (No. 8) Order 2020* provides for stamp duty exemption on instruments for purchase of a flat under the *Program Perumahan Rakyat Majlis Tindakan Ekonomi Negara* and *Perumahan Awam Dewan Bandaraya Kuala Lumpur*.

The instruments are as summarised below:-

Loan scheme	Instruments	Party
Special Financing Scheme	Sale and purchase agreement ["SPA"]	Between a purchaser and Syarikat Perumahan Wilayah Persekutuan ["SPWP"]
	Loan agreement	Between a purchaser and SPWP
	Instrument of transfer	Between a purchaser and Dewan Bandaraya Kuala Lumpur ["DBKL"]
	SPA	Between SPWP and DBKL
Other than Special Financing Scheme	SPA	Between a purchaser and DBKL
	Loan agreement	Between a purchaser and a financial institution
	Instrument of transfer	Between a purchaser and DBKL

The exemption applies to the above instruments executed on or after 1st January 2020 but not later than 31st December 2024.

Service Tax - Industry Guides

The Royal Malaysian Customs Department has published the following guides:-

- i. [Guide on Management Services](#) (currently only made available in *Bahasa Malaysia*) dated 15th January 2021; and
- ii. [Guide for Refund on the Acquisition of Services by Foreign Missions and International Organisations](#) dated 18th January 2021.

For other issues of our Tax Flash, please go to:
www.moore.com.my/publications



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