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Guidelines for Approval of DGIR under Section 44(6) of the Act

The Inland Revenue Board ["IRB"] has, on 15th May 2019, issued the updated Guidelines for Approval of Director General of Inland Revenue ["DGIR"] under Section 44(6) of the Income Tax Act 1967 ["the Act"] to replace the previous Guidelines issued in January 2005. The updated Guidelines do not apply to any application related to Houses of Religious Worship and Schools.

Salient points of the abovementioned updated Guidelines include:-

- i. Types of Institution or Organisation Eligible to Apply for Approval under Section 44(6) of the Act
 - Institution or organisation in Malaysia that is not managed or operated for profit seeking purposes.

Hyperlinks

- [Moore Stephens Malaysia](#)
- [Moore Stephens International](#)
- [Inland Revenue Board](#)

- [Guidelines for Approval of DGIR under Section 44\(6\) of the Act](#)

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- ii. Eligibility Criteria of an Institution or Organisation to Apply for Approval under Section 44(6) of the Act
 - The institution or organisation must be established in Malaysia and not established primarily for profit.
 - Services or benefits provided by an institution or organisation:-
 - provided to Malaysians irrespective of race, religion or descendant;
 - not limited to a target group based on race, religious affiliation, political affiliation or specific area;
 - 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;
 - not enjoyed by family members or any parties related/connected with the abovementioned parties; and
 - 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.
 - Institution's or organisation's Board of Trustees / Board of Directors / Committee Members terms
 - More than 50% of the members must consist of outsiders who is not related to the institution or organisation.
 - 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.
 - An institution or organisation must be in operation for at least 2 years to be eligible to apply for approval under Section 44(6) of the Act.
- iii. Procedures of Application for Approval under Section 44(6) of the Act
 - Application for approval must be accompanied with the necessary documents.
- iv. Conditions for Approval under Section 44(6) of the Act
 - During the approved period, the institution or organisation shall comply with the all conditions imposed by the DGIR and observe the prohibition for the institution or organisation that has been approved under Section 44(6) of the Act.

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- v. Responsibilities of an Institution or Organisation After Obtaining Approval under Section 44(6) of the Act
- The responsibilities of institution or organisation after obtaining an approval are as follows:-
 - Official receipt
 - All donations received in the form of cash or via internet banking, cheque / money order / postal order / bank draft must be issued an official receipt.
 - 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.
 - 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.
 - An annual audited financial statement audited by an accredited Public Auditor shall be sent by or on 30th April of each year to the IRB's Tax Policy Department.
 - The institution or organisation shall submit Income Tax Return Form (Form TF) by e-filing to the DGIR latest by 30th of April annually under Section 77 of the Act.
- vi. Consequences of a Breach of the Conditions of Approval
- In the event the institution or organisation violates any of the conditions of approval, the DGIR may at his own discretion revoke the approval granted under Section 44(6) of the Act.
- vii. Tax Treatment of Donors
- Donors who have contributed and donated to any approved institutions or organisations under Section 44(6) of the Act are entitled to a deduction of their contributions and donations in the calculation of their aggregate incomes.
 - Only cash contributions and donations supported by official receipts are entitled for tax deduction. Contributions and donations in the form of goods (e.g. food, clothing, computers, stocks and building materials) are not entitled for tax deduction.
 - The amount of deductible donations and contributions is limited to 7% of aggregate income for individuals and 10% of aggregate income for companies.

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Guidelines on Tax Treatment Related to the Implementation of MFRS 121 (or other Similar Standards) (Revised)

The IRB has issued Guidelines for Tax Treatment Related to the Implementation of Malaysian Financial Reporting Standards ["MFRS"] 121 (or other Similar Standards) (Revised) dated 16th May 2019. The previous guidelines issued on 24th July 2015 is revoked.

Foreign currency transactions are transactions conducted by businesses that are denominated in a currency other than the company's functional currency. Gains and losses may result from such transactions due to the fluctuation in the rates of the foreign currencies. The MFRS 121 addresses the accounting treatment in relation to transactions involving changes in foreign exchange rates.

Salient point of the above revised Guidelines include:-

- i. Tax Treatment of Foreign Exchange Differences
 - MFRS 121 requires an entity to determine its functional currency and measure its result and financial position in that currency when preparing its financial statements. Initial recognition of a foreign currency transaction is to be recorded by applying the spot exchange rate between the functional currency and the foreign currency at the date of the transaction.
 - Sales or purchases settled in the same accounting period
 - Where sales or purchases transacted in foreign currency are settled in the same accounting period, the exchange rates at the time of transactions and at the time of settlement may be different. As a result, foreign exchange differences are charged to the profit and loss account. These foreign exchange differences are considered realised at the date of settlement and any gains or losses arising therefrom will be subject to tax or allowed a deduction for tax purposes.
 - Sales or purchases not settled in the same accounting period
 - Where sales or purchases transacted in foreign currency are not settled in the same accounting period, the exchange rate at the end of the accounting period may be different from the exchange rate at the transaction date or the exchange rate applied at the end of the previous accounting year end. As a result, foreign exchange differences arising from converting the monetary items denominated in foreign currencies into the functional currency of the business are charged to profit and loss account. These foreign exchange differences are not considered realised until the date of settlement and any gains or losses arising therefrom will not be subject to tax or allowed a tax deduction for tax purposes.

- [Guidelines on Tax Treatment Related to the Implementation of MFRS 121 \(or other Similar Standards\) \(Revised\) dated 16th May 2019](#)

Hyperlinks

- Purchases of assets may be made in functional currency or foreign currency of a business entity and the following principles are to be observed for tax purposes:-
 - Foreign exchange differences arising from purchases of assets are not allowable for deduction as they are capital in nature but shall be adjusted to the qualifying expenditure ["QE"] of the asset for the purpose of capital allowance calculation when payment is made (realised).
 - Foreign exchange differences are realised when the asset or liability is settled i.e. received/paid through foreign currency.
 - For every purchase of asset denominated in Ringgit Malaysia ["RM"], the actual cost of the asset in RM is to be used as QE.
 - For every purchase of asset denominated in foreign currencies other than RM, the spot exchange rate between the foreign currencies and RM at the date of the transaction is to be applied to determine the QE.
 - For the purpose of the revised Guidelines, at the date of transaction, entity may use these rates as the spot exchange rate:-
 - the exchange rate issued by the Accountant General's Department of Malaysia from time to time based on the rate published by Bank Negara Malaysia for the purpose of managing and accounting transaction involving foreign currencies; or
 - the exchange rate used by the entity's bank.
- ii. Foreign Exchange Rates to be used for Reporting in the Tax Returns
 - An entity may translate its financial statements into the presentation currency if the presentation currency differs from the entity's functional currency using the exchange rates prescribed in MFRS 121. This may result in translation of foreign exchange differences. Translation of foreign exchange differences will not be subject to tax or allowed a tax deduction for tax purposes.
 - In situation where an entity uses currency other than RM as its functional currency, the entity's financial statements audited in functional currency for the accounting period shall be translated into RM, for the purpose of reporting their tax returns, using the following exchange rates:-
 - The exchange rate used to translate an audited financial statement in functional currency into presentation currency as prescribed under MFRS 121; or
 - The average exchange rate issued by the Accountant General's Department of Malaysia from time to time based on the rate published by Bank Negara Malaysia for the purpose of managing and accounting transaction involving foreign currencies at the date of the statement of financial position.

- The exchange rate used to translate an audited financial statement in functional currency into presentation currency is allowed to be used only by entity adopting MFRS (or other similar standards) in their financial reporting.

Note : For further information on the previous Guidelines on Tax Treatment Related to the Implementation of MFRS 121 (or other Similar Standards), kindly refer to our Tax Flash – October 2015 issue.

Tax Exemption for Non-Resident on Income Received from Religious Institution or Organisation

The Income Tax (Exemption) (No. 3) Order 2019 has been gazetted to provide tax exemption to a non-resident person in respect of income derived from Malaysia in relation to any payment received from any religious institution or organisation for the following service throughout the period of service:-

- to provide religious lectures or study of a religious book including the translation of a holy book or related religious books; or
- to preside prayers or rites of worship according to the ritual of each religion.

This exemption is given on the conditions that:-

- the religious programme or activity conducted and organised by the religious institution or organisation exclusively for religious purpose and not for commercial or profit purposes;
- the religious programme or activity is conducted and organised without imposing any payment on participants; and
- the religious programme or activity is commenced on or after 1st February 2019.

The withholding tax provision under Section 109A of the Act shall not apply to the above income derived by the non-resident.

This Order is deemed to have come into operation on 1st February 2019

Hyperlinks

➤ [Tax Flash – October 2015](#)

➤ [Income Tax \(Exemption\) \(No. 3\) Order 2019](#)

Hyperlinks

Tax Exemption for Non-Resident on Income Derived from End User Who is an Individual Resident in Malaysia

Pursuant to the Income Tax (Exemption) (No. 4) Order 2019, a person not resident in Malaysia is exempted from the payment of income tax in respect of income derived from Malaysia in relation to any amount of payment for shrink-wrapped software, site-license, downloadable software or software bundled with personal computer hardware, smartphone or tablet received from an end user who shall be an individual resident in Malaysia who purchases software or acquires any right to use software for personal usage and not for usage in his business.

The withholding tax provision under Section 109 of the Act shall not apply to the above income derived by the non-resident.

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

Guides on Goods and Services Tax

- i. The Goods and Services Tax ["GST"] Guide on Declaration and Adjustment After 1st September 2018 as at 19th April 2019 is updated with the same publication as at 8th May 2019.
- ii. The GST Guide on Tax Invoice, Debit Note, Credit Note and Retention Payment After 1st September 2018 as at 29th April 2019 is updated with the same publication as at 9th May 2019.

The salient amendments to the above guides are summarised below:-

- Any GST adjustment shall be made by a GST registered person before 1st September 2020. A GST registered person is not required to adjust his output or input tax for any changes taking place on or after 1st September 2020.
- A GST registered person is not allowed to issue a credit note or debit note and make GST adjustment after 31st August 2020 although there is a change in consideration for the taxable supplies. The above treatment also applies to retention payments.

This publication is provided gratuitously and without liability. It is intended as a general guide only and the application of its contents to specific situations will depend on the particular circumstances involved. Readers should seek appropriate professional advice regarding any particular problems that they encounter, and this tax update should not be relied on as a substitute for advice. Accordingly, Advent MS Tax Consultants Sdn Bhd assumes no responsibility for any errors or omissions it may contain, whether caused by negligence or otherwise, or for any losses, however caused, sustained by any person that relies on it. Should further information, clarification or advice be required on any of the contents stated herein, please feel free to contact our tax team.

➤ [Income Tax \(Exemption\) \(No. 4\) Order 2019](#)

➤ [GST Guide on Declaration and Adjustment After 1st September 2018](#)

➤ [GST Guide on Tax Invoice, Debit Note, Credit Note and Retention Payment After 1st September 2018](#)