



INLAND REVENUE BOARD OF MALAYSIA
TECHNICAL DEPARTMENT
12TH FLOOR, BLOCK 9,
GOVERNMENT OFFICE COMPLEX
JALAN DUTA, P.O.BOX 11833,
50758 KUALA LUMPUR

**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 Act 1967 and the various steps/procedures involved in the submission of applications 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 established in Malaysia which are not operated or conducted primarily for profit may be considered for approval under subsection 44(6);

- 2.1 **Institutions**

- 2.1.1 a hospital;

- 2.1.2 a public or benevolent institution;

- 2.1.3 a university or other education institution;

- 2.1.4 a public authority or society engaged in research or other related activities connected with the causes, prevention or cure of disease in human beings;

- 2.1.5 a Government-assisted institution engaged in socio-economic research; or

- 2.1.6 a technical or vocational training institution.

- 2.2 **Organisations/Funds**

- 2.2.1 a public or private fund established or held for the sole purpose of:

- 2.2.1.1 the establishment, enlargement or improvement of an educational institution in Malaysia but does not include a sports complex, recreational facility, or parking bay; or

- 2.2.1.2 the provision of scholarship, exhibition or prize for an individual for educational work or research work in an institution in Malaysia;
- 2.2.2 a public fund established for the relief of distress amongst the Malaysian public;
- 2.2.3 a fund established and held solely for the construction, improvement or maintenance of a building in Malaysia which is to be used exclusively for the purpose of religious worship or advancement of religion and is intended to be open to any member of the public for those purposes;
- 2.2.4 an organisation engaged in or in connection with the conservation or protection of animals;
- 2.2.5 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;
- 2.2.6 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;
- 2.2.7 a Government -assisted organisation established and maintained exclusively to administer and augment a fund established or held solely for promoting national unity;
- 2.2.8 an organisation established exclusively for the conservation or protection of the environment;
- 2.2.9 an international organisation as defined under the International Organisation (Privileges and Immunities) Act 1992 carrying out such charitable activities as determined by the Minister;
- 2.2.10 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;
- 2.2.11 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).

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

3.1 **Objective**

Organisation must be established in Malaysia for charitable purposes only.

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

- (a) a trust for the relief of poverty;
- (b) a trust for the advancement of education;
- (c) a trust for the advancement of religion;
- (d) a trust for other purposes beneficial to the community not falling under any of the preceding categories.

3.3 **Benefits**

- (a) the institution or fund should serve or benefit Malaysians irrespective of race, creed or religion. The benefit should not be confined to a specific group only.
- (b) the benefits of the institution or fund shall not be enjoyed by 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 **50% Fund Expenses**

The charitable institution / organisation must spend at least 50% (or such percentage as may be determined by the Director General) of its income including donation received in the previous year for the activities which were approved to achieve its objectives for the basis period for a year of assessment.

3.5 **Board of Trustees**

At least 50% of the members of the Board of Trustees are 'outsiders', who are not connected to the organisation or founder.

3.6 **Prohibitions**

The Organisation is not allowed to be involved in any political activities or trade union movements and must not allow its funds, staffs/members and premises/assets to be used for these purposes.

3.7 **Financial Statement**

An audited set of annual accounts of the organisation/fund must be forwarded to Technical Department Inland Revenue Board after the end of its financial year. In addition, an audited set of consolidated accounts must be forwarded to the Board for organisation that establishes a branch/affiliated body. The audited set of consolidated account must show all income including donations and all expenditure incurred by the organisation and its branch/affiliated body.

3.8 **Business Activity**

Generally, the institution/organisation is not allowed to carry on any type of business. However, an organisation is allowed to be involved in business if the following conditions are fulfilled:

- (i) The organisation applies 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; and
- (ii) The profits or incomes derived from the business activity is used solely for charitable purposes or for the primary purpose for which the institution or organisation was established.

The restriction of 25% accumulated fund is not applicable, if

- (a) the business carried on is in the course of discharging the primarily charitable purpose of the institution or group of people established for; or
- (b) the work relating to the business is mainly carried on by persons whose benefit the institution was established for.

Example;

One of the objectives of the Persatuan Orang Buta, Malaysia is to educate and encourage its members to be independent. One of the businesses undertaken by the Association is to produce and sell rattan products made by its members.

In this regard, this activity will not jeopardise the Association's approved status under subsection 44(6) even though the Association utilised all its funds for the business.

3.9 Amendments And Changes To The Constitution/Trust Deed And Memorandum and Articles

No addition, alteration or amendment to the constitution shall be made to or in the provisions contained in the documents for the time it being in force unless a prior written notice is obtained from the Director-General of Inland Revenue Board, Malaysia before it is implemented.

3.10 Winding Up Or Dissolution

- (i) If upon the winding up or dissolution of the institution/organisation, there remains, after the satisfaction of all its debts and liabilities, any property or monies, the property or monies shall not be paid or distributed among members of the institution/fund, but shall be donated to the Government or to other institutions/funds which has been approved by the Director General of Inland Revenue Board, Malaysia.
- (ii) the Director-General of Inland Revenue Board, Malaysia should be notified of any dissolution of the institution /organisation.

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/Constitution/Trust Deed

If the organisation is requested to amend the Memorandum and Article/Constitution/Trust Deed, the amendment must be approved by the respective authority. Upon approval, documents as listed below must be forwarded to Inland Revenue Board;

- (i) a copy of minutes of meeting approving the relevant amendments;
- (ii) a copy of approval letter from the respective authority; and
- (iii) a copy of amended Memorandum and Article/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 in the case of a school-building fund, the headmaster of a school can submit an application for approval.

6. Procedures And Requirements For Application

There is no special form to make an application for approval under subsection 44(6) except in the case of a school building fund the relevant form (**Appendix A**) can be obtained from the State Education Department. The application can be made through a letter with detailed information of the organisation/institution. The procedures and requirements for the application are as follows:

6.1 Institution Or Organisation

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

6.1.1 An Institution/Organisation Which Is A Company Limited By Guarantee

- 6.1.1.1 a copy of the certificate of registration from the Commission of Companies;
- 6.1.1.2 a copy of the certificate issued under section 24(1) of the Companies Act, 1965;
- 6.1.1.3 a copy of the Memorandum & Articles of Association;
- 6.1.1.4 a copy of Form 49 (detailed information on Board of Directors/ Board of Trustees);
- 6.1.1.5 financial statements for the immediately preceding two years, if applicable;
- 6.1.1.6 a list of activities being carried out and activities to be carried out; and
- 6.1.1.7 supporting letter from the relevant Department/ Ministry .

6.1.2 Other Organisation And Institution

- 6.1.2.1 a copy of the certificate of registration from the Registrar of Societies;
- 6.1.2.2 a copy of the Constitution/Rules;
- 6.1.2.3 a list of the committee members stating the names full addresses, identity card numbers, occupation and the positions held in the committee;
- 6.1.2.4 financial statements for the immediately preceding two years, if applicable;
- 6.1.2.5 a list of activities being carried out and activities to be carried out; and

6.1.2.6 supporting letter from the relevant Department/
Ministry .

6.1.3 Specific Fund And Other Organisation Established Under Trust Deed

6.1.3.1 a stamped copy of the Trust Deed;

6.1.3.2 a list of the Board of Trustees stating the names, full addresses, identity card numbers, occupation and the positions held in the Board;

6.1.3.3 financial statements for the immediately preceding two years, if applicable;

6.1.3.4 a list of activities being carried out and activities to be carried out; and

6.1.3.5 supporting letter from the relevant Department/
Ministry.

6.1.4 Education And Welfare Fund Established By A Foundation/Association

6.1.4.1 the fund must be established for the purpose of advancement of education and relief of distress among Malaysians irrespective of race, religion and creed.

6.1.4.2 the following documents should be sent with the letter of application together with documents as stated in paragraph 6.1.1/6.1.2/6.1.3;

(a) a copy of minutes of meeting/resolution of the foundation or association which approved;

(i) the establishment of the fund;

(ii) the appointment of the fund committee members; and

(iii) the Rules and By-laws of the fund.

(b) documents in respect of the fund itself;

(i) Rules and By-laws of the fund. Rules and By-Laws should incorporate inter-alia the names of the fund, address, objectives, control and management of finance, auditing and accounting, appointment and responsibilities of the committee

members, amendments of articles and dissolution of the fund;

- (ii) a complete list of the committee members stating the names, identity card numbers and occupation;
- (iii) a list of activities being carried out and activities to be carried out; and
- (iv) supporting letter from Ministry of Education/ Welfare Department

6.1.5 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 issued for this purpose. The guidelines can be obtained from all Inland Revenue Board branches as well as from Inland Revenue website; <http://www.has/7n7et.org.my>

6.2 Building Fund

6.2.1. School Building Fund

6.2.1.1. For Fully - Aided Government And Non-Government Schools

The application for approval for the above school building fund must be submitted to the Director General of Inland Revenue Board through the State Education Department. One (1) copy of the application form 'Appendix 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 then submit the application to the Director General of Inland Revenue Board.

6.2.1.2 For Private Schools

The application for approval for the above school building fund must be submitted to the Director General of Inland Revenue Board through the State Education Department and the Ministry of Education. One (1) copy of the application form 'Appendix 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.

For the building of Islamic school, the application must be submitted through the respective Majlis Agama Islam Negeri.

Note:

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

6.2.2. Building Fund For Mosque, Temple and Church

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

6.2.2.1 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 names, full addresses, identity card numbers, occupation and the positions held in the committee.

6.2.2.2 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. The Rules/By-laws should incorporate inter-alia the names, 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 and minutes of meeting in which the rules and by-laws were approved;
- (iv) a list of the building fund committee members stating the names, full addresses, identity card numbers and occupation;
- (v) a copy of the building plan approved by the local authority;
- (vi) a breakdown of the estimated cost of the proposed building and a certification from a registered architect;
- (vii) if collection of public donation has already commenced, state the date on which the donation was first made and the total amount of donation collected to date;
- (viii) total financial assistance from the Government or other agencies which have been received or pledged if any; and
- (ix) a recommendation letter by the respective authority to verify that the building is used solely for religious worship and recommendation letter from the Majlis Agama Negeri where the application is in respect of a mosque building fund.

7. **Where To Submit Application**

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

Director,
Tax Policy Department
Inland Revenue Board Of Malaysia
17 Floor, Wisma Hasil,
Persiaran Rimba Permai,
Cyber 8, P.O.Box 11833
63000 CYBERJAYA, Selangor Darul Ehsan

8. **General And Specific Requirements Of An Approved Institution/Organisation/Fund**

8.1 **General Requirement**

8.1.1. official receipts for all donations received must clearly indicate the following;

8.1.1.1 name of the organisation/fund;

- 8.1.1.2 serial number;
- 8.1.1.3 reference number of the approval i.e. file reference number;
- 8.1.1.4 period of approval; and
- 8.1.1.5 gazette notification number.

8.1.2. A copy of the audited accounts (i. e audited by a public auditor) **must be sent annually to Director General Inland Revenue Board within 6 months** after the end of the organisation's financial year to the above mentioned address (see para 7).

8.1.3. Any amendment to the constitution /Rules and By-laws shall not come into effect unless prior written approval from Director General Inland Revenue Board has been obtained.

8.2 **Specific Requirements**

8.2.1. **Institution /organisation**

At least 50% of the income and donation received must be spent yearly in carrying out the objectives of the institution / organisation. Failure to meet this condition, will result in withdrawal of the exempt status.

8.2.2. **Building Fund**

8.2.2.1 the building fund must be utilised **solely** for the construction of the building mentioned in the application for approval.

8.2.2.2 all donations received must be utilised solely for the construction of the building. **Donations cannot be utilise for expenditure relating to equipment and fittings.** After the construction of the building is completed the remaining donations (if any) must be donated to any approved institution/ organisation approved by Director General Inland Revenue Board under subsection 44(6).

8.2.2.3 the building must be completed within 3 (three) years as stated in the approval letter or such further period as may be allowed by the Director General Inland Revenue Board, Malaysia.

8.2.2.4 separate accounts should be maintained for the building fund and submitted annually to Director

General Inland Revenue Board at the above mentioned address (see para 7).

8.2.2.5 a report on the completed project must be submitted to the Technical Department of Inland Revenue Board.

8.2.3 **Other Fund**

An organisation which has been approved in respect to its scholarship fund or fund for the relief of distress shall maintain separate account for purposes of its approved status.

9. **Tax Deduction And Exemption**

9.1. **Tax Deduction**

Donors who have made 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 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.

9.2. **Tax Exemption**

With effect from the year of assessment 2001, any organisation or institution which is approved under subsection 44(6) will automatically be granted tax exemption on its income (except dividend income) under paragraph 13, Schedule 6, Income Tax Act 1967.

Tax Policy Department
Inland Revenue Board,
Of Malaysia.

April 2005

APPLICATION FOR SCHOOL BUILDING FUND

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

A. TO BE COMPLETED BY APPLICANT

1. Name of school and address

2. Status of school: whether private school / fully government-aided school / non-government-aided school (capital grant). If private, its registration number with the Education Department.

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

Year						
Standard 1-6						
Form 1-5						
Form 1-6						
Number of 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 with assistance becomes a 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. Whether the proposed buildings/additional buildings are certified or approved by the respective local councils. Please state the approval number and date.

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

16. If donation received from foreign 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 date of the first donation received and total amount of collection to date.

Proposer

Name : ..

Address :

Date : ...

Signature of applicant /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 with details of name, full address, identity card number, occupation and designation in the committee.
3. One copy of building plan which is approved by the local council.
4. A breakdown of the estimated cost of construction of the building and certification of the construction cost from a registered 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's approval)

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

3. It is confirmed that:

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

Yes/No

(b) Eventhough the school is administered by a 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 MINISTRY OF EDUCATION
(applicable to private school only)

Declaration:

Signature

Date:

Name and Designation