

TECHNICAL

Direct Taxation

[GUIDELINES ON APPLICATION FOR APPROVED SOCIAL ENTERPRISE UNDER S44\(11C\) OF THE INCOME TAX ACT 1967 \(ITA\)](#)

Background

Budget 2019 included a proposal for contributions made to social enterprises by individuals to be allowed as deduction up to 7% of aggregate income.

The above [Guidelines](#) dated May 2019 (refer to our [e-CTIM TECH-DT 57/2019](#) dated 12 July 2019) explain the application procedure and conditions for approval under S44(11C) of the ITA for a social enterprise (SE).

The contents of the Guidelines are outlined below.

Terms and Conditions

- To be eligible for approval, the SE must meet all the criteria stated in para. 2.1. They are: -
 - (a) Established and carries on business in Malaysia;
 - (b) Its objective is to actively bring about positive social and environmental effects whilst in a financially stable position.
 - (c) An active entity registered under any written law in Malaysia;
 - (d) Obtained accreditation from the Ministry of Entrepreneur Development (MOED);
 - (e) The beneficiaries are Malaysian citizens only, regardless of race, religion or ethnic group.
 - (f) Must have been in operation for at least 2 years to qualify for approval by the Minister of Finance as an approved SE.
 - (g) SE that have been approved as approved institutions under S44(6) are not allowed to apply for approval under S44(11C).
- Other conditions that must be met with **after** approval has been obtained under S44(11C) of the ITA are set out in para. 2.2 of the Guidelines. These relate to the preparation of separate accounts for contributions received, submission and reporting requirements, utilization of funds from contributions, and the keeping of accounts and other records (e.g. names of donors and receipts).

Tax deduction for contributions

- The deduction that is allowed in respect of contributions to an approved SE is restricted to contributions in cash only.
- The amount that is allowed to be deducted is explained in para. 3.1.

This amount is stated in the proviso to S44(11C) of the ITA to be an amount which “...shall *not exceed* –

(a) in the case of a person other than a company, the difference between the amount of 7% of the aggregate income of that person in the relevant year and the total amount that has

*been deducted pursuant to the proviso to subsections (6) and (11B) for that relevant year;
or*

(b) in the case of a company, the difference between the amount of 10% of the aggregate income of that company in the relevant year and the total amount that has been deducted pursuant to the proviso to subsections (6) and (11B) for that relevant year.

- A deduction can only be claimed after a donation has been made and a receipt is issued to the donor by the approved SE.

Other matters dealt with

The other matters dealt with in the Guidelines are the following: -

- **Dissolution of the SE** (para. 4)

An approved SE that ceases operation is required to transfer the remainder of the funds from contributions received to other approved SE under S44(11C) or approved institutions under S44(6) and to show proof to the Finance Ministry of the transfer of its funds to these organizations.

- **Period of application and approval** (para. 5)

The application for approval under S44(11C) must be made between 1/1/2019 and 31/12/2020. Approval is granted for a period of 3 consecutive years.

- **Withdrawal of approval** (para. 6)

The Minister may withdraw an approval under S44(11C) if the SE fails to fulfill any condition of approval or fails to renew its accreditation with the MOED. Following the withdrawal, all contributions received by that SE must be transferred to other approved SE or approved institutions under S44(6).

- **Application** (para. 7)

Paras. 7.1 and 7.2 provide information on the documents that must be submitted together with the application, and the address to which the application is to be sent.

Members may read the Guidelines in full on the websites of the [Institute](#) and the [LHDNM](#).

You may write to the Institute at technical@ctim.org.my or secretariat@ctim.org.my in respect of any suggestions, concern or comments you may have on the [Guidelines](#) so that we may raise them to the tax authorities.

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