INLAND REVENUE AUTHORITY OF SINGAPORE

IRAS e-Tax Guide

Guidance on Tax Deductible Donations

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1 Aim

1.1 This e-Tax Guide sets out what contributions made to an Institution of A Public Character ("IPC") or a Grant-Making Philanthropic Organisation ("Grant-maker") are considered donations and eligible for tax deduction under the Income Tax Act 1947 ("ITA"); and the differences between donations and sponsorships.

1.2 This e-Tax Guide will be relevant to you if you are an IPC, a Grant-maker, or a potential donor.

2 At a glance

2.1 IPCs and Grant-makers may use this guide to determine whether the contribution which they receive should (a) be regarded as a donation or sponsorship, and (b) if the contribution is considered a donation, whether the donation qualifies for enhanced tax deduction for income tax purposes. IPCs should read this e-Tax Guide in conjunction with the e-Tax Guide on **Tax Treatment on Donations with Benefits**, which deals with the specific scenario where donors receive benefits when they make tax deductible donations.

3 Glossary

3.1 Institution of A Public Character as defined under section 40 of the Charities Act 1994:

A registered charity or an exempt charity in Singapore –

a) that is approved as an institution of a public character by the Minister, Commissioner of Charities, or any Sector Administrator on the application of the charity; or
b) which is deemed as an institution of a public character under any written law.

3.2 Grant-making Philanthropic Organisation

A grant-making philanthropic organisation registered with IRAS under the Income Tax (Grant-Making Philanthropic Organisations) Regulations 2009.

3.3 Hereinafter, references to IPC(s) in this guide should be taken to include the references to Grant-makers.

4 Background

4.1 To encourage philanthropy and altruistic giving, the Government provides enhanced tax deductions on certain donations made to IPCs ("tax deductible donations") under section 37(3) of the ITA. For the donors to enjoy the enhanced tax deductions on their donations, IPCs are required to issue tax deduction receipts to the donors. As granting such enhanced tax deduction results in tax revenue foregone by the Government, IPCs must ensure that tax deduction receipts are issued only in respect of tax deductible donations.

4.2 IPCs may source for donations and sponsorships to fund their activities. When a person contributes to an IPC, the person may receive enhanced income tax deduction in respect of the contribution if the contribution is a donation that met the relevant conditions. **When the person's contribution to the IPC is a sponsorship, the person is not entitled to enhanced income tax deduction, and IPCs should not issue tax deduction receipts for such contributions**. Instead, the sponsors may claim these sponsorships as business expenses when they file their income tax returns if these expenses were tax deductible expenses under section 14 of the ITA (i.e. revenue expenses incurred wholly and exclusively in the production of their income).

5 What is a Donation

5.1 A donation is generally an unconditional and voluntary gift to the recipient without expectation of any benefit in return. The main test determining whether a contribution is a donation depends on the intention of the person making the contribution. If a person would not have made the contribution to an IPC but for the fact that he would receive a benefit-in-return, the contribution to the IPC would not be considered a donation. That said, the fact that a person receives a benefit-in-return in connection with his contribution to an IPC does not automatically mean that his contribution is not a donation. Whether a contribution constitutes a donation will depend on the facts and circumstances of each case. This e-Tax Guide highlights some factors which would disqualify a contribution from being regarded as a donation, as well as some illustrative examples on what constitutes a donation.

Tax Deductibility of Donations

5.2 The following three criteria can be used by IPCs to determine if a contribution qualifies as a tax deductible donation (see **Annex A** for examples):

a) The contribution must fall within one of the categories of donation specified in section 37(3)(c), (e) and (f) of the ITA as detailed in Annex A;

b) The contribution is a free-will gift for which the giver relinquishes and confers all his rights, control and ownership over the gift to the IPC when the contribution is made[1]; and

c) If the contribution is subject to any condition specified by the donor as to the purpose for which the contribution may be applied, all the three requirements[2] under section 37(3C) of the ITA must be satisfied.

5.3 IPCs may issue tax deduction receipts to donors in respect of tax deductible donations that meet all the above three criteria. **Where a contribution does not fulfil any of the three criteria above, the contribution is not a tax deductible donation and IPCs must not issue tax deduction receipts in respect of the contribution**.

5.4 A contribution will **not** qualify as a tax deductible donation if the contribution is governed by an agreement which includes any of the following attributes and IPCs must not issue tax deduction receipts in respect of such contributions (see **Annex A** for examples):

a) The contribution agreement contains a refund clause, where the IPC is obliged to refund (wholly or in part) the contribution or make other compensation arrangements to the contributor (see paragraphs 5.6 to 5.7 for more details.); or

b) The contribution agreement contains an ‘exclusivity’ clause which prevents the IPC from accepting funds/contributions from and/or acknowledging other contributors/donors, regardless of whether the latter are from the same industry as the contributor; or

c) The contribution arrangement is in substance a commercial arrangement or an exchange of monies for benefits. Such arrangements include outright sales of goods or services, instances where the contributor derives substantial commercial benefits from the contribution arrangement, or instances where the contributor retains contractual rights over the sum contributed.

5.5 Contributions made under agreements with these attributes will not qualify as tax deductible donations as the contributions would not be consistent with a free-will gift where the contributor relinquishes and confers all his rights, control and ownership over the gift to the IPC when the contribution is made.

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[1] As part of the assessment whether the contribution is a free-will gift, IPCs should assess whether the contribution is a sponsorship. A contribution that constitutes a sponsorship is not a free-will gift.

[2] (a) Each specified purpose must be one that advances an objective of the recipient set out in its governing instruments;
(b) None of the specified purposes must be to advance the interests (whether directly or indirectly) of a particular race, belief or religion, or of a particular person or persons; and
(c) The donor did not specify or imply in any manner that any part of the property or money that cannot be used for any of the specified purposes shall revert to him or be given to any other person.

Refund clause vs statutory obligation to refund

5.6 While Regulation 11(7) of the Charities (Institutions of A Public Character) Regulations ("IPC Regulations") requires an IPC to return the donated funds if it is unable to carry out the project for which it has specifically raised funds for, this is a statutory obligation, and does **not** impose a requirement on the IPC to include a refund clause in the contribution agreement. The inclusion of a refund clause in the contribution agreement indicates that the contribution is not a free-will gift as it creates a contractual obligation that is commercial in nature. Such a contribution agreement would thus be classified as a sponsorship and would not be eligible for enhanced tax deductions.

5.7 IPCs should refer to the IPC Regulations for the legal requirements and circumstances under which the obligation under Reg 11(7) applies. **For avoidance of doubt, a clause where the IPC commits to adhere to the IPC Regulations does not constitute a refund clause.** To assure donors that IPCs are adhering to their statutory obligations regarding the donations, IPCs may wish to refer donors to the IPC Regulations.

Donations with benefits

5.8 Where a donor, or a person connected with the donor, receives a benefit in return for a tax deductible donation made, the enhanced tax deduction is only granted on the difference between the donation and the value of the benefit under section 37(3G)[3] of the ITA. Enhanced tax deduction will not be granted if the contribution is ascertained to be a sponsorship (refer to section 6 for more details).

5.9 Notwithstanding the rule, to further encourage philanthropic giving, certain donations made to IPC may be deemed to be pure donations as a concession, notwithstanding there is a benefit given in return for the donation. These benefits are treated as having no commercial value under the concessionary tax treatment outlined in the e-Tax Guide on **Tax Treatment on Donations with Benefits**.

6 What is a Sponsorship

6.1 Sponsorships (whether in-kind or in cash) are arrangements which typically entail a defined set of rights, opportunities, and benefits to the sponsor to be fulfilled by the IPC (in exchange for the sponsorship monies). The sponsor will typically support an activity or event by making a contribution to the IPC and in the process, the sponsor receives certain commercial benefits, although the value of the benefits could be lower than the value of the support provided. This is unlike a donation where the intent is to make an

[3] Section 37(3G) of the ITA - Where a donor who makes a donation referred to in subsection (3)(*b*), (*c*), (*d*), (*e*) or (*f*), or a person connected with the donor, receives or will receive a benefit in consequence of making the donation, a reference to the value or amount of the donation under that provision shall exclude an amount equivalent to the value of the benefit.

unconditional and voluntary gift to the IPC without expectation of any benefit in return, to support its charitable objects.

6.2 If a contributor would not have made the contribution but for the fact that he would receive a benefit in return, regardless of whether the value of the contribution is higher than the value of the benefits received (i.e. the contribution is not a free-will gift), the full contribution would not be a donation. Whether the contribution made to an IPC tantamount to a sponsorship ultimately depends on the facts and circumstances of the case.

Tax Deductibility of Sponsorships

6.3 Sponsorships are not eligible for enhanced tax deduction under section 37(3) of the ITA. Such sponsorships of monies, goods or services may, however, be expenses allowable for tax deduction under section 14[4] of the ITA if such expenses are considered as being incurred wholly and exclusively in the production of income and are not explicitly prohibited under section 15[5] of the ITA. These include payments made to advertise the sponsor's goods and services. Sponsors may claim these sponsorship expenses when they file their income tax returns.

6.4 IPCs should determine whether a contribution is a sponsorship or a donation by reviewing the terms of the agreement with the contributor and bearing in mind the principles and factors set out in paragraphs 6.1 and 6.3 above. **IPCs should not issue tax deduction receipts for sponsorships**. IPCs should also take note that the tax treatments stated in the e-Tax Guide on **Tax Treatment on Donations with Benefits** apply only to donations and not sponsorships.

6.5 In the event of wrongful issuance of tax deduction receipts, the enhanced tax deductions claimed by the sponsors will be recovered by IRAS and the IPCs may be liable for penalties imposed by the Commissioner of Charities[6].

7 Enquiries

7.1 For enquiries or clarification on this e-Tax Guide, please contact:

Tel: 6351 3763
Email: charities@iras.gov.sg

[4] Section 14 of the ITA - For the purpose of ascertaining the income of any person for any period from any source chargeable with tax, there shall be deducted all outgoings and expenses wholly and exclusively incurred during that period by that person in the production of the income.
[5] Section 15 of the ITA – For the purpose of ascertaining the income of any person, no deduction shall be allowed on expenses that are prohibited under this section.
[6] Under Regulation 22 of the Charities (Institutions of A Public Character) Regulations, a person who issues a tax deduction receipt for any donation that is not a tax deductible donation shall be liable to pay to the Commissioner a financial penalty.

Annex A – Details of the three criteria under paragraph 5.2 and examples[7] of non-qualifying donations

a) **The donation must fall within one of the categories of donation specified in section 37(3)(c), (e) and (f) of the ITA (see summary table below)**

ITA	Types of Donations	Qualified Recipients
S37(3)(c)	Cash	• IPC • Singapore Government • Grant-making Philanthropic Organisation (registered by the Comptroller of Income Tax)[8]
S37(3)(e)	Shares and units in unit trusts donated by any individual - Shares must be of a company listed on Singapore Exchange - Units in unit trust must be traded in Singapore or listed on the Singapore Exchange	• IPC
S37(3)(f)	Immovable property	• IPC

Donations-in-kind do not constitute tax deductible donations except as provided under S37(3)(b), S37(3)(e) and S37(3)(f) of the ITA.

<u>Examples of non-qualifying donations:</u> <u>Example 1</u> A florist donates its inventory of plants and flowers to an IPC to be used at a fund-raising event. As the donated items do not fall within the above list, they do not qualify as tax deductible donations.

[7] These examples serve to illustrate the key considerations in determining whether the criteria are met. IRAS will make reference to the actual agreement and arrangement to determine the tax treatment for each specific case.
[8] Please refer to IRAS website at https://www.iras.gov.sg for more details on the tax deduction scheme for qualifying grantmaking philanthropic organisations.

Example 2

Under a deed of arrangement, an IPC is allowed to use a piece of land for 50 years with no premium or rent payable to the landowner. This free use of land is not a tax deductible donation.

b) The donation is a free-will gift for which the contributor relinquishes and confers all his rights, control and ownership over the gift to a qualified recipient when the donation is made

Examples of non-qualifying donations:

Example 3

A company pledges or promises to give $500,000 to an IPC. The pledge or promise itself does not constitute a donation since no money is transferred to the IPC yet. A donation is made only when the company honours the pledge by transferring the money to the IPC.

Contributions with a refund clause

Example 4

A company gives $1 million to an IPC with the condition that the amount, wholly or in part, be refunded to them if the amount was not utilised by the IPC for the agreed objective. While Regulation 11(7) of the IPC Regulations requires an IPC to return the donated funds if it was not utilised for the intended objectives, the inclusion of a refund clause creates a contractual obligation which is commercial in nature. Such a contribution agreement would be classified as a sponsorship and cannot qualify as a tax deductible donation.

On the other hand, if the IPC states in the agreement that it commits to adhere to all relevant laws, rules and legislations, including but not limited to Regulation 11(7) of the IPC Regulations, this clause itself does not constitute a refund clause and this factor alone will not disqualify the contribution as a tax deductible donation.

Example 5

A company gives $20 million to an IPC with the condition that the amount, wholly or in part, be refunded to them if: (a) IRAS determines that the $20 million does not qualify for enhanced tax deduction, or (b) certain benefits which were agreed upon were not given to the company. As the gift is subject to refund conditions, the $20 million cannot qualify as a tax deductible donation.

Contributions with an exclusivity clause

Example 6

A company gives $500,000 to an IPC on the condition that the IPC cannot enter into an agreement with another company for any form of sponsorship. As the gift imposes an exclusivity condition on the IPC, it is not an outright donation and does not qualify as a tax deductible donation. This is a sponsorship arrangement.

Contribution is a commercial arrangement in substance

A pure gift of money or asset cannot be treated as a tax deductible donation if it forms a prerequisite for a subsequent commercial collaboration with the contributor or any person connected to the contributor, or if it is associated with any business arrangement involving the acquisition of goods or services by the IPC from the contributor or any person connected to the contributor. The entire arrangement constitutes a business arrangement or sponsorship, rather than a donation.

<u>Example 7</u>

In return for a cash payment of $300,000 over a time period from a gaming software distributor, a university allows the distributor to advertise its gaming software at the school compound during its freshmen orientation week. The advertisements take the forms of setting up booths and displaying of distributor's banners, products and other collaterals at the school. If the university does not fulfil this obligation, the gaming software distributor will terminate any outstanding payments. Such a cash payment does not qualify as a tax deductible donation as the substance of the arrangement is that of commercial transaction and it is not a free-will gift. The sum of $300,000 should be more appropriately classified as a sponsorship.

<u>Example 8</u>

A production company makes a cash gift to an IPC and in return for the contribution, is awarded with exclusive rights to either produce or collaborate with the IPC to produce new media, arts performance, film, etc. Where the exclusive rights are contingent on the cash gift made, the cash gift then forms part of a business arrangement or sponsorship and is not a tax deductible donation.

<u>Example 9</u>

A company makes a contribution of $500,000 to an IPC. In return for the contribution, the company is provided with many marketing, publicity, and promotional benefits, but these benefits are valued at $100,000. The company is entitled to receive some other form of compensation if these benefits are not delivered fully. The entire contribution does not qualify as a tax deductible donation as the overall facts of the case indicates that the transaction is commercial in nature. The contribution is therefore a form of sponsorship

<u>Example 10</u>

A company makes a contribution of $50,000 to an IPC to set up a scholarship. As part of the conditions for receiving the scholarship, the recipient is required to provide a list of services for the company. The contribution is substantially a commercial transaction similar to a service contract. The contribution is therefore a sponsorship.

Example of qualifying donation:

Example 11

A company makes a contribution of $500,000 to an IPC. In return for the contribution, the company is given free tickets to a performance staged by the IPC. The IPC is not restricted from accepting contributions from other donors or acknowledging contributions made by other companies in the same sector/industry. The IPC prints all its donors' logos in its publicity banners and pamphlets as a form of acknowledgement. The company is not entitled to any refund of the contribution even if the IPC does not deliver any of the benefits it had earlier agreed to provide (e.g. there are no contractual clauses that indicate any refunds or compensations to be made to the company in the event that the performance is cancelled). The contribution qualifies as a tax deductible donation. While the company receives benefits in the form of free tickets for the performance, these benefits are treated as having no commercial value under the concessionary tax treatment. Please refer to IRAS e-Tax Guide on **Tax Treatment on Donations with Benefits** for more details.

c) **The donation is an outright gift or if the donation is subject to any condition specified by the donor as to the purpose for which the donation may be applied, all the three requirements under section 37(3C) of the ITA must be satisfied.**

The following two types of donations to an IPC – an outright donation and a donation for a specified purpose are qualifying donations.

Outright donation
An outright donation is an unconditional gift where the donor fully transfers both the ownership and control over the use of the donation to the IPC without stating any specified purpose as to how the donation should be used.

Donations for specified purposes
A donor may place legally enforceable conditions on how the IPC can use donation made. Such donations are tax deductible if (and only if) all the three requirements under section 37(3C) of the ITA are satisfied:

(a) Each specified purpose must be one that advances an objective of the recipient set out in its governing instrument;
(b) None of the specified purposes must be to advance the interests (whether directly or indirectly) of a particular race, belief or religion, or of a particular person or persons; and
(c) The donor did not specify or imply in any manner that any part of the property or money that cannot be used for any of the specified purposes shall revert to him or be given to any other person.

Example of non-qualifying donation:

Example 12

A family donates monies to an IPC on the condition that the IPC awards a scholarship under its education support program to a specified relative or person. As one of the specified purpose is to advance the interest of a particular person, it does not satisfy section 37(3C)(b) of the ITA. This donation is thus not tax deductible.

Example of qualifying donation:

Example 13

An individual makes a cash donation to a hospital (which is an IPC) and stipulates that the monies be applied only to senior citizens above the age of 70 years old for their medical needs.

In this example, the condition imposed by the donor advances the charitable objects of the hospital. The condition also does not favour any named persons or a group of people based on race, belief or religion. The beneficiaries of the donation are a class of persons, and not “particular persons” who are specified to receive the benefits; and thus the donation does not breach condition (b). Hence, this donation for a specified purpose is tax deductible as it meets all the requirements under section 37(3C) of the ITA.