

MALAYSIA HAS SEEN MAJOR CHANGES IN THE FORMAT OF TAX COMPUTATIONS IN RECENT YEARS, ESPECIALLY REGARDING DEDUCTIONS MADE FROM AGGREGATE INCOME WHEN ASCERTAINING THE TOTAL INCOME OF THE TAXPAYER.

AGGREGATE TO TOTAL

RELEVANT TO ACCA QUALIFICATION PAPER F6 (MYS)

Although this article covers all the deductions found under Section 44 of the Income Tax Act 1967 (as amended) (referred to as ‘the Act’), detailed explanations are restricted to items examinable for Paper F6 (MYS).

The Act provides specific instructions, under Section 44, concerning the order in which the deductions from aggregate income are to be made, and this has to be adhered to strictly.

The first deduction is for current year business losses. This also referred to as basis year loss, which arises when the allowable deductions in respect of a particular source of income exceed the gross income from that source. This is generally stated in the tax computation as an adjusted loss, with an accompanying express statement that adjusted income is ‘Nil’. At the stage of aggregate income, all sources of income (both business and non-business) have been combined, therefore current year business losses can be offset against any source of income, although not individually.

This is followed by a deduction under Schedule 4 for abortive prospecting expenditure, which is examinable only in Paper P6 (MYS).

The next deduction is under Schedule 4B, in respect of qualifying pre-operational business expenditure. This refers to qualifying expenditure incurred by a resident company in connection with a proposal by the company to undertake investment in a business venture, approved by the minister, in a country outside Malaysia. Qualifying expenditure is:

- expenditure directly attributable to the conduct of feasibility studies; expenditure directly attributable to market research or the obtaining of marketing information
- expenses, by way of fares, in respect of travel to a country outside Malaysia by a representative of the company for the purpose of conducting feasibility studies or market research

- actual expenses for accommodation and sustenance for the whole period, commencing with the representative’s departure from Malaysia and ending with their return to Malaysia (restricted to RM400 per day).

EXAMPLE 1

Harvard Sdn Bhd, a company resident in Malaysia, owns a chain of restaurants in Malaysia and is contemplating opening a food outlet in Helsinki, Finland, selling Asian cuisine. It has obtained the approval of the Minister of Finance to conduct a preliminary study before embarking on this venture. The company sends its chief operating officer and marketing director to Finland to conduct the study, where they stay for five days. They incur the following expenses:

	RM
Feasibility study conducted by a firm of consultants in Finland	10,000
Research to obtain marketing information	8,000
Air fare to Finland for two individuals	6,000
Accommodation, meal and laundry allowances for both individuals	7,500
	<u>31,500</u>

The amount that Harvard Sdn Bhd can claim under Schedule 4B is computed as follows:

	RM
Feasibility study	10,000
Market research	8,000
Air fare	6,000
Accommodation and sustenance RM7,500	
Restricted to (RM400 x 2 persons x 5 days)	4,000
	<u>28,000</u>

INCOME

EXAMPLE 2

What if this scenario is set in the context of a corporate tax question, and the whole preliminary study cost is expensed to the profit and loss account in ascertaining the profit before tax? Let us assume that the company also has a current year loss from another business of RM10,000.

In this case, candidates should add back the whole RM31,500 to the profit before tax figure in the tax computation (since it is a pre-operating expenditure not wholly and exclusively incurred in the production of income from the current business source), and deduct RM28,000 from the aggregate income (after deducting current year business losses) to arrive at the total income, as illustrated below:

Tax computation for year of assessment 2008

Profit before tax (assumed)	RM 20,000
Add: Qualifying pre-operating business expenditure	31,500
Adjusted income	<u>51,500</u>
Aggregate income (assumed)	50,000
Less: current year business loss	<u>(10,000)</u>
	40,000
Less: Schedule 4B deduction	<u>(28,000)</u>
Total income	<u>12,000</u>

Where there is insufficient income to absorb the full deduction for Schedule 4B expenditure, the amount unabsorbed can be carried forward to future years of assessment to be offset against the aggregate income, after deducting current year business losses and Schedule 4 expenditure.

Subsequently, a deduction is allowed for a whole range of donations and other benevolent activities, as follows.

DEDUCTIONS FOR BENEVOLENT ACTIVITIES

Section 44(6) provides a deduction for any gift of money to government, state government, or local authority. A deduction is also available for any gift of money to an approved institution or organisation which is not operated or conducted primarily for profit. However, this is restricted to 7% of aggregate income. The Finance Act 2009 has increased this restriction to 10% of aggregate income in the case of companies, but candidates should note that this is only examinable from December 2009.

EXAMPLE 3

Cambridge Sdn Bhd has an aggregate income of RM100,000 for year of assessment 2008. It makes a cash donation of RM5,000 to the government, and another RM8,000 to an approved institution. Its deduction for the donations for year of assessment 2008 are as follows:

Aggregate income	RM 100,000
Less: Approved donations	
Government	(5,000)
Approved institution – RM8,000 restricted to 7% of aggregate income	<u>(7,000)</u>
Total income	<u>88,000</u>

EXAMPLE 4

In Paper 7(M), December 1998, Question 1 concerned Swiftcom Sdn Bhd, a company trading in imported telecommunication equipment, which had a claim for a donation of RM3,000 in its profit and loss account. The description of this donation was as follows: 'On Valentine's Day, the company donated telecommunications equipment worth RM2,000 to an orphanage (an approved institution). In addition, each orphan received ang pow (cash) of RM20. The total ang pow distributed was RM1,000.'

ALTHOUGH THIS ARTICLE COVERS ALL THE DEDUCTIONS FOUND UNDER SECTION 44 OF THE INCOME TAX ACT 1967 (AS AMENDED) (REFERRED TO AS 'THE ACT'), DETAILED EXPLANATIONS ARE RESTRICTED TO ITEMS EXAMINABLE FOR PAPER F6 (MYS).

The telecommunications equipment worth RM2,000 would not qualify for a deduction under Section 44(6) since it is **not** in cash. The cash ang pow also **does not** qualify for a deduction because although it is in cash, it was given to each orphan (who are not approved). The RM1,000 would have qualified if the company had donated it to the orphanage instead.

Section 44(6A) deals with any gift of an artefact, manuscript or painting made to the government or the state government. The amount to be deducted is the value as determined by the department of museums Malaysia or the National Archives.

Section 44(8) provides a deduction for a gift of money for the provision of library facilities which are accessible to the public, to public libraries, or to libraries of schools and institutes of higher education. The maximum deduction is RM20,000. However, note that this deduction is only given to a person to whom Section 34(6)(g) is not applicable, ie if a person has a business source, then any gift of money for the provision of library facilities should be claimed under Section 34(6)(g) and not under Section 44(8). Incidentally, Section 34(6)(g) provides for a maximum deduction of RM100,000.

Note that the decision as to which Section is used to claim the deduction is not one of preference but one of law, and is based on whether a source of business exists or not.

EXAMPLE 5

In Paper 7(M), June 1998, Question 1 concerned Cepatcekap Bhd, a company engaged in the provision of courier services for documents and parcels, which had a donation expense of RM116,000 reflected in its profit and loss account, of which RM103,000 was detailed as a 'contribution to a school library'.

In computing, the adjusted income commencing from profit before tax, RM3,000 is added back, as only a maximum of RM100,000 is allowed as a deduction under Section 34(6)(g).

However, if the company did not have a business source, then the whole RM103,000 would be added back when arriving at the adjusted income, with a maximum of RM20,000 qualifying, under Section 44(8), for deduction from aggregate income when determining total income. Section 44(9) allows a deduction for individuals in respect of a gift of money

or a contribution in kind for the provision of facilities in public places for the benefit of disabled persons. The value of the deduction is determined by the relevant local authority.

Section 44(10) states that an individual who makes a gift of money or medical equipment to a healthcare facility approved by the ministry can claim a deduction for the donation of a maximum of RM20,000.

Section 44(11) allows a deduction for any painting donated to the National Art Gallery or to any state art gallery. The deduction is equal to the value of the painting, as determined by the national or state art gallery.

Section 44(11A) details deductions in respect of payment of 'zakat perniagaan' to an appropriate religious authority by a person, excluding an offshore company (unless it is a chargeable offshore company) and an individual. This is because an offshore company which is chargeable to tax under the Labuan Offshore Business Activity Tax Act gets a tax rebate in respect of any zakat it has paid, under Section 8A of that Act, and an individual also qualifies for a rebate in respect of zakat paid under Section 6A(3) of the Income Tax Act 1967 (as amended).

However, the deduction granted is the actual payment made, up to a maximum of 2.5% of aggregate income.

Section 44(11B) provides that for a gift of money or cost of contribution in kind, for any sports activity approved by the minister or to any sports body approved by the Commissioner of Sports appointed under the Sports Development Act 1997, the amount paid, together with the amounts deducted under sub-sections 6 and 11C, is restricted to a maximum deduction of 7% of aggregate income.

Similarly, Section 44(11C) gives a deduction for any gift of money, or cost of contribution in kind, for any project of national interest approved by the minister, but the amount qualifying for deduction, together with the amounts deducted under Sub-Sections 6 and 11B, is restricted to a maximum deduction of 7% of aggregate income.

Note that with effect from December 2009, the amendment in the Finance Act 2009 mentioned above will impact on the restriction under Section 44(11B) and (11C). A summary of all the donations is presented in the Appendix.

EXAMPLE 6

For year of assessment 2008, Yale Sdn Bhd has an adjusted business loss of RM20,000, interest income of RM60,000, and a rental income of RM40,000. In line with its new corporate social responsibility policy, it makes the following contributions during the year:

	RM
Cash donations to city council (DBKL)	1,500
Cash donations to approved care home	5,000
Dialysis machines to a health care centre	3,500
Cash contribution for a sports activity approved by the minister	2,500
Cash donations for approved projects of national interest	2,500

Yale Sdn Bhd
Tax computation for year of assessment 2008

	RM
Adjusted income	Nil
Interest income	60,000
Rental income	40,000
Aggregate income	<u>100,000</u>
Less: Current year business loss	<u>(20,000)</u>
	80,000

Less:

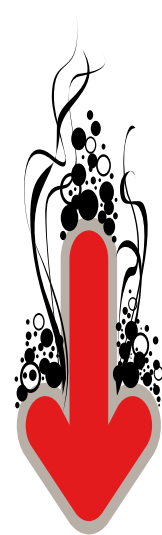
Cash donations to city council (DBKL)	(1,500)
Cash donations to approved care home (limited to 7% – no restriction)	(5,000)
Cash contribution for a sports activity approved by the minister	(2,500)
Cash donations for approved projects of national interest	<u>(2,500)</u>
	<u>(5,000)</u>

Restricted to 7% of aggregate income less cash donation to approved institution deducted under Section 44(6)	7,000	<u>5,000</u>	<u>2,000</u>
Total income/chargeable income			<u>71,500</u>

CANDIDATES PREPARING FOR PAPER P6 (MYS) SHOULD NOTE THAT THE DEDUCTION FOR PERMITTED EXPENSES, AND ANNUITIES (CLAIMED BY A DECEASED PERSON'S ESTATE AND TRUST BODIES) ARE DEDUCTED FROM AGGREGATE INCOME AFTER DEDUCTING FOR CURRENT YEAR BUSINESS LOSSES (SCHEDULE 4 AND 4B).

SUMMARY

A summary of the journey from aggregate income to total income is presented below.

**AGGREGATE INCOME**

Less:

Section 44(2): Current year business losses
Schedule 4: Abortive prospecting expenditure
Schedule 4B: Qualifying pre-operating business expenditure
Annuities/Permitted Expense (see reference below), Donations Section 44 (6) to (11C)
Section 44A: Group loss relief for companies (see reference below)

TOTAL INCOME

TABLE 1: AGGREGATE TO TOTAL INCOME

Some of the deductions are not specifically indicated under Section 44, but also rank for a deduction in arriving at the total income. These are mentioned in the reference below.

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REFERENCE

Candidates preparing for Paper P6 (MYS) should note that the deduction for permitted expenses (claimed by investment holding companies, unit trusts, and close end funds), and annuities (claimed by a deceased person's estate and trust bodies) are deducted from aggregate income after deducting for current year business losses (Schedule 4 and 4B) but before a deduction is made for donations (under Sub-section 6). A deduction for group loss relief is also available under Section 44A, after which we finally reach total income.

NOTE THAT WITH EFFECT FROM DECEMBER 2009, THE AMENDMENT IN THE FINANCE ACT 2009 MENTIONED IN THIS ARTICLE WILL IMPACT ON THE RESTRICTION UNDER SECTION 44 (11B) AND (11C). A SUMMARY OF ALL THE DONATIONS IS PRESENTED IN THE APPENDIX.

APPENDIX: SUMMARY OF DONATIONS ELIGIBLE FOR DEDUCTION WHEN ASCERTAINING TOTAL INCOME

Section 44 Nature of donation	(6) Cash	(6A) Artefact/ Manuscript/ Paintings	(8) Cash	(9) Cash/ contribution in kind	(10) Cash/ Medical equipment	(11) Painting	(11A) Cash	(11B) Cash/ contribution in kind	(11C) Cash/ contribution in kind
Recipient of donation	Government/ State Government/ Local authority/ Approved institutions or organisation	Government/ State Government	Public libraries or libraries of schools and institutes of higher education	Facilities in public places for the benefit of disabled persons	Healthcare facilities approved by the Ministry	National Art Gallery or any state art gallery	Appropriate religious authority	Any sports activity approved by the Minister, or to any sports body approved by the Commissioner of Sports appointed under the Sports Development Act 1997	Project of national interest approved by the Minister
Restrictions	Approved institutions – max 7% of aggregate income	Nil	Max RM20,000	Only for individuals	Max RM20,000; only for individuals	Nil	Max 2.5% of aggregate income	Max 7% of aggregate income after amount claimed under Section 44, sub-sections (6) and (11C)	Max 7% of aggregate income after amount claimed under Section 44, sub-sections (6) and (11B)