

IRAS e-Tax Guide

**Tax Treatment under Section
11(2) of the Income Tax Act and Qualifying
Conditions for Company Limited by Guarantee
to be subject to Section 11(2)**



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Tax Treatment under Section 11(2) of the Income Tax Act and Qualifying Conditions for Company Limited by Guarantee to be approved under Section 11(2)

1 Aim

- 1.1 This e-Tax Guide sets out the tax treatment of trade or professional associations under section 11(2) of the Income Tax Act (“ITA”). It also provides information on the conditions that a company limited by guarantee must meet to be approved as a mutual concern to which the provisions of section 11(2) apply.
- 1.2 This guide is relevant to trade or professional associations.

2 At a glance

- 2.1 Section 11(2) of the ITA deems a trade or professional association to be carrying on a business if more than 50% of its receipts by way of entrance fees and subscriptions from Singapore members are from those who claim or are entitled to claim a deduction under section 14 of the ITA. However, only the income from transactions with Singapore members and non-members will be subject to tax. The income from transactions with foreign members will not be subject to tax.
- 2.2 Companies limited by guarantee that carry on a trade or professional association may apply to be approved as a mutual concern to which the provisions of section 11(2) of the ITA shall apply. This approval is provided for under section 11(3) of the ITA.
- 2.3 Companies can make applications to the Comptroller of Income Tax with information stated in paragraph 6.1 in this guide. For approval to be treated as a mutual concern, the company must meet all the qualifying conditions as detailed in paragraph 5.2 of this guide.

3 Background

- 3.1 The mutuality principle in common law is founded on the precept that a person cannot make profit by trading with himself. Thus, any surplus of a mutual concern derived through transactions with its members is not regarded as “gains or profits from trade or business” and thus not liable to tax.
- 3.2 While the ITA does not provide for the tax treatment of mutual concerns, section 11 of the Act stipulates the conditions for a mutual body of persons¹ to be regarded as carrying on a trade or business for tax purposes.
- 3.3 The tax treatment in respect of a body of persons that carries on a club or similar institution is stipulated in section 11(1), whereas section 11(2) provides for the tax treatment in respect of a body of persons that carries on a trade or professional association.

4 Current tax treatment under section 11(2) of the ITA

- 4.1 With effect from Year of Assessment (“YA”) 2008,² a trade or professional association would be deemed under section 11(2) of the ITA to be carrying on a business if more than 50% of its receipts by way of entrance fees and subscriptions from Singapore members³ are from those who claim or are entitled to claim a deduction under section 14 of the ITA. In such cases, only the income from transactions with Singapore members and non-members will be subject to tax. The income from transactions with foreign members will not be subject to tax.

- 4.2 Where 50% or less of the receipts from Singapore members are from

¹ Section 2 of the ITA defines “body of persons” to mean “any body politic, corporate or collegiate, any corporation sole and any fraternity, fellowship, or society of persons whether corporate or unincorporated but does not include a company or a partnership.”

² Prior to YA 2008, no distinction was made between Singapore and foreign members. Specifically, a trade or professional association was deemed to be carrying on a business if more than 50% of its receipts by way of entrance fees and subscriptions were from persons (including both Singapore and foreign members) who claimed or were entitled to claim a deduction under section 14 of the ITA, and the whole of its income from transactions with Singapore members, foreign members and non-members shall be subject to tax. Conversely, if not more than 50% of its receipts were from persons who claim or are entitled to claim a deduction under section 14 of the ITA, only income from transactions with non-members shall be subject to tax.

³ “Singapore members” mean members comprising:

- (a) Persons, other than companies, residing in Singapore;
- (b) Companies incorporated in Singapore (excluding branches or offices located outside Singapore); and
- (c) Branches or offices of companies incorporated outside Singapore that are located within Singapore.

those who claim or are entitled to claim a deduction under section 14 of the ITA, only income from transactions with non-members will be subject to tax.

- 4.3 The following table summarises the basis of computing the 50% cap and the corresponding tax treatment under section 11(2) of the ITA with effect from YA 2008.

Whether more than 50% of receipts by way of entrance fees and subscriptions from Singapore members are from those who claim or are entitled to claim as deduction under section 14.	Tax Treatment
<p>Yes, 50% Cap breached</p> <p>Trade or professional association is deemed to be carrying on a business</p>	<p>- Income from transactions with Singapore members and non-members* is subject to tax.</p> <p>- Income from transactions with foreign members is not subject to tax.</p>
<p>No, 50% Cap not breached.</p>	<p>Only income from transactions with non-members* is subject to tax</p>

*includes both Singapore and foreign non-members

5 Tax Treatment of a Company Limited by Guarantee that Carries on a Trade or Professional Association

- 5.1 Prior to YA 2008, a company is not regarded as a mutual concern because of its independent legal personality and its inherent aim to make profits. Hence, the tax treatment provided under section 11(2) is not applicable to a company even if it is a trade or professional association. Section 2 of the ITA also specifically excludes a company from the definition of “body of persons”.
- 5.2 With effect from YA 2008, this treatment was changed to recognize that more trade associations were set up as companies limited by guarantee for various business considerations. A company limited by guarantee that carries on as a trade or professional association can be recognized as a mutual concern if the company meets the following prescribed conditions:
- (a) it must be set up not for purposes of profit or gain and if the company derives any surplus, it must be used to carry out its not-for-profit objectives;

- (b) it exists for the sole purpose of benefiting its members and is operated exclusively for the same purpose for which it was organized;
- (c) the contributors to the common fund, as a class, should be identical to the participators in the mutual surplus;
- (d) there must be arrangements which entitle the contributors to the common fund to control it; and
- (e) the constituent documents must prohibit the company limited by guarantee from making any distribution, whether in money, property or otherwise, to its members.

5.3 Section 11(3) of the ITA enables the Minister (or such person as he may appoint) to approve such companies limited by guarantee to be subjected to the treatment specified in section 11(2). In other words, the tax treatment stated under paragraphs 4.1 to 4.3 is also applicable to a company limited by guarantee that is approved under section 11(3). The process to apply for approval is explained in paragraph 6.1.

5.4 The following illustrates how the 50% cap is computed:

Trade Limited is a trade association set up as a company limited by guarantee. In YA 2013, Trade Limited receives \$10,000 of subscription fees from its members, of which \$7,500 is from its Singapore members and \$2,500 is from its foreign members. Of the subscription fees received from its Singapore members, \$5,000 can be claimed as deduction under section 14 of the ITA by the members.

Receipts from Singapore members that is claimed or claimable as deduction under section 14
Total receipts from Singapore members

$$\frac{5,000}{7,500} > 50\%$$

Trade Limited breaches the 50% cap. Thus, it is deemed to be carrying on a business and the income from its Singapore members (i.e. \$7,500) will be liable to tax. The \$2,500 received from foreign members will not be taxed.

6 Application procedures for Companies Limited by Guarantee

6.1 To obtain approval as a mutual concern to which the treatment specified in section 11(2) is applicable, a company limited by guarantee that carries on a trade or professional association must make an application in writing to the Comptroller of Income Tax for such approval. The application is to be submitted to Corporate Tax Division - Services Branch, IRAS. In the application, the company is required to provide

the following information:

- (a) the company's name and tax reference number (e.g. UENO no.);
 - (b) a written confirmation that the company meets all the prescribed conditions stated in paragraph 5.2(a) to (e) of this circular; and
 - (c) relevant documents (e.g. the company's Memorandum and Articles of Association) to substantiate that the company meets the qualifying conditions.
- 6.2 Once an application is approved, it shall continue indefinitely unless revoked. IRAS reserve the right to revoke the approval if at any time the company limited by guarantee is found to have failed to satisfy any of the prescribed conditions.

7 Contact Information

- 7.1 If you have any enquiries or need clarification on this Guide, please contact:

Corporate Tax Division
Inland Revenue Authority of Singapore
55 Newton Road
Revenue House
Singapore 307987

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Tel: 1800 3568622
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or

Taxation of Body of Persons
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