

**CHARITABLE ORGANISATIONS OR RELIGIOUS ORGANISATIONS
(APPROVAL AND CALCULATION OF INCOME FROM CHARTABLE BUSINESS)**

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1.0 TAX LAW.

1.1 This Practice Note applies in respect of the taxation of income of charitable organisation or religious organisation from its charitable businesses.

2.0 INTERPRETATION.

2.1 In this Practice Note, unless the context requires otherwise - "Act" means the Income Tax Act, Cap. 332.

2.2 Definitions and expressions used in this Practice Note that are used in the Act have, unless the context requires otherwise, the same meaning in this Note as they have in the Act.

3.0 THE PURPOSE OF THIS PRACTICE NOTE

A charitable organisation or religious organisation shall be considered as conducting a business with respect to its functions if it fits into the technical meaning provided in section 64(8).

This Practice Note considers:

3.1 A charitable organisation or religious organisation conducting a business with respect to its functions referred to as the "charitable business";

- 3.2 Income of a charitable organisation or religious organisation which is excluded from income tax and conditions thereto;
- 3.3 Accumulation of income and conditions;
- 3.4 Exclusion from income tax of gains derived from investment;
- 3.5 Income of a charitable organisation or religious organisation that ceases to be charitable or religious organisation during a year of income.

4.0 HOW THE LAW APPLIES.

4.1 Charitable status

An organisation has charitable status if it meets the following conditions:

4.1.1. It is a resident entity.

4.1.1.1 An entity means a partnership, trust or corporation.

4.1.1.2 A partnership is a resident partnership for a year of income if at any time during the year of income a partner is a resident of the United Republic;

4.1.1.3 A Trust is resident trust for the year of income if;

- i) it was established in the United Republic or
- ii) at any time during the year of income, a trustee of the trust is a resident person; or
- iii) at any time during the year of income a resident person directs or may direct senior management decisions of a trust.

4.1.1.4 A corporation is a resident corporation for the year of income if;

- i) it is incorporated in the United Republic, or
- ii) at any time during the year of income the management and control of the affairs of the corporation are exercised in the United Republic

4.1.2 The entity is of public character;

Public character means the benefits of the organization are directed to the community or a section of the community and not to defined individuals based on their personal identities.

Illustration 1:

XYZ Trust provides medical services to a restricted section of villagers, who are identifiable by their personal identities, say

Primary school teachers only and not available to other members of the village then the entity is not of public character as the beneficiaries of the services are defined school teachers that can be identified by their names and the service not made available to other villagers. If the service is made available to all members of the village or even part of the village without restriction then the organisation assumes public character even where it is established in order to provide service to a particular group of people.

4.1.3 Establishment and Functioning of the Organisation

The main objectives of an entity as indicated in the instrument or the document establishing the entity must clearly demonstrate that the entity's sole or dominant purpose is charitable and any ancillary purposes must be those effectively connected with the main purpose. They should not in themselves be the main objectives.

The organisation must function solely for the purposes listed in section 64(8)(a). i.e. Relief of poverty or distress of the public, advancement of education or the provision of general public health, education water or road construction or maintenance.

4.1.3.1 Organization for Relief of poverty or distress of the public;
Poverty does not mean destitution. The term covers those who are to 'go short' in the ordinary acceptable levels. Poverty is subjective as there is no absolute income level beyond which one cannot be poor. The performance of a particular activity tending to relieve forms of poverty is regarded as charitable purposes. The gifts for the relief of poor widows, orphans, spinsters or victims of a particular disaster are charitable activities. The injection of capital to unemployed graduates in a community to make them self employed; the activity is charitable. Where an organization provides skills on milk cattle rearing to women villagers and a milk cow as initial capital to enable them start business on condition that the first born cow is given to another villager is a charitable activity.

4.1.3.2 Advancement of education;
The entity must be involved in the provision of specific training on skills and knowledge in various aspects of life. Advancement of education in charitable sense entails increase of available stock of knowledge and goes beyond teaching in class rooms, but may include promotion and

encouragement of the arts such as culture, drama, music, science and graces of life.

Illustration:

Provision of Vocational training in various skills such as Carpentry, Mechanics, Electrical, etc is advancement of education hence charitable.

4.1.3.3 Provision of general public health, education, water or road construction or maintenance

The provision of such services and facilities must be for the benefit of the community. The limitation of provision of the above listed services to the inhabitants of a particular place such as village, town or district does not remove the necessary public character or render it any less charitable. The provision of the services loses the public character if the beneficiaries are individuals distinguished by their personal identities as distinct from a section of the general public. Provision of primary or secondary school education or general public health services are generally charitable activities as the beneficiaries are members of the community.

4.2 It has been issued with a ruling by the Commissioner under the Act stating that it is a charitable organisation.

In order to be recognised as a charitable organisation or religious organisation for the purposes of section 64 (8) the organisation must be issued with a ruling by the Commissioner under section 131 of the Act currently in force that it complies with the requirements of the section. Therefore any resident entity seeking status as a charitable or religious organisation must apply to the Commissioner for the ruling. After consideration of the application the Commissioner shall inform the organisation in writing of the decision. In the case of approval the organization will be informed of the year of income it is treated as a charitable organisation or religious organisation and any conditions of the approval.

4.3 Calculating income from a charitable business.

4.3.1 A charitable organisation or religious organisation shall be treated as conducting a business with respect to the functions of the organisation which is referred to as the "charitable business".

The income of a charitable organisation or religious organisation from the charitable business is calculated as follows: -

- (a) there shall be included together with any other amounts required to be included in calculating income under the Act, all gifts, contributions and donations received by the organisation; and
- (b) there shall be deducted, together with any other amounts deductible under other provisions of the Act –
 - i) amounts applied in pursuit of the organisations functions by providing reasonable benefits to resident persons or persons resident anywhere if the expenditure has a source in the United Republic; and
 - ii) 25 percent of the organisation’s income from its charitable business calculated without deduction of the amounts applied in pursuit of its functions and any investment.

4.3.2 Offsetting losses between charitable and non-charitable businesses is not allowed. It is not allowed to deduct losses from a charitable business against income from a non-charitable business.

4.4 Income from charitable business excluded from tax and conditions

In calculating income of a charitable organisation from its charitable business the following amounts shall be deducted:-

- 4.4.1 The income of a charitable or religious organisation from its charitable business that is applied in pursuit of its charitable functions.
- 4.4.2 25 percent of the income from charitable business and any investment, and
- 4.4.3 Funds saved during the year of income for a project that is detailed in material particulars and which the organisation is committed to and the Commissioner has approved the project as meeting the application in pursuit of the organisation’s functions.

Example 1.

Suppose the income of the organization from its charitable business is TZS. 15,000,000/=excluding TZS. 4,000,000/= received by way of voluntary contributions. It is assumed that the income applied for the purposes of the trust is TZS. 10,000,000/=.

The tax liability of the organisation will be: -

Income from charitable business	TZS	15,000,000/=
Voluntary contributions deemed income Under section 64(2)(a)	TZS	<u>4,000,000/=</u>
Total income from charitable business	TZS	19,000,000)/=
Less: Income applied in pursuit of its functions.	TZS	<u>10,000,000/=</u>
Unapplied income	TZS.	<u>9,000,000/=</u>

The maximum non-application of income admissible is 25 percent of the total income of the organization (Viz. 25 percent of TZS. 19,000,000/=), which will be TZS 4,750,000/=. The balance of unapplied income of shs. **4,250,000/=** (TZS. 9,000,000/= – 4,750,000/=) will be liable to tax during the year of income.

Example 2

Suppose the income of the organization from its charitable business is TZS. 15,000,000/=excluding TZS. 4,000,000/= received by way of voluntary contributions and income applied for the purposes of the trust is TZS. 15,200,000/=.

The tax liability of the organisation will be: -

Income from charitable business	TZS	15,000,000/=
Voluntary contributions deemed income Under section 64(2)(a)	TZS	<u>4,000,000/=</u>
	TZS	19,000,000)/=
Less: Income applied in pursuit of its functions	TZS	<u>15,200,000/=</u>
Unapplied income is	TZS.	<u>3,800,000/=</u>

The income of the Trust from its charitable business is excluded from income tax has been applied in pursuit of the organisation functions. The balance of Shs. 3,800,000/= is not taxable as it is less than 25 percent of the income from the charitable business for the year of income.

4.5 Accumulation of income and conditions

An amount accumulated or saved by a charitable organization or religious organization for a project that is detailed in material particulars and which the organization is committed to for future application is deductible as an

amount expended for charitable purposes subject to the approval of the Commissioner. The amount will not attract tax liability in the year of income. If in any year of income the accumulated funds are applied to purposes other than the purposes for which they were saved or the organization ceases to be a charitable organization or religious organization the amount previously saved will be taxed as income for that year of income.

4.6 Exclusion of gains derived from investment

Income derived from investments including gains from sale of an investment asset of a charitable organisation or religious organisation is not taxable in accordance with section 64(2)(b)(ii).

4.7 Income of a charitable organization or religious organization which ceases to be a charitable or religious organization during a year of income

4.7.1 Where a charitable organisation or religious organisation ceases to be a charitable or religious organisation during a year of income, the organisation or religious organisation shall be treated as conducting a business other than its previous charitable business.

4.7.2 The organisation after the cessation will include in calculating the organisation's income for the year of income from business any amount claimed as a deduction when calculating the income from charitable business as provided for under section 64(2)(b)(ii) of the Act that is the retained 25 percent of the charitable business income and any investment income during that year of income or any prior year of income during which the organisation was a charitable or religious organisation.

Example 1

M/s A Trust, a charitable organisation, was formed in Tanzania in the year 2010. During the year 2010 it had income of TZS. 15,000,000/= of which Shs. 12,000,000/= was applied in pursuit of its functions. Since the balance of the income of shs. 3,000,000 was less than 25 percent of the total income the amount was not taxed.

During the year 2011 the organisation derived income of TZS 25,000,000 of which TZS. 10,000,000 was applied in pursuit of its functions. The organisation applied to the Commissioner to be allowed to save TZS 9,000,000/= to be applied towards its

functions in the year 2012. The Commissioner allowed the saving of the amount. The organisation derived income of TZS 16,000,000 and ceased to be a charitable organisation in the year of income 2012 before applying the saved amount of TZS 9,000,000 derived from its charitable business in the year 2011.

Solution

The taxable income of the organisation for the year 2012 when it ceased to be a charitable organisation is calculated as follows:

Income from its business in year 2012		TZS	16,000,000
Add:			
Excluded amount in year 2010 –	TZS	3,000,000	
Excluded amount in year 2011 –	TZS	6,000,000	
Amount saved in year 2011-	TZS	<u>9,000,000</u>	
		TZS	<u>18,000,000</u>
			34,000,000

Taxable income of the organisation for the year of cessation i.e. Year 2012 is TZS 34,000,000.

5.0 REVOCATION

Pursuant to the provisions of section 130(2) the Practice Note Number 03/2004 issued on 15th December, 2004 is hereby revoked.

**Signed.....
Commissioner
1st November, 2013.**