Kenya introduces Income Tax (Charitable Organizations and Donations Exemption) Rules, 2024

The National Treasury and Economic Planning on 18 June 2024 gazetted the Income Tax (Donations and Charitable Organizations Exemption) Rules, 2024 (the Rules). The Rules revoked the Income Tax (Charitable Donations) Regulations, 2007.

The objective of the Rules is to prescribe the procedure for determining the allowability of donations and prescribe the procedures for applying for, processing, granting and retaining an exemption from income tax.

Key definitions

The rules provide numerous definitions including the following:

i. Charitable activity — an activity carried out in furtherance of a charitable purpose
ii. Charitable organization — an institution, body of persons or irrevocable trust of a public character established:
   a. Under the relevant written law solely for the purposes of the relief of poverty or distress, distress of the public, or the advancement of religion or education
   b. In Kenya or with its headquarters in Kenya
iii. Donation — a benefit conferred on a person in kind, cash, promissory note, mobile money or money transfer in any form

Requirements for exemption

The rules provide a tax exemption for income that a charitable organization accrues in or derives from Kenya and consists of gains or profits from a business that are applied solely to charitable purposes. Other requirements include:

a. The business is carried on in the course of the actual execution of the charitable purposes of the charitable organization.
b. The work in connection with such business is mainly carried on by those who benefit from the charitable organization's charitable purposes.
c. The gains or profits consist of rent received from leasing or letting of land and any chattels leased or let therewith.

To qualify as a charitable organization, the entity must be established for charitable purposes only. The Regulations prescribe the following key considerations.

Organizational test

The governing document of the organization must limit the organization's objectives to one or more charitable purposes, being the relief of the poverty, the relief of distress of the public, the advancement of religion or the advancement of education.

Further, the founding document must stipulate the charitable activities to be carried out, the targeted beneficiaries and the criteria for identifying the beneficiaries in a manner that is open and needs-based.

The governing document may not confer any private benefits; it must restrict the use of its assets to the organization's charitable purposes.

Notably, the governing document must expressly state that, upon dissolution, the charitable organization will transfer its assets to another charitable organization with similar objectives.

A copy of the amended governing document must be submitted to Kenya Revenue Authority (KRA) within 30 days after the amendment has been made.

Operational test

The organization must engage primarily in activities that further the charitable purpose for which it was founded, and the organization may not engage or take part in any unlawful activities.

Where an organization qualifies as a charitable organization by dint of the organizational and operational tests, income derived from Kenya shall be exempt from income tax if the organization demonstrates that the income will be spent only for charitable purposes that result in a public benefit for Kenyan residents.

Application for exemption from income tax

Where the KRA is satisfied that an organization qualifies for exemption, the organization shall be issued an income tax exemption certificate. The certificate is valid for a period of five years.

Timeframe for approval of exemption

An applicant that meets the requirements for exemption and submits an application can expect to receive approval from the KRA within 60 days.

An application for exemption must be made in the prescribed form, accompanied by:

i. A certified copy of the applicant organization's governing documents, including rules, constitution, trust deed, memorandum and articles of association
ii. A certified copy of the applicant's registration documents
iii. Audited financial statements of the applicant for the three-year period immediately preceding the lodging of the application
iv. A schedule of the applicant's assets, including their corresponding values
v. Certified copies of the applicant's bank statements for the three-year period immediately preceding the lodging of the application
vi. An introduction letter from the office of the County Commissioner of the county where the organization's principal activities are carried out
vii. The applicant's impact report describing in detail the organization's past, present and future activities and how they are intended to benefit, or have already benefitted, the residents of Kenya
viii. The applicant's criteria for defining and selecting its beneficiaries
ix. An itemized summary of the payments the applicant has made, showing the payee, amount and purpose of each payment
x. Certified copies of identity documents of all the responsible office bearers of the applicant
xi. Proof of applicant's physical address
xii. A copy of valid tax compliance certificate and, in the event of a renewal, a copy of applicant's expired tax exemption certificate
xiii. A letter of authority, power of attorney or appointment letter for the representative of the applicant

Where the application is being made for the first time, the organization must have been operational for at least a year, while a renewal application shall be made at least six months prior to the expiry of the existing exemption.

Revocation of exemption

The KRA may revoke an exemption where satisfied that an exempt organization has failed to comply with the Rules in any material respect or on a continuous or a regular basis.

Appeals

A person aggrieved by a decision of the KRA under the rules may, within 30 days of the decision, appeal to the Tax Appeals Tribunal.

Accumulation of surplus

An organization may accumulate surplus funds not exceeding an average of 15% of its funds in a period of three succeeding years.

Limitation of scope on donations

Donations may be claimed as allowable deductions for income tax purposes on condition that:

i. The deduction does not result in a taxable loss.
ii. Not more than 50% of the donations in a year of income are to unrelated entities.

Further, the donor shall be required to provide evidence of the donation by providing:

i. Evidence of receipt of the donation issued by the exempt person
ii. Approved budget proposals and budgets submitted by the charitable organization and approved by the donor
iii. A copy of the exemption certificate
iv. Approval by the Cabinet Secretary where the project requires such approval
v. A declaration from the donee that the donation shall be used exclusively for charitable purposes

Transition window

Charitable organizations are required to comply with the new rules within 12 months from the date of the coming into operation of the rules.

Way forward

The rules expand the scope of allowable donations for income tax purposes but also introduce stringent considerations in the granting of income tax exemptions.

Charitable organizations and other affected persons should review their operations, founding documents and other aspects in view of these requirements and take measures to comply with these rules.

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Contact Information

For additional information concerning this Alert, please contact:

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