Income Tax (Donations and Charitable Organizations Exemption) Regulations, 2024

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Background

The Cabinet Secretary for the National Treasury and Economic Planning in exercise of the powers conferred by Sec 130 of the Income Tax Act gazetted the **Income Tax (Donations and Charitable Organizations Exemptions) Regulations, 2024** on 18th June 2024 subsequently revoking **Income Tax (Charitable Donations) Regulations, 2007** that were issued on the 14th June 2007.

The Regulations are specifically tailored to offer a comprehensive guidance for charitable organizations to follow when applying for tax exemptions from Kenya Revenue Authority (KRA).

The regulations offer clarity on threshold for an organisation to be considered as a charitable organisation. The procedure and documentations for applications of tax exemptions certificate among other issues.

It is important to note that on transitions, the Regulations provide that charitable organisations that had been issued with a tax exemption certificate prior to enactment of this Regulations have to comply with the Rules within twelve months from the date the Rules were gazetted **by 18th June 2025**.

Our summary and comments on the key highlights of the above Regulations are presented below;

Summary

Rule(s)	Description	Our comments
REGULATION 5: **WHAT TYPE OF ORGANIZATIONS ARE CONSIDERED AS CHARITABLE ORGANIZATIONS.**	The Regulations have outlined the threshold to be satisfied for an organization to be considered as a charitable organization in order to apply for tax exemption certificate.	**The Commissioner shall consider a charitable organisation to be established solely for charitable purposes if it meets the following three tests:** **i. Organisational Test** **ii. Operational Test** **iii. Public Benefits Test** **Organisational test; charitable organizations objectives are strictly limited to charitable purposes only, charitable organisations should not pursue objectives for provision of private benefits.** **Operational Test; charitable organisations should only engage in activities which are tailored to achieve the purpose for which that organisation was founded. A case in point, a charitable organisation founded to advocate for eradication of poverty, should strictly stick to activities that will help eradicate poverty only.** **Public Benefits Test; charitable organisations purposes should be tailored in such a manner for the benefit of the general public, a charitable organisation that serves personal family interests will not be considered as a charitable organisation.**
REGULATION 9: **THE SCOPE OF CHARITABLE PURPOSES**	Regulations 9 characterise incomes of a charitable organisation to be incomes derived from Kenya and shall be exempt from tax only if the charitable organisation is established solely for the following purposes- 1. The relief of the poverty; or 2. The relief of distress of the public; or 3. The advancement of religion; or 4. The advancement of education	**The Regulations seek to align the scope of incomes earned by charitable organization for purposes stated under paragraph 10 of Part 1 of the First Schedule of Income Tax Act (ITA). The would mean that for local donors accounting for the expense in their books of accounts can only allow for the expense if it falls in the categories stated under the proposed rules.** **These Regulations seek to eliminate the ambiguity in defining the activities categorised under relief of poverty for the public benefit. Consequently, the Regulations have offered much clarity in regards to which entities qualify for exemption, unlike the previous Regulations which led to uncertainty.** **Notably, the definition of charitable organisations has been made broad. The plus of this broad definition is that, most charitable entities will find it easier to comply with the Regulations when making application for tax exemption, unlike in the past when the applications were afflicted with challenges, leading to most entities being denied exemptions**

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REGULATION 16: **SURPLUS FUNDS RESTRICTIONS.**	The Regulations allow the charitable organisations to accumulate funds provided that the funds retained does not exceed 15% of its funds in a period of three consecutive years without applying the surplus to its charitable purposes.	**The proposed rules seek to ensure charitable organisations maintain the course in carrying out charitable activities they registered for and not using their surplus funds to pursue non-related activities.** **Additionally, the cap on accumulation of surplus income not exceeding 15% of a charitable organisation funds in a period of three consecutive years, is meant to encourage these organisations to spend funds on activities they are registered for.**
Rule 17: **REQUIREMENTS AND PROCEDURE FOR APPLICATION OF EXEMPTION.**	Rule 17 of the Regulations provide for the requirements that are needed when charitable organizations will be making applications for exemptions	**Application for exemption from income tax should be made to the commissioner accompanied by the following documents:** **I. Certified copy of governing documents of the applicant including rules, constitution, trust deed, memorandum and articles of association** **II. Applicants certified copies of registration documents.** **III. Audited financial statements of the applicant for the period of three years immediately prior to application.** **IV. A schedule of the assets of the applicant.** **V. Certified copies of applicant's bank statements for the period of three years immediately prior to the application.** **VI. Introductory letter from the office of the County Commissioner of the county where the applicant is located, that should detail; nature and principal activities of the applicant** **VII. The Applicant's Impact Report; detailing past, reset and future activities and how these activities have impacted Kenyan residents.** **VIII. Itemised summary of the payments made by the applicant showing the payee, amount and purpose of payment** **IX. Certified copies of identity documents of all relevant office bearers of the applicant.** **X. Proof of Applicant's physical address.** **XI. Copy of valid tax compliance certificates, if it is an application for renew an exemption, then a copy of previous tax exemption certificate of the applicant.** **XII. Letter of authority, power of attorney or appointment letter for representative of the applicant.**

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RULE 18: **INCOME TAX EXEMPTION CERTIFICATE**	Rule 18 of the Regulations provide for validity of the tax exemption certificate issued and when the exemption certificate will be issued after application	**The Regulations seek to align on the issuance of an Income Tax Exemption Certificate to compliant applicants.** **Rule 18 provides that a tax exemption certificate will be valid for a period of five years and it will be issued within 60 days after application, if the applicant meets all the requirements.** **In the event the application for exemption is declined, the commissioner is mandated to inform the applicant in writing giving reasons for the decline. The Regulations are however, silent on the timeline period within which the commissioner shall communicate the reasons for declining the application.**
RULE 19: **SUBMISSION OF ANNUAL TAX RETURNS**	Regulation 19 requires charitable organisations to be compliant with declaration and submission of annual return in the prescribed form.	**Charitable organisations are mandated to submit an annual return to the KRA commissioner. A charitable organisation that carries on unrelated business will have to mandatorily register a second KRA PIN for purposes of accounting for this unrelated income from unrelated business.**
RULE 20: **REVOCATION OF EXEMPTION CERTIFICATE ISSUED TO A CHARITABLE ORGANIZATION**	Rule 20 details guidelines on revocation of exemption status for failure to comply with the provisions of the rules.	**Scenarios when an exemption certificate granted prior can be revoked by the KRA commissioner;** **I. charitable organisation has repeatedly failed to comply by the rules in the Regulations or;** **II. It has failed to stick by its constitution or founding document in relation to the provisions of the Regulations.** **Revocation of exemption certificate;** **The commissioner will issue a notice of intention to revoke the exemption certificate with reasons for. A charitable organisation will have 30 days to respond, if the commissioner is satisfied with reasons provided, he/she will not revoke the exemption certificate.** **If the commissioner is not satisfied with reasons offered, or the charitable organisation does not respond to the notice of intention, the commissioner will revoke the certificate of exemption.**

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Rule 22: **DISPUTE RESOLUTION**	Rule 22 grants the taxpayers the right to appeal to the tribunal on revocation of an exemption application or revocation of the exemption status.	**A charitable organisation who disputes the decision of the Commissioner to decline his application for exemption or to withdraw his exemption status, may, within thirty days of receipt of the decision to decline the application or to revoke the exemption status, and upon giving notice in writing to the Commissioner, appeal to the Tribunal**
RULE 26: **RULES ON DONATIONS**	The rules define the parameters for which the donor funds are sourced and utilised by the charitable organisation and when donations qualify for tax deductions.	**Regulation 25 provides that for a donation to qualify for tax deduction as provided under section 15(2)(w) of ITA, a donor must provide proof of donation in the following forms;** **I. Evidence of receipt of donation by the exempt organisation** **II. Approved project proposals and budgets submitted by charitable organisation and approved by the donor** **III. Copy of exemption certificate issued under the Rules** **IV. Declaration from the donee that the donation shall be used exclusively for charitable purposes** **Regulation 25 further provides that evidence of receipt of donation must be provided for any donations received from local or foreign donors.** **The donations is not refundable, repayable or returnable to the donor. Additionally, the donations should not confer any indirect benefit to the donor or his/her associates.** **That a donation once conferred upon a charitable organization can only be revoked with the approval of the commissioner.**

Key take away

The Income Tax (Donations and Charitable Organizations Exemptions) Regulations, 2024 are a marked departure from the previous Income Tax (Charitable Donations) Regulations, 2007 in the regulatory landscape governing granting of tax exemptions to charitable organisations and attendant issues. The new Regulations have broadened and given clarity to the meaning of charitable organisations, this will afford more not-for-profits entities to apply for tax exemptions.

The Regulations have expanded the scope of allowable donations donated to charitable organisations to include: benefits given in kind, cash, promissory note, mobile money or money transfer in any form unlike the previous regulations which restricted donations to only cash. However, unlike the previous Regulations the current Regulations have introduced stricter measures for a donation to qualify for tax deductions, for donations to qualify for tax deductions, donors now have the responsibility of providing proof of donation in the forms prescribed in the Regulations. The need for proof is to mitigate on tax avoidance.

Another remarkable shift that has been brought by the new Regulations is taxation of separate incomes generated by charitable organisations. The new regulations provide that if a charitable organization that has been granted an exemption certificate makes income from unrelated business, it will need to obtain separate Personal Identification Number (PIN) for purposes of filing returns from the unrelated business. This means, for instance a charitable organisation that was established for advancement of religion, generates rental income from its unrelated business, it will have to get a separate KRA PIN for this rental income. This was not the case in the previous regulations where exemption extended to separate/unrelated sources of income.

Additionally the regulations provide that, a charitable organisation applying for an exemption for the first time is required to have been in operation for at least one year prior to making the application. Therefore, such an organisation will submit the financial statements, bank statements for that one year it has been in operation.

For further discussion on this alert or any other tax concern, please contact our tax partner listed below.

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