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The path towards charitable status

There is the widely accepted assumption that not-for-profit organisations automatically qualify for charitable status under the Tanzanian Income Tax Act Cap 332. While on the face it may seem straightforward, primarily because of the character of the activities that such organisations engage in, the appropriate response to the question whether one qualifies for charitable status in Tanzania should be 'it depends...'. Why? Well, this is primarily because there are a number of things that need to be in place in relation to how the organisation is set-up and perhaps more importantly the activities which the organisation is involved in. The management therefore needs to ensure that a number of boxes are ticked.

A change in the landscape

The first step in the journey is the form of legal entity which the organisation seeks to use. Due to lacuna in the appropriate legislation, up until mid-2019 most not-for-profit entities were set up as companies limited by guarantee with no share capital under the Companies Act. However, the Government introduced legislative changes to the Companies Act which narrowed down the types of entities that can be registered under the Act to those established for purposes of promoting commerce, investment and trade. Thereby excluding entities that have been established for non-commercial, non-trade and non-investment purposes such as not-for-profit organisations which now had to register under the Non-Governmental Organisations Act, 2002.

Prior to this amendment, the Companies Act Cap 212 allowed for registration of entities established

for purposes of promoting art, science, religion, charity or such other useful object provided that such entities apply their profits, if any, to the promotion of their objects and do not pay dividend to their members. This provision was broad in application. After the amendment, entities established for purposes other than the promotion of commerce, trade and investment that had been registered as companies limited by guarantee and not having a share capital, do not qualify to be registered under the Companies Act Cap 212.

With the amendment of the Non-Governmental Organisations Act, 2002, the definition of the term 'non-governmental organisation' was also narrowed down to only cover non-partisan or non-profit sharing organisations or organisations established and operating for the benefit and welfare of the community for purposes of enhancing or promoting economic, environmental, social or cultural developments or protecting the environment, good governance, law and order, human rights and lobbying or advocating on such issues. The law also carves out entities that are no longer eligible for registration under the Non-Governmental Organisations Act, 2002

Qualifying for charitable status for income tax purposes

While the legal form which the entity has adopted is an important consideration when applying for a charitable status for income tax purposes, it is not the determining factor. The TRA spotlight is mostly focused on the organisation's activities, which to qualify, must not be of a business

character. For an entity to be considered as a not-for-profit organisation, it must not conduct business activities which mean *a trade, a concern in the nature of trade, manufacture, profession, vocation or isolated arrangement with a business character; and a past, present or prospective business, but excludes employment*. Where the not-for-profit organisation habitually earns income through imposing fees, realises gains from the sale of assets, gifts, income derived from investments or from generating profit, it will not be treated as a not-for-profit organisation.

It does not suffice that a not-for-profit organisation does not make profits or does not operate as a business. For a not-for-profit organisation to qualify for charitable status for income tax purposes, it must have been set-up as a religious or charitable organisation that functions for the purpose of the relief of poverty or distress of the public; the advancement of education; or the provision of general public health, education, water or road construction or maintenance. This narrow window means that if the not-for-profit organisation engages in other activities which, on their face, may not appear to have a charitable character, the TRA could potentially disqualify such an organisation at that early hurdle. Nonetheless, the TRA weighs the activities that the not-for-profit organisation engages in through the objectives which are indicated in the constitutional documents of the entity.

Once the charitable status is granted, the organisation can obtain both income tax and capital exemptions in the form of tax advantages that are not afforded to other entities, and perhaps most importantly an accumulation of funds for future application towards charitable functions will not be subject to income tax provided the Commissioner's approval has been granted at the end of the year of income. It is important to point out that the charitable status is pegged to the entity and is restricted to income tax; it does not extend to other taxes which are imposed by other tax statutes (unless specifically stated) or the organisation's employees.

How can the organisation apply for charitable status for income tax purposes?

Organisations that meet the eligibility criteria and would like to apply for charitable status are required to complete the prescribed form and include any supporting information as annexures to the form. It is through this application that the TRA will weigh whether the organisation qualifies for the charitable status. Notwithstanding, the not-for-profit organisation will only be considered a charitable organisation for income tax purposes once the ruling is obtained from the TRA.

A not-for-profit organization making this application must meet the following conditions to qualify as a charitable organization:

- a) must be a Tanzanian entity of public character – *this means a locally established entity that benefits the community as a whole or a specific group in the community*; and
- b) established and functioning solely for the relief of poverty or distress of the public, for advancement of education, or the provision of general public health, education, water or road construction or maintenance – *this may take the form of capital injection, service provision or skills training*.

Upon getting the application with the supporting documentation, the Commissioner, if satisfied that the charitable functions that the Organization carries fall within the ambits of the above-mentioned criteria, will issue a ruling confirming the charitable status of the organization. Not-for-profit entities without charitable status may definitely find themselves missing out on several tax benefits and deductions. But can you blame them? The TRA has kept the tax-advantage treasures at a distant place where only the qualifying well-informed entities reach the destination. Whether such entities choose to embark on this journey is really a matter of following the roadmap to getting the Commissioner's ruling. Nonetheless, the road remains paved by charitable functions.

*If you would like to learn more about this or if you have any questions, please get in touch with **Jacquiline Matiko** at j.matiko@ealc.co.tz or **Corliss Kidaha** at c.kidaha@ealc.co.tz*

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