



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

BACKGROUND

The Cabinet Secretary for the National Treasury and Economic Planning in exercise of the powers conferred by Sec 130 of Income Tax Act gazette 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 tailored to bring a comprehensive guidance for charitable organizations to follow when applying for tax exemptions from Kenya Revenue Authority(KRA)

This helps bring clarity on threshold for an organization to be considered as a charitable organization. That is the procedure and documentations for application of tax exemption certificates among other issues.

NB-Charitable organizations that had been issued with Tax exemption certificate prior to enactment of this regulations have to comply with the rules within 12 months from the date of gazettment that is by 18th June 2025



Rule 5- What Organizations are considered as Charitable Organization

- *Legal Definition*
- To be recognized as a charitable organization and be eligible for an exemption certificate, the organization must meet specific criteria outlined in the regulations. These criteria ensure that only legitimate charitable entities receive tax benefits.



- *Our Take*
- The commissioner shall approve charitable organization to be established if it meets the following criteria:
 - I. **Organizational Test** -Objectives of the charitable organization are strictly limited for charitable purposes, no provision for private benefits
 - II. **Operational Test**- the organization must only pursue activities which are tailored to achieve the purpose for which the organization was founded.eg An organization set to help in educating less fortunate should strictly stick to activities that help educating the less fortunate.
 - III. **Public Benefits Test**- charitable organizations purpose should be tailored to benefit the general public, a charitable organization that serves personal family interests will not be considered as a charitable organization.

Rule 9- Scope of Charitable Purposes

- *Legal Definition*
- Incomes derived from Kenya for charitable purposes shall be exempt from tax only if the charitable organization is established for the below purposes:
 - a. The advancement of religion; or
 - b. The advancement of Education; or
 - c. The relief of poverty; or
 - d. The relief of distress of the public
- *Our Take*
- This seeks to align scope of income earned by charity organizations under Part 1, section 10 of the First schedule of Income Tax Act(ITA).
- Only expenses that fall under these categories shall be allowed in the organizations books of Accounts.
- This will remove ambiguity in defining activities categorized under relief of poverty for public benefit. This also brings certainty on the entities that qualify for exemption.



Rule 16- Surplus Funds Restrictions

- *Legal Definition*
- The Law has allowed charitable organizations to accumulate funds provided the funds retained do not exceed 15% of its funds in a period of Three consecutive Years without applying the surplus to its charitable purposes.
- *Our Take*
- This seeks to ensure charitable organizations continue to carry out its course in facilitating charitable activities and does not use surplus funds to pursue non-related activities.
- The cap also ensures the Charity organizations only use the funds in activities which they are meant for.



Rule 17: Requirements And Procedure for Application of Exemption

- *Legal Definition*
- The Law has provided requirements needed when charity organizations will be making Exemptions applications.
- The requirements are:
 - a. Certified copy of governing documents of applicant including rules, constitution, trust deed, memorandum and articles of association.
 - b. Applicants certified copies of registration documents.
 - c. Audited financial statements of the applicant for the period of Three years prior to application
 - d. Introductory letter from office of County Commissioner of the county where the applicant is located, that should detail nature and principal activities of the applicant.
 - e. The applicants Impact Report; detailing past, present and future activities and how these activities have impacted Kenyan residents.
 - f. Itemized summary of payments made by applicant showing Payee, amount and purpose of payment.
 - g. Certified copies of identity documents of all relevant office bearers of the applicant.
 - h. Proof of Physical Address
 - i. Copy of Valid Tax Compliance Certificates, if it is an application to renew an exemption then a copy of previous exemption certificate of the applicant
 - j. Letter of authority, power of attorney or appointment letter for representative of the applicant.
- *Our Take*
- This brings more scrutiny into Charitable organizations books of accounts, Purpose and ownership before issue of Exemption certificates.



Rule 18: Income Tax Exemption Certificate

- *Legal Definition*
- The Law has provided the validity for tax exemption certificate issued and when the Exemption certificate will be issued after application.



- *Our Take*
- This brings much needed reprieve when it comes to approval of Tax exemption certificate and the period they will be valid.
- The tax Exemption certificate will be valid for 5 Years and it will be issued within 60 Days from the date of application if the applicant meets all the requirements.
- If an application is declined, the commissioner is mandated to inform the applicant in writing giving reasons for the decline.

Rule 19: Submission of Annual Tax Returns

- *Legal Definition*
- The Law requires that charitable organizations must be compliant with declaration and submission of annual returns in the prescribed form.
- *Our Take*
- Charitable organizations must submit annual returns to the KRA Commissioner.
- A charitable organization that carries out unrelated business will have to register a second KRA Pin for purposes of accounting for this unrelated income from unrelated business.



Submit

Rule 20: Revocation of Exemption Certificate Issued to A Charitable Organization

- *Legal Definition*
- The Law has provided the following grounds under which KRA may revoke an exemption certificate:
 1. Charitable organization has consistently failed to comply by the rules in these regulations
 2. A charitable Organization has failed to stick by its constitution or founding document in relation to the rules.
- *Our Take*
- The commissioner will issue a notice to revoke the exemption certificate with reasons for the same. A charitable Organization will have 30Days to respond, if the commissioner is satisfied with the reasons provided, he/she will not revoke the exemption certificate.
- If the commissioner is not satisfied with the reasons offered, or charitable organization does not respond to the notice of intention, the commissioner will revoke the certificate of exemption.
- This is a straight forward rule that sets the records straight on revoking of exemption certificates.



Rule 22: Dispute Resolution

- *Legal Definition*
- The Law provided for the right to appeal to the tribunal on revocation of an exemption application or revocation of exemption status.
- *Our Take*
- Again the law has permitted challenging the decision of the Commissioner to revoke/withdraw an exemption, within 30Days of receipt of the decision to decline the application or to revoke the exemption status, and upon notice in writing to the Commissioner, appeal to the Tribunal.



Rule 25: Rules on Donations

- Legal Definition
- Regulation 25 provides that for a donation to qualify for tax deduction as provided under Sec 15(2)(w) of ITA, a donor must provide proof of donation in the following forms:
 1. Evidence of receipt of donation by the exempt organization
 2. Approved project proposals and budgets submitted by charitable organization and approved by the donor
 3. Copy of exemption certificate issued under the Rules.
 4. Declaration from the Donee that the donation shall be used exclusively for charitable purposes.

- Our Take
- The Law has provided limits for which donor funds are sourced and utilized by the charitable organization and when donations qualify for tax deductions.
- Evidence of receipt of donation must be provided for any donations received from local or foreign donors.
- The donations are not refundable, repayable or returnable to the donor.
- More so, the donations should not confer any indirect benefit to the donor or his/her associates.
- A donation once conferred upon a charitable organization can only be revoked with the approval of the commissioner.



Executive Summary

The **Income Tax (Donations and Charitable Organizations Exemption) Regulations, 2024** outlines the tax framework governing donations to charitable organizations and the tax exemption benefits available to both donors and qualifying organizations. These regulations aim to encourage charitable giving while ensuring transparency and accountability within the nonprofit sector.

Key provisions include:

Eligibility for Exemption: Organizations must meet specific criteria to qualify as charitable, including proper registration and adherence to reporting standards.

Tax Deductibility for Donors: Donors are entitled to claim tax deductions for donations made to qualifying organizations, up to a certain percentage of their taxable income.

Compliance and Reporting: Charitable organizations are required to file annual reports detailing donations and their usage. Failure to comply with reporting standards could result in revocation of the exemption.

Monitoring and Audits: The government reserves the right to audit charitable organizations to ensure compliance with the regulations and proper use of funds.

Enforcement: Non-compliance with these regulations may lead to penalties or the loss of exemption status.

These regulations are designed to provide tax relief to both donors and charitable organizations, while ensuring that charitable funds are used effectively and with transparency.

For further details or guidance, contact **Fiscus Consulting Limited** at fiscusconsulting.co.ke.

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