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**KEY TAX CONSIDERATIONS FOR CHARITABLE,
NON GOVERNMENTAL ORGANISATIONS ("NGOs") AND
RELIGIOUS INSTITUTIONS THIS YEAR.**

Foreword

With the media awash with stories of inefficiencies in financial reporting by charities, it is becoming increasingly clear that tax fraud together with money laundering are increasingly becoming significant risks in the running of charities and need to be addressed both from the Donor's perspective and the recipients. In this article, our team demystifies the widely held but false belief that: as long as an organisation is registered as a Not for profit or charity organisation, then automatically it's out of the reach of the tax man. Our team provides key insights from a practical point of view, with commentary on recent amendments to the law. Our team further explores the different strategies that Not for profit organisations can adopt to ensure that they operate efficiently and with minimal disruption from the tax administration.

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RELIGIOUS AND CHARITABLE ORGANISATIONS

Overview

Corporate tax

In principle all income that is received or generated by charities and religious institutions that are not for profit in the form of donations, grants and membership fees is exempt from taxation. However, this exemption from taxation is not automatic. In practice, Uganda does not have a blanket exemption from taxation of income of Charities and Religious institutions. All exemptions from taxation are granted upon fulfilment of the conditions set down by law and administrative requirements put in place by Uganda Revenue Authority ("URA") in order for one to access such privileges.

Recipient

Any company, institution or irrevocable trust that is a religious or charitable, institution and is not for profit may be a suitable recipient of charitable gifts. While the proper organisation form is a pre-condition for tax privileges, the form of the organisation itself does not afford any privileges. In order to qualify for the tax privileges under law, additional requirements must be met on a continuing basis.

Obtaining exemptions

Corporate Tax

In order to obtain an exemption from taxation, the entity seeking the exemptions must be classified as an exempt organisation within the scope of the law and must apply for a ruling from the Commissioner General Uganda Revenue Authority indicating that it is an organisation whose income is exempt from taxation. Religious and charitable institutions that are not for profit meet the organisation/ legal form of an exempt organisation. Additionally, for a charitable organisation to be classified as an exempt organisation, it ought to demonstrate that none of the income or assets of the organisation confers a private benefit on any person.

A charitable organisation is further required to register for taxes, acquire a Tax Identification Number and continue filing returns even when its income is not taxable



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Procedure

An Application for a ruling to exempt a charitable organisation from taxation is made to the Commissioner General URA using form DT 1017 and is supported by the following documentation:

1. Certificate of incorporation as a Company limited by guarantee.
2. Certificate of registration as a Non-Governmental Organisation.
3. Valid NGO permit.
4. The charities' constitution or governing documentation.
5. URA TIN certificate.
6. Income Tax returns for the 3 years preceding the application.
7. Income Tax returns for the trustees or members or governors or directors for the 3 years preceding the application.
8. PAYE returns for the last 6 months preceding the date of application.
9. Copy of the tenancy agreement or and title showing location of the organisation.
10. Audited financial accounts for the last 3 years.
11. Bank statements for the last 3 years for all Bank accounts operated by the applicant.
12. Letter of confirmation from the local authority confirming existence and activities of the applicant.
13. Any other relevant documents that may be relevant in confirming the existence of operations, for example minutes of last Annual General Meeting (AGM).
14. A declaration certifying that all information as required has been provided without any omission and it's correct.





Income tax amendments 2021

The amendment to the law scrapped the requirement of religious and charitable institutions demonstrating that they are of a public character before obtaining an exempt status ruling. A religious and charitable institution only needs to demonstrate that it is a Not for Profit organisation before accessing the privilege of exempting its tax and that none of the income or assets confers any private benefit on any person.

Charitable Donations

Just like it is in the case of income received by non-profits, non-governmental organisations and charities, not all charitable donations made by taxable persons are allowable expenses that can be used to offset a tax payer's liability. In order for a charitable donation to be allowed as a deduction for an organisation's tax liability, the following conditions have to be met:

- a) It must be made to a charitable organisation that has received a ruling exempting its income from taxation as an exempt organisation.
- b) The value of the donations should not exceed 5% of the person's chargeable income.

Non- exempt income

- Income from business activities not related to the functions of the organisation's existence.
- Income from property except rent received and is used exclusively for the activities of an organisation.

• Other taxes

Value Added Tax

Not for profit and charitable organisations incur a Value Added Tax charge at a rate of 18% on goods and services supplied to them as long as the good or service is not VAT exempt. Whereas corporate tax is charged on an organisation, VAT is charged on a good or service making it an indirect tax levied on consumption. The person providing the service or good is the one that charges VAT and subsequently remits the same to URA.

Vat is only exempt from goods and services that are classified as exempt. These include social welfare services, dental, medical and veterinary equipment, supply of machinery, tools and implements suitable for use only in agriculture, photo sensitive semi conductor devices etc.

Additionally, supply of Bibles and Qurans is VAT exempt.



Not for profit/ charitable organisations exempt from VAT.

Only charitable organisations that are gazetted in the VAT Act as Public International Organisations are entitled to a blanket exemption from VAT. Public International Organisations include donor agencies and development financial institutions like Danish International Development Agency, Department for International Development, Korea International Cooperation Agency and many others. Any supplies made to such organisations are VAT exempt.

However, all the other Not for profit entities or charities that are not gazetted, are charged VAT on goods and services they are supplied if the goods or service are not exempt from VAT or zero rated.

Pay as you earn ("PAYE")

Pay as you earn is a tax that is charged on the income of an employee. The tax is charged on an employee's wages, salary, leave pay, payment in lieu of leave, overtime pay, fees, commission, gratuity and any other allowance that is not incurred by an employee for organisational purposes. Not for profit, charities and Non-Governmental Organisations are required to deduct and remit tax on the salaries of their employees. PAYE tax filings are made within 15 days after the end of the month.

Withholding tax

Tax is withheld on the gross amount of the payment on the following:

- Professional fees- 6%
- Purchase of an asset for example land- 6% if the vendor is a resident and 10% if the vendor is a Non-resident.

Tips for minimizing tax risks in Charities and Religious institutions.

Charities and religious institutions that run income generating activities need to be mindful of the potential tax risks on a continuing basis particularly in regards with the allocation and distribution of income in their Financial statements. Below is a non-exhaustive list of recommendations that we suggest can be put in place to mitigate the potential tax risks:

- Establishment of an independent governance structure to ensure accountability for any income received by way of grants, donations and membership fees.
- Documentation of all income and expenses that are incurred when running the organisation.



- Conducting due diligence on organisational procurements.
- Staying compliant with licencing and filing requirements under the Non-Governmental Organisations legal regime.
- Conducting annual financial audits to ensure that the Organisation's financials are aligned with the requirements of an exempt organisation.
- Conducting periodic tax health checks to ensure income and expenditure qualify for tax exemptions.

Continuous monitoring of an organisations spending to ensure all expenses are related to the core activities of the charity/
Non-Governmental Organisation.

Conclusion.

Whereas the law grants Charities and Educational institutions several privileges as they go about their mandate of doing good, it also places certain obligations in order for them to continue enjoying those privileges. In order to ensure that an organisation continues being compliant, robust systems need to be put in place to ensure continuous risk assessment of all financial transactions and compliance.

Disclaimer.

Every effort has been made to ensure this information is up-to-date as of the date of the publication. It is not intended to be a full and exhaustive discussion of the law in any area. This information is not intended as legal advice and may not be used as such.

Our Firm

Origo is a Latin word to mean "origin". The adoption of the Origo brand was born out of the need to build a brand that reflects our core working principles namely: originality and ingenuity in the provision of bespoke solutions to our clients.

Origo Advocates is a regionally recognised law firm operating primarily in Kampala, the capital city of Uganda as a premier full-service law firm. The firm has since its inception built a solid reputation in Foreign Direct Investment, International Trade, Corporate Law and Tax.

Our Services

- Advisory services in regards to registration, renewal, deregistration and day to day running of Non-Governmental Organisations.
- Detection and response to non-compliance with regulatory requirements in the areas of Employment, Tax, Corporate governance, Finance, Anti-money laundering, corruption and bribery, human rights, real estate, contractual obligations and procurement.
- Advise on continuous compliance with regulatory requirements.
- Conducting due diligence on potential grant beneficiaries and ensure continuous compliance with regulatory requirements through periodic tax health checks.
- Advise on in-house compliance in regards to acquisition of tax exempt status.
- Assist in forensic investigations, collection of evidence and prosecution in Courts of law in fraud cases.

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