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## Guide to Application for Tax Exemption for Hong Kong Charitable Institutions

Charitable institutions wishing to enjoy the tax exemption may apply to the Inland Revenue Department under section 88 of the Inland Revenue Ordinance.

### 1. Institutions Eligible for Tax Exemption

Under section 88 of the IRO, charitable institutions or trusts of a public character (referred to as charities in this article) are exempt from tax. While organizations may apply to the Inland Revenue Department (IRD) for recognition as tax-exempt charities, the IRD isn't responsible for the registration of charities. There is also no provision in the IRO that exempts a voluntary or non-profit-making organization from tax, as not all of them are charities.

For an organization to be recognized as a tax-exempt charity, it must be established for purposes which are exclusively charitable according to law and must be subject to the jurisdiction of Hong Kong courts. The law defining the legal attributes of a charity is based upon case law developed through court decisions. For practical purposes, the judgment of Lord MacNaghten in the case of *IT Special Commissioners vs. Pemsel* is regarded as an authoritative summary of the purposes that may be accepted as charitable.

Charitable purposes are grouped under four heads:

- (1) relief of poverty;
- (2) advancement of education;
- (3) advancement of religion; and
- (4) other purposes of a charitable nature beneficial to the community not falling under any of the preceding heads.

While the purposes under the first three heads may be in relation to activities carried on in any part of the world, those under head (d) will only be regarded as charitable if they are of benefit to the Hong Kong community.

A purpose is not charitable unless it is directed to the public or a sufficient section of it. An organization cannot be charitable if it is, in principle, established for the benefit of specific individuals. However, it is not possible to lay down any precise definition of what constitutes a sufficient section of the public, which means each case must be considered on its own merit.

On condition that admission to a non-profit-making kindergarten is open to the public (established for public benefit), the operation might be accepted as charitable for the advancement of education.

## **2. Governing instrument of a charity**

It is essential that a written governing instrument be used to establish a charity. Promoters or founders of a charity must be clear in their own minds about the purposes of the charity and the manner in which it should be administered before they seek legal advice about the format, content and legal sufficiency of the charity's governing instrument.

For an organization to be recognized as a tax-exempt charity, its governing instrument should generally contain clauses that:

- State precisely and clearly its objects.
- Limit the application of its funds towards the attainment of its stated objects.
- Prohibit distribution of its incomes and properties among its member
- Prohibit members of its governing body (directors, trustees, etc.) from receiving remuneration.
- Specify how the assets should be dealt with upon its dissolution (the remaining assets should normally be donated to other charities).
- Require the keeping of sufficient records of income and expenditure (including donation receipts), proper accounting books and compilation of annual financial statements.
- Exclude the powers set forth in the seventh schedule to the Companies Ordinance if the charity is incorporated under this ordinance.

## **3. Application procedure**

Organizations need to submit an application letter to IRD together with:

- A copy of the relevant certificate of registration (if appropriate).
- A certified true copy or a draft of the governing instrument and rules governing its activities.
- A list of activities planned for the next 12 months.
- A list of activities that have been carried out in the past 12 months and a copy of accounts for the last financial year (if appropriate).

The application should be sent to the Commissioner of Inland Revenue, G.P.O. Box 132, Hong Kong.

Provided that the governing instrument is in order and no supplementary information is required, tax exemption would normally be granted within eight weeks after receipt of the application. Otherwise, the time required would depend on when the organization could provide all the required information or remove any irregularities in its governing instrument to satisfy the requirements for tax exemption.

#### **4. Review of tax-exempt charities**

To protect revenue, IRD will review from time to time the status of tax-exempt charities to ensure their objects are still charitable and their activities are compatible with their objectives. For review purposes, the charities are required to provide their accounts (audited if incorporated), annual reports and documents, such as a list of activities carried out during the review period.

#### **5. A summary of the tax advantages accorded to charities**

##### **(1) Inland Revenue Ordinance**

- (a) Section 88 provides that charitable institutions or trusts of a public character are exempt from tax under the Inland Revenue Ordinance.
- (b) Proviso to section 88 states that for the purpose of Profits Tax, if a charitable institution or trust of a public character carries on a trade or business, the profits from such trade or business are exempted only if:-
  - (I) the profits are applied solely for charitable purposes, and
  - (II) the profits are not expended substantially outside Hong Kong, and
  - (III) either
    - (i) the trade or business is exercised in the course of the actual carrying out of the expressed objects of the institution or trust (for example, a religious body might sell religious tracts); or
    - (ii) the work in connection with the trade or business is mainly carried on by persons for whose benefit such institution or trust is established (for example, a society for the protection of the blind might arrange for the sale of handicraft work made by the blind).

- (c) For the purposes of Personal Assessment, Salaries Tax and Profits Tax and subject to certain limitations, a deduction is granted for donations of money to charitable institutions or trusts of a public character which are exempt from tax under section 88 or to the Government for charitable purposes.

**(2) Stamp Duty Ordinance**

Stamp duty under Head 1(1) or Head 2(3) shall not be chargeable on any conveyance of immovable property or any transfer of Hong Kong stock operating as a voluntary disposition inter vivos where the beneficial interest therein passes by way of gift from the person entitled to that interest, or from the registered owner, to or on trust for a charitable institution or trust of a public character. However, the instrument in question must still be submitted to the Collector for adjudication. It is not treated as duly stamped unless it has been stamped with a particular stamp denoting either that it is not chargeable with stamp duty or that it is duly stamped.

**(3) Estate Duty Ordinance**

- (a) Gifts for the benefit in Hong Kong to any charitable institution or trust of a public character, or to Government for charitable purposes will not be deemed to be part of the dutiable estate.
- (b) Property bequeathed for the benefit in Hong Kong to any charitable institution or trust of a public character, or to Government for charitable purposes is allowed as a deduction.

The exclusion from the dutiable estate is applicable in respect of gifts and bequests received from donors dying before 11 February 2006.

**(4) Business Registration Ordinance**

Charitable, ecclesiastical or educational institutions of a public character are normally exempt from the obligation of business registration unless a trade or business is carried on. Where such an institution carries on a trade or business, the exemption will only be granted if the conditions set out in section 16(a) of the Business Registration Ordinance are satisfied.