

PRIVATE SOCIETIES AND TRUSTS PAY TAX

In certain circumstances, corporates, individuals or even families may set up charitable foundations as a way to help the society and the less privileged or to benefit their heirs. In some cases, such foundations are strategically set up as a business model to pursue philanthropy in order to make a real impact on the society in which a business operates. Such institutions may be set up in the form of religious organisations, educational institutions and trusts. However, such institutions are commonly construed to be immune to tax on the basis that they are predominately donor-funded and their main activities are for charity and not solely to earn profit. On the contrary, it is key to note that such institutions are not exempt from income tax as we will elaborate below. In this article, words importing the masculine shall be deemed to include the feminine.

The private societies

Basically, private societies relate to those organisations formed or created by private individuals, partnerships or private organisations. Such organisations are usually owned and controlled by their private founders. Primarily, such societies may operate in the form of clubs, societies or institutes operating solely for social welfare, civic improvements, recreational or even advancement of a profession or trade. It is imperative to note that in terms of the tax laws such organisations are generally neither exempt persons nor is their income exempt from tax save when established for public purposes.

The law

In verbatim, the Income Tax Act provides that no tax is applied on 'any income of a charitable religious or educational institution or a trust established for public purposes.' From the above, it is axiomatic that the exemption is only applicable to an institution that is established for public purposes. It is therefore of paramount importance that we first establish the qualifying criteria that separate an institution established for public purposes from that for private purposes.

Public vs private institutions

The Income Tax Act does not further define or explain what an institution established for public purposes is. However, if we look at an institution that is established by private individuals or a corporation, it is plausible that surplus earnings from the operations of the institution or assets at dissolution of the same are distributed to private individuals. Put differently, at the point of dissolution of such an institution, the question is whether the assets devolve to private individuals or to the public. If the assets devolve to private persons, then the organisation is private in nature and pays income tax. Where the assets can be distributed to the public, then such institution is not exempt from income tax but its income is not subjected to the tax.

The exemption

Consequently, the exemption stipulated in the Income Tax Act is only applicable to an institution established for public purposes, as alluded to above. It is therefore key to take note

of an institute's activity as well as the beneficiaries in the event of a dissolution in determining whether it is established for public purposes. As an example, a charitable foundation established through a trust whose beneficiaries are family members ceases to be for public purposes even though it performs charitable activities for the general public. The reason is that at the point of dissolution, the assets are distributed to private individuals i.e., the family members. Accordingly, should the earnings or proceeds be available for distribution to or for the benefit of the general public, then the tax exemption will apply.

Well, folks, we hope that was insightful. As we say goodbye, remember to pay Caesar what belongs to him. If you want to consult, join our free Tax WhatsApp group or to know about our 9 Tax e-books, send a text to +267 7181 5836 or email us at jhore@aupracontax.co.bw. You can read more tax articles on our website, www.aupracontax.co.bw under the 'Tax articles' tab