

Income Tax (Charitable Organisations and Donations Exemption) Legal Notice No. 105 of JUNE 18, 2024



Introduction

On 18 June 2024, the Cabinet Secretary for the **National Treasury and Economic Planning** issued **Legal Notice** No. 105 of 2024, officially gazetting the Income Tax (Charitable Organizations and Donations Exemption) Rules, 2024 (the "2024 Rules"). These new rules take effect from 18th June 2024 and supersede the previous Income Tax (Charitable Donations) Regulations, 2007 (the "Repealed Rules").



Key Highlights

Here are the key highlights

Exemption Requirements

Charitable organizations are exempt from tax if their income is used:

- Exclusively for charitable purposes benefiting Kenyan residents and
- Is expended within Kenya. This means all funds must be directed towards charitable activities within Kenya to maintain tax-exempt status.

Establishment Criteria

To qualify as a charitable organization, an institution must:

- Operate exclusively for one or more charitable purposes.
- Avoid providing private gains to individuals or entities.
- Restrict assets solely for charitable uses. These requirements ensure that organizations are dedicated to their charitable mission and do not distribute profits for personal benefit.

Key Highlights (continued)

Operational Restrictions

Charitable organizations must:

- Focus solely on charitable activities which it was founded for.
- Avoid unlawful practices.
- Use assets strictly for their stated charitable purposes. Organisations must ensure all operations are aligned with their charitable objectives and comply with legal standards.

Public Benefit Test

Charitable activities must:

- Benefit a defined group or the public at large.
- Be accessible to those in need or in poverty without unreasonable restrictions. This test ensures that charitable services are inclusive and benefit a broad section of the community, rather than a select few.
- The benefits of the charitable activities are related to the charitable organisation's purpose
- **Not provide private benefits, directly or indirectly, by making any part of its income payable to or available to any person including its creators or their families, shareholders, members employees,**

LN 105:SUMMARY

Operational Framework

Society

Trusts

Company limited by guarantee

PBOs—(Formally NGOs)

Key thematic requirements

- Advancement of education
- Advancement of religion
- Relief of poverty
- Relief of distress

Surplus fund restriction---15%--3 years average

Need to separate the commercial section with the charitable by way of a separate PIN

Founding document to ensure compliance with provisions of Rule 5, 6 & 7.— such as Dissolution clause and asset distribution—No individual to benefit.Non distribution of surplus

LN 105:

Charitability test—Exclusivity

To qualify as a charitable organization, an institution must:

- Operate exclusively for one or more charitable purposes.
- Avoid providing private gains to individuals or entities.
- Restrict assets solely for charitable uses. These requirements ensure that organizations are dedicated to their charitable mission and do not distribute profits for personal benefit.

Relief of Distress-Requirements for Exemption:

- Exclusively for relieving public distress.
- Must meet public benefit requirements, including providing free or subsidized healthcare services to at least 10% of the total patient population if fees are charged.

Advancement of education-Requirements for Exemption:

- ❖ Exclusively focused on educational advancement.
- ❖ Services must be accessible to the poor and needy.
- ❖ Support for disadvantaged groups with scholarships for at least 10% of students population from poor backgrounds.

Application for Tax Exemption:

Documents Required:

- Governing documents ---the constitution—Ensure it defines the purpose and charitable cause with certainty
- Registration documents,
- Audited 3 years financial statements or one year if a new applicant
- Asset schedules,
- Certified bank statements for a period of three years,
- Criteria for defining and selecting beneficiaries
- An introduction letter detailing the name, nature and principal activities
- Impact report describing in detail— the past, present and future activities of the applicant; and
how the activities of the applicant are intended or have benefited the residents of Kenya;
- An itemized summary of the payments made by the applicant showing the payee, amount and purpose of payment
- A copy of a **valid tax compliance certificate** and, in the case of an application to renew an exemption, a copy of the previous tax exemption certificate of the applicant;
- a letter of authority, power of attorney or appointment letter for the representative of the applicant.
- The application is processed within 60 days
- Valid TEX is to last for 5 years. For renewal the commencement date is effective the day the prior one expired