

## **Tax exemption by the Hong Kong Inland Revenue Department**

The IRD uses four criteria to assess whether or not an organization is qualified for exemption:

(a) purpose of “charity”

Under this ordinance, charity is not equivalent to “voluntary” or “non-profit-making” organization. Charity must be established exclusively for charitable purposes. Generally speaking, for an institution or a trust to be a charity, it must be established for purposes which are exclusively charitable according to the law. The law defining the legal attributes of a charity is based upon case law developed through court decisions. In brief, these attributes are :

- a) A relief of poverty
- b) Advancement of education
- c) Advancement of religion
- d) Other purposes of a charitable nature beneficial to the community falling under 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.

(b) “public character”

The IRD considers that a purpose is not charitable unless it is directed to the public or a sufficient section of it. An institution cannot generally be considered charitable if it is in principle established for the benefit of specific individuals.

(c) “written governing instrument”

The IRD considers it essential that a charity is established by a written governing instrument. The type of instrument adopted will depend on the particular circumstances pertaining to the charity proposed and the preference of the promoters or founders. The most common types of structures used are:

- a) A trust
- b) A society established under the Societies Ordinance (Cap. 151)
- c) A company incorporated under the Companies Ordinance (Cap.32)
- d) A statutory body established by the Hong Kong legislature.

In some rare circumstances, the IRD also gives recognition to ad hoc committees established for charitable purposes. In the case of ad hoc committees, minutes of the meeting establishing the committee must be ready for inspection by the IRD, although preparation of governing instrument is not strictly required.

The government instrument of a charity<sup>1</sup> is required to contain the following clauses:

- (1) Clause(s) stating precisely and clearly its object;
- (2) A clause limiting the application of the charity's funds towards the attainment of its stated objects;
- (3) A clause prohibiting distribution of its incomes and properties amongst its members;
- (4) A clause prohibiting members of its governing body (e.g. directors, trustees, etc.) from receiving remuneration;
- (5) A clause specifying how the assets should be dealt with upon the dissolution of the charity (the remaining assets should normally be donated to other charities);
- (6) A clauses requiring the keeping of sufficient records of income and expenditure (including donation receipts), proper accounting books and compilation of annual financial statements; and
- (7) A clause excluding the powers set forth in the Seventh Schedule to the Companies Ordinance (in case the charity is a company incorporated under such Ordinance).

(d) jurisdiction of Hong Kong courts

Tax exemption is only given to charities subject to the jurisdiction of the Hong Kong courts. In other words, they comprise charities established in Hong Kong or Hong Kong establishment of overseas charities such as those deemed to be established in Hong Kong under Section 4 of the Societies Ordinance or registered under Part XI of the Companies Ordinance.

A summary of the tax advantages accorded to recognized charities is as follows:

- (a) exemption from tax under the Inland Revenue Ordinance;
- (b) if a recognized charity carries on a trade or business<sup>2</sup>, the profits from such trade or business are exempted if the profits are applied solely for charitable purposes and the profits are not expended substantially outside Hong Kong;
- (c) for the purposes of Personal Assessment, Salaries Tax and Profits Tax, an allowance is granted for donations of money to recognized charities;

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<sup>1</sup> Memorandum and Articles of Association in the case of a corporation, the Ordinance where the body has been established by statute, the Trust Deed in the case of a trust, or the Constitution in the case of a society.

<sup>2</sup> The trade or business should be exercised in the course of the actual carrying out of the expressed objects of the institution or trust (e.g. a religious body might sell religious tract), or the work in connection with the trade of business should be mainly be carried on by persons for whose benefit such institution or trust is established (e.g. a society for the protection of the handicapped might arrange for the sale of handicraft work made by the handicapped).

- (d) stamp duty is be chargeable under the Stamp Duty Ordinance 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 recognized charity;
- (e) under the Estate Duty Ordinance, gifts for the benefit in Hong Kong to any recognized charity will not be deemed to be part of the dutiable estate and is allowed as a deduction;
- (f) recognized charities are normally exempt from the obligation of business registration unless a trade or business is carried on.