



Income Tax

A guide to applying for charitable exemption

This guide has been written by the States of Guernsey Income Tax Department to assist organisations wishing to apply for Charitable Exemption from Income Tax.

What is "Charitable Exemption"?

Whether or not a "body of persons" is a charity for tax purposes is a question of fact. In section 40(k)(i) of the Income Tax (Guernsey) Law 1975, which refers to Guernsey charities, a charity means any body of persons or trust established for charitable purposes only.

If the income of a Guernsey charity is to be granted exemption from income tax, the charity has to apply for exemption under section 40(k) of the Law. A properly constituted Guernsey branch of a charity situated in another territory is considered to be a Guernsey charity.

This section exempts the income of a Guernsey charity if and so far as it is applied to charitable purposes. This is taken literally and means any income of the charity, unlike the UK where the profits derived from regular trading (e.g. charity shops) are not exempt.

If a charity does not apply for exemption, then it would be liable to tax on any income it received.

How to apply

In order to apply for exemption, the charity needs to send in to the income tax office a copy of the trust deed, constitution, or other documentation setting out the rules under which it is governed.

The objects or purposes must be wholly charitable. If there is a mix of objects and some are not charitable, then exemption is not available. There should also be a specific restriction on the use of the funds to those charitable purposes, both during the life of the charity and in the event of its winding up or dissolution.

If charitable status can then be given, a letter is issued by the tax office by way of confirmation. The letter deals with the income tax position only and does not mean that the body is a registered charity, as there is no register of charities in Guernsey.

Types of charity

A charity can be set up and run as a company, normally limited by guarantee (LBG). A copy of the constitution, deed or similar is still needed by the tax office in order to consider whether the income can be given exemption from income tax.

Churches (e.g. parish churches) are accepted automatically as being of a charitable nature.

The income tax office can request accounts from any Guernsey charity at any time, to ensure that the income is being used for charitable purposes only.

Charities from Jersey and the UK are dealt with under section 40(r) of the income tax law. Here, exemption is limited to income derived from investments or deposits. It does not apply to income received under Deeds of Covenant.

Deeds of Covenant

Deeds of Covenant are settlements, made in writing, and fall under two categories –

- a. those in favour of a Guernsey charity
- b. other settlements

For a Deed in favour of a Guernsey charity to be effective, the charity must have been given exemption from income tax under section 40(k). The Deed must be for period exceeding 3 years. Currently, the maximum deduction for Deeds in favour of Guernsey charities is £1,500 per annum per individual (i.e. £3,000 for a married couple) regardless of who actually makes the payments.

“Other settlements” must be for a period exceeding 6 years and there is no maximum deduction.

However, Deeds in favour of non-Guernsey charities, including UK and Jersey charities, are “tax neutral”. The settlor (the person making the payment) is entitled to a deduction in calculating his/her liability to income tax but the charity is liable to tax on the Guernsey source income (under the Deed). Furthermore, the settlor is the person responsible for paying the tax due by the charity. Thus, the reduction in the settlor’s own tax is covered by tax paid on the payments under the Deed.

The income tax office takes the view that if the settlor does not claim a deduction against his/her income then the charity is not taxed on the covenanted donations. This arrangement has the same effect, as it is still tax neutral.

If any additional information is needed by Guernsey charities seeking to apply for exemption from paying income tax, or any other queries connected with charities and Deeds of Covenant, then please contact the Income Tax Department – telephone 724711 (extension 215).

This information is offered to assist charitable organisations. It should not be regarded as comprehensive and charities should take appropriate advice to ensure they comply with their obligations. The Association of Guernsey Charities accepts no responsibility for any person or organisation using these guidelines.

Further information is available on our website www.charity.org.gg