



**International Center for Not-for-Profit Law**

**733 15<sup>th</sup> Street, NW, Suite 420  
Washington, DC 20005 USA  
(202) 624-0766 (telephone)  
(202) 624-0767 (facsimile)  
[www.icnl.org](http://www.icnl.org)**

**January 24, 2002**

**Comparative Analysis of the  
Definition of Charities and their Legal Treatment**

**Classification of Exempt Charitable Organizations**

*United States*

Pursuant to section 501(c)(3) of the Internal Revenue Code, an organization is exempt if it is organized and operated exclusively for one or more of the following purposes:

- (a) Religious,
- (b) Charitable,
- (c) Scientific,
- (d) Testing for public safety,
- (e) Literary,
- (f) Educational, or
- (g) Prevention of cruelty to children or animals.

In addition to qualifying as one of the above-listed categories of activities, 501(c)(3) requires that an exempt organization serve a public and not a private interest.

The US Treasury Regulations expand upon the language in the Internal Revenue Code and provide clarifications and examples of qualifying activities for each of these categories of exempt organizations.<sup>1</sup> The US statutes and regulations have been interpreted rather liberally by the US courts in determining what constitutes a charity as compared to the positions established by the courts in other common law

---

<sup>1</sup> See Treas. Reg. 1.501(c)(3)-1(d)(2) through 1.501(c)(3)-1(d)(5).

countries. The term “charitable” as defined in the Treasury Regulations includes: relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments or works; lessening of the burdens of Government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tension; (ii) to eliminate prejudice and discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency. An organization’s qualification as a charity is not affected by any advocacy it undertakes for civil or social change or to mold public opinion in promoting its primary purpose.<sup>2</sup>

### ***Common Law Countries***

With the exception of the United States, most other common law countries have struggled to clearly define what constitutes a charity, relying heavily on the rather vague pronouncements of the common law of the courts. The traditional legal approach in common law jurisdictions starts with the formulation contained in the preamble of *The Statute of Uses*, a 1601 English law enacted during the time of Elizabeth I. In the nineteenth century the provisions of the 1601 statute were more succinctly organized in the *Pemsel*<sup>3</sup> case, which established the following four categories:

- the relief of financial hardship;
- the advancement of education;
- the advancement of religion; and
- certain other purposes for the benefit of the community.

The courts of the common law jurisdictions have all used the *Pemsel* “definition” in conjunction with the 1601 legislation to “define” what is meant by the term “charity”. Certain jurisdictions (such as Canadian provinces) have attempted to create statutory language to better (and more broadly) define “charity” but with limited success.

### ***Canada***

To be entitled to the privileges offered to charities under the *Income Tax Act*, a charitable entity must have the status of “registered charity”. However, the *Income Tax Act* does not define “charity”. In deciding whether an organization is entitled to registered status, the Canada Customs and Revenue Agency relies on a reasonably traditional interpretation of the common law tests, as well as the Act’s particular rules on such things as political activities and unrelated and related business activities.

Over the years, the courts have used and amalgamated these two sets of criteria from the 1601 Statute and *Pemsel*, principally by requiring other purposes beneficial to the community also to be within the “spirit and intendment” of the statute’s preamble. For the most part, the Canadian provinces and territories have not

---

<sup>2</sup> Treas. Reg. 1.501(c)(3)-1(d)(2).

<sup>3</sup> *Income Tax Special Purpose Comrs. v. Pemsel* [1891] AC 531.

defined “charity” or “charitable purposes” in legislation but left it to the courts to apply the common law. However, in some jurisdictions there are statutory definitions which, to varying degrees, expand or modify the common law definition. In Alberta, the *Charitable Fund-raising Act* extends the common law by defining “charitable purpose” as including “a philanthropic, benevolent, educational, health, humane, religious, cultural, artistic or recreational purpose, so long as the purpose is not part of a business.”<sup>4</sup> Similarly, in Manitoba the *Charities Endorsement Act* defines “charitable purpose” as including “any charitable, benevolent, philanthropic, patriotic, athletic, artistic, or civic purpose that has as its object the promotion of a civic improvement or the provision of a public service.”<sup>5</sup>

### ***United Kingdom (England and Wales)***

The main statute for England and Wales regarding the regulation of charities is the *Charities Act 1993* (UK). This Act does not substantively define “charity” or “charitable purposes”. Therefore, whether an organization or trust has charitable purposes is determined by reference to the principles established by the courts. In England and Wales the registration of charities is administered by the Charity Commission for England and Wales, an independent statutory authority, which reports to the Parliament through the Home Secretary. Although the Charity Commission applies the common law test in determining charity status, according to some commentators believe that the Commission is in fact extending the working definition of “charity”.

### ***New Zealand***

In New Zealand, charitable organizations are eligible for taxation concessions under the *Income Tax Act 1994* (NZ). Section OB 1 of this Act provides that “charitable purpose” includes “every charitable purpose whether it relates to the relief of poverty, the advancement of education or religion, or any other matter beneficial to the community.” This definition, however, is in effect just a restatement of the common law meaning of charity.

## **Analysis by Activity**

### **Health Care**

Analysis of the varying approaches for granting charitable status to healthcare institutions is an exercise specific to the United States, since in most developed countries (at least those researched for this paper) healthcare is generally universally available for free or nominal fees. Thus, although in the United States there is a great deal of precedent regarding what healthcare organizations qualify for charitable status, in most other countries researched this issue rarely arises and receives little attention.

---

<sup>4</sup> Section 1(1)(b) of the Act.

<sup>5</sup> Section 1(1) of the Act.

To qualify for exemption under 501(c)(3), a nonprofit hospital<sup>6</sup> must be organized and operated exclusively in furtherance of some purpose considered “charitable.” Originally, the term “charitable” was interpreted by the IRS and the courts to entail the provision of medical services to the poor and other disadvantaged classes. However, because of changes in society and the delivery of health care services, both a broader standard was introduced.

Under the new *community benefit standard*, a hospital is deemed charitable if its services are provided to a class broad enough to benefit the community, and it is operated to serve a public rather than private interest. It is no longer required that the hospital provide that care be provided at free or reduced costs. In fact, the facility may even have a surplus of receipts over disbursements, subject to various requirements (such as inurement and private benefit issues)[Does this mean I can charge full price to all patients on rooms, doctors, medicines, etc.? Sure, as long as you don’t discriminate among patients based on their ability to pay]. The following factors are used in determining whether a hospital meets the community benefit standard :<sup>7</sup>

- Non-emergency care is provided to all who can pay, directly or indirectly;
- An emergency room is open to all regardless of ability to pay;

If an organization does not meet both of the above factors, the IRS uses other criteria to evaluate whether an organization is operating for the benefit of the public. These criteria include (but are not limited to):

- Management by a board of trustees composed of individuals who do not have any direct economic interest in the hospital;
- Maintenance of an open medical staff with privileges available to all qualified physicians;
- Programs in medical training, research and education; and
- Existence of other projects to improve the health of the community.<sup>8</sup>

[Are these factors weighted? Do I have to meet one? More? All? How are they evaluated? This list is merely illustrative and not fixed. They aren’t weighted and you certainly don’t have to meet all of them. As with other charitable categories, the IRS uses a balancing test taking into account various circumstances, which makes it difficult for us to be more prescriptive and black letter law.]

## **Education**

For purposes of section 501(c)(3), “educational” is defined as (a) the instruction or training of the individual for the purpose of improving or developing his capabilities; or (b) The instruction of the public on subjects useful to the individual

---

<sup>6</sup> The term “hospital” is used here but other organizations such as clinics, homes for the elderly, and other institutions equally apply.

<sup>7</sup> Rev. Rul. 69-545.

<sup>8</sup> IRS Exempt Organizations Handbook (IRM 7751) Sec. 342.5(2). These factors are of more importance, for example, when the institution does not have an emergency care unit (and thereby fails one of the primary factors) either because of its locale or presence of other institutions providing emergency care, or due to the nature of the institution that doesn’t generally necessitate emergency care (such as a cancer center or eye clinic).

and beneficial to the community.<sup>9</sup> Thus, there is no requirement that the instruction be directed directly at the public, and in this sense, the educational prong for exemption differs from the charitable prong, which requires that a charitable class be served with broad access to the public or a broad segment thereof. Organizations that qualify for exemption under the educational prong include conventional schools, colleges, and professional or trade schools; organizations which present public discussion groups, forums or similar lectures; and museums, zoos, orchestras, and similar organizations.

The IRS' long-standing policy has been to focus on the method used by an organization in advocating its position, rather than the position itself of the organization. The method used by an organization is not considered educational if it fails to provide a factual foundation for the viewpoint being advocated. The presence of any of the following factors in the presentations made by an organization is indicative that the method used is not educational:

1. The presentation of viewpoints or positions unsupported by facts is a significant portion of the organization's communications.
2. The facts that purport to support the viewpoints or positions are distorted.
3. The organization's presentations make substantial use of inflammatory and disparaging terms and express conclusions more on the basis of strong emotional feelings than of objective evaluations.
4. The approach used in the organization's presentations is not aimed at developing an understanding on the part of the intended audience or readership because it does not consider their background or training in the subject matter.<sup>10</sup> [It's not my language; I just quoted the language of the Rev. Proc. I guess you could try to hypothesize a scenario but I'm not sure why the IRS singled this out. Don't want freeriders who are talking over the heads of their audiences? ]

Organizations advocating particular viewpoints raise special problems. IRS regulations recognize advocacy groups as "educational" as long as they present a "sufficiently full and fair exposition of the pertinent facts to permit a listener to form an independent opinion."<sup>11</sup> To determine what is "full and fair," the IRS currently uses the *methodology test* to distinguish educational endeavors from propaganda. This approach focus on the means by which the information and conclusions are provided, not necessarily the content itself. For example, an organization formed to promote world peace and disarmament by nonviolent direct action including acts of civil disobedience was denied tax exemption on the grounds that if an object of an organization is the violation of criminal law or its activities tend to induce the commission of a crime, this would be contrary to public policy. An organization that is contrary to public policy cannot be construed as being "charitable."<sup>12</sup>

[The key distinction you focus on here appears to involve advocacy or politics. But are there other factors that influence whether an organization is educational (sort of like the list you have for the health care issue?) Are their factors relating to availability, for example? Like most of the other categories, the IRS uses a totality of the circumstances approach that balances all the relevant facts. Thus, the service looks at the nature, scope and motivation of an organization's educational activities. Availability, for example, isn't a factor, since an ABA meeting open only to

---

<sup>9</sup> Treas. Reg. 1.501(c)(3)-1(d)(3).

<sup>10</sup> Art. 3.03 of Rev. Proc. 86-43, 1986-2 C.B. 729.

<sup>11</sup> Treas. Reg. 1.501(c)(3)-1(d)(3).

<sup>12</sup> Rev. Rul. 75-384.

attorneys is just as exempt as a public university. Hopefully the sentence I added above on methodology clarifies the IRS' position.

In Canada, the courts have established more stringent standards in order for an educational organization to be considered a charity. An organization with objects of informing Canadians about the unique nature of Canada, establishing communication between Canadians and enhancing appreciation and tolerance of linguistic and cultural differences, all with special emphasis on English- and French-speaking Canadians was held not to be a charity. The court found the organization's objects and activities to be inherently political.<sup>13</sup> A similar case involved an organization devoted to promoting peace and understanding between a Canadian city and a Soviet city through education, public awareness, exchanges and meetings. The organization was found not to be charitable since its activities and objects were categorized as "no more than propaganda," being "education for a political cause, by the creation of a climate of opinion."<sup>14</sup>

## Culture

Organizations devoted to promotion of the arts may qualify for exemption as tax-exempt charitable entities. In the United States, some such organizations provide presentations or exhibits to educate the public on certain art forms, develop the talent and abilities of young artists by holding performances or offering scholarships, and organize and conduct musical concerts, plays, or musicals. Even symphonies or theaters which sponsor professional presentations have been found to be tax-exempt depending on the motivation and nature of their activities.<sup>15</sup> Because of the balancing test the IRS applies in these cases, factually similar organizations have received varying treatment due to surrounding circumstances. For example, an organization will generally not achieve exemption as a charitable entity where it sells the art works it exhibits and remits the proceeds to the artists.<sup>16</sup> However, the IRS has exempted some organizations engaged in precisely these activities but with mitigating circumstances that overcame the presumption against exemption.<sup>17</sup>

By contrast, the approach and the criteria in the United Kingdom are a bit more straight-forward and objective. Art galleries and museums in the United Kingdom generally qualify as charities if they meet a two-prong test: (1) they advance education (or further a purpose which is of general public benefit), and (2) there is public access to the institution. However, not every work of art or exhibit, even of high quality, necessarily qualifies for charity status. Where the Charity Commission has doubts as to the educational or aesthetic value of an exhibit or display, independent third party evaluation may be required.

---

<sup>13</sup> *Canada UNI Association v. M.N.R.* [1993] 1 C.T.C. 46.

<sup>14</sup> *Toronto Volgograd Committee v. M.N.R.* [1988] 1 C.T.C. 365, 88 D.T.C. 6192 (F.C.A).

<sup>15</sup> Critical factors in determining the exempt status include the goals of the productions (are they focused on offerings gauged to have mass audience appeal and greater revenue, or aimed at exposing the public to new and experimental pieces or classical works), the number of offerings in the repertoire and the length of the season, and ticket pricing policies. See *Plumstead Theatre Soc'y, Inc. v. Comm'r*, 74 T.C. 1324, 1332-1333 (1980).

<sup>16</sup> See, e.g., *St. Louis Science Fiction Ltd. V. Comm'r*, 49 T.C.M. 1126 (1985) (where the organization did not apply any controls to ensure the quality of the artwork sold and the "tone" of its annual convention was found to be predominantly social).

<sup>17</sup> *Goldsboro Art League, Inc. v. Comm'r*, 75 T.C. 337 (1980) (where artworks displayed were selected by jury procedures and the organization maintained the only art gallery in the geographic area).

## Social Welfare

In the area of social welfare, the United States also tends to have a more liberal attitude of what constitutes a “charity” than other common law countries. The US Treasury Regulations set forth specific endeavors that constitute the promotion of social welfare:

Activities to

- Promote any charitable objective;
- Lessen neighborhood tensions;
- Eliminate prejudice and discrimination;
- Defend human and civil rights secured by law; and
- Combat community deterioration and juvenile delinquency.<sup>18</sup>
- 

These principles have been applied in granting exemption status to an organization formed to promote equal rights for women in employment (to eliminate economic discrimination against women);<sup>19</sup> an organization engaged in preventing discrimination against minorities in certain trades by recruiting, education and counseling workers and providing assistance to lawyers in employment suits;<sup>20</sup> and an organization that purchases and renovates deteriorating residences and sells them to low-income families on a nonprofit basis.<sup>21</sup> Even an organization which preserves the historic and architectural character of a community by acquiring historic structures, restoring them and selling them subject to restrictive covenants qualified for tax exemption.<sup>22</sup> Can we push this one step forward and articulate criteria based on these examples? Honestly, . . . I don’t know. It’s hard for me to discern any common criteria connecting these somewhat disparate cases (besides the fact that the courts liberally interpret the five general principles mentioned above (as contrasted to the Canadian courts which more strictly construe their respective provisions)).

However, in Canada, a more stringent standard for social welfare organizations is applied than in the US. For example, one community organization with focuses on social issues in the community, accessibility to community resources, development of educational facilities and services to the disadvantaged was held not to be charitable, again on the grounds of political activity. The non-exclusive assistance to the disadvantaged negated the poverty prong of qualifying as a charity[“head” is a term of art they use in the common law countries], while providing information and conducting letter writing campaigns were considered as not educational. The emphasis on lobbying efforts and “defending people’s rights” made the organization too political for these activities to be incidental and ancillary. Because the organization “not only has activities beyond education but that it is, in effect, an activist organization” it failed to qualify as a charity.<sup>23</sup> Similarly, an organization producing and distributing anti-violence, anti-drug and anti-crime material to youth groups was found not to be charitable. The court found that, for the community benefit test [what is this in the Canadian system? See p. 2 (1601 Statute

---

<sup>18</sup> Rev. 1.501(c)(3)-1(d)(2).

<sup>19</sup> Rev. Rul. 72-228, 1972.

<sup>20</sup> Rev. Rul. 75-285, 1975.

<sup>21</sup> Rev. Rul. 68-17, 1970.

<sup>22</sup> Rev. Rul. 86-49, 1986.

<sup>23</sup> *NDG Neighbourhood Association v. Revenue Canada* [1988] 2 C.T.C. 2048, 88 D.T.C. 6279 (F.C.A.).

and Pemsel)] to be met, the activities must be more than worthwhile, they must be specific and clearly focused on “charitable objects in the legal sense.”<sup>24</sup>

The differing approaches used in the United States and Canada are illustrated by the following scenarios. A US organization operated to aid immigrants to the United States in overcoming social, cultural and economic problems by either personal counseling or referral to the appropriate public or private agencies. The IRS reasoned that “the organization is instructing the public on subjects useful to the individual and beneficial to the community, and is therefore, furthering an educational purpose.”<sup>25</sup> While this organization was granted charitable status, a group in Canada engaged in similar activities of providing educational forums and workshops to immigrant women to help them find employment and carrying on incidental and ancillary political activities and raising funds for these purposes.<sup>26</sup> The court repeated the principle that laudable community services are not necessarily charitable at law and activities and objects of general public utility are not always charitable in the legal sense.

### **Athletic Organizations**

Under US law, the criteria for amateur athletic organizations to qualify as charities appears to be stricter than, for example, in the UK. The language in section 501(c)(3) specifically allows charity status for a sporting organization “only if no part of its activities involve[s] the provision of athletic facilities or equipment.” However, this prohibition is a limitation only upon qualification as an amateur sports organization, and an organization can avoid this strict standard and acquire charitable status if its activities could be deemed to entail educational or charitable purposes.<sup>27</sup> The law was subsequently modified to exempt *qualified amateur sports organizations* from the prohibition on the provision of athletic facilities or equipment. A *qualified amateur sports organization* is one which is operated exclusively to foster national or international amateur sports competition if the organization is also organized and operated primarily to conduct national or international competition in sports.<sup>28</sup>

Under UK law, amateur sport organizations must show that their purpose is educational or that its object is the improvement of the public’s life conditions by promoting and furthering the well being of the public. Thus, regular health clubs or sports facilities could qualify for exemption. However, a club or sport facility will not receive charitable status if its purpose is to promote a certain sport even if as an incidental consequence the public’s health is improved through regular exercise. Factors used in making this determination include the affordability of membership in the club (dues, equipment costs, clothing, etc.), the ability of all members of the public to participate regardless of skill level, and the level of coaching (i.e. are

---

<sup>24</sup> *STV Stop The Violence . . . Face The Music Society v. R.* [1997] 2 C.T.C. 10.

<sup>25</sup> Rev. Rul 76-205.

<sup>26</sup> *Vancouver Society of Immigrant Women and Visible Minority Women v. M.N.R.* [1996] 2 C.T.C. 88.

<sup>27</sup> For example, a private foundation was advised it could make a grant to a state university-related for the purpose of constructing an aquatic complex as an integral part of the university’s educational program (Priv. Ltr. Rul. 8037103).

<sup>28</sup> IRC 501(j)(2).

participants and coaches working on a basic level or focused more on specialized skills and techniques necessary for more serious competition).<sup>29</sup>

## **Scientific Organizations**

A scientific organization, like all other 501(c)(3) organizations, must be organized and operated in the public interest. Therefore, any scientific research it conducts must be in the public interest. Scientific research is regarded as being in the public interest:

- (a) If the results of the research (including any patents, copyrights, processes, or formulae resulting from such research) are made available to the public on a non-discriminatory basis;
- (b) If such research is performed for the United States, or any of its agencies or instrumentalities, or for a State or political subdivision thereof; or
- (c) If such research is directed toward benefiting the public. Examples of research considered as benefiting the public are: (1) Scientific research carried on for the purpose of aiding in the scientific education of college or university students; (2) scientific research carried on for the purpose of obtaining scientific information, which is published in a treatise, thesis, trade publication, or in any other form that is available to the interested public; (3) scientific research carried on for the purpose of discovering a cure for a disease; or (4) scientific research carried on for the purpose of aiding a community or geographical area by attracting new industry to the community or area or by encouraging the development of, or retention of, an industry in the community or area.<sup>30</sup>

The key criteria is that it serve a public rather than a private interest. An organization will not qualify under section 501(c)(3) if (i) the organization performs research only for the creators of the organization and which are not described in 501(c)(3), or (ii) the organization retains control or ownership of more than an insubstantial portion of the patents, copyrights, processes, or formulae resulting from its research and does not make such patents, copyrights, processes, or formulae available to the public.<sup>31</sup> Thus, an organization which, for example, develops and improves uses for products of a particular industry was ruled to not be a tax-exempt scientific organization since it was serving the private interests of its creators.<sup>32</sup> Similarly, an organization that tested drugs for commercial pharmaceutical companies was held to not qualify for tax exemption because the testing was regarded as principally serving the private interests of the manufacturers.<sup>33</sup> By contrast, an organization formed by a group of physicians specializing in heart disease to research the cause and publish treatments of heart defects was found to be an exempt scientific organization.<sup>34</sup>

## **Economic Activities of Exempt Organizations**

---

<sup>29</sup> See Annex A of the Charity Commission Consultation on the Promotion of Sport as Charitable Purpose at <http://www.charitycommission.gov.uk/registeredcharities/pdfs/rorpos.pdf>.

<sup>30</sup> Treas. Reg. 1.501(c)(3)-1(d)(5).

<sup>31</sup> Treas. Reg. 1.501(c)(3)-1(d)(5)(iv).

<sup>32</sup> Rev. Rul. 69-632, 1969.

<sup>33</sup> Rev. Rul. 68-373, 1968.

<sup>34</sup> Rev. Rul. 69-526, 1969.

The ability a exempt charities to engage in profit-making economic activities and the tax treatment thereof varies somewhat in the jurisdictions studied. In the United States, a charity does not lose its exemption by engaging in insubstantial business activities. Even substantial commercial activities will not jeopardize an organization's exempt status if they are in furtherance of its exempt purposes.<sup>35</sup> Exemption will be denied, however, when an unrelated trade or business becomes the organization's primary purpose, even if all the profits are used to support exempt activities. Determining whether commercial activities are the organization's primary purpose is increasingly difficult as nonprofits increasingly engage in for-profit activities or form joint ventures with commercial entities.

The process is much more critical to a decision than the actual activity. For example, the sale of paintings by an artist from a private studios in addition to an art center where discussions, classes, and various presentations on art and art techniques are held. Although individual artists materially benefited from the sale of their works at the galleries, it was determined that these art sales were not an end in themselves but rather a means for accomplishing an exempt purpose. Factors considered were the fact that a jury selected the works to be sold, selecting pieces that represented new art trends in a region where there were no other art museums or galleries nearby. In addition, the vast array of other activities of the proprietor artist in educating the public and developing an appreciation of art overshadowed the commercial activities.<sup>36</sup>

For example, a bookstore at a university is a commercial enterprise. However sales of many items are related to their educational objectives, such as the sale of textbooks, supplies computer software, etc... Sales from these items would understandably be tax exempt. In addition, the IRS (under the so-called convenience doctrine) allows earnings from the sale of sundry articles, film, and health and beauty aids to also be tax exempt since they are intended for the benefit of students. However, sales of any other items, particularly those that have a useful life of more than one year, are considered to be unrelated business transactions that are not exempt.<sup>37</sup>

Another scenario that often arises is the creation of a joint venture between a charitable and commercial entity. Under US law, an exempt organization can enter into a partnership with for-profit entities or individuals without sacrificing its exempt status. An exempt organization may form and participate in a partnership if participation in the partnership furthers a charitable purpose, and the partnership arrangement permits the exempt organization to act exclusively in furtherance of its exempt purpose and only incidentally for the benefit of the for-profit partners. Retention of control in the hands of the exempt entity is a critical factor in this analysis, and if the private party is allowed to control or use the non-profit organization's assets or activities for the benefit of the private part, and the benefit is

---

<sup>35</sup> Treas. Reg. 1.501(c)(3)-1(c),-1(e).

<sup>36</sup> See *Goldsboro Art League v. Commissioner* (US Tax Court 1980).

<sup>37</sup> Priv. Ltr. Rul. 8025222.

not incidental to the accomplishment of exempt purposes, the organizations will be precluded from exemption.<sup>38</sup>

Health clubs and fitness centers operated as a program of a hospital has also raised disputes. The IRS looks to the breadth of the group of individuals being served. If it provides services of value to the general public and utilizes a fee structure designed to ensure public accessibility, then it is generally deemed as exempt, since it advances the well-being of the community in general.

## **United Kingdom**

Section 505(1)(e) of the Income and Corporation Taxes Act exempts from income tax “profits of any trade carried on by a charity whether in the UK or elsewhere if the profits are applied solely for the purposes of the charity and either (i) the trade is exercised in the course of the actual carrying out of the primary purpose of the charity; or (ii) the work in connection with the trade is mainly carried out by beneficiaries of the charity.” Compared to the standards applied in the US and Canada, the English law permits exemption from income tax in relatively limited cases. Thus, for example, a museum charging admissions fees for entrance or participation in guided tours would not concern the Charity Commission; however, if a gift shop and café were opened, then these activities would constitute for-profit economic activities (and under UK law likely need to be conducted through a separate subsidiary).

## **Canada**

In Canada, the standard applied by the courts in evaluating the commercial activities of charities, while being more favorable to charities than in the US, runs almost completely counter to the language of the applicable statutes. Observers note that this legal ambiguity might be the cause of reticence on the part of charitable organizations to more actively engage in economic activities. Although the statutes require that any for-profit business activities be “significantly related” to the activities of the charity, the courts have interpreted the legislation in such a way as to allow charities to engage in nearly any for-profit venture as long as all the profits from these activities are directed to the non-profit activities of the organization.<sup>39</sup> Despite the liberal approach established by the Canadian courts, charities in Canada seem to be reticent to fully use the opportunities to engage in commercial activities to support their nonprofit objectives, perhaps because there has never been further judicial pronouncement on the subject after the *Alberta* case to help solidify the legal grounds on which charities could conduct tax-exempt economic activities.

---

<sup>38</sup> See, e.g., *Plumstead Theatre Society, Inc. v. Commissioner*, 74 T.C. 1324 (1980) (court preserved the charity’s exempt status since the charity was the general partner of a limited partnership with commercial entities; the limited partners had no control over the partnership’s operations).

<sup>39</sup> See *Alberta Institute on Mental Retardation v. The Queen*, [1987] 2 C.T.C. 70; 87 D.T.C. 5306.