



**TAX GUIDE FOR
CHARITABLE INSTITUTIONS AND TRUSTS
OF A PUBLIC CHARACTER**

**INLAND REVENUE DEPARTMENT
THE GOVERNMENT OF
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TAX GUIDE FOR CHARITABLE INSTITUTIONS AND TRUSTS OF A PUBLIC CHARACTER

INTRODUCTION

The Department's role

1. Exemption of charitable institutions and trusts of a public character (i.e. charities) from tax is granted by the legislature. Section 88 of the Inland Revenue Ordinance (Cap 112) (the IRO) provides that a charity is exempt from profits tax subject to certain conditions to be fulfilled in relation to the trade or business carried on by the charity concerned. The Department's role is to ensure that tax exemption is provided to a charity as per the relevant IRO provisions. A charity may request the Department to recognise its tax exemption status accorded by section 88 of the IRO (i.e. tax-exempt charity).
2. The Department is not responsible for the registration of charities nor does the Department have the statutory powers in the monitoring of their conducts. To facilitate the general public to check whether donations to an organisation will be accepted as approved charitable donations for the purposes of the IRO, the Department, with the consent of the organisations concerned, publishes a list of charities that are exempt from tax under section 88 of the IRO, as explained in paragraph 60. It must be emphasised that the list does not constitute a formal register of charities. It should be apparent that the list does not include:
 - (a) charities which do not seek for the recognition of status under section 88 of the IRO (e.g. charities which do not require such recognition as they do not need to raise donations from the public); and
 - (b) charities which do not give consent to the Department for publishing their names.

The Department's work strictly does not include the giving of advice regarding the setting up or running of charities. Legal advice, if required, should be sought from legal practitioners.

3. Section 88 of the IRO does not provide a legislative framework for regulating and monitoring charities' operations or governance. The provisions therein primarily concern the exemption of tax liability of

charities. Where the Department considers, after taking a holistic view, that a charity's contravention of its charitable objects (e.g. use of funds not in furtherance of the charity's charitable objects, serious breach of the charity's governing instrument, and engaging in or supporting any acts or activities which are unlawful or contrary to the interests of national security) would fundamentally change its charitable status, the Department may withdraw the recognition of tax exemption status of the charity concerned and raise tax assessment where appropriate.

The guide

4. This tax guide contains the interpretation and practice of the Department in relation to the taxation of charitable institutions or trusts of a public character and other related matters. It has no binding force and does not affect a person's right of objection or appeal to the Commissioner of Inland Revenue, the Board of Review or the Court.

MEANING OF CHARITY

Charity is not equivalent to voluntary or non-profit-making organisation

5. A voluntary or so-called non-profit-making organisation is not necessarily a charity, however worthy its causes may be. In fact, there is no provision in the IRO which exempts a voluntary or non-profit-making organisation from tax.

Charity must be established exclusively for charitable purposes

6. The law of charity in Hong Kong has been built up by case law. To be a charity at law, the institution or trust must be established for purposes which are exclusively charitable and these purposes of the organisation are charitable in the strict legal sense.

Charitable purposes are classified into four heads

7. It has long been the practice of the courts in Hong Kong to refer to the Preamble to the Charitable Uses Act 1601 (commonly referred to as "the Statute of Elizabeth I") for guidance. The leading common law authority on the definition of charity, which is expressly applied by the courts in Hong Kong, is the famous dictum of Lord Macnaghten in the case of *Commissioners for Special Purposes of Income Tax v Pemsel* [1891] AC

531. In that case, Lord Macnaghten listed “four principal divisions” of charitable purposes:

- (a) the relief of poverty;
- (b) the advancement of education;
- (c) the advancement of religion; and
- (d) other purposes of a charitable nature beneficial to the community not falling under any of the preceding heads.

8. While the purposes under the first three heads (i.e. poverty, education and religion) 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. Examples of purposes held by the courts to be charitable are given in the list shown at [Appendix 1](#).

9. The courts have considered various situations where charity status was claimed. Purposes held not to be charitable purposes include:

- (a) attainment of a political object (such as furthering the interests of a particular political party, procuring changes in laws and procuring a reversal of government policy or of particular decisions of governmental authorities);
- (b) promotion of the benefits of the founders or subscribers;
- (c) encouragement of a particular sport such as football or cycling;
- (d) provision of a playing field, recreation ground or scholarship fund for employees of a particular company.

Charity must be established for public benefit

10. A purpose is not charitable unless it is for public benefit. The Department agrees with the interpretation of the Charity Commission of the UK that the public benefit requirement has two aspects: (a) the benefit aspect; and (b) the public aspect. The important points to consider when deciding whether an institution or trust’s purposes meet the two aspects are set out in the following table:

Public Benefit Requirement	Important Points to Consider
Benefit aspect	There must be an identifiable benefit or benefits: (a) it must be clear what the benefits are; (b) the benefits must be related to the purposes;

	(c) benefits must be balanced against any detriment or harm.
Public aspect	The benefit must be to the public in general, or to a sufficient section of the public: (a) the beneficiaries must be appropriate to the purposes; (b) where the benefit is to a section of the public, the opportunity to benefit must not be unreasonably restricted by geographical or other restrictions; (c) any personal benefit (i.e. benefits that a person or organisation receives from a charity other than as a beneficiary) must be incidental.

11. An institution or trust cannot generally be charitable if it is in principle established for the benefit of specific individuals. It is, however, not possible to lay down any precise definition of what constitutes a sufficient section of the public. Each case must be considered on its own merit. As a general rule, the beneficiaries of a charity must not be defined by a personal connection like family relationship or common employer, as explained in *Re Compton* [1945] Ch 123 and *Oppenheim v Tobacco Securities Trust Co Ltd* [1951] AC 297.

Charity must act lawfully and has duty to safeguard national security

12. A charity's resources must be directed towards charitable works and should not engage in or support any acts or activities which are unlawful or contrary to the interests of national security.
13. Article 6 of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (the NSL) clearly provides that any institution, organisation or individual in the Hong Kong Special Administrative Region (the HKSAR) shall abide by the NSL, and the laws of the HKSAR in relation to the safeguarding of national security, and shall not engage in any act or activity which endangers national security.
14. Article 3 of the NSL provides that it is the duty of the HKSAR under the Constitution of the People's Republic of China to safeguard national security and the HKSAR shall perform the duty accordingly.
15. Thus, a charity which takes part in acts or activities which are unlawful or contrary to the interests of national security, or uses its resources to

support or promote such acts or activities, will not be regarded as a genuine charity.

CONSTITUTION OF CHARITY

Governing instrument

16. It is essential that a charity is established by a written governing instrument. The type of instrument adopted would depend on the particular circumstances of the charity proposed and the preference of the promoters or founders. Persons who are considering starting a charity are strongly advised to seek legal advice about the format, content and legal sufficiency of the charity's governing instrument. Before seeking advice, persons founding a charity must take cognisance of the purposes of the charity and the manner in which they wish the charity to be administered. Briefly, the types of structures are:

- (a) a trust;
- (b) a society registered under the Societies Ordinance (Cap 151);
- (c) a company incorporated under the Companies Ordinance (Cap 622);
and
- (d) a statutory body incorporated under a specific Ordinance.

The instrument establishing the institution or trust must precisely and clearly state the purposes or objects for which the institution or trust is established. Apparently, a charity incorporated as companies limited by guarantee under the Companies Ordinance (Cap 622) will increase the public's confidence about its operations. Currently, the majority of institutions which are recognised by the Department as tax-exempt charities are companies limited by guarantee.

Clauses in governing instrument

17. Generally, the clauses in the governing instrument of a charity include:
- (a) clause stating precisely and clearly its objects for which the charity is established;
 - (b) clause limiting the application of its funds towards the attainment of its stated objects;
 - (c) clause prohibiting distribution of its incomes and properties amongst its members;

- (d) clause prohibiting members of its governing body (e.g. directors, members of the executive committee, trustees, etc.) from receiving remuneration;
 - (e) clause requiring members of its governing body (e.g. directors, members of the executive committee, trustees, etc.) to disclose material interest and not to vote in respect of a transaction, arrangement or contract in which they are so interested;
 - (f) clause specifying how the assets should be dealt with upon its dissolution (e.g. the remaining assets should normally be donated to other charities); and
 - (g) clause requiring the keeping of sufficient records of income and expenditure (including donation receipts), proper accounting books and compilation of annual financial statements.
18. Examples of clauses (b) to (g), as referred in paragraph 17 above, that the governing instrument of a charity should generally contain are at [Appendix 2](#) whilst clauses not acceptable are at [Appendix 3](#).
19. If a charity can show that the payment of allowance or remuneration to its member(s) of governing body is necessary and reasonable in the exceptional circumstances, the requirement referred in paragraph 17(d) above can be relaxed, provided that the following conditions are satisfied and specified in the charity's governing instrument:
- (a) the remunerated members of governing body have special qualifications which are not otherwise available to the charity and which would make for its more effective administration;
 - (b) the remunerated members of governing body are absent from meetings and discussions concerning their own appointment, conditions of services and remuneration and must not vote thereon; and
 - (c) the number of such remunerated members must be less than majority of quorum (of meetings of the governing body).

TAXATION OF CHARITY

Tax exemption

20. A charity is exempt from tax under section 88 of the IRO. The general tax exemption contained in section 88 is subject to conditions (see paragraph 22 below) and a charity subject to tax would continue to be a charity.

Trading or business profits are taxable unless specified conditions are fulfilled

21. Section 14 of the IRO provides that profits tax shall be charged for each year of assessment on every person carrying on a trade, profession or business in Hong Kong in respect of his assessable profits arising in or derived from Hong Kong for that year from such trade, profession or business (excluding profits arising from the sale of capital assets). Prima facie, all profits derived in Hong Kong from trading or business activities are subject to profits tax. Therefore, a charity carrying on a trade or business is therefore chargeable to profits tax unless the charity can fulfil specified conditions under section 88 of the IRO.

22. Proviso to section 88 of the IRO provides that if a charity carries on a trade or business, the profits from such trade or business are exempt from profits tax only if:
 - (a) the profits are applied solely for charitable purposes; and
 - (b) the profits are not expended substantially outside Hong Kong; and
 - (c) either -
 - (i) the trade or business is exercised in the course of the actual carrying out of the expressed objects of the charity; or
 - (ii) the work in connection with the trade or business is mainly carried on by persons for whose benefit such charity is established.

Trade or business not exercised in the course of the actual carrying out of expressed objects

23. If a charity derives profits from a trade or business, it must establish that all the requirements of the proviso to section 88 of the IRO are satisfied before the profits could be exempt from profits tax. In *Church Body of the Hong Kong Sheng Kung Hui v CIR* [2010] 2 HKC 475, the Court of First Instance took the view that the property development transaction could not be said to be exercised in the course of the actual carrying out of the object of the church and the profit accrued to the church from the transaction in question was held not exempt from profits tax.

Trading or carrying on business

24. Under section 2 of the IRO, “trade” is defined to include “every trade and manufacture, and every adventure and concern in the nature of trade”,

and “business” is defined to include “agricultural undertaking, poultry and pig rearing and the letting or sub-letting by any corporation to any person of any premises or portion thereof, and the sub-letting by any other person of any premises or portion of any premises held by him under a lease or tenancy other than from the Government”.

25. The definitions of “trade” and “business” in the IRO are not exhaustive. It is well-established that whether a person is carrying on a trade or business depends on the facts of the particular case. It is essentially a question of fact and degree.

Badges of trade

26. Whether the sale of goods and services by a charity is “trading” depends on a number of factors, including:
- (a) the number and frequency of transactions;
 - (b) the nature of the goods or services being sold;
 - (c) the intention of the charity in acquiring the goods which are to be sold;
 - (d) whether the goods are capable of being used and enjoyed by the charity selling them;
 - (e) the nature and mechanics of the sales; and
 - (f) the presence or absence of a profit motive.

But the fact that the sale of goods, services and property furthers the objects of the charity, or that the trading profits are to be used for the furtherance of those objects, does not prevent an activity from being regarded as “trading”.

Indicia of carrying on business

27. While it may be not possible to definitively state what amounts to a business, it was however observed in *Federal Commissioner of Taxation v Murry* 39 ATR129 that a business is a course of conduct carried on for the purpose of profit and involves notions of continuity and repetition of actions.
28. While the totality of facts would be considered, the key indicia in determining whether the activities carried on by an organisation amount to the carrying on of a business are:

- (a) whether the organisation intends to carry on a business;
- (b) the nature of the activities, particularly whether they have a profit-making purpose;
- (c) whether the activities are:
 - (i) repeated and regular;
 - (ii) organised in a business-like manner, including the keeping of books, records and the use of a system;
- (d) the size and scale of the organisation's activities including the amount of capital employed in them; and
- (e) whether the activities are better described as a hobby, or recreation.

Trading or non-trading transactions

29. The following transactions are not generally regarded as "trading", and the profits derived from such transactions are not regarded as trading profits:
- (a) the sale of goods donated to a charity for the purpose of sale;
 - (b) the sale of capital investments; and
 - (c) the sale of capital assets which the charity uses, or has used, for its charitable purposes.
30. Where a charity is trading, the trading profits are, in principle, subject to profits tax, other than as specifically exempted under the proviso to section 88.
31. The mere sale by a charity of goods donated to it is generally not regarded as "trading" for tax purposes. For the charity the sale proceeds are simply a realisation of the value of a gift. If the goods donated to a charity are substantially altered or improved which brings them into a different condition for sale purposes, for example by turning donated raw materials into finished and saleable goods, the profits arising from such sales may be treated as trading profits. However, sorting and cleaning items, or giving the donated goods minor repairs, does not turn the profits obtained from their sales trading profits.

Primary purpose trade/business or ancillary trade/business

32. Subject to other conditions of the proviso to section 88 of the IRO to be fulfilled, a charity can conduct and be exempted from profits tax in respect of the profits from a trade/business which contributes directly to an expressed object of the charity (i.e. a primary purpose trade/business) and/or a trade/business ancillary to the primary purpose trade/business

which contributes indirectly to successful furtherance of the expressed object (i.e. an ancillary trade/business). In other words, a charity can conduct not only a trade/business which is ancillary to a primary purpose trade/business but also a primary purpose trade/business without having any liability under profits tax.

33. Examples of primary purpose trades/businesses include:

- (a) the sale of religious tracts by a religious charity;
- (b) the provision of educational services by a charity school or college in return for course fees;
- (c) the holding of an exhibition by an art charity in return for admission fees;
- (d) the sale of tickets for a theatrical production staged by a theatre charity;
- (e) the provision of healthcare services or residential accommodation by a healthcare charity in return for payment;
- (f) the sale of certain educational goods by a museum charity;
- (g) the sale of products made of recycled materials by an environmental protection charity;
- (h) the provision of medical consultation by an elderly care and welfare charity in return for consultation fees;
- (i) the provision of training courses to children with special education needs by a children's charity in return for course fees;
- (j) the provision of extra-curricular activities/ after-school care programmes/ after-school tutorial classes for school children and teenagers by a children and young people's charity in return for fees;
- (k) the provision of family counselling services by a family charity to help dysfunctional families in return for fees;
- (l) the provision of low-priced meals to the poor by a poverty charity;
- (m) the provision of a residential care home for the elderly by an elderly care charity in return for fees;
- (n) the provision of recreational facilities in return for fees by an elderly care charity for the elderly; and
- (o) the provision of medical or rehabilitation equipment in return for fees by an elderly charity or medical charity.

34. Examples of ancillary trades/businesses include:

- (a) the provision of serviced accommodation to students by a charitable university or college;
- (b) the sale of goods or services for the benefits of students by a

- charitable school or college;
- (c) the sale of food, drink and snacks to patrons of an art charity or museum charity;
- (d) the sale of confectionary, toiletries and flowers to patients and their visitors by a charitable hospital;
- (e) the provision of childcare services in a church to parents who attend church services;
- (f) the sale of vegetarian food by a religious charity in a temple (e.g. Buddhist temple) built for the advancement of religion;
- (g) the provision of study tour to children by an education charity; and
- (h) the provision of pilgrimage tour to believers by a religious charity.

Trading/carrying on business is not regarded as ancillary to the carrying out of an expressed object of a charity simply because its purpose is to raise funds for the charity.

Trades/businesses where work mainly carried out by beneficiaries

35. Subject to other conditions of the proviso to section 88 of the IRO to be fulfilled, a charity can claim tax exemption on the profits of a trade/business where the work in connection with the trade/business is mainly carried out by beneficiaries of the charity. Examples of trades/businesses carried on by a charity where the work is mainly carried out by beneficiaries are:
- (a) a cafe operated by students as part of a catering course at a further education college;
 - (b) a bakery operated by a charity which hires mainly the physically handicapped for providing on-the-job training to them;
 - (c) a shop for selling low-cost goods or products (e.g. artworks and handicrafts) made by persons suffering disability who are the beneficiaries of a charity for the disabled;
 - (d) the sale of artwork produced by elderly persons as part of their rehabilitation by an elderly care and welfare charity;
 - (e) the operation of a restaurant mainly by the deaf as part of a training programme run by a hearing loss charity to facilitate the integration of the deaf into the community; and
 - (f) the provision of car-beauty services by the ex-mentally ill as part of an on-the-job training programme run by a rehabilitation charity.

Charging for services – public benefit

36. A charity may charge for the services or facilities it offers. This is usually because the charity's services or facilities are expensive to provide or the charity will be unable to operate at all unless the charity makes charges. Examples of charities that often charge for their services include:
- (a) charitable educational establishments (e.g. schools, colleges, universities);
 - (b) charities that advance education or promote the arts (e.g. theatres, concert halls, museums, art galleries);
 - (c) charities that advance health or relieve sickness (e.g. charitable hospitals);
 - (d) charities that provide residential care; and
 - (e) charities that advance heritage or environmental protection or improvement.
37. If a charity charges for the services or facilities it offers, the charity has to consider whether the public benefit requirement of charities would be satisfied. The poor cannot be excluded. In setting the charges for the services or facilities a charity is to offer, the charity must consider whether the poor can least afford it. This might depend, for example, on the nature of the service and the frequency or regularity with which such a service is likely to be used or needed, and the consequent financial commitment likely to be required by beneficiaries. However, in general, it will usually mean charges that someone of modest means will not find readily affordable. If the charges are of a level that the poor cannot afford, it must ensure that the poor can benefit.
38. When a charity makes provision for the poor to benefit, the level of provision must be more than minimal or token. There are no objective benchmarks for a charity to follow regarding what is more than minimal or token provision for the poor. This is a matter for the charity to decide, taking into account all the circumstances of the charity. Examples are:
- (a) reduction in charges for people who cannot afford the full cost;
 - (b) provision of benefit in other ways, such as supporting the delivery of similar services by another charitable organisation; and
 - (c) other sources of funding from outside the charity which assist the poor in accessing the benefits of the charity (e.g. scholarship funds provided by others).

Investee trading company not tax exempt

39. Subject to the objects and powers expressly provided in the governing instrument, a tax-exempt charity may invest in a trading company. The profits derived by such trading company (i.e. the investee trading company) do not qualify for tax exemption under section 88 of the IRO. The trading company is liable to profits tax under section 14 of the IRO in the usual way (e.g. investee trading company operates a hotel or restaurant).

Financial investment

40. A charity may invest in order to achieve a financial return so that it can further the charity's objects. Normally, such an investment is expected to be made in a proper and prudent manner to yield best return within acceptable level of risk. The financial return may be chargeable to profits tax depending on its nature and the circumstances, including the way in which the return is applied (i.e. whether solely for its charitable objects) and the place where the return monies are expended (i.e. whether substantially in Hong Kong or elsewhere). If a charity purchases an asset with the intention of selling it for a profit in the course of a trading venture, it is likely to be considered as trading. The profits derived by a charity from the sale of a trading asset are subject to profits tax unless the conditions in the proviso to section 88 of the IRO are satisfied. The following is an example of financial investment that would not give rise to profits tax consequence:

A charity invests with surplus fund that is not needed in the short or medium term in a diversified investment fund designed for long term investment (i.e. a capital asset). The charity does not engage in trading of investment fund or financial securities. The financial return so derived from the investment fund will not be chargeable to profits tax.

41. If a charity invests by way of a discretionary account (i.e. an account that allows a licensed or registered investment manager to trade in investment products on behalf of a client without specific authorisation from the client), the investment manager will act as the agent of the charity. Whether the investments made by the investment manager on behalf of the charity is of capital or revenue nature is a question of fact and degree which takes into account all the surrounding circumstances, including the investment mandate or pre-defined model portfolio. The "badges of trade" (see paragraph 26 above) remain relevant for answering the question.

42. Under the IRO, the following income, gains or profits are specifically exempted from profits tax liability:
- (a) dividends received from a corporation which is subject to Hong Kong profits tax;
 - (b) interest on, and any profit made in respect of a bond issued under the Loans Ordinance (Cap 61) or the Loans (Government Bonds) Ordinance (Cap 64), or in respect of an Exchange Fund debt instrument or in respect of a Hong Kong dollar-denominated multilateral agency debt instrument;
 - (c) interest, profits or gains from qualifying debt instruments (issued on or after 1 April 2018);
 - (d) interest that is derived from any deposit placed in Hong Kong with an authorised institution, excluding interest received by or accrued to a financial institution;
 - (e) interest on and any profit made in respect of Renminbi sovereign bonds and non-Renminbi sovereign bonds; and
 - (f) interest on and any profit made in respect of debt instruments issued in Hong Kong by the People's Bank of China.
43. Where a charity makes a financial investment in companies or entities in which the members of its governing body have personal interests, full consideration has to be given as to whether:
- (a) the investment is appropriate for the charity and in line with its investment policy;
 - (b) any conflict of interest issues have been identified and managed; and
 - (c) any personal benefit is acceptable in the sense that it is necessary in the circumstances, reasonable in amount and in the interests of the charity.

Where there is an unacceptable level of personal benefit and thereby not fulfilling the public benefit requirement, it can affect the charity's charitable status and hence its tax exemption under section 88 of the IRO.

Programme related investment

44. A charity may use assets to directly further the charity's objects while potentially also generating a financial return. This kind of programme related investment made by a charity is different from the financial investment in paragraph 40 above in that the justification for making the former investment is to further the charity's objects. Same as for the

financial investment, the financial return from the programme related investment may be chargeable to profits tax depending on its nature and circumstances. The following is an example of a programme related investment that would not attract any profits tax liability:

A charity that works to relieve poverty may give a loan to another charity for helping unemployed people back into work pursuant to the latter's expressed objects (i.e. the loan is made for the actual carrying out of the latter's expressed objects). This will relieve poverty (i.e. wholly in furtherance of the charity's objects); be for the public benefit and be expected to achieve repayment of the loan and a financial return from interest payments on the loan. In this case, the interest payments on the loan would not be chargeable to profit tax.

45. Where a charity makes a programme related investment, it has to ensure that any personal benefit, including interests to other investors, arising from the investment should be necessary, reasonable and in the interests of the charity. There should be reasonable and practical ways to exit from the investment if it is no longer furthering the charitable objects. Where there is an unacceptable level of personal benefit and thereby not fulfilling the public benefit requirement, it can affect the charity's charitable status and hence its tax exemption under section 88 of the IRO.

Property letting

46. A charity may lease out its properties for rental income, which is subsequently applied for charitable purposes. While property letting may amount to a business, the term "business" is clearly defined to include property letting by any corporation and sub-letting by any person other than a corporation. In any event, the following are strong indicia of business:
- (a) the number of properties let is substantial and the charity has engaged some staff to handle tenancies and to deal with the tenants;
 - (b) additional services or facilities are provided by the charity as landlord with the properties let; or
 - (c) letting by a charity in the course of selling properties which constitutes a trade.

In such situations, rental income derived by a charity from property letting can only be exempt from profits tax if the proviso to section 88 of the IRO can be satisfied.

47. Generally, if the property letting is not exercised in the course of the actual carrying out of expressed objects, the rental income will be chargeable to profits tax. The following example illustrates such a case:

A charity holds a property and leases it out at market rent without any specific target group of tenants. The charity, set up for promotion of religion, carries out direct charitable activities and/or makes grants for its charitable objects. Such letting is clearly not exercised in the course of actual carrying out of the charity's expressed objects despite the fact that the rental income is applied solely for its charitable objects and is not expended substantially outside Hong Kong. As such, the rental income so derived from letting of the property will be chargeable to profits tax.

48. If the property letting is exercised in the course of the actual carrying out of the charity's expressed objects and the rental income, solely applied for charitable purposes, is not expended substantially outside Hong Kong, the rental income will not be chargeable to profits tax. The following example illustrates such a case:

A charity set up for the relief of poverty lets out apartment units it owns at below-market rent to the poor. The rental income so derived is solely applied in Hong Kong for its charitable activities to relieve the poor. The letting is clearly exercised in the course of actual carrying out of the charity's expressed objects (i.e. for relief of poverty). As such, the rental income so derived from letting of the property will not be chargeable to profits tax.

49. A charity may also lease out its properties to other charities for use. If the rental income so derived, solely applied for charitable purposes, is not expended substantially outside Hong Kong, the rental income will not be chargeable to profits tax. The following is an example of such a case:

An environmental protection charity has a function room for holding activities related to promotion of environmental protection. When the function room is not reserved for such activities, the charity leases it out to other charities at a rent for their use. The rental income so derived, if applied solely for charitable purposes and not expended substantially outside Hong Kong, will not be assessed to profits tax.

CHARITIES SUBJECT TO HONG KONG'S JURISDICTION

Charities qualify for tax exemption

50. Following the principle in *Camille and Henry Dreyfus Foundation Inc v IRC* [1954] Ch 672, tax exemption will only be given to charities subject to the jurisdiction of the courts in Hong Kong, that is, charities that have been 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 (Cap 151), or registered under Part 16 of the Companies Ordinance (Cap 622).

OTHER TAX ADVANTAGES

Inland Revenue Ordinance (Cap 112)

51. For the purposes of profits tax, salaries tax and personal assessment, sections 16D and 26C of the IRO allow, subject to certain conditions, a deduction for a donation of money made by a taxpayer to a charity which is exempt from tax under section 88 or to the Government for charitable purposes (i.e. an approved charitable donation). Please refer to paragraphs 54 to 59 below for further information of an approved charitable donation.

Stamp Duty Ordinance (Cap 117)

52. Section 44 of the Stamp Duty Ordinance provides that stamp duty shall not be chargeable on any conveyance of immovable property under heads 1(1) (ad valorem stamp duty on property transaction), 1(1AA) (special stamp duty) and 1(1AAB) (buyer's stamp duty); or any transfer of Hong Kong stock under head 2(3) (ad valorem stamp duty and fixed duty on stock transaction) in the First Schedule where the beneficial interest therein passes by way of gift from the person entitled to that interest, the registered owner or the transferor, to or on trust for charitable institutions or trusts of a public character. The instrument in question must be submitted to the Collector of Stamp Revenue for adjudication under section 13 of the Ordinance. It is not treated as duly stamped unless it has been stamped with a particular stamp or by way of a stamp certificate denoting either that it is not chargeable with stamp duty or that it is duly stamped.

Business Registration Ordinance (Cap 310)

53. Where charitable, ecclesiastical or educational institutions of a public character carry on a trade or business, an exemption from the obligation of business registration will only be granted if the conditions set out in section 16(1)(a) of the Business Registration Ordinance are satisfied. These conditions are similar to the conditions set out in the proviso to section 88 of the IRO as explained in the paragraph 22 above.

APPROVED CHARITABLE DONATIONS

Definition of approved charitable donation

54. Sections 16D and 26C of the IRO allow a deduction for approved charitable donations made by a person during a year of assessment. The term “approved charitable donation” is defined in section 2 of the IRO as a donation of money to:

- (a) any charitable institution or trust of a public character that is exempt from tax under section 88 of the IRO; or
- (b) the Government,

for charitable purposes.

55. The basic criteria governing the granting of the deduction are:

- (a) the payment must be a donation;
- (b) the donation must be a donation of money;
- (c) the donation must be made to a tax-exempt charity, or the Government;
- (d) the donation must be for charitable purposes;
- (e) the aggregate of the person’s donations (including the donations of the person’s spouse, not being a spouse living apart from the person) must not be less than \$100;
- (f) the allowable deduction in any year cannot exceed 35% of the person’s assessable income or profits;
- (g) a deduction in respect of the same donation cannot be granted to more than one person; and
- (h) a deduction for the donation can only be claimed once under profits tax, salaries tax or personal assessment.

56. The word “donation”, in its ordinary sense, means a gift. To constitute a gift, the property transferred must be transferred voluntarily and not as a result of a contractual obligation to transfer it and no advantage of a material character is received by the transferor by way of return. In *Sanford Yung-tao Yung v CIR* [1979] HKLR 429, it was held that the purchase of the cinema tickets was an advantage of a material nature which took the transaction as a whole outside the definition of “donation”.
57. If the person making a payment to a tax-exempt charity received a material benefit, the whole of the payment falls outside of the ambit of a gift because the requirement that no material advantage may accrue to the donor, is breached. Payments other than those which are strictly gifts are not donations for the purposes of sections 16D and 26C of the IRO. There is no provision in the IRO to permit payments to be apportioned into “charitable” and “material benefit” components. For further information, please refer to [Departmental Interpretation and Practice Notes No. 37 \(Revised\) – Concessionary Deductions: Section 26C Approved Charitable Donations](#).

Donation receipts

58. A charity should note that donors may be asked to produce receipts for donations in support of any claims they make for an allowance under the IRO. In respect of a donation of money received, a tax-exempt charity may prepare and issue proper receipt. To assist donors to claim tax deduction, the donation receipt should show the full name of the tax-exempt charity according to its constitutional or formation document.
59. If the donation is not a donation of money, it would not constitute an approved charitable donation and would not be allowed for tax deduction. It is therefore important for a charity to distinguish donations from other payments when issuing such receipts. Payments other than those which are strictly gifts (e.g. payments made for a grave space, services such as saying prayers, reservation of a space for ancestral worship, admission tickets for film shows, etc.) should not be termed as donations. In borderline cases, the exact nature of the payment should be clearly stated on the receipt so that such transaction can be separately considered by the Department.

TO CHECK WHETHER AN ORGANISATION IS A TAX-EXEMPT CHARITY

List of tax-exempt charities

60. To enable members of the public making donations to check whether such donations qualify for a tax deduction, [a list of charitable institutions and trusts of a public character recognised by the Department as exempt from tax under section 88 of the IRO](#) is available at the Department's website. A tax-exempt charity should inform the Department if there is a change in its name as soon as possible. Otherwise, donors may not be able to find its new name from the above list.

THE WAY A CHARITY IS RECOGNISED AS A TAX-EXEMPT CHARITY

Procedure

61. Any organisation wishing to seek recognition as a charity exempt from tax under section 88 of the IRO should submit the following documents to the Department:
- (a) a letter requesting for recognition of tax exemption status;
 - (b) if the organisation has been established:
 - (i) a copy of the relevant certificate of registration;
 - (ii) a certified true copy of the instrument and rules governing its activities, i.e. the Articles of Association in the case of a limited company, 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;
 - (iii) a list of any activities which have been carried out in the past 12 months (or less, if appropriate), and a list of activities planned for the next 12 months;
 - (iv) a list of members of governing body (e.g. directors, trustees, etc.);
 - (v) a copy of its accounts for the last financial year (if the organisation has been established for 18 months or more).
 - (c) if the organisation has not yet been established:
 - (i) a draft of the instrument and rules governing its activities;
 - (ii) a list of the activities planned for the next 12 months from the date of establishment or date of application, where appropriate;
 - (iii) a list of founder members/ settlors (for trusts only) and proposed members of governing body (e.g. directors, trustees, etc.).

62. The request should be sent to the Commissioner of Inland Revenue, G.P.O. Box 132, Hong Kong.
63. The Department endeavours to respond within 4 months of the date of receipt of an application for recognition as a charity exempt from tax under section 88 of the IRO, provided that all relevant information is supplied with the application and further information from the applicant is not required.
64. In determining whether an institution or trust is established or carried on for charitable purposes, the Department will have regard not only to the stated objects of the institution or trust, but also to the activities which have been, are being or will be carried out by or in relation to the institution or trust. If the Department, after a full and detailed consideration of the circumstances and activities relating to the institution or trust, concludes that it does not meet the legal test for being a charity as it is not established for exclusively charitable purposes for public benefit (e.g. engaging in or supporting acts or activities which are unlawful or contrary to the interests of national security, or organising activities solely for the benefit of specific individuals), the institution or trust will not be recognised as a charity exempt from tax under section 88 of the IRO.

REVIEW OF TAX EXEMPTION AND TAX OBLIGATIONS

Duty to submit accounts and annual reports

65. The Department will, from time to time, call for accounts, annual reports or other documents to review whether the objects of a tax-exempt charity are still charitable and if its acts or activities are compatible with its objects stated in its governing instrument.
66. If there is evidence that (a) the acts or activities of a tax-exempt charity are unlawful or contrary to the interests of national security, or are otherwise not compatible with its stated charitable objects; (b) its income and assets are not wholly applied towards charitable purposes; or (c) there are any other events having an impact on its tax exemption status, the Department would request the tax-exempt charity to supply further information for considering whether it should be continued to be accepted as a tax-exempt charity.
67. Where the Department considers, after taking a holistic view, that a charity

seriously contravenes its charitable objects (e.g. use of funds not in furtherance of the charity's charitable objects, serious breach of the charity's governing instrument, or engaging in or supporting acts or activities which are unlawful or contrary to the interests of national security) and hence fundamentally changes its charitable status and is not a genuine charity, the Department may withdraw the recognition of tax exemption status of the charity concerned and raise tax assessment where appropriate.

Duty to inform change in circumstances

68. Given a tax-exempt charity is subject to the Department's review from time to time, it is essential for a tax-exempt charity to notify the Department within 1 month of the following circumstances:
- (a) change of its correspondence address; or
 - (b) alteration to its governing instrument; or
 - (c) termination of its subsidiary body (i.e. a service unit or time limited project) separately disclosed on the list of tax-exempt charities; or
 - (d) cessation of its operation, dissolution or winding up.

Failure of notification may lead the Department to cease accepting it as a tax-exempt charity. For the present purpose, a subsidiary body refers to a body which is not an entity distinct from the charity and is governed by the charity's governing instrument under the charity's sole ownership and control.

69. If an organisation has ceased operation or become dormant, it would be difficult, if not impossible, for the Department to assess whether the organisation as a matter of fact continues to be a charity and it is not unreasonable for the Department to consider such cessation or dormancy when assessing whether the organisation continues to be a charity for the purpose of section 88. If an organisation was dissolved or wound up, there is no longer any charity eligible for tax exemption under section 88. The tax exemption under section 88 would no longer apply to the organisation.
70. After an organisation's recognition of tax exemption status has been revoked or withdrawn, it will be denied the tax exemption under section 88 and tax assessments may be made under the IRO. If the organisation is aggrieved by the assessments, it may raise objection to the Commissioner under section 64 and appeal to the Board of Review or the

Court of First Instance against the Commissioner's determination under sections 66 and 67 respectively.

Duty to inform chargeability to tax

71. If an organisation:

- (a) has ceased to be a charity with chargeable profits which were previously exempted under the proviso to section 88 of the IRO; or
- (b) has commenced to derive chargeable profits, other than profits which were previously exempted under the proviso to section 88 of the IRO, whether there is any change in charitable status,

notification must be given in writing to the Department to inform chargeability to tax for a year of assessment not later than 4 months after the end of the basis period for that year of assessment.

72. If an organisation fails to inform chargeability to tax, the Commissioner may "compound" the relevant offence (i.e. accept a monetary settlement instead of sanctioning the institution of a prosecution) in lieu of penal action under section 80(2). The Commissioner may also impose additional tax under section 82A.

73. If additional tax is assessed under section 82A, a notice will be given to the organisation stating the relevant offence and the organisation is allowed at least 21 days to make written representations. The representations received will be taken into account when the Commissioner determines the amount of additional tax. The organisation can appeal to the Board of Review against the assessment to additional tax if it is aggrieved by the assessment.

Duty to report remuneration paid to employees

74. A charity, as an employer, has to report details of remuneration made to the charity's employees for each year of assessment. Further, there are reporting obligations in respect of the charity's employees in relation to their commencement of employment, cessation of employment and departure from Hong Kong. For further information, please refer to the Department website: [Employer's Obligations](#).

OTHER USEFUL REFERENCES

Fund raising and anti-terrorist financing

75. It is essential that a charity should maintain good management practice. The following publications are useful reference:

- (a) [Good Practice Guide on Charitable Fund-raising](#) issued by the Social Welfare Department, the Home Affairs Department and the Food and Environmental Hygiene Department
- (b) [Best Practice Checklist - Management of Charities and Fund-raising Activities](#) issued by the Independent Commission Against Corruption
- (c) [An Advisory Guideline on Preventing the Misuse of Charities for Terrorist Financing](#) and [Appendix](#) issued by the Narcotics Division of the Security Bureau.

For enquiries, please contact the relevant departments.

TAM Tai-pang
Commissioner of Inland Revenue

September 2021

Our telephone number: 2594 5300

Our website on the Internet: www.ird.gov.hk

Our E-mail address: taxinfo@ird.gov.hk

Purposes Held to be Charitable Purposes by the Courts

1. **Relief of poverty**
 - (a) Relief of poor people
 - (b) Relief of victims of a particular disaster

2. **Advancement of education**
 - (a) Establishment or maintenance of non-profit-making schools
 - (b) Provision of scholarships
 - (c) Diffusion of knowledge of particular academic subjects

3. **Advancement of religion**
 - (a) Establishment or maintenance of a church
 - (b) Establishment of religious institutions of a public character

4. **Other purposes of a charitable nature beneficial to the community not falling under any of the preceding heads**
 - (a) Relief of sickness
 - (b) Relief of physically and mentally disabled
 - (c) Prevention of cruelty to animals
 - (d) Protection and safeguarding of the environment or countryside
 - (e) Promotion of health

Appendix 2

Clauses Generally Contained in a Charity's Governing Instrument

1. Clause limiting the application of its funds towards the attainment of its stated objects

Example

The income and property of [the Charity], however derived, shall be applied solely towards the promotion of the objects of [the Charity] as set out in this [type of the Charity's governing instrument].

2. Clause prohibiting distribution of its incomes and properties amongst its members

Example

None of the income and property of [the Charity] shall be paid or transferred directly or indirectly, by way of dividend, bonus, or otherwise howsoever to any member of [the Charity].

3. Clause prohibiting members of its governing body from receiving remuneration

Example

No member of the [Board of Directors / Executive Committee] or Governing Body of [the Charity] shall be appointed to any salaried office of [the Charity], or any office of [the Charity] paid by fees and no remuneration or other benefit in money or money's worth shall be given by [the Charity] to any member of the [Board of Directors / Executive Committee] or Governing Body.

4. Clause requiring the members of its governing body to disclose material interest and not to vote in respect of a transaction, arrangement or contract in which they are so interested

Example

If a [director / member of the Executive Committee] is in any way (directly or indirectly) interested in a transaction, arrangement or contract or a proposed transaction, arrangement or contract with [the Charity] that is significant in relation to [the Charity]'s operations and his interest is

material, he must declare the nature and extent of his interest to the other [directors / members of the Executive Committee]. The [director / member of the Executive Committee] must neither vote nor be counted for quorum purposes in respect of the transaction, arrangement or contract or the proposed transaction, arrangement or contract in which he is so interested, and if he does so vote his vote must not be counted.

[Note: Companies incorporated by guarantee may adopt Article 15 Conflicts of interest contained in [Schedule 3 Model Articles for Companies Limited by Guarantee](#) to the Companies (Model Articles) Notice (Cap 622H).]

5. Clause specifying how the remaining assets should be dealt with upon dissolution

Example

If upon the [winding up / dissolution] of [the Charity] there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, this shall not be paid to or distributed among the members of [the Charity]; but shall be given or transferred to some other institution or institutions, having objects similar to the objects of [the Charity], and which shall prohibit the distribution of its or their income and property amongst its or their members to an extent at least as great as is imposed on [the Charity] under or by virtue of [Article N] above and this article, such institution or institutions to be determined by the members of [the Charity] at or before the time of dissolution and in default thereof by a Judge of the High Court of the Hong Kong Special Administrative Region having jurisdiction in regard to charitable funds and, if this provision cannot be effected, then to some charitable object.

Note: [Article N] is the article in the governing instrument prohibiting distribution of its incomes and properties amongst its members.

6. Clause requiring the keeping of sufficient records of income and expenditure (including donation receipts), proper accounting books and compilation of annual financial statements

Example (for charities that are incorporated companies)

The [directors / members of the Executive Committee] must prepare annual financial statements for each accounting reference period as required by the Companies Ordinance. The financial statements must be prepared to show a true and fair view and follow accounting standards issued or

adopted by the Hong Kong Institute of Certified Public Accountants or its successors and adhere to all of its recommended practices.

The [directors / members of the Executive Committee] must keep accounting records (including donation receipts) as required by the Companies Ordinance.

Example (for charities other than incorporated companies)

[The Charity] shall keep sufficient records of income and expenditure (including donation receipts) and proper accounting books, and compile annual financial statements.

[Note: For clauses 1, 2, 5 and 6 above, companies incorporated by guarantee may adopt the relevant sample clauses contained in the Standard Form of Articles of Association prescribed by the Companies Registry (at Appendix III to its Guidance Notes) at the following website:

http://www.cr.gov.hk/en/companies_ordinance/docs/Guide_Section103-e.pdf]

Clauses Generally Not Acceptable in a Charity's Governing Instrument

1. Clause which may allow distribution of its incomes and properties amongst its members or shareholders (for example through payment of dividends and other distribution, capitalisation of profits, alteration of share capital, reduction of share capital, share buy-backs, etc.)
2. Clause which may allow payment of remuneration to members of its governing body (for example Articles 16(1) and 16(2)(a) regarding holding "position of profit" and on terms "as to remuneration" and Articles 24 and 27(6) in [Schedule 3 Model Articles for Companies Limited by Guarantee](#) to the Companies (Model Articles) Notice (Cap 622H))
3. Clause which may allow distribution amongst its members or shareholders in specie or kind the whole or any part of its surplus assets upon dissolution or winding up