

IRD

# Charities

Tax exemption under section 88  
of the Inland Revenue Ordinance

The chief executive announced in his policy address in October 2006 a series of forward-looking new initiatives for pre-primary education. One of them is the introduction of an education voucher scheme to provide subsidy to parents from the 2007-08 school year onwards.

Kindergartens can redeem vouchers during the three-year transition period if they meet with all the requirements that are required of a non-profit-making kindergarten.

The Education and Manpower Bureau also announced that kindergartens exempt from tax under section 88 of the Inland Revenue Ordinance (IRO) would be recognized as non-profit-making kindergartens for the purposes of the education voucher scheme.

## Who can obtain tax exemption?

Under section 88 of the IRO, charitable institutions or trusts of a public character (referred to as charities in this article) are exempt from tax. While organizations

may apply to the Inland Revenue Department (IRD) for recognition as tax-exempt charities, the IRD isn't responsible for the registration of charities. There is also no provision in the IRO that exempts a voluntary or non-profit-making organization from tax, as not all of them are charities.

For an organization to be recognized as a tax-exempt charity, it must be established for purposes which are exclusively charitable according to law and must be subject to the jurisdiction of Hong Kong courts. The law defining the legal attributes of a charity is based upon case law developed through court decisions. For practical purposes, the judgment of Lord MacNaghten in the case of *IT Special Commissioners vs. Pemsel* is regarded as an authoritative summary of the purposes that may be accepted as charitable.

Charitable purposes are grouped under four heads:

1. Relief of poverty
2. Advancement of education

3. Advancement of religion
4. Other purposes of a charitable nature beneficial to the community not falling under any of the preceding heads

While the purposes under the first three heads may be in relation to activities carried out in other countries, those under the fourth will generally be regarded as charitable only if they are of benefit to the Hong Kong community.

A purpose is not charitable unless it is directed to the public or a sufficient section of it. An organization cannot be charitable if it is, in principle, established for the benefit of specific individuals. However, it is not possible to lay down any precise definition of what constitutes a sufficient section of the public, which means each case must be considered on its own merit.

On condition that admission to a non-profit-making kindergarten is open to the public (established for public benefit), the operation might

be accepted as charitable for the advancement of education.

### Governing instrument of a charity

It is essential that a written governing instrument be used to establish a charity. Promoters or founders of a charity must be clear in their own minds about the purposes of the charity and the manner in which it should be administered before they seek legal advice about the format, content and legal sufficiency of the charity's governing instrument.

For an organization to be recognized as a tax-exempt charity, its governing instrument should generally contain clauses that:

- State precisely and clearly its objects.
- Limit the application of its funds towards the attainment of its stated objects.
- Prohibit distribution of its incomes

and properties among its members.

- Prohibit members of its governing body (directors, trustees, etc.) from receiving remuneration.
  - Specify how the assets should be dealt with upon its dissolution (the remaining assets should normally be donated to other charities).
  - Require the keeping of sufficient records of income and expenditure (including donation receipts), proper accounting books and compilation of annual financial statements.
- Exclude the powers set forth in the seventh schedule to the Companies Ordinance if the charity is incorporated under this ordinance.

### Application procedure

Organizations need to submit an application letter to IRD together with:

- A copy of the relevant certificate of registration (if appropriate).
- A certified true copy or a draft of the governing instrument and rules governing its activities.
- A list of activities planned for the next 12 months.
- A list of activities that have been carried out in the past 12 months and a copy of accounts for the last financial year (if appropriate).



The application should be sent to the Commissioner of Inland Revenue, G.P.O. Box 132, Hong Kong.

Provided that the governing instrument is in order and no supplementary information is required, tax exemption would normally be granted within eight weeks after receipt of the application. Otherwise, the time required would depend on when the organization could provide all the required information or remove any irregularities in its governing instrument to satisfy the requirements for tax exemption.

### Review of tax-exempt charities

To protect revenue, IRD will review from time to time the status of tax-exempt charities to ensure their objects are still charitable and their activities are compatible with their objectives. For review purposes, the charities are required to provide their accounts (audited if incorporated), annual reports and documents, such as a list of activities carried out during the review period.

### Further information

Detailed information on tax exemption under section 88 of the IRO is contained in the information pamphlet *A Tax Guide for Charitable Institutions and Trusts of a Public Character*, which is available on the IRD website: [www.ird.gov.hk/eng/tax/ach\\_tgc.htm](http://www.ird.gov.hk/eng/tax/ach_tgc.htm).

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