

BOTSWANA UNIFIED REVENUE SERVICE

DEPARTMENTAL GUIDANCE NOTE ON CHARITABLE, RELIGIOUS OR EDUCATIONAL INSTITUTIONS, TRUSTS ESTABLISHED FOR PUBLIC PURPOSES AND SOCIAL AND SPORTING ASSOCIATIONS.

1. Introduction

This Departmental Guidance Note is issued to explain the provisions and procedures as to the tax treatment of charitable, religious or educational institutions and trusts established for public purposes and social and sporting associations. Such institutions and associations were hitherto listed as persons exempt from tax in Part I of the Second Schedule of the Income Tax Act, Cap 52.01 but have now been removed from the list of exempt persons. However, their gross income generally remains exempt from tax if applied for the charitable or public purposes within the tax year or the extended period as approved by the Commissioner General. But any income or disposal gains derived by such institutions or associations and not applied for the public purposes will now be taxable.

The purpose of this Note is to enumerate and explain the respective obligations of the above listed persons and the procedure to be followed to comply with those obligations under the Income Tax Act, Cap 52.01.

This Note has no force in law and does not bind the Commissioner General nor does it restrict the rights of objection and appeal as provided by the Income Tax Act.

2. Persons covered

This Note specifically relates to charitable, educational and religious institutions, trusts established for public purposes and any associations formed for the purpose of promoting sporting and social amenities and not involving the acquisition or possible future acquisition of gain.

3. Relevant provisions of the law:

The relevant provisions have been introduced through the Income Tax (Amendment) Act, 2004 which brought the following specific provisions into force with effect from 1st July 2004 and will therefore apply from tax year 2004 - 2005.

3.1. Section 2

The law relating to tax treatment of these persons has been brought in by Income Amendment (Amendment) Act of 2004 which extended the meaning of "company" under Section 2 of the Income Tax Act by inserting a new subparagraph (e) to the definition of a company as under:

* All references to the provisions of the Income Tax Act are based on the latest edition of the Laws of Botswana published in 2002.

“Company” includes –

(e) any charitable, religious or educational institution or a trust established for public purposes’

3.2. Section 71

The managers or trustees of these institutions, trusts and associations are now required to file returns as is required by the Amendment of section 71 that reads as follows:

“(4) The manager or trustee of any charitable, religious or educational institution or a trust or an association referred to in the proviso to paragraph (xxxix) or in paragraph (xl) of Part II of the Second Schedule shall, in accordance with the provisions of section 65, furnish a tax return of the gross income of such institution, trust or association, for the tax year including statements of accounts, certificates and other relevant documents in relation to the return, signed by such manager or trustee, as the case may be, and shall also furnish such evidence as may be required by the Commissioner as to the applications of such income during the tax year.”

3.3. Second Schedule

Part I

Paragraphs (iv) and (x) have been deleted from Part I of the Schedule thereby removing the blanket exemption formerly granted to charities, educational and religious institutions, trusts established for public purposes and any associations formed for the purpose of promoting sporting and social amenities and not involving the acquisition or possible future acquisition of gain.

Part II

Part II of the Second Schedule is amended by adding the following new paragraphs at the end of paragraph (xxxviii) thereof –

“(xxxix) any income of a charitable, religious or educational institution or a trust established for public purposes:

Provided that where a person to whom this paragraph applies, carries on any business or derives any gains from disposal of any property chargeable to tax under section 35, exemption under this paragraph shall not be granted to such person unless it is proved to the satisfaction of the Commissioner that the income of that person has been applied exclusively for public purposes within that tax year or such extended period as may be allowed by the Commissioner;

(xl) any income of any association formed for the purpose of promoting social or sports amenities and not involving the acquisition of gain or the possibility of future gains to the extent that such income is applied exclusively for the purposes of such association

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within that tax year or such extended period as may be permitted by the Commissioner."

4. Application of the Amendment

The combined effect of the above amendments to the Act is as follows:

4.1 Withdrawal of blanket exemption

As indicated above, the deletion of paragraphs (iv) and (x) of Part I of the Second Schedule has effectively removed the blanket exemption that was accorded to these institutions, trusts and associations. The inclusion of new paragraphs (xxxiv) and (xl) in Part II of the Second Schedule now provides for the exemption of business income and/or disposal gains of such institutions and associations only if it is exclusively applied for public purposes within the tax year or within the extended period as allowed by the Commissioner General.

4.2 Taxability of business income and disposal gains in the hands of charitable, religious or educational institutions and public trusts and any unapplied income of social and sports associations

All income that accrues to these institutions, trust or associations is exempt provided it is not business income or disposal gains that are not applied for public purposes. Whether a person is carrying on business or has disposal gains will be decided on the basis of the respective provisions of section 2 and section 35 of the Act.

Any income of a social or sports association will be taxable to the extent it has not been applied for the purposes of the association within the accounting period or within the extended period as approved by the Commissioner General

4.3 Obligation to file a return of income under the self assessment and payment of self assessment tax installments

Where the institution, trust or association derives taxable income (i.e. non-applied business income and/or disposal gains in the case of charitable, religious or educational institutions and public trusts and 'any income' in the case of sports associations or social associations established not for gain or future gain) during an accounting year it shall be required to file a self assessment income tax return within 4 months after the end of its accounting year.

4.4 Claim of exemption of income possible if applied exclusively for public purposes within the accounting period or within the extended period as approved by the Commissioner General.

However, such institution, trust or association can claim exemption of such taxable income provided it is applied exclusively for public purposes within the accounting year in which it is earned. Alternatively, they may seek the Commissioner General's approval for extending the period of application of such income beyond the

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relevant accounting year. Such an application must be submitted to the Commissioner General within one calendar month of the end of the relevant accounting year so that there is adequate time for a decision to be made before the due date of filing the return.

The application must be submitted on Form ITA 25 (SA APN) attached.

For the transitional tax year 2004-2005, such an application may be filed by 31 March 2006

4.5 Validity of extension for application of income and consequences of failure to apply the taxable income within the extended period

Extensions will not normally be granted beyond the immediately succeeding accounting year.

Where the income is not applied within the prescribed or extended period, it will be treated as income of the accounting year during which it was derived and will be taxed accordingly. All liabilities for self assessment tax installments will be calculated and interest and penalties will be charged wherever necessary.

5 Summary of Obligations of persons covered

5.1 Does this Amendment mean that persons who are covered by this amendment have to register?

Yes. Institutions, trusts or associations covered by this amendment have to register using form ITRG 1. A certificate of registration with the Registrar of Societies, Registrar of Deeds or other registering Government Department together with the objects or constitution of that person must accompany the registration form.

5.2 What does the Amendment mean for persons already enjoying a 'blanket' exemption?

Institutions, trusts or associations to whom this amendment applies who may have already enjoyed the benefits of a blanket exemption under Part I of the Second Schedule and who may not have registered with the BURS (or the then Department of Taxes) for tax purposes are now required to register.

5.3 Whether the amendments would apply to income derived from 1 July 2004?

The amendments are applicable from tax year 2004-2005 and therefore any amount of income derived during the accounting period relevant to the tax year 2004-2005 would be subject to the new provisions.

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5.4 What does the Amendment mean in respect of filing of returns?

Since these institutions, trusts or associations will be registered as companies and may suffer tax on some of their income, they will be required to file annual income tax returns as per the requirements of the Act. Returns are generally mailed to taxpayers but taxpayers are reminded that it is not sufficient for taxpayers to argue that they did not file returns because they were not mailed to them. Taxpayers are therefore advised to request returns from the nearest tax office when they realise that returns may not have been mailed to them.

5.6 Are there special returns for filling?

A return, ITA 25 (SA) has been prepared for filing by these institutions, trusts or associations and that is the return that must be used to declare items of income.

For the transitional tax year 2004-2005, such returns may be filed by end of March 2006 without any interest or penalty for late filing.

5.6 What happens if income is partly applied during the tax year or extended period?

Normally the business income and/or disposal gain not applied for public purposes will not be exempt in the case of social or sports associations and they would be subjected to all self assessment provisions relating to payment of tax, interest and penalties.

There, however, may be a case of a charitable institution that it earns income from business and/or disposal gains and also received subscription or donations during the year and the entire amount may not be applied during the year. In such cases the exemption will be granted in the proportion that the business income or capital gains bears to the total income and the percentage of income exclusively applied for public purposes.

Example 1 (Social Associations not for personal gains)

Tax Year 2004-2005 onwards

Total income	P100 000
Applied for social purposes within the tax year or approved extended period	P80 000
Amount exempt	P80 000
Taxable through self-assessment	P20 000

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Example 2 (Religious, Charitable, Educational Institutions)

Tax Year 2004 – 2005 onwards

Total income	Business income or disposal gains = P40000 Non-business income = P60000	P100 000
Total income applied for public purposes within the tax year or approved extended period		P55 000
Amount exempt	Non-business income = P60000 Business income $(55000 / 100000) \times P40000 = P22000$	P60000 + P22000 = P82000
Taxable amount at the marginal rate for companies through self assessment	P40000 – P22000	P18000

5.7 Other obligations that must be fulfilled?

There are several obligations that a taxpayer must fulfill. Amongst these are the following:

- o Filing of returns when they are due;
- o Deduction and payment of withholding taxes;
- o Deduction and payment of PAYE;
- o Filing of Annual Returns of Withholding Taxes;
- o Payment of self assessment tax; and
- o Payment of any taxes that may be due and payable

6 Communication

Any concerns or questions regarding the Amendment or this Note may be addressed to:

The Commissioner Internal Revenue
Botswana Unified Revenue Service
Income Tax Division
P/Bag 00171
Gaborone

Tel: 361 4600

S Lekau
Commissioner Internal Revenue
Botswana Unified Revenue Service

Dated: 16 March 2006

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**REQUEST FOR EXTENSION FOR APPLICATION OF BUSINESS
INCOME AND/OR DISPOSAL GAINS OF CHARITABLE, RELIGIOUS
OR EDUCATIONAL INSTITUTIONS, TRUSTS ESTABLISHED FOR
PUBLIC PURPOSES AND SOCIAL AND SPORTING ASSOCIATIONS**

Name of institution, trust or association	
TIN	
Address Telephone number	
Accounting period	
Tax year for which extension is applied for	
Amount of business income and /or disposal gains	
Proposed date of application	
Brief description of project/work on which funds will be applied	
Reasons for non- application during the accounting year	
Declaration	
As Manager / Trustee of the above named institution, trust or association, I declare that I have examined this application and that the above information is correct and complete	
Status of declarant	
Name of declarant	
Signature of declarant	
Date	

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