



ALERT

AN ORGANIZATION OPERATED FOR BOTH BUSINESS AND CHARITABLE PURPOSES DOES NOT QUALIFY AS A CHARITABLE ORGANIZATION AND IS NOT ENTITLED TO A TAX EXEMPTION STATUS.



In Uganda, religious, charitable, or educational institutions are exempt from paying income tax. To qualify for exemption, the institution's object must be for non-profit, the income or assets of the institution should not confer a private benefit to any person and the Institution must obtain a written ruling by the Commissioner Uganda Revenue Authority stating that the institution is an exempt organization.

Recently, the Tax Appeals Tribunal rendered a ruling to determine the question of whether an organisation which embodies both business and charitable characteristics. This was in the case of Yunus Social Business Foundation Uganda Limited v Uganda Revenue Authority TAT No. 079 of 2020.

Brief facts:

The Applicant, Yunus Social Business Foundation Uganda Limited is part of a network of Yunus Social Business initiatives founded by Professor Muhammad Yunus, as a German charitable corporation. The Applicant was incorporated as a company limited by guarantee with the main objective to address social and environmental problems in Uganda by promoting and empowering social business through the provision of financial and technical support. The Applicant also provides strategic and other support to social businesses in Uganda with the ultimate goal of alleviating poverty and related social and environmental problems. The Applicant receives funding from donors including its parent company and the monies received are lent to businesses in Uganda. The Applicant has a trading license and an investment licence but is not registered as a Non-Governmental Organisation.

On 7th February 2019, the Applicant applied to be considered as an exempt institution under the Income Tax Act. Uganda Revenue Authority (URA) rejected the Application on grounds that the Applicant was not a charitable organization. The Applicant objected and its objection was disallowed, hence an Application for review was filed before the Tax Appeals Tribunal for determination.

Issues

The main issue for consideration was whether the Applicant is a charitable organization and qualifies to be exempt from tax under the Income Tax Act.

Submissions

The Applicant argued that it qualifies as a charitable organization with a public character. The Applicant submitted that apart from providing concessional and soft loans, the Applicant provides strategic and other support to social businesses in Uganda with the ultimate goal of alleviating poverty and related social and environmental problems in Uganda.

That its parent company is registered as a charity in Germany and exempt from income tax in that country and in other countries such as Columbia and Brazil. That the Applicant's memorandum and articles of association restricts the conferring of private benefits to its members.

In reply, the Respondent, URA argued that the Applicant does not provide services for alleviation of poverty since the persons they lend to are not poor and are capable of paying interest. That the Applicant was involved in the business of providing financial services with a trading license from KCCA and a money lending license from Uganda Micro Finance Regulatory Authority. That the Applicant is not registered as a charitable organization under the NGO Act and has no NGO permit and cannot claim to be a charitable organization.

Tax Appeal's Tribunal ruling.

On 30th March 2022., the Tribunal dismissed the Application holding that;

- i. An organization operated for both business and charitable purposes does not qualify as a charitable organization under the provisions of the Income Tax and thus not entitled to a tax exemption status.
- ii. The fact that the memorandum of association prohibits distribution of profits, dividends and assets to shareholders does not on its own clothe an organization with a charitable status though it distinguishes a charity from other organization.
- iii. The Tribunal also noted lacuna in the law which does not consider the emergence of social enterprises with invaluable contributions made to the charitable sector. The Tribunal however held that any changes in legislation must be made by the legislature and the current law prohibits grant of tax concessions, reserved for charities, to social enterprise.

The Tribunal's ruling is well reasoned and we are in agreement. This decision cements the position that to qualify as a charitable organization, the activities of the organization must be exclusively charitable and not a mixture of both business and charity. Had the Tribunal ruled otherwise, it would have opened floodgates of businesses registering as companies limited by guarantees to avoid payment of taxes. In case any company dealing in business would like to offer charitable services, it would be important for a new entity to be registered either as a company limited by guarantee, an NGO, a Trust or a Foundation and its activities be exclusively charitable. This ruling should thus help companies dealing in both charitable work and business on how to separate the two and enjoy the tax exempt status for the charitable work being done.



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