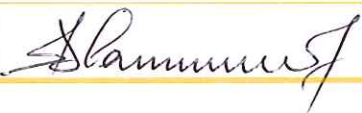


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# **Guideline on the Tax Treatment of Donations and Sponsorships**

## **Citation and Commencement**

This Notice shall be cited as the Guideline on the tax treatment of donations and sponsorships in terms of Sections 2, 7, 12 and 14(1)(u) of the Income Tax Order of 1975, as Amended (*hereinafter referred to as the Order*) and Regulation 14 of the VAT Act No.12 of 2011 (*hereinafter referred to as the Act*).

## **Purpose**

The guideline is meant to assist event organizers and sponsors understand the Income Tax and VAT treatment of charity events, sponsorships and donations. It is also meant to give practical guidance, in order to promote voluntary compliance, and to foster public confidence in the integrity and effectiveness of the enforcement of the provisions cited above.

## VAT

### 1. Exempt Supply/Services

In terms Section 19 read with Schedule I together with Regulation 14 of the Act a supply is exempt where:

- a) *It is made by an amateur organization of sporting activities, where such activities are deemed for the purposes of the Act to be non-professional.*
- b) *An amateur organization of sporting activities shall be deemed to be unprofessional:*
  - i. *where no remuneration bonus, lump sum or lump sum is paid to the players;*
  - ii. *where a loan sought by a player from a financial institution is not guaranteed by the sporting organization in which the player is listed;*
  - iii. *where activity, behavior, association and relationship with the organization may not be construed by the Commissioner General as professional;*
    - a. *a sporting organization shall first apply for the VAT exemption by the Commissioner General in order to qualify for the exemption; and*
    - b. *the sporting organization shall submit audited accounts to the Commissioner General within two months of its financial year end.*
- c) *Non- cultural activities and services are exempt, save that:*
  - i. *the supplier of such services shall apply for an exemption to the Commissioner General prior to the activity;*
  - ii. *subsequently supply audited accounts and statements to the Commissioner General, for determination as to whether the activity is a non- profit making supplier of goods and services.*

### 2. What is a Non- Profit Cultural Activity?

- a. *A non - profit cultural activity may be a once off cultural activity or a regular activity.*
- b. *The annual number of cultural activities on which one organizer can be granted exemption shall not exceed twelve in a year.*

### **3. Supply of Goods/services in a charity Arrangement**

- a. *A supply of goods and services in a charity arrangement is exempt if the Commissioner General is satisfied that the body, organization making that arrangement is not masquerading as a charity organizer for purposes of tax evasion, and, if discovered, that organizer commits an offence and will be held liable under the Act.*
- b. *In terms of the Act the organizer of a charity arrangement obtains an exemption prior to the arrangement; and the organizer of the arrangement submits to the Commissioner General audited financial statements on each arrangement on which VAT is granted.*

### **4. VAT treatment of charity events and sponsorships**

#### **A. Sponsorships for benefit**

- i. Where a sponsorship or other form of support funding is received by a charity event organizer or by a charity organization that is VAT registered, in return for a significant benefit to the sponsor; the charity organizer or charity organization will be considered to be making a taxable supply as defined by Section 18 of the VAT Act, and will be expected to issue a VAT invoice to the sponsor.
- ii. The supply is deemed to be that of marketing/ advertising services, from which the sponsor receives a significant benefit. Significant benefit could mean any or all of the following:
  - naming the event sponsor;
  - displaying the sponsor's company logo or trading name;
  - participating in the sponsor's promotional and advertising activities;
  - allowing the sponsor to use their (charity event organizer) name or logo;
  - giving free or reduced price tickets;

- allowing access to special events;
- providing entertainment or hospitality facilities; or
- giving the sponsor exclusive or priority booking rights.

The above list is not exhaustive. There may be other situations in which the sponsor maybe receiving significant benefits.

#### **B. Sponsorships with no benefit**

- i. Where a benefit amounts to no more than a mere acknowledgement of support given graciously by the charity to the sponsor and is not directly linked to the payment made by the sponsor there is no significant benefit.
- ii. Where this is the case the payments are considered to be a donation and therefore outside the scope of VAT.

Examples of insignificant support include:

- giving a flag or sticker;
- naming the donor in a list of supporters in a program or on a notice etc.

#### **C. Sponsorships to unregistered organizations**

- i. Where a sponsorship is given to a charity organization that is not VAT registered no VAT will be chargeable to the sponsor

## Income Tax

### 1. Gross income

In terms Section 7 of the Order any amount;

- (a) whether in cash or otherwise,*
- (b) received by or has accrued,*
- (c) to or in favor of any person,*

*“except such receipts or accruals of a capital nature as are not receipts or accruals referred to in Section (a) to (c) of the above Section in any year of assessment from any source within Swaziland or deemed to be within Swaziland shall be regarded as Gross Income, and as such shall be taxable, unless such receipts or accruals are exempted in terms of the definition of 'exempt organization' under Section 12 and 2 of the Order.”*

### 2. Exempt organization

Under Section 2 of the Order an exempt organization is described;

- a) as an amateur sporting association,*
- b) charity*
- c) or educational institution of a public character,*

*which the Commissioner is satisfied that it is a genuine exempt organization and none of its income or assets confer a private benefit on any person.*

*Section 12 (1) (iii) of the Order further states that there shall be exempt from normal tax: any company, society or other association of persons,*

- a) whether or not registered under any law;*
- b) the profits or gains derived solely from transactions with or on behalf of its individual members;*

- c) *and the constitution of which does not admit of the distribution of its profits or gains to any persons other than the members with whom or on whose behalf the transaction took place; and*
- d) *there must be no benefit to any person other than benefits accruing to that person from transactions with or on behalf of such person.*

This provision excludes receipts or accruals from investments by such company, society or association of persons.

### **3. Allowable Deductions**

In terms of section 14 (1)(u) of the Order, *a donation or grant will be deducted from the taxable income of any person provided such donation is made during the year of assessment to:*

- a. *an amateur sporting association; or*
- b. *charity; or*
- c. *educational institution of a public character; or*
- d. *made to the Government for the purpose of erecting school or hospital buildings; or*
- e. *any grant made to an education institution, school or hospital which is registered with the appropriate Ministry, for undertaking capital projects in the form of buildings, fittings, furniture as well as other items associated with capital assets needed for the development of such educational institution or school or hospital.*

The amount of deduction allowed shall not exceed 5 percent of the person's taxable income calculated before taking into account the deduction under this section.

#### **4. Income Tax Treatment of charity events and sponsorships**

- a. Where an event organizer or a sponsor has made a donation or grant, the sponsor or charity event organizer is entitled to a deduction of not more than 5 percent of its taxable income. The deduction is subject to the donation being made to any of the following organizations:
  - i. to an amateur sporting association; or
  - ii. charity; or
  - iii. educational institution of a public character; or
  - iv. made to the Government for the purpose of erecting a school or hospital buildings; or
  - v. any grant made to an educational institution, school or hospital which is registered with the appropriate Ministry, for undertaking capital projects in the form of buildings, fittings, furniture as well as other items associated with capital assets needed for the development of such educational institution or school or hospital.
- b. The deduction will be effected at the end of the year of assessment when the event organizer files an income tax return. The return should be accompanied by audited financial records.

#### **5. Conclusion Summary**

- a. Where it is evident that a sponsorship to a charity is made for a benefit to the sponsor, then the charity is making a taxable supply for VAT purposes and must therefore issue out a VAT invoice clearly stating the amount of VAT payable and the amount paid to the charity event.
- b. For a donation to be exempted for income tax purposes it has to be a donation made to an exempt organization as defined by Section 2 of the Order and the amount so donated must be used solely for purposes of furthering the course of the charity organization.
- c. Allowable deductions regarding donations made through sponsorships will only be allowed where such donations are made to an exempt organization.



  
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COMMISSIONER DOMESTIC TAXES

