



THE J.D.

JURIST DICIT: The Legal Experts Speak

J.D. NEWS

NEW PROFESSIONALS

Nakisha Ali (Real Estate and Probate Practice Group)

PROMOTIONS

Irena Paynter (Senior Associate, Real Estate)

Andre Rudder (Senior Associate, Litigation and Dispute Resolution)

EVENTS

J.D.'s OSH Committee, as part of its efforts to encourage and foster a safe and healthy work life is hosting a walk/jog/Run around the QPS every Wednesday. **Clients Welcome!!!!**

TAX PLANNING FOR CHARITIES: AN OXYMORON?

I know what you are thinking. Charities do not pay tax and therefore do not need to tax plan. Am I right? If I am right, then, sadly, you are dead wrong. Charities actually pay tax on taxable income just like anybody else! They also pay Value Added Tax and, unlike everybody else, generally will not qualify for a refund of input VAT, because (i) they cannot satisfy the VAT registration threshold, and if they do, (ii) they still may only be entitled to a partial recovery at best.

“The issue for charities is that donations may not be enough to fund its charitable work.”

The main (if not only) advantage of charitable status, quite frankly, is the entitlement to receive covenanted donations from supporters, covenanted donations being tax deductible donations. The thing is, though, donations/gifts are not “income” and, therefore, are not taxable in the first place. So this “tax” benefit is not really for the charity, it is really a benefit for the donor.

The charity derives an indirect benefit, because “but for” the donor’s tax break (in tax lingo: covenanted donation i.e. the ability to “expense” a gift) it may not have received the funding in the first place.

The issue for charities is that donations may not be enough to fund its charitable work. After all, like everybody else, charities have bills to pay (e.g. rent and salaries) in addition to funding the charitable work (e.g. clothes and food to cover and feed the poor).

When donations fall short, the charity must find other ways to raise funds, more often than not including operating a “commercial enterprise”. Surely, you say, such “commercial” activities must be tax exempt, because the “profits” will be re-invested into the charity’s coffers to help feed and clothe the poor. Sadly, once again, you are wrong.



The Board of Inland Revenue (“the Board”) has begun to challenge such charitable “enterprises” (the “real” oxymoron in the Board’s view), and it has legitimate grounds. Specifically, section 6(1)(g) of the Corporation Tax Act, Chap 75:02 (the “CTA”) provides that the profits of any ecclesiastical, charitable or educational institution of a public character, approved by the President by writing under his hand, insofar as such profits are not derived from a trade or business carried on by such institution, shall be exempted from corporation tax. The underlined text reveals that even charitable entities will be subjected to tax on receipts from a trade.

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Section 2 of the Income Tax Act, Chap. 75:01 (the “ITA”) provides that “trade” includes a business, and every trade, manufacture, adventure or concern in the nature of a trade or business. This definition is unhelpful and requires us to look at the development of case law to determine what business income in this context is.

In the United Kingdom case of *Brighton College v Marriott (H M Inspector of Taxes)* (1924), 10 TC 213 the House of Lords endorsed the principle that:

*“Whether in any particular case activities which may properly and exclusively be described as charitable have become trading or commercial must always be a question of fact, one important consideration being whether these activities are being conducted with commercial considerations in view and on commercial principles”.*¹ [Emphasis Added]

It was also observed that:

*“A charitable institution which carries on a trade at a profit is chargeable with Income Tax in respect of its profits or gains in that trade, notwithstanding that they are and can only be applied to the purposes of the charity.”*² [Emphasis Added]

So, if charities are taxable on trading income, and are also subject to VAT, then operating a charity is not tax efficient is it? Well it really wasn’t meant to be. “Tax” is for profit generating entities. Charities, on the other hand, are meant to be focused on noble activities, such as feeding the poor, not on generating profit. Perhaps a charitable organization is just meant to be eternally grateful that its sponsors get tax benefits when they provide financial support towards the charity’s work.

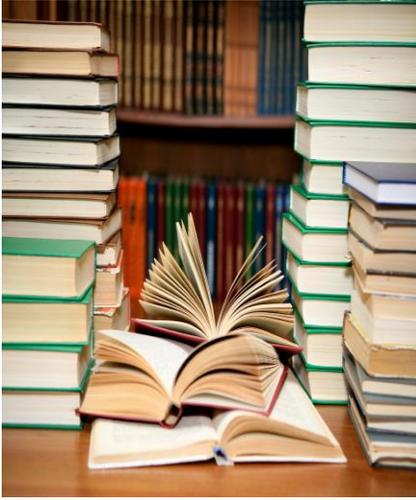
TAX MATTERS

J.D.’s Tax practice is an integral part of our Banking + Finance and Corporate + Commercial practices. We render tax advice on a range of commercial transactions including corporate finance, mergers and acquisitions, new business ventures, private equity transactions and project finance.

We work closely with several of the country’s leading accounting firms to develop tax strategies for our clients. We represent clients in appeals of the Board of Inland Revenue (BIR) decisions on matters of corporation tax, value added tax, withholding tax, double taxation relief, business levy and stamp duty.

¹ Per Lord Blanesburg at p. 234

² Per Viscount Cave, L.C. at p 231



Let's be real. Charities need to be self-reliant in fund raising, because 3rd party donations may not be (and generally never are) sufficient. Profit is a good source of funds (if it were not, Bill Gates and others wouldn't be trying so hard to generate them). There is an apt saying, which is worthy of mention at this point: you need to spend money to make money (in tax lingo: you have to incur input VAT – VAT incurred on the consumption of goods and services - if you are going to provide a commercial supply). This is where tax planning for charities comes in: *charities need to maximize after tax profits and minimize their input VAT bill, if they are to effectively and efficiently raise funds to clothe and feed the poor.*

Although the CTA and ITA do not provide tax incentives to charities per se, they do provide tax incentives to sponsors/donors of charitable causes. It is in this context that effective tax planning strategies can be employed to provide real “tax” benefits to charities, resulting in an overall reduction in their corporation tax and VAT bills.

[N.B. This is not intended to be legal advice. You should contact your legal/tax adviser if advice is required.]

ABOUT THE AUTHOR

Barrie is a Consultant in our Corporate Commercial Department. Barrie consults in the areas of tax, corporate and commercial law and litigation.

Barrie began his career at a large “Seven Sisters” international business law firm in Canada, where he focused on corporate and commercial litigation. Barrie acted as Assistant Commission Counsel to one of the largest judicial inquiries in the history of the City of Toronto.

More recently, Barrie has held the position of Senior Tax Consultant at a big four international professional services firm in T&T and, thereafter, has held the position of Group Tax Manager at one of the largest regional conglomerates in the Caribbean. In these roles Barrie has provided tax planning and compliance advice and representation to a number of leading companies in various sectors including financial services, manufacturing, media, automotive and construction.

Barrie advises on a range of commercial transactions including corporate finance, mergers and acquisitions, new business ventures, private equity transactions and project finance.



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ABOUT J.D. SELLIER + CO.

J.D.Sellier+Co. was founded by Jean-Baptiste Denis Sellier who was admitted to practice as a Solicitor and Conveyancer in Trinidad and Tobago in 1882. He practiced on his own until 1916 when he invited his colleague and friend George Cecil Pantin to join him in a partnership.

Today, J.D.Sellier+Co. has expanded to approximately 20 attorneys-at-law and 77 employees and offers its clients quality legal services. Our clients include industrial, commercial and financial enterprises, domestic and foreign, public and private, ranging in size and complexity from small single location business enterprises to large diverse, multinational corporations.

Our firm is a general practice law firm specializing in four areas of civil practice, namely: Corporate + Commercial (including banking + finance; energy + regulated industries; probate; estate planning + administration; mergers + acquisitions; tax), Real Estate, Intellectual Property, and Litigation + Dispute Resolution (including admiralty + shipping).
