

The Isle of Man

Charity formation and legal framework

The word 'charity' does not describe an entity, but describes the status of an entity which is set up to meet certain defined eleemosynary objectives, and which having a public dimension falls to be regulated under the law and thereby attains certain exemptions from direct taxation. Such an entity can be any legal form, although it usually takes the form of a trust or a company limited by guarantee. Isle of Man Charity law essentially followed the English pattern with some minor differences up until the English Charities Act 2006, which is not being followed in the Isle of Man. Although entirely new legislation is anticipated eventually, taking account of the island's status as an international finance centre and its zero rate direct taxation on companies, in the meantime the Charities Exemption Regulations 2008 have effectively introduced a special (and relaxed) regulatory regime for private funded charities. There exist now therefore two regulatory regimes; the first for 'privately' funded charities and the second for 'publicly' funded charities.

A private charity is defined as a charity where the funding is exclusively from one donor, or from his/her spouse or issue who were living on the date of the original donation, or from any trust settled by the donor or if the donor is a corporate body from another corporate body belonging to the same group as the donor and which was in existence on the date of the original donation.

Any other charity is a publicly funded charity.

Charitable purposes and regulation

Publicly funded charities have to comply with the Charities Registration Act 1989, which requires all charities to register (other than private charities) and comply with a number of restrictions. Furthermore, all persons providing professional services as trustees or corporate service providers are licensed and regulated by the Isle of Man Financial Supervision Commission. In addition, H.M. Attorney General has an overriding supervisory role as the guardian of the public interest. If the charity is established as a company limited by guarantee, it must comply with the Companies Acts 1931-2004 or the new Companies Act 2006, whichever is applicable.

The regulatory regime derived from the Charities Registration Act 1989 provides that it is unlawful for any organisation to hold itself out as a charity in the Isle of Man unless it is registered. The authorities may refuse registration where they conclude an organisation is not established for charitable purposes, does not possess a substantial genuine connection with the Isle of Man, or the name of the institution is misleading or undesirable.

The Charities Registration Act 1989 also established a Registrar of Charities, with whom all charities have to be registered. Accounts have to be filed annually. They must be audited except for smaller charities. There is considerable confusion relating to the status of non-

Manx charities (e.g. English charities) in the Isle of Man, both in terms of compliance with the Charities Registration Act 1989 and the tax reliefs available.

Private charities that comply with the Charities Exemption Regulations 2008 are exempt from the provisions of the Charities Registration Act. They are however required to be approved by and be registered with the Attorney General, and submit annual audited accounts to him. However such information is confidential. The majority of the trustees must be resident in the Isle of Man and all meeting must take place in the Isle of Man. One of the trustees (or in the case of a corporate trustee, one of the directors) has to be appointed as the 'Responsible Person' who must be a 'key person' of a licensed fiduciary in the Isle of Man. This provides a confidential and relaxed regulatory regime for such privately funded charities.

'Charitable purposes' has the same meaning as it did in England following the *Pemsel* case of 1891 until the English 2006 Charities Act, and the purposes have to be exclusively charitable.

Taxation and donor reliefs

A registered charity is exempt from income tax. If it is a company, it will in any event fall under the zero rate corporation tax regime, and thus be tax free also. A full trading company being a subsidiary of a charitable trust is thus tax free, as is the parent charity. Donors resident in the Isle of Man can obtain tax relief in respect of donations made to registered charities in the Isle of Man.

Consequent upon the decision of the Court of Justice of the European Communities in the case of *Persche v Finanzamt Lüdenscheid*, in 2009, Article 56 on the free movement of capital enables eligible tax deductions on gifts made to charitable bodies in the taxpayer's state also to be claimed on gifts made to charities within the European Union outside the taxpayer's state. Although the Isle of Man is not a member of the European Union, it's relationship is governed by a protocol which provides that Article 56 is applicable to the Isle of Man. In consequence Isle of Man private charities can be established with fiscal efficiency by any European Union person.



Future development

Although the Charities Exemption Regulations 2008 have opened up the Isle of Man for international private charities, the need for a new legal framework for publicly funded charities remains. Government is currently developing a study which will produce new legislation in due course.

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Philanthropy Impact (incorporates EAPG, Philanthropy UK and the Philanthropy Advisors Forum). It was launched on 3 December 2012.