

JAMAICA

No. 13 - 2013

I assent,

[L.S.]

(Agd.) P. L. Allen

Governor-General

12th day of June, 2013

AN ACT to Make provision under several enactments for harmonizing the treatment of charitable organizations for the purpose of taxation; and for connected matters.

[13th day of June, 2013]

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1. This Act may be cited as the Charitable Organizations (Tax Harmonization) (Miscellaneous Provisions) Act, 2013. Short title.

[No.] *The Charitable Organizations (Tax Harmonization)*
(Miscellaneous Provisions) Act, 2013

Amendment
of
enactments;
and
construction.
Schedule.

2.—(1) The provisions of the enactments specified in the first column of the Schedule are amended in the manner specified respectively in relation to them in the second column of the Schedule.

(2) Each amendment shall be construed as one with the enactment specified in relation thereto.

SCHEDULE (Section 2)

Amendment to Enactments

<u>Enactment</u>	<u>Amendment</u>
Customs Act	<p>1. In section 2(1), insert in the appropriate alphabetical sequence the following definitions—</p> <p>““approved charitable organization” has the meaning given to it under the Income Tax Act;</p> <p>“charitable purpose” has the meaning given to it under the Income Tax Act;”.</p> <p>2. Delete subsection (2) of section 5 and substitute therefor the following—</p> <p>“ (2) Notwithstanding anything to the contrary, no import duty shall be payable upon any article imported into Jamaica or taken out of bond in Jamaica by—</p> <p>(a) an approved charitable organization and shown to the satisfaction of the Commissioner to be required for the charitable purposes of that organization;</p> <p>or</p> <p>(b) the University of the West Indies or the Council of Legal Education and shown to the satisfaction of the Commissioner to be required for the use of the University or the Council.</p>
General Consumption Tax Act	<p>1. In section 2(1), insert in the appropriate alphabetical sequence the following definitions—</p> <p>““approved charitable organization” has the meaning given to it under the Income Tax Act;</p> <p>“charitable purpose” has the meaning given to it under the Income Tax Act;”.</p>

*Charitable Organizations (Tax Harmonization)
(Miscellaneous Provisions) Act, 2013*

Amendment to Enactments

Enactment

Amendment

2. Delete section 43 and substitute therefor the following —

“ Refund to certain organizations.

43. An approved charitable organization which —

- (a) has acquired a taxable supply that is zero-rated for use in connection with the work of the organization;
- (b) has nevertheless paid tax in respect of the supply; and
- (c) is not entitled to claim a credit of input tax in respect of that supply,

may within two years of the date on which the tax was paid, apply to the Commissioner General for a refund of the tax, which application shall be in the form prescribed or approved by the Commissioner General.”.

3. Renumber section 47 as subsection (1) of the section and insert next after subsection (1) as renumbered, the following as subsection (2)—

“ (2) This section does not apply to any supply of goods or services to an approved charitable organization.”.

4. In Group 9 of Part II of the First Schedule, insert next after item 7 the following as item 7A—

“ 7A. Goods and services acquired by an approved charitable organization for the charitable purposes of the organization.”.

Amendment to Enactments

Enactment

Amendment

5. In Part II of the Third Schedule—

- (a) delete paragraph (b) of item 6 and substitute therefor the following—

“(b) in respect of which the Commissioner General is satisfied that the proceeds therefrom are for charitable purposes;” and

- (b) delete from item 8 the words “a charitable corporation or charitable association or” and substitute therefor the words “an approved charitable organization or by”.

Income Tax Act

1. In section 2—

- (a) insert in subsection (1), the following definitions in the appropriate alphabetical sequence —

““approved charitable organization” means an organization that, subject to subsection (8), has been approved as such by the Commissioner General under section 12(h);

“charitable purpose” shall be construed in accordance with subsection (4);”.

- (b) insert next after subsection (3) the following as subsections (4), (5), (6), (7) and (8)—

“ (4) Subject to subsections (6) and (7), each of the matters specified in the following paragraphs is a charitable purpose if it is carried out for the public benefit, namely—

- (a) the prevention or relief of poverty;
- (b) the advancement of education;
- (c) the advancement of religion;
- (d) the advancement of health or saving of lives;

Amendment to Enactments

Enactment

Amendment

- (e) the advancement of good citizenship or community development;
- (f) the advancement of the arts, culture, heritage, or science;
- (g) the advancement of amateur sport;
- (h) the advancement of human rights, conflict resolution, or reconciliation;
- (i) the promotion of religious or racial harmony or equality and diversity;
- (j) the advancement of environmental protection or improvement;
- (k) the relief of those in need because of youth, advanced age, ill-health, disability, financial hardship or other disadvantage (including temporary disadvantages such as the effects of a public disaster or public emergency);
- (l) the promotion of the efficiency of the armed forces or the efficiency of the police forces;
- (m) the advancement of animal welfare; or
- (n) a purpose specified by the Minister, by order, subject to negative resolution of the House of Representatives, as being analogous to any of those in the preceding paragraphs.

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Enactment

Amendment

(5) For the purposes of subsection (4), “public benefit”—

(a) includes a benefit of a kind comprised within the scope of the purposes specified in subsection (4) which—

(i) is available to members of the public at large; or

(ii) is available to a section of the public ascertained by reference to some specified geographical area; but

(b) does not include a benefit, as described in paragraph (a), if the persons for whom it is intended to be available are to be ascertained primarily by reference to their relationship with a particular person or body of persons, whether that relationship is one of blood, status, contract or otherwise.

(6) If the purposes of an organization that is or seeks to be registered as an approved charitable organization, include a purpose that is not a charitable purpose but that is merely ancillary to a charitable purpose of the organization, the presence of that non-charitable purpose does not, without more, prevent the organization from being regarded as, or qualifying to be, so registered.

[No.] *The Charitable Organizations (Tax Harmonization)
(Miscellaneous Provisions) Act, 2013*

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Amendment

(7) For the purposes of subsection (6), a purpose is ancillary to a charitable purpose of the organization if the non-charitable purpose is—

- (a) ancillary, secondary, subordinate, or incidental to a charitable purpose of the organization; and
- (b) not an independent purpose of the organization.

(8) Notwithstanding the requirement in section 12(h), for approval by the Commissioner General, an organization that immediately before the coming into operation of the Charitable Organizations (Tax Harmonization) (Miscellaneous Provisions) Act, 2013 had, for the purposes of any enactment relating to the revenue, been entitled to be treated as having been organized and operated for a charitable purpose, shall be treated as an approved charitable organization for the purposes of this or any other such enactment.”.

2. In section 12, delete paragraph (h) and substitute therefor the following—

- “ (h) the income of an organization, whether or not incorporated (including a trust established for charitable purposes), that—
 - (i) is organized and operated exclusively for charitable purposes;

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Amendment

- (ii) has no part of its net income or assets enuring, or likely to enure, to the personal benefit of any proprietor, member, shareholder, trustee or settlor hereof; and
- (iii) is approved by the Commissioner General for the purposes of this paragraph;”.

3. In section 13(1), delete paragraph (q) and substitute therefor the following—

“ (q) the amount or value of a donation to an approved charitable organization of—

- (i) money (however, the allowable deduction shall not exceed five per cent of the statutory income);
- (ii) other property (however, the allowable deduction shall be of an amount not exceeding the written down value of the property, or five per cent of the statutory income, whichever is the lesser amount).”.

4. Delete section 86 and substitute therefor the following—

“ Remission of tax. 86. The Minister may, if he is satisfied that it would be just and equitable to do so, remit the whole or any part of the income tax or any other amount payable under this Act by any person, other than an approved charitable organization, and he shall cause notice of the remission to be published in the *Gazette*.”.

[No.] *The Charitable Organizations (Tax Harmonization)
(Miscellaneous Provisions) Act, 2013*

Amendment to Enactments

<u>Enactment</u>	<u>Amendment</u>
Property Tax Act	<p>1. In section 10 (1)—</p> <p style="padding-left: 40px;">(a) delete paragraph (b) and substitute therefor the following—</p> <p style="padding-left: 80px;">“(b) all buildings and lands belonging to and used by an approved charitable organization, and not falling within the description of any other paragraph of this subsection”;</p> <p style="padding-left: 40px;">(b) delete from paragraph (l) the words, “charitable or”.</p> <p>2. In section 13, insert immediately after the words “this Act—” the following definition—</p> <p style="padding-left: 40px;">““approved charitable organization” has the meaning given to it under the Income Tax Act;”.</p>
Stamp Duty Act	<p>Delete the first item under the sub-heading “Exemption From All Stamp Duties Whatsoever” which second follows the head “CONVEYANCES” and substitute therefor the following—</p> <p style="padding-left: 40px;">“An approved charitable organization is exempt from any portion of stamp duty payable by the organization (not exceeding fifty per cent of the stamp duty chargeable) in respect of any conveyance made by or to the organization of land used or intended to be used by the organization for its charitable purposes; and “approved charitable organization” has the meaning given to it under the Income Tax Act.”.</p>
Transfer Tax Act	<p>1. In section 2 (1), insert immediately before the definition of “capital sum” the following definition—</p> <p style="padding-left: 40px;">““approved charitable organization” has the meaning given to it under the Income Tax Act.”.</p>

Amendment to Enactments

Enactment

Amendment

2. In section 15, delete from subsection (6) the words “public religious worship and a schoolroom, or for either of such purposes,” and substitute therefor the words “an approved charitable organization”.

3. In section 17 (1), delete paragraph (c) and substitute therefor the following—

“(c) any transfer by way of gift to an approved charitable organization;”.

4. Delete section 46 and substitute therefor the following—

46. —(1) If the Minister is satisfied that it would be just and equitable to do so, he may remit any amount of tax charged or chargeable under this Act, and he shall cause notice of the remission to be published in the *Gazette*.

“Remission
of tax.

(2) This section does not apply to any tax charged or chargeable in respect of a transfer of property to or from an approved charitable organization.”.

Passed in the House of Representatives this 14th day of May, 2013.

LLOYD B. SMITH
Deputy Speaker.

Passed in the Senate this 24th day of May 2013.

FLOYD E. MORRIS
President.

This printed impression has been carefully compared by me with the authenticated impression of the foregoing Act, and has been found by me to be a true and correct printed copy of the said Act.

Clerk to the Houses of Parliament.

