TAXATION OF ENTITIES IN TANZANIA UNDER THE INCOME TAX ACT [CAP 332 RE 2019]

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1.0. INTRODUCTION

The income tax act provides for different rules used to impose tax among persons and entities which however both receives income for a year of income but each person or entity based on its nature is taxed differently from an entity of another nature, for example the law recognizes deduction on entities and persons carrying charitable activities in the society or those which are religious in nature of 25% more other than that which is recognized from section 11 of the income tax Act which is available for all persons, entities and individuals. Moreover, the law provides for persons as recognized under the income tax which include individuals and entities like trust, partnership and corporation, That there are persons who are not taxed on their own for example partnership but their taxation is based on interest a partner has in the firm, but other persons for example corporation are taxed separately from the shareholders[1].

The rules of taxation on Partnership, trust, corporation, insurance companies, club, charitable and religious organization are those which are used to examine tax liability of the organization or entity after all taxable income are included, deductions recognized from section 11 are made thereupon it is where the rules specifically which apply to that organization or entity are applied for taxation, therefore this rules are those which are applicable peculiarly to the person apart from the general rules of taxation.

[1] Luoga F.D.A.M. Makinyika. A source book of income tax law in Tanzania

2.0. SPECIFIC RULES APPLICABLE TO DIFFERENT EN PERSONS AND ORGANIZATION

2.1. Taxation on corporation

The meaning of corporation is provided under section 3 of the income tax act which involves a company or corporate body registered or incorporated under the laws of Tanzania, it include also unit trust[2]. A corporation is taxed differently from its share holder. That, because a corporation normally has a legal personality and as per section 5(2) of the income tax act income from a person is to be determined separately, at the point before dividends, an income of the corporation is taxed separately from that which the share holders will receive from such dividend.

2.1.2. Unrelieved loss for two years. Even so loss are deducted under section 19 of the income act, but for corporation when a corporation receives losses in two consecutive years and in the present year of income it also receives loss then that corporation will be subject to tax[3].

Generally an income of a company from investment or business is calculated based on general rules applicable in calculating income from business or investment for the year of income that is section 8(2) and section 9(2) of the income tax act, concerning

[2] Rules which specifically apply for taxation of corporation are provided under section 53 of the income tax Act [CAP 332 RE 2019].
[3] Tanzania tax Manual 2019-2020 published by MEHTA & ASSOCIATES (certified public accountant)

deductions, also the general rules which provides for deductions are applicable specifically from section 11 are applicable[4].

2.2. Taxation of Partnership

Partnership has its meaning stipulated under the income tax act specifically section 3 of the Act (supra), that, partnership is an association between individuals or body corporate which normally carries out their business in common. Despite section 4 of the income tax which provides for taxation of all persons who has total income for the year of income, and for the purpose of income tax act partnership being among the persons, it is not however subject to tax on its total income[5]. This is not to be understood that an income from partnership is not subject to tax at all, section 48 (2)of the income tax act provides that the income from a partnership is to be allocated to the partners. That, after identifying total income of the partnership for the year of income then the same is to be distributed to the partners proportional to their share or interest they hold in the firm for such income to be taxed. To clarify the matter it can be said that for a total income of a partnership the tax payer of such income is the partners subject to interest they hold in that firm and not the partnership by itself. In calculation of the partnership expenditure the following lines are to be considered;

[4] The income tax Act[CAP 332 RE 2019]

[5] By considering the proviso of the income tax Act specifically section 48(1)(2) (6), 50(4) the income from a partnership is generally subject to tax, but it is not the partnership which will bare a burden to pay such tax but the partners subject to the share or interest they hold in that firm.

2.2.1. Amount derived and expenditure incurred by the partners in common. Through section 48(3) of the income tax act it is provided that, amount or expenditure incurred by the partners in common is not to be treated as amount or expenditure by the partners but it is to be treated as amount or expenditure of the partnership . the purpose of this provision is to include all amount and expenditures derive by the partners in common to be calculated in the total income of the partnership for the purpose of the same to be distributed equally or in proportion to the interest of a partner in a firm for taxation rather than to be treated as amount or expenditure of a partner[6].

2.2.2. Asset and liabilities owned by partners in common. It is provided under section 48(4) that assets or liabilities that the partners own in common are to be treated as owned by the partnership this is also to calculate what is totally owned by the partnership so that it can be allocated to the partners for taxation.

2.3. Taxation of trust

The meaning of trust is provided under section 3 of the income tax act that, a trust means arrangement where a trustee holds asset, normally a trustee holds asset on a fiduciary capacity for the benefit of identifiable person. Normally liability of a trust in terms of taxation is calculated separately from its beneficiary, also in term of trusts which have the same trustee, the calculation of total income for each trust must be made separately and hence its tax liability will also be assed separately. Regarding

[6] ibid

distribution a resident trust is exempted in the hands of the trust's beneficiary but for non-resident trust or unit trust the distribution shall be included in calculating the income of the trust's beneficiaries[7].

2.3.1. Amount derived and expenditure incurred by a trust. That, where an amount is derived or an expenditure is made by a trust or trustee in the capacity of the trustee then the same is to be treated as derived or incurred by the trust and not any other person, hence it is calculated as an income or expenditure of the trust regardless of whether the same is derived or incurred on behalf of another person or any other person is entitled to that amount or expenditure.

2.3.2.1. Asset and liability owned in the capacity of the trustee. When there is an asset or liability which a trust or trustee owns but in the capacity of the trustee then the same should be treated as owned by the trust and not by any other person.

2.4. Taxation of clubs

For the purpose of taxation, clubs and trade association are treated as business. In calculation of the income of a club or association for a year of income then all amount that are included under normal business as recognized under section 8 (1) (2) of the income tax Act and in other provisions of the act (supra) are to be included for taxation, not only that but specific amounts which are not recognized in other business, are also to be included such as entrance fee, subscription and amount derived from members

[7] Clarification under the book of E. Kitime & D. Mwamlangala, Laws of taxation in Tanzania(2017)

during the year of income. Notwithstanding income from a club to be subject to tax, where three-quarter or more of the amount to be included in calculating the income of the club or association is from the members then the income received shall not be subject to tax or it will not be a chargeable income. An income which three-quarter or more is from the members of the club or association is not a chargeable income because a person cannot make profit on his own meaning because the large part of the income was from members of the club themselves then it will not be subject to tax[8], but when the income received by the club or association for the year of income is from non-members then the same will be subject to tax[9].

2.5. Taxation of insurance business

In calculating income from an insurance business, the income tax act under section 58(1) provides for income from such business to be calculated separately from any other activities that a person does apart from the insurance business. When calculating an income of the insurance business amount which is included for taxation of income from business is to be included as provided under the income tax act. Furthermore, there are specific amounts which only are applicable to insurance companies which are to be included.

[8] A person cannot make profit on his own https://www,taxinsider.co.uk
[9] ibid

2.5.1. Premiums derived during the year of income. Premium is a periodic payment required to keep an insurance policy in effect[10], section 58(1)(a)(i) of the income tax act provides for such amount form a person as an insurer or re-insurer to be included in calculating total year of income. That, after including the entire amount from business which is subject to tax as provided under section 8 and other provisions of the income tax act, premiums must also be included to assess the total income of the insurance business for the year of income.

2.5.2. proceeds of reinsurance. it is provided under the income tax act through section 58 (2)(a)(ii) that an amount received in a contract of reinsurance is also to be included in calculating a person year of income from insurance business[11].

Concerning deduction in insurance business all deductable income from business as recognized from section11 of the income tax act is to be deducted but such deduction shall extend to other amount recognized to be deducted for insurance business.

2.5.3. proceed incurred during the year of income. In terms of deduction of income from an insurance business, the amount which was used in conducting the business for insurer and re-insurer is to be deducted. Also premium which was used in the year of income in a contract of re-insurance is also to be deducted[12].

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[10] The black's law dictionary (8th edition 2004), an insurance premium therefore is an amount of money an individual or business must pay for an insurance policy

[11] ibid

[12] For the purpose of clarification reinsurer is a company that provides financial protection to insurance companies (provides insurance to insurance companies) https://www.investopedia.com

2.6. Taxation of charitable organization and religious institution.

Charitable organizations and religious organization when conducting charitable activities are treated as conducting charitable business. Normally an income received in a year of income by a charitable organization when conducting charitable business is subject to tax. proviso of the income tax act particularly section 64(2)(a) is to the effect that, when calculating total income of a charitable organization or religious organization then all amounts that are included under the income tax act, meaning amount which are included in determination of total income from a business shall also be included but, it should also be included together with gifts and donation received by the organization in the year of income. In term of deduction all deduction which is recognized under the income tax act should also be deducted on charitable business of the organization or religious institution. Despite that, a charitable organization is entitled to make further deduction which is preferential treatment to the organization which includes:

2.6.1. Deduction of amount applied for the benefit of residents. When a charitable organization or a religious organization uses an amount on its charitable business in providing benefit to a resident person, or where the expenditure has source in the united republic

2.6.2. Deduction of 25 percent. Despite deductions which are recognized under the income act for business and investment total income, charitable organizations and religious organizations are given preferential treatment and that is to deduct 25 percent

more after the deduction which is recognized for all business or investment total income. The proviso of income tax act specifically section 64(2)(ii), provides to the effect that, after deducting amount deductable under other provisions of the income tax act, then a charitable or religious organization can make together another deduction of 25 percent but such deduction is allowed when the organization didn't make a deduction of amount applied in the course of its charitable business to benefit a resident person or expenditure which has source in the united republic[13].

3.0. CONCLUSION

Considering all the matters, despite specific rules which are applicable to a certain person or organization directly, general provisions which provides for calculation of chargeable income in business and investment and deduction thereto are also applicable to these persons. That, after calculating income chargeable for these persons or organization as recognized under the income act then thereupon there are specific rules available to each person who includes rules which demand other amount to be deducted and those which allow deduction specifically for that person or organization[14].

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[13] Ibid

[14] Normally through preferential treatment which are given by the income tax act to some persons and organization it is where some people makes their arrangements so as their income or assets they own can fall under the income generated by such organization or if it is an asset to be foreseen as owned by such organization for example a person may shelter his income or asset to a charitable or religious organization so as to enjoy the deduction of 25% as provided under section 64(2)(b)(ii) of the income tax act(***supra***) which is a form of tax avoidance

- **This writing is based on interpretation of the law as understood by the author, it is not to be viewed as a legal advice to anyone who may access the same**