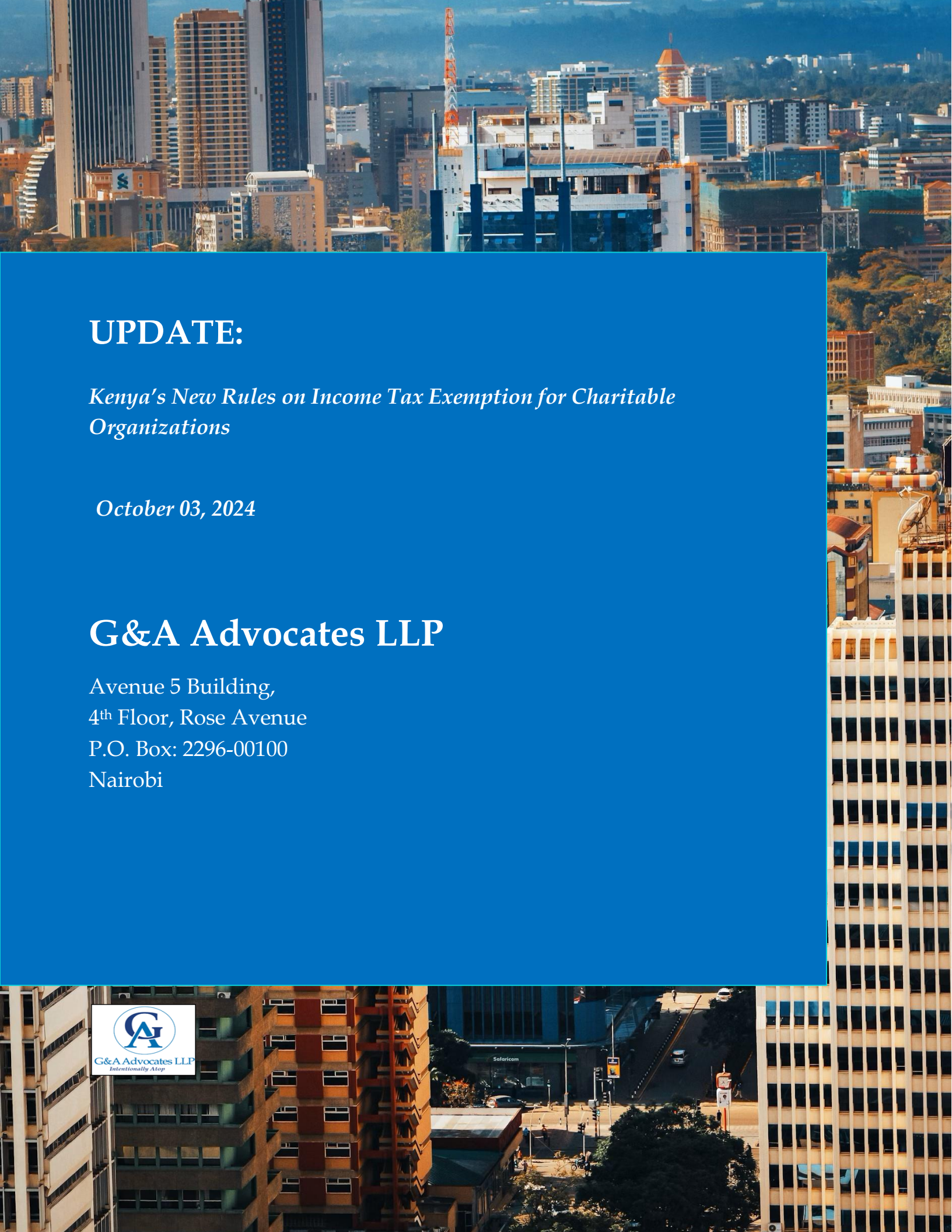


A panoramic view of the Nairobi skyline, featuring a mix of modern high-rise buildings and older structures, with a clear blue sky and distant hills.

UPDATE:

Kenya's New Rules on Income Tax Exemption for Charitable Organizations

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Kenya's New Rules on Income Tax Exemption for Charitable Organizations

The Income Tax Act (Charitable Organisations and Donations Exemptions) Rules of 2024 (**the Rules**), Gazetted on June 18, 2024 through Legal Notice No. 105 of 2024, came into force to repeal the Income Tax (Charitable Donations) Regulations of 2007.

The Rules' primary objectives are to prescribe procedures for determining the allowability of donations and to prescribe the procedure for applying for, processing, granting, and retaining an exemption from income tax by charitable organizations.

What is a Charitable Organisation under the Rules?

An organisation qualifies for an exemption under the Rules if it is established for charitable purposes. These are outlined

under the Income Tax Act and the Rules to include as acts that aid in the relief of poverty, distress of the public, and advancement of religion and education.

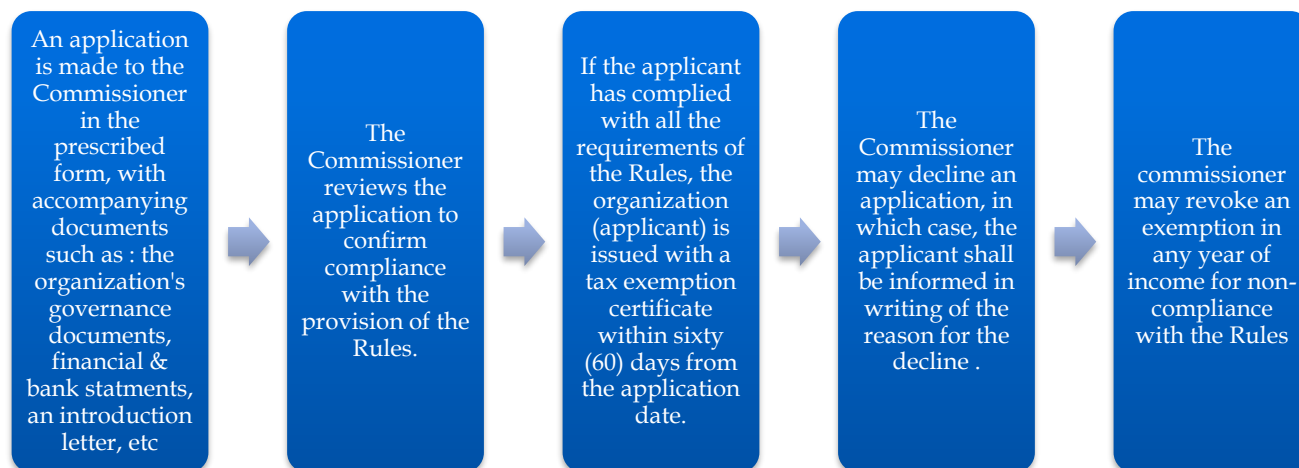
More so, the Rules stipulate various tests to determine charitable purpose, being the (1) organizational test and the (2) operational test.

The governing documents of an organization must clearly outline that it has been established for charitable purposes under the organisational test.

The operational test on the other hand stipulates that the organization must engage in activities which accomplish the charitable purpose for which it is founded and must not also engage in unlawful activities.

Application Process

A summary of the application process is as follows:



When applying, the charitable organization shall be required to have been in operation for at least one (1) year.

The income tax exemption certificate once issued by the commissioner is valid for five (5) years and an application for renewal should be made at least six (6) months before its expiry.

Other Salient Provisions of the Rules

1. Accumulation of Surplus Funds

Surplus funds for purposes of the Rules refers to excess of income over expenditure in any accounting period. The Rules provide that whilst a charitable organization may accumulate surplus funds as desired, it shall not retain more than an average of fifteen percent (15%) of funds collected in a period of three (3) years without applying the surplus funds to charitable purposes.

They further specify that retained surplus funds exclude profits or gains from business as provided under Paragraph 10 of Schedule 1 of the Income Tax Act, which exempts profits if the business is for public benefit, primarily run by beneficiaries, or consists of rental income.

2. Unrelated Business Income

‘Unrelated business’ for purposes of the Rules refers to any business which is not conducted to support charitable activities. In this respect, the Rules provide that charitable organizations are

required to apply for a separate personal identification number (PIN) in connection with any unrelated business(es).

3. Compliance with Other Tax law

A charitable organization exempted under the Rules is furthermore expected to comply with the requirements of any applicable tax laws as well as the Rules. This includes submitting an income tax return in the prescribed form yearly.

4. Transition

Charitable organizations that were exempt under the previous regulations are required to comply with the new Rules within 12 months from their coming into operation i.e. June 18, 2024.

Our Comments and Conclusion

In an evolving legal and regulatory environment for charities, the Rules take effect shortly after the gazettelement of the Public Benefit Organizations Act, 2013 which replaces the Non-Governmental Organizations Coordination Act, 1990.

Charitable organizations should pay attention to the revised tax exemption framework introduced by the Rules, outlining requirements, application procedures, allowable deductions, as well as stricter definitions of charitable organizations, their income usage, and surplus accumulation.

Disclaimer: *This article is for general informational purposes only and is not intended to constitute legal advice. Readers should contact an attorney/advocate to obtain legal advice.*

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