Navigating The Maze Of New Audit Reporting Requirements For Charitable Institutions: Decoding New Form 10B/10BB.

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I. Introduction

A significant and transformative change in audit reporting for charitable institutions is set to take effect from April 1, 2023. This change, facilitated by Notification No. 7/2023 dated February 21, 2023, issued by the Central Board of Direct Taxes (CBDT), marks a substantial departure from the existing rules governing income tax compliance in India.The focus of this transformation centers on the audit reports required under Section 12A of the Income-tax Act, 1961, specifically affecting funds, trusts, institutions, universities, educational institutions, hospitals, and medical institutions.

The revised audit reports, particularly the revamped Form 10B, now demand more comprehensive disclosures and reporting, signifying a shift towards greater transparency and compliance in the sector. The impetus for this comprehensive revision can be traced to the observations made in the report of the Comptroller and Auditor General (CAG), dated August 2022. This report, which focused on the performance audit of exemptions granted to charitable institutions for the fiscal year ending in March 2021, highlighted inadequacies in the existing audit reports. These shortcomings included challenges in capturing crucial information such as details of income receipts under different heads, certification of corpus donation exemptions by auditors, and claims of deemed application.

In light of these changes and the imperative to enhance accountability and transparency, the forthcoming modifications to audit reporting for charitable institutions signal a significant development in the landscape of income tax compliance in India. This article delves into the specifics of these revisions and their potential implications for charitable organizations, shedding light on the broader context and motivations driving this transformative shift.

II. Applicability

Charitable institutions fulfilling the following criteria are required to furnish audit report in Form 10B:

(i) Having total income in excess of INR

5 Cr. before applying the exemption provisions; or

(ii) Having received foreign contribution; or

(iii) Having applied any part of their income outside India. The scope of the revised form has been substantially expanded, including introducing new reporting requirements.

Charitable institutions not covered by the above criteria are required to furnish audit report in Form 10BB which has limited disclosures as compared to Form 10B.

BEFORE AMENDMENT		AFTER AMENDMENT	
Form 10B	Form 10BB	Form 10B	Form 10BB
Charitable institutions registered under S. 12AB	Charitable institutions registered under different clauses of S.10(23C)	Charitable institutions registered under S.12AB or different clauses of S.10(23C) fulfilling the following criteria: Total income before giving effect to exemption provisions exceeds INR 5 Cr during financial year; or o Having received any foreign contribution during the financial year; or Having applied any part of its income outside India during the financial year	Charitable institutions registered under S.12AB or different clauses of S.10(23C) and not covered by the specified criteria in the earlier column.

III. Format

Form10B has 49 clauses and 28 schedules, whereas Form10BB has 32 clauses and 5 schedules. Forms can be divided into following parts:

Part	Details	Clause Number in Form10B	Clause Number in Form10BB
1	General Information	1-14	1-10
2	Activity based information	15-19	-
3	Details related to certain violations	20-24	11-14
4	Donation related information	25-27	15-21
5	Details of application of income	28-40	22-27
6	Other details such as specified persons and specified violations, depreciation, deduction under section 10, transactions specified in section 269SS, 269ST, 269T and details related to TDS.	41-49	28-32

IV. Key Changes

The new form multifold the scope of the particulars and the information to be furnished in the report as mentioned below:

1. Registration related data

Requires details of date of registration/provisional registration with unique registration number, authority granting registration and date from which the registration/provisional registration is effective.

2. Management Particulars

This requires details of author/founder/settlor/trustees/members of society/members of governing council/

director(s)/ shareholders holding 5% or more of shareholding/office bearer at any time during the previous year, including name, address, relation, percentage shareholding, unique identification number and changes if any. If any of the above specified persons is not an individual, details of natural persons who are beneficial owners (5% or more) of such person at any time during the previous year. These details, by and large, are similar to requirements in the tax return in ITR-7 applicable to charitable institutions.

3. Objects of the Trust

It provides for identifying the charitable purpose(s) under which the charitable institution may be covered. It also requires reporting of details about any modification in the objects, which do not conform to the conditions of registration. The information includes details such as date of modification, date of application for re-registration and status of such application.

4. Activity Commencement –

In case of charitable institutions having provisional registration, details of commencement of activities during the tax year (if any) with date thereof. Information about date of application for re-registration together with status of such application (pending/granted/ cancelled).

5. Advancement of general public utility

General Public Utility is a residuary charitable purpose under the law and exemption thereof is subject to fulfillment of the following cumulative conditions:

- It involves the carrying on of activities in the nature of trade, commerce or business or rendering any services in relation thereto for a consideration.
- Such activity is undertaken in the course of actual carrying out of GPU and aggregate receipts from such activity during the year do not exceed 20% of the total receipts of the charitable institution or 25 Lakhs which ever is higher.

6. Business details

Where the charitable institution has any business undertaking or business incidental to the objects, details such as nature of business undertaking, business code, maintenance of separate books of accounts are to be disclosed. Further, in case of business undertaking, amount of income from business undertaking is to be included or excluded from total income to be disclosed.

7. Tax deducted at source (TDS) on receipts –

This requires disclosure of details of receipts on which tax is deducted at source under specified provisions of the act - Apart from name/TAN of the deductor, disclosure includes the category of receipts to be bifurcated as:

(I) In the nature of trade, commerce or business.

(ii) Activity of rendering any service in relation to any trade, commerce or business.

(iii) Others (nature to be specified).

8. Donations

This requires break-up of donation received, broadly as under:

- Total sum of donations reported in Form 10BD furnished by charitable institutions.
- Donation not reported in Form 10BD or could not be reported due to non -availability of identification of donor or donations in kind or anonymous donations or any other voluntary contribution.

Total foreign contribution received during the tax year, including break-up into corpus and non-corpus and application therefrom.

Details about voluntary contribution forming part of corpus, along the lines of Schedule J of ITR-7, including information about opening balance, receipt, application, invested or deposited back into corpus, invested in specified modes.

9. Income taxable under S.115BBI –

Finance Act, 2022 introduced a new provision to tax certain specified income at a flat rate of 30% without any deduction in respect of expenditure or allowance or set-off of any loss. The reporting requirement herein is pursuant to the amendment and is consistent with reporting prescribed under ITR-7.

10. Applicability of 13(10)

Finance Act, 2022 introduced a new provision for computation of income in circumstances, including breach of certain provisions, such as non maintenance of books of account, non-obtaining of audit report or non-furnishing of tax return within due date. - The reporting requirement herein is pursuant to the amendment and is consistent with reporting prescribed under ITR-7.

11. Specified violations

The act provides for cancellation of registration under certain specified violations by charitable institutions. The reporting requires disclosure of violations, if any, by charitable institution such as application of income for other than objects, application of income for benefit of religious community or caste, activity is not genuine or is not carried out in accordance with any or all conditions of registration, non-compliance of any other law.

12. Application of voluntary contribution

The reporting requirements herein are largely similar to those prescribed in ITR-7. This includes object-wise details of donation to other persons, break-up of application into revenue or capital, amount to be disallowed. - Additionally, in relation to contribution/donation to other person, disclosure requires breakup of payment made in electronic and other than electronic modes. - Further, where application results in payment in excess of INR 5cr, name and permanent account number (PAN) of payee, amount of application, mode of application (electronic or otherwise) and TDS details to be disclosed. Additionally, similar details are to be disclosed in respect of application of income out of sources such as corpus, borrowed funds, accumulated income, which do not qualify as application.

13. Others

Disclosure is also required for breach of specified provisions of the income tax law, such as acceptance or repayment of any loan or deposit or specified sum exceeding prescribed limit other than by banking modes, default in TDS/tax collected at source (TCS) compliances.

V. Consequences of Non-Compliance with Form 10B Provisions

Non-compliance with the provisions of Form 10B can have significant repercussions for charitable or religious organizations. Failure to file Form 10B as required can lead to serious consequences, including the loss of tax exemption status. This means that the organization may become subject to income tax on its earnings, potentially resulting in a financial burden. Additionally, non-compliance may result in the imposition of penalties and interest by tax authorities, further exacerbating the organization's financial and legal challenges. Therefore, it is essential for such organizations to diligently adhere to the Form 10B requirements to maintain their tax-exempt status and avoid these adverse outcomes.

VI. Addressing Delay in Filing Form 10B

When it comes to cases of delay in filing Form 10B, there are specific steps that can be taken to rectify the situation. Firstly, the Chief Commissioner of Income Tax holds the authority to condone a delay of up to 365 days if valid reasons for the delay exist. This provides a window for organizations to address minor delays in filing. In situations where the delay extends beyond 365 days, the Chief Commissioner can still consider condoning the delay, but strong and substantiated reasons must be provided to justify the prolonged delay. Valid reasons for such delays may encompass unforeseen circumstances, genuine difficulties, or other justifiable causes that hindered the timely submission of Form 10B. It's crucial for organizations to communicate and document these reasons effectively to seek the necessary condonation and ensure compliance with regulatory requirements.

VII. Challenges And Issues

1. Complexity of Forms

a). Comparable to Form 3CD for large businesses.

b). Require a deep understanding of tax regulations.

2. Data Collection and Organization

a) Gathering data from past and present financial records.

b) Often handled by volunteers and non-professionally qualified staff.

c) Lack of accounting expertise can make the process overwhelming.

3. Interpretation of Tax Laws

a) Complex tax laws create challenges.

b) Different interpretations of rules and regulations.

c) Potential for errors and disputes with tax authorities.

4. Timing of Introduction

a) Forms introduced late in the financial year.

b) Limited time to understand and comply with new requirements.

c) Tools and resources for form completion often available shortly before the deadline, increasing time pressure.

VIII. Conclusion

In conclusion, the revised reporting requirements for charitable institutions present a multifaceted challenge due to their expansive scope and intricate detail. Compiling the necessary information can be a formidable task, particularly as the revised form was introduced towards the end of the year, potentially catching organizations off guard and not aligned with their existing software systems.

Furthermore, the burden extends to auditors, who are tasked with verifying numerous particulars and certifying them as “true and correct,” adding to the complexity of compliance. While some reporting requirements align with disclosures in ITR-7, many others necessitate additional particulars, increasing the reporting burden significantly.

The reporting of specified violations has the potential to provide tax authorities with valuable information for initiating proceedings to cancel an organization’s registration. This introduces the prospect of exit tax levies under the law. Additionally, disclosing the status of applications for modification or re-registration may shed light on any delays in the registration process, which, in turn, could trigger exit tax levies, as proposed in the Finance Bill of 2023.

Lastly, the determination of whether an activity undertaken by these institutions constitutes trade, commerce, or business, or if it is merely incidental to their charitable objectives, involves a complex fact-finding exercise. This determination relies on the application of principles laid down by the Supreme Court in recent rulings, such as those in the cases of Ahmedabad Urban Development Authority and New Noble Educational Society. Navigating these legal intricacies adds an additional layer of complexity to the reporting process for charitable institutions.

In light of these challenges and complexities, it becomes imperative for charitable institutions to seek expert guidance and diligently comply with the revised reporting requirements to ensure both legal compliance and the preservation of their tax-exempt status.

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