

Taxation on Charitable Institutions – Income Tax Perspective

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Coverage

- OVERVIEW.
- TAXABILITY OF INCOME.
- REGISTRATION.
- BOOKS OF ACCOUNTS.
- RETURNS.
- AUDIT.



OVER VIEW

1. FIRST REGIME

2. SECOND REGIME.



SEC - 10 (23 C)



Hospitals or Educational Institution



Hospitals or Educational institutions

Government Support

If wholly or substantially (more than 50% of total receipts) financed by government




Annual Receipts

If not supported by Govt. but aggregate annual receipts is below 5 Crores.

SEC 10 (23 C)

1. Any University or Educational Institution existing solely for educational purposes and not for the purpose of profit Wholly or Substantially financed by Government
2. Any Hospital or Medical Institution existing solely for medical relief wholly or substantially financed by Government
3. Any University or Educational Institution having the Gross Receipts less than the prescribed limit which is 5Cr now
4. Any Hospital or Medical Institution having the Gross Receipts less than the prescribed limit which is 5Cr now



5. Any other fund having regard to the objects of the fund or institution and its importance throughout India or throughout any state or states. Approval to be obtained from the prescribed authority


6. Any trust or institution wholly for public religious purposes or wholly for Public religious and charitable purposes. Approval to be obtained from the prescribed authority

7. Any university or other educational institution solely for the educational purposes (Not financed by government) and which maybe approved by the Principal Commissioner

8. (via) Any Hospital or other medical institution solely for the Medical purposes (Not financed by government) and which maybe approved by the Principal Commissioner.

➤ An educational institution having annual receipts of ₹ 3.80 crore during the P.Y. 2023-24, has availed exemption under section 10(23C)(iiiad). The Assessing Officer has denied the exemption on the grounds that the educational institution has not made any application to the prescribed authority for approval under the said section 10(23C)(iiiad). Examine the action of the Assessing Officer in denying the exemption.

➤ *As per section 10(23C)(iiiad), income of any university or other educational institution existing solely for educational purposes and not for purposes of profit would be exempt if the aggregate annual receipts of such university or educational institution do not exceed ₹ 5 crore. Therefore, the exemption available under this section can be availed without making any application to the prescribed authority. Therefore, the action of the Assessing Officer in denying the exemption to the educational institution is not correct.*

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- A not for profit trust undertakes philanthropic activities through an educational institution and a hospital. During the P.Y. 2023-24, the trust had annual receipts of ₹ 3 crore from its educational institution and ₹ 4 crore from the hospital. During the P.Y. 2023-24, it desires to avail exemption under section 10(23C)(iiiad) and 10(23C)(iii ae), as the individual threshold under each of the subclauses, is less than ₹ 5 crore. Can it do so? Examine.
 - As per Explanation below to section 10(23C)(iii ae), it has been clarified that the limit of annual receipts of ₹ 5 crore is qua 'taxpayer' and not qua 'activity'. Therefore, if the aggregate annual receipts from educational activity and medical activity exceeds ₹ 5 crores, then, exemption under sub-clause (iiiad) and (iii ae) cannot be availed by the trust.
 - Since, in the present case, the aggregate annual receipt of ₹ 7 crores (₹ 3 crores of educational institution and ₹ 4 crores from hospital) exceeds the threshold of ₹ 5 crores, exemption under section 10(23C)(iiiad) and (iii ae) cannot be availed, even though the individual receipts from educational institution and hospital have not exceeded ₹ 5 crores.



TYPES OF CHARITABLE INSTITUTIONS



TRUST



SOCIETIES



SECTION 8 COMPANIES



HINDU MATH



WAKF BOARD



SEC 12 AB REGISTERED ENTITIES



Charitable Purpose - Sec 2(15)



RELIEF OF POOR	MEDICAL RELIEF	PRESERVATION OF ENVIRONMENT	Any other object of General Public Utility
EDUCATION	YOGA	PRESERVATION OF MONUMENTS	

Any other object of general public utility


It may include any activity in the nature of trade, commerce or business, but:


- §) The activity carried out in the course of the charitable purpose other than GPU
- §) Receipts from such activity shall not exceed 20% of total receipts.


Overview - Object of general public utility not to comprise receipts from trade, commerce, business etc.


- There is no total embargo on commercial receipts. Receipts from these activities up to the following limits are acceptable
 - AY 2009-10 to 2011-12: up to Rs. 10 lakhs/year
 - AY 2012-13 to 2015-16: up to Rs. 25 lakhs/year
 - From AY 2016-17: up to 20% of the total receipts
- This embargo does not apply to
 - Public religious trusts
 - Charitable trusts carrying on the first five limbs of charity as defined in S. 2(15) – Circular 11/2008 dt 19.12.2008

Trade associations carrying out commercial activities will be hit – ACIT vs. Ahmedabad Urban Development Authority (SC) (2022) 143 taxmann.com 278 (SC) 19.10.2022

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- An institution having its main object as “advancement of general public utility” received ` 30 lakhs in aggregate during the P.Y.2023-24 from an activity in the nature of trade. The total receipts of the institution, including donations, was ` 140 lakhs. It applied 85% of its total receipts from such activity during the same year for its main object i.e., advancement of object of general public utility.
 - (i) What would be the tax consequence of such receipt and application thereof by the institution?
 - (ii) Would your answer be different if the institution’s total receipts had been ` 150 lakhs (instead of ` 140 lakhs) in aggregate during the P.Y.2023-24?
 - (iii) What would be your answer if the main object of the institution is “relief of the poor” and the institution receives ` 30 lakhs from a trading activity, when its total receipts are ` 140 lakhs and applies 85% of the said receipts for its main object?

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- (i) As the main object of the institution is “advancement of object of general public utility”, the institution will lose its “charitable” status for the P.Y.2023-24, since it has received ` 30 lakhs from an activity in the nature of trade, which exceeds ` 28 lakhs, being 20% of the total receipts of the institution undertaking that activity for the previous year. The application of 85% of such receipt for its main object during the year would not help in retaining its “charitable” status for that year. The institution will lose its charitable status and consequently, the benefit of exemption of income for the P.Y.2023-24, irrespective of the fact that its approval is not withdrawn or its registration is not cancelled.

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- (ii) If the total receipt of the institution is ₹ 150 lakhs, and the institution receives ₹ 30 lakhs in aggregate from an activity in the nature of trade during the P.Y.2023-24, then it will not lose its “charitable” status since receipt of upto 20% of the total receipts of the institution in a year from such activity is permissible. The institution can claim exemption subject to fulfilment of other conditions under sections 11 to 13. Further, such activity should also be undertaken in the course of actual carrying out of such advancement of any other object of general public utility

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- (iii) The restriction regarding carrying on a trading activity for a cess, fee or other consideration will not apply if the main object of the institution is “relief of the poor”.

Therefore, receipt of ` 30 lakhs from a trading activity by such an institution will not affect its “charitable” status, even if it exceeds 20% of the total receipts of the institution. The institution can claim exemption subject to fulfilment of other conditions under sections 11 to 13.




Charitable trust engaged in business activity


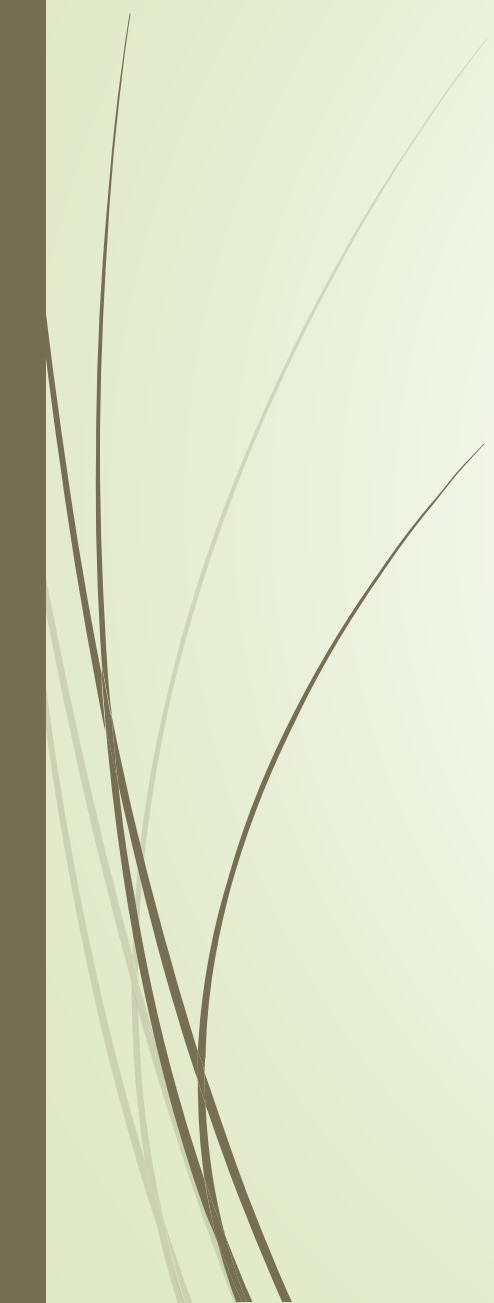
- ▶ - Section 11(4A) provides that the exemption under the respective regime, would be available in respect of income, being profits and gains from business activity if — (a) such business is incidental to the attainment of the objects of the trust/institution; and (b) separate books of account are maintained by such trust/institution in respect of such business



Cases where trust property consists of a business undertaking

- ▶ Section 11(4) clarifies that for the purposes of section 11, property held under trust may consist of a business undertaking so held. If that be so, the trustees may claim that the income of such undertaking enjoys exemption under section 11. Section 11(4) provides that –
- ▶ (a) The Assessing Officer shall have the power to determine the income of the undertaking in accordance with the provisions of the Act relating to assessment, and
- ▶ (b) Where the income determined by the Assessing Officer is in excess of that shown in the books of the undertaking, such excess shall be deemed to be applied to purposes other than charitable or religious purposes.

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- NSN, a charitable educational trust approved under section 10(23C)(vi), is running a school. It operates a stationery shop outside the school campus. A sum of ₹ 75 lakhs has been derived as net income from such business activity, which has been applied towards the objectives of the trust in providing education. The trust maintains separate books of accounts for the business activity. Examine the taxability of application of the income, if the income so derived relates to the previous year 2023-24.

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- ▶ The trust objective of providing education is a charitable purpose as per section 2(15). The trust in the given case runs a stationery shop business, whose income is applied towards the objectives of the trust. In this case, the business income from the stationery shop will be eligible to avail exemption in respect of profits and gains of business, if such business is incidental to the attainment of the objectives of the trust and separate books of account are maintained in respect of such business.
 - ▶ Therefore, in the given case, the profit from the business shall be eligible for exemption under section 11, assuming that the said business is incidental to the attainment of the objects of the trust (i.e., education) and books of account for such business activity is maintained separately.

Overview - Pitfalls

- Religious trust can do charity but a charitable trust cannot pursue religious objects – Charitable trust having mixed objects – very dangerous scenario
- Problem situations – Charitable trust with religious objects, public religious trusts with private religious objects, benefits given to specified persons, trust property misused, amounts not invested in specified mode, problems in accounts, audit, Violation of other allied laws, ITR / TAR non filing etc. – Can lead to cancellation of registration and accreted tax.
- Denial of exemption vs. cancellation of regn

Overview – source of income and application of income

- Sources of income
 - Voluntary Contributions (domestic / foreign)
 - Income from property held under trust
 - Corpus Donation (Donor direction, Investment u/s 11(5))
 - Other income
 - Income exempt under other sections (Agrl Inc, S 10(23C))
- Application of income (Revenue or capital permissible)
 - Not less than 85% of CY income to be applied in India for charitable or religious purposes (on cash basis).
 - Spending from earlier year's surplus, corpus donation, loans etc not treated as application of income
 - Depreciation not deductible if cost of asset is claimed as application of income

Overview Accumulations of income


- Section 11(1) – 15% of Income of CY
- Explanation to S 11(1) – Accumulate till the year of receipt or next year, as the case may be. Option (Form 9 A) to be exercised within 2 months before the ITR due date. (income not recd or any other reason) – Delay upto 3 years (earlier 365 days) – Condonation – CIT – Cir 17/2022
- Section 11(2) – Can be accumulated for a period up to 5 years. Option (Form 10) to be exercised within 2 months before the ITR due date. Invest as per S 11(5) – Delay upto 3 years (earlier 365 days) – Condonation – CIT – Cir17/2022

Overview – other conditions

- Trusts having business income – business should be incidental to objects, books to be maintained & income to be used for objects
- Registration of trusts now compulsory u/s 12AB (10(23C) and 80G also as the case may be) – *Earlier Sections 12A/12AA*
- Maintain books (Rule 17AA)
- Audit and file audit report by due date (Form 10B / Form 10BB)
- 10 (23C) – 5 crore income institutions – audit not required – ITR must
- File ITR – 139(4A) (*139(1) or 139(4)*) – *circular 173/193/2019-ITA-I-23.04.2019 – File F 10, 10B and then ITR*



TAXABILITY OF INCOME



Section 11

• **Exclusion of the following income from total income of the trust:**

- Income derived from property held under trust wholly or partly for charitable and religious purposes, applied for such purposes; **and**
- Income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust

Section 12

- Income derived by a trust from voluntary contributions (other than corpus donations) deemed to be income derived from property held under trust for the purposes of section 11;
- Value of medical and educational services made available to specified persons deemed to be income of the trust running a hospital or medical or educational institution notwithstanding the provisions of section 11(1).

Section 12A

- prescribes the conditions for availing the benefits u/s 11 and 12.

Section 12AB

- prescribes the procedure framework for registration with the income-tax authorities to avail the exemption u/s 11 & 12 .

Section 13

- enumerates the circumstances under which the exemption available u/s 11 and 12 will be denied



Conditions for availing exemption under First Regime and Second Regime

- ▶ 1. Approval/Registration for claiming exemption.
- ▶ 2. Mandatory filing of return
- ▶ 3. Maintenance of Books of account & Other Documents and Audit of accounts



Mandatory filing of return

- In order to avail of exemption under any of these regimes, the entities approved under first regime and entities registered under second regime are required to file the return of income under section 139(4C) or under 139(4A), respectively within the time allowed under section 139(1) [i.e., on or before the due date of filing return of income] or section 139(4) [upto 31st December of the relevant assessment year], if the total income without giving effect to the provisions of
 - – section 10, in case of first regime approved entities or
 - – section 11 and 12 in case of second regime approved entities, exceeds the maximum amount which is not chargeable to income-tax.

FORM 9A AND FORM 10

Where due to reason that whole or any part of the income **has not been received during the year**, the amount can be applied in the year of receipt or in the following year. However, intimation in writing must be sent to Assessing Officer (AO) in **Form 9A** before the expiry of time allowed u/s. 139(1) for furnishing the return of income. In case the amount is not applied, it will be deemed to be the income of previous year immediately following year of receipt [Explanation 1 to Section 11(1) & section 11(1B)].

- Setting apart of funds with the specific purpose u/s.11(2) – for a period of 5 years: A charitable trust may opt for accumulating its income for a specific purpose to be spent in a period of 5 years. Trust should pass appropriate resolution for accumulation. The purpose of accumulation is to be specified to the Assessing Officer in **Form No. 10** along with copy of resolution passed. If accumulated amount could not be applied due to order/ injunction of the court, such period will be excluded.

Examples of Condition - B

<u>Scenario – 1</u>		<u>Scenario – 2</u>		<u>Scenario – 3</u>		<u>Scenario – 4</u>	
Income : 1,00,000/- Applied : 85,000/-		Income : 1,00,000/- Applied : 65,000/-		Income : 1,00,000/- Applied : 60,000/-		Income : 1,00,000/- Applied : 60,000/-	
Deemed apply : Nil		Deemed apply : Nil		Deemed apply : 12,000/-		Deemed apply : 12,000/-	
Particulars	Amount	Particulars	Amount	Particulars	Amount	Particulars	Amount
Income	1,00,000/-	Income	1,00,000/-	Income	1,00,000/-	Income	1,00,000/-
Application	85,000/-	Application	65,000/-	Application	60,000/-	Application	60,000/-
% applied	85%	% applied	65%	% applied	60%	% applied	60%
Reserve Accu.	15,000/-	Reserve Accu.	15,000/-	Reserve Accu.	15,000/-	Reserve Accu.	15,000/-
5 Year Accu.	Nil	5 Year Accu.	20,000/-	5 Year Accu.	13,000/-	5 Year Accu.	13,000/-
Form – 10	Nil to filed	Form – 10	Yes, 20,000/-	Form – 10	Yes, 13,000/-	Form – 10	Not submitted
Form – 9A	Nil to filed	Form – 9A	Nil to be filed	Form – 9A	Yes, 12,000/-	Form – 9A	Not submitted
Total Income	NIL	Total Income	NIL	Total Income	NIL	Total Income	25,000/-

Income from property held for charitable or religious purposes in India [Section 11(1)]

- (a) Income derived from property held under trust wholly for charitable or religious purposes to the extent such income is applied in India for such purpose. Further, a minimum 85% of the income derived to be applied for charitable or religious purpose.
- (b) Income derived from property held under trust in part only for such purpose, to the extent such income is applied in India for such purposes.
- (c) Income derived from property held under trust,
 - created on or after 1.4.1952 for charitable purpose which tends to promote international welfare in which India is interested to the extent to which such income is applied to such purpose outside India. This does not cover religious trusts.
 - trust for charitable or religious purposes, created before 1.4.1952, to the extent to which such income is applied for such purposes outside India.

In both the cases, the CBDT should have, by general or special order, directed that such income shall not be included in the total income of the person in receipt of such income.

- (d) Income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution.


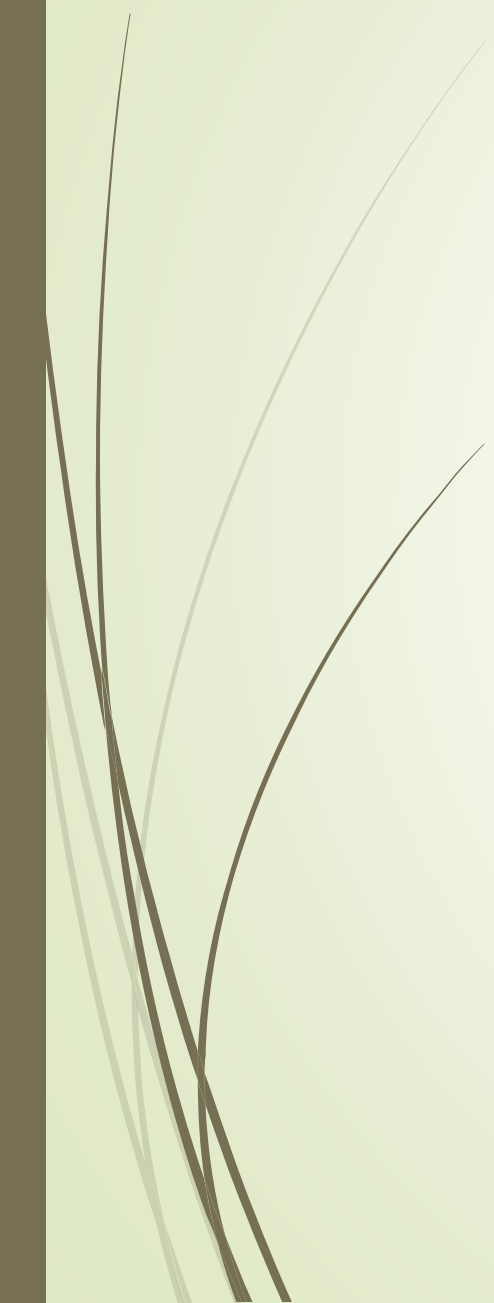
Such voluntary contributions received as corpus must be invested or deposited in one or more of the forms or modes specified in section 11(5) maintained specifically for such corpus, for claim of exemption.

Voluntary Contributions [Section 12]

- Any voluntary contribution received by a trust created wholly for charitable or religious purposes or by an institution established wholly for such purposes shall, for the purposes of section 11, be deemed to be income derived from property held under trust wholly for charitable or religious purposes. However, corpus donations (i.e., contributions made with a specific direction that they shall from part of the corpus of the trust or institution) shall not be treated as income, provided they are invested in the modes specified under section 11(5) [Section 12(1)].
- The value of any services, being medical or educational services, made available by any charitable or religious trust running a hospital or medical institution or an educational institution, to any person referred under section 13(3), would be deemed to be income of such trust or institution derived from property held under trust wholly for charitable or religious purposes during the previous year in which such services are so provided and shall be chargeable to income-tax.

Amounts not treated as application of income or not allowable as deduction

- Amount credited or paid out of income of any trust by way of corpus donation not to be considered as application [Explanation 2 to section 11(1)]
- Only 85% of the amount credited or paid by way of donation (other than corpus donations) to another trust or institution out of current year income would be considered as application [Explanation 4(iii) to section 11(1)]
- Amount credited or paid, out of accumulated income of any trust, to any trust or institution registered under section 12AA/12AB or referred to in section 10(23C)(iv)/(v)/(vi)/(via), not considered as application of income [Explanation to section 11(2)]
- Provisions of sections 40(a)(ia), 40A(3) and 40A(3A) apply in case of application of income by trust [Explanation 3 to section 11(1)]

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- ▶ Corpus donations utilised by fund/trust/institution towards its objects shall not be treated as application of income.
 - ▶ Application out of loan/borrowings not to be treated as application of income.
 - ▶ No set off or deduction allowable of any excess application of earlier previous year [Explanation 5 to section 11(1)]
 - ▶ No deduction for depreciation where cost of asset has been claimed as application of income
 - ▶ Expenditure allowed only on actual payment basis



Transfer of a capital asset held under trust wholly for charitable or religious purposes [Section 11(1A)(a)]

<i>Original cost of capital asset transferred</i>	<i>₹ 1,00,000</i>
<i>Consideration for which it is transferred</i>	<i>₹ 1,50,000</i>
<i>Situation 1 Cost of new capital asset acquired</i>	<i>₹ 1,50,000</i>
<i>Situation 2 Cost of new capital asset acquired</i>	<i>₹ 1,20,000</i>
<i>Amount that will be deemed to have been applied for charitable purposes.</i>	
<i>Situation 1</i>	<i>₹ 50,000</i>
<i>Situation 2</i>	<i>₹ 20,000</i>



Manner of computation of income
of a trust violating certain
conditions [Sections 13(10) & (11)]



Consequences of failure to comply with stipulated conditions:

- With effect from A.Y.2023- 24, if a trust or an institution violates certain stipulated conditions, the income shall be chargeable to tax after allowing deduction for expenditure (other than capital expenditure) incurred in India for the objects of the trust/ institution.
- The following are the violations:
 - - It has receipts from trade, commerce etc. while advancing the object of general public utility, in excess of 20% of total receipt; - It fails to maintain prescribed books of account;
 - - It fails to get its books of account audited and furnish audit report on or before the specified date;
 - - It fails to file return of income under section 139(4A) (or 139(4C), as the case may be, for the first regime trust) within the time stipulated under section 139(1) or 139(4).

Conditions to be fulfilled for claim of deduction of revenue expenditure

- (a) such expenditure is not from the corpus standing to the credit of the trust or institution as on the end of the financial year immediately preceding the previous year relevant to the assessment year for which income is being computed;
- (b) such expenditure is not from any loan or borrowing;
- (c) there is no claim of depreciation on those assets, whose acquisition cost has been claimed as application of income in any previous year; and
- (d) such expenditure is not in form of any contribution or donation to any person.





Disallowances:

- (a) Capital expenditure is not allowed as a deduction.
- (b) Disallowance under sections 40(a)(ia), on account of non-deduction of tax or nonpayment of tax deducted at source on or before the due date of filing of return, would be attracted
- (c) Disallowance of expenditure in respect of cash payment in excess of ₹. 10,000 under section 40A(3) and 40A(3A) would be attracted .
- (d) no deduction in respect of any expenditure or allowance or set-off of any loss shall be allowed to the assessee under any other provision of this Act.




Taxation of specified income of NPOs chargeable to tax by charitable trusts/institutions [Section 115BBI]

- ▶ As per section 115BBI specified income of a trust/institution availing exemption under the first regime [section 10(23C)(iv)/(v)/(vi)/(via))] or second regime [Section 11], would be chargeable at the **rate of 30%**.

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- “Specified income” means:
 - (a) income accumulated or set apart in excess of 15% of the income, where such accumulation is not allowed under any specific provision of the Income-tax Act, 1961.
 - (b) deemed income on account of violation of certain conditions stipulated for accumulation of income under section 11(3) and corresponding provision in section 10(23C).
 - (c) deemed income on account of violation of deemed application provisions specified under 11(1B) read with Explanation 1 below to section 11(1).
 - (d) any income which is not exempt under section 10(23C) or section 11 on account of funds of the trust or institution invested otherwise in the forms and modes specified under section 11(5)
 - (e) any income which is applied for the benefit of any specified prohibited person referred to in section 13(3).
 - (f) any income derived from a property held under trust for a charitable purpose which tends to promote international welfare in which India is interested to the extent to which such income is not applied towards charitable purposes outside India.

Circumstances where levy of tax on accreted income is attracted – 115TD

- The accreted income of a specified person shall be taxable at the maximum marginal rate (@34.944%) on
- – (1) conversion into a form not eligible for grant of registration under section 12AA or section 12AB or approval under section 10(23C) (iv) / (v) / (vi) / (via); or
- (2) merger with an entity not having similar objects and registered under section 12AA or section 12AB or approved under section 10(23C) (iv) / (v) / (vi) / (via); or
- (3) non-distribution of assets on dissolution to any other specified person within a period of 12 months from the end of the month in which the dissolution takes place. This levy of exit tax shall be in addition to income chargeable in the hands of the entity.

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- **Deemed conversion** into non-eligible form - Circumstances:
 - (i) the registration granted to it under section 12AA or section 12AB or approval under section 10(23C) (iv) /(v)/ (vi)/ (via) has been cancelled; or
 - (ii) it has adopted or undertaken modification of its objects which do not conform to the conditions of registration and,— (a) it has not applied for fresh registration under section 12AA or section 12AB or approval under section 10(23C)(iv) /(v)/ (vi)/ (via) in the said previous year; or (b) it has filed application for fresh registration u/s 12AA or 12AB or approval under section 10(23C) (iv)/(v)/(vi)/(via) but the said application has been rejected; or
 - (iii) it has failed to make an application for – (a) reapproval/re-registration; or (b) renewal of approval/registration where the period of approval/registration is due to expire; or (c) final approval/registration within the period specified under clause (i)/(ii)/(iii) of the first proviso to section 10(23C) or clause (i)/(ii)/(iii) of section 12A(1)(ac), as the case may be, which expires in the said previous year.



Meaning of Accreted Income:

- ▶ Aggregate FMV of total assets of the specified person as on the specified date
- ▶ Less
- ▶ Total liability of the specified person computed in accordance with the prescribed method of valuation [See Method of Valuation prescribed by CBDT given in pages 10.77 to 10.81]

Immovable property

The fair market value of an immovable property shall be higher of the following:

- (a) price that the property shall ordinarily fetch if sold in the open market on the specified date on the basis of the valuation report from a registered valuer; and
- (b) stamp duty value as on the specified date.

A business undertaking

The fair market value of a business undertaking, held by a specified person, shall be its net assets determined in accordance with the following formula:

Fair market value = $(A + B - L)$,

The value of A, B and L would be determined in the same manner as discussed above in the case of unquoted equity shares.

Overview – Anonymous Donations (S. 115 BBC)

- Donation where donor's identity is unknown (be careful with UPI and imps fund transfers)
- Not taxable in the case of religious trusts and religious and charitable trusts receiving anonymous donations for religious purposes.
- For others anonymous donations are taxable at 30% + SC + Cess
- Threshold limit – Rs. 1,00,000 or 5% of total donations, whichever is higher

11 Overview – Tax at special situations

- When assessment of a year is completed without giving exemption – Assessed income of that year is taxable at MMR. This is a year to year affair. Note – AO cannot cancel regn.
- Exit tax on conversion to non charitable trust or trust cease to exist – E.g. cancellation of registration, modification of objects without taking fresh registration etc. – Exit tax = Accreted income x MMR, where Accreted income is the value of net assets on the specified date.



RECENT AMENDMENTS

- FINANCE ACT 2020
- FINANCE ACT 2021
- FINANCE ACT 2022
- FINANCE ACT 2023
- FINANCE ACT 2024

Finance Act 2020

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- Provisions regarding re-registration, provisional registration, regularisation of provisional registration etc. introduced in Sections 10(23C), 12AB & 80G. Cut off date got extended up to 31.03.2022 – Discussed elsewhere. **Re registration time further extended to 25.11.2022. Again extended to 30.09.2023.**
- Audit reports – Form 10B or Form 10BB – now required to be e-filed 1 month prior to the ITR due date u/s 139(1) – earlier they need be filed only along with ITR (wef AY 2020-21) – Refer circular 15/2022 & 16/2022 for CIT's power to condone delay. – Forms have undergone change
- Corpus donation given to other registered entities shall not be regarded as application of income u.s. 11 & 10(23C) – (wef AY 2020 – 21)
- Section 80G – Filing of statement in respect of donors – Forms 10BD & 10BE – Cut off date got extended up to 30.06.2023 from 31.05.2023.

Finance Act 2021

- ³Section 10(23C) – (iiiad) & (iii ae) – Small income institutions – Ceiling enhanced from Rs. 1 crore to Rs. 5 Crores (wef AY: 2022 – 23)
 - Amendment common to S 11 and S 10(23C) – wef AY: 2022 – 23
 - Corpus donations must be invested in S 11(5) modes
 - Amounts spent from the following sources will not be allowed as application of income
 - Corpus donation
 - Income accumulated to the extent of 15% year to year
 - Loans.
- However when the funds are replenished or loan is repaid, application disallowed can be claimed as deduction*
- Excess application of earlier years cannot be set off

FA: 2022 – Amendments to bring consistency

- A trust/institution is required to apply at least 85 percent of its income towards charitable activities in a particular year. However, in the event this threshold is not met, the law allows for **accumulation of funds** to be applied for charitable purposes in the future years (**not exceeding 5 years**). Such accumulation is subject to certain conditions (S 11(2) / 11(5) etc). Now, such conditions are **made applicable to 10(23C) cases also**. (AY 2023-24)
- Currently, under the 12A regime, income diverted/excessive benefits provided to **trustees/other specified persons** result in such amount becoming taxable for the trust/institution. Now, such conditions are **made applicable to 10(23C) cases also**. (AY: 2023 – 24)
- Currently, under the 12A regime, there is a requirement to **file a Return of Income** for claiming exemption. Now, such a condition is **made applicable to 10(23C) cases also**. (AY 2023 – 24)
- Currently, re-organisation (i.e., conversion, merger or transfer of assets on dissolution) of trusts/institutions governed by 12A regime with any non-qualifying entity (i.e., an entity that is not governed by either of the regimes) triggers a taxation under the **accrued income provisions**. Now, the accrued income provisions are **made applicable to 10(23C) regime as well**. AY 2023-24

FA 2022 - Period of utilisation of accumulation

- A ¹⁶ trust/institution is required to apply at least 85 percent of its income towards charitable activities in a particular year. However, in the event this threshold is not met, the law allows for the **accumulation of funds** to be applied for charitable purposes in the future years (not exceeding **5 years**), subject to certain conditions.
- Before Amendment, such **accumulated funds can be applied even in the year subsequent to the previous year upto which accumulation is done**—if it is not used in such subsequent year as well, then the funds not applied become taxable in such subsequent year.
- Now, **the option of allowing application in such subsequent year is done away** with — therefore, if the accumulated funds are not entirely applied up to the previous year of accumulation, then the funds not applied become taxable in such last year.

FA 2022 – Application of income to be reckoned only on ‘payment’ basis

17

- Currently, there is no explicit provision determining the manner of reckoning the application of income (i.e., either accrual basis or cash basis could be followed).
- Now, it is proposed that the **application of income shall be reckoned only on ‘payment’ basis.**
- *This change is proposed to be effective from FY 2021–22 itself. (AY: 2022 – 23)*
- Closing balances of creditors and accounts payable must be reduced from application of income. In the first year we cannot add thereto opening balance of creditors and accounts payable. Whether advances paid could be deducted is a debatable point.

FA: 2022 – Computation of taxable income resulting on account of certain prescribed non-compliances

18

AY 2023 – 24 onwards

- Currently, there is no explicit provision determining the manner of computation of taxable income resulting on account of non-compliances. **Presently officers tax the gross receipts without allowing application of income.**
- Now, it is provided that the taxable income resulting on account of prescribed non-compliances (such as (a) **not maintaining prescribed books** of accounts, (b) **not filing the Return of Income**, and (c) **carrying on commercial activities for consideration** beyond the prescribed threshold of 20%) shall be computed **after allowing deduction of revenue expenditure** incurred in India, but subject to the following conditions:
 - Expenditure should not be a donation or contribution to any person.
 - Expenditure incurred without withholding appropriate tax or expenditure incurred in cash beyond the prescribed threshold shall not be allowed.
 - Expenditure incurred from the corpus or any loan or borrowing shall not be allowed.
 - Depreciation on an asset, the cost of which is claimed as application of income in any year, shall not be allowed.

FA: 2022 – New tax rate prescribed for certain specified income – 115BBI

- Currently, there is an ambiguity on the tax rate that applies, where certain specified incomes of the trust/ institution become taxable.
- Now, it is provided that **specified income** (resulting from violations such as (i) accumulation of funds for prohibited purposes, (ii) partial application of accumulated funds, (iii) deployment of funds in prohibited investments, and (iv) diversion of income/provision of excessive benefits to trustees/other specified persons) would be taxable at a **flat rate of 30 percent (plus applicable surcharge if any and cess)** without reduction of any expenditure or allowances or set off of losses.
- Other incomes (if any) of the trust/institution will be taxable per the currently applicable provisions.

FA: 2022 – Proportionate income (instead of entire income) now made taxable on account of prescribed non-compliance

- It is provided that if trust/institution **diverts income/ provides excessive benefits to trustees/other specified persons or deploys its funds in prohibited investments** only that part of income that is diverted/regarded as excessive benefit/deployed in prohibited investments would be taxable. (items iii & iv) in the previous slide

- This position has been upheld in certain rulings even

before the amendment. As discussed above, such income will be taxable at a flat rate of 30 percent without any deductions.

FA 2022: – Penalty for

of excessive

21

specified persons - Section 271 AAE

- A trust/institution will be liable to **penalty for diversion of income/provision of excessive benefits to trustees/ other specified persons.**
- The penalty will be equal to **100 percent of the amount diverted in case of the first instance and will go up to 200 percent of the amount diverted in case of violations in subsequent years.**
- This penalty will be in addition to any other penalties that may be levied under the existing law.

FA: 2022 – Streamlining of the 22 administrative/procedural framework

- Maintenance of the prescribed books of accounts
 - Where the total income of the trust/institution exceeds the basic exemption limit, it is required to get its books of accounts audited.
 - Currently, there are no specific books of accounts that the trust/institution is required to maintain.
 - Now, it is proposed that such a trust/institution would be required to maintain the prescribed books of accounts.
 - Reference is made in Form 10B and 10BB Forms
 - Rule 17AA notified on 10.08.2022 – Refer notification GSR 622(E) dated 10.08.2022

25 FA : 2022 – Withdrawal of registration/approval provisions revamped

- The provisions dealing with withdrawal of the registration/approval of a trust/institution have been revamped.
- Notably, the new provisions enumerate certain ‘specified violations’ that will lead to a withdrawal of the registration/approval—amongst them is having a business that is not incidental to the attainment of its objectives, material non-compliances in other legislations, etc.

Finance Act 2023

For the discussions below

Regime 1	Entities referred to in section <ul style="list-style-type: none">• 10(23C)(iv) – Approved charitable trust• 10(23C)(v) – Public religious or religious / charitable trust• 10(23C)(vi) – University / Educational Institutions• 10(23C)(via) – Hospital / Medical institutions
Regime 2	12AA / 12AB registered entities

FA 2023 – Allowability vis-a- vis depositing back of amount spent from corpus

Section: Regimes 1 & 2

Clause of FB: 5

Effective date: AY 2023 – 24

Discussion

- **Amount spent from corpus donation is not allowed as deduction.**
- **But if amount spent from corpus donation is replenished from income it can be claimed as application subject to conditions**

Proposal

Whether amount spent from corpus is replenished during the year from income of the current year?

No

Yes

Whether the amount replenished is attributable to amount spent from corpus on or before 31.03.2021?

Yes

No

Whether the concerned amount spent from the corpus, which is replenished now, was applied subject to following conditions?

- | | |
|--|---|
| a. Not given as corpus donation to another trust | e. The payment was actually done (not accounted as payable) |
| b. TDS, if applicable, had been done on amount spent | f. The payment did not benefit any person specified u/s 13 |
| c. The payment did not violate limits u/s 40A(3) | g. The payment was for its objects in India |
| d. The payment was not sourced from excess application of any earlier year | |

No

Yes

Whether the present replenishment of corpus from CY income is within 5 years of the application from corpus?

No

Yes

Corpus replenished from CY income is deductible

No deduction is available

FA 2023 – Allowability vis-a- vis repayment of loan

Section: Regimes 1 & 2

Clause of FB: 7

Effective date: AY 2023 – 24

Discussion

- Amount spent from loan is not allowed as deduction.
- But if the loan is repaid from income it can be claimed as application
subject to conditions

Proposal

Whether loan is repaid during the year from income of the current year?

No

Yes

Whether the amount repaid is attributable to amount spent from loan on or before 31.03.2021?

Yes

No

Whether the concerned amount spent from the loan, which is repaid now, was applied subject to following conditions?

- a. Not given as corpus donation to another trust
- b. TDS, if applicable, had been done on amount spent
- c. The payment did not violate limits u/s 40A(3)
- d. The payment was not sourced from excess application of any earlier year
- e. The payment was actually done (not accounted as payable)
- f. The payment did not benefit any person specified u/s 13
- g. The payment was for its objects in India

No

Yes

Whether the present repayment of loan from CY income is within 5 years of the application from the loan?

No

Yes

Loan repaid from CY income is deductible

No deduction is available

FA – 2023 Treatment of donation to other trusts

Section: Regimes 1 & 2 | Clause of FB: 5 & 7 | Effective date: AY 2024 – 25

Discussion

- **Certain trusts falling within a group roll funds from one trust to another by way of donation so that each trust in the loop gets the benefit of accumulating 15% of the respective donation**
- **E.g. Trusts A to E are under same group. Trust A's income of Rs. 1,00,000 is donated to Trust B. Trust B donates Rs. 85,000 (85% of Rs. 1,00,000) to Trust C. Trust C donates Rs. 72,250 (85% of Rs. 85,000) to Trust D. Trust D donates Rs. 61,413 (i.e. 85% of Rs. 72,250) to Trust E. Now Trust E has to apply Rs. 52,201 (i.e. 85% of Rs. 61,413). However, this effectively is only 52% of A's income of Rs. 1,00,000.**

Proposal

- **It is proposed that only 85% of eligible donations made by a trust or institution in the first regime or second regime to another trust or institution in the first regime or second regime shall be treated as application in the hands of the donor.**

FA 2023 - Omission of certain provisions relating to dating back of exemption

Section: Regimes 1 & 2

Clause of FB: 8

Effective date: 01.04.2023

Discussion

- **Section 12A(2): *Once registered under section 12AA or 12AB, exemption shall be available to the trust from the assessment year relevant to the financial year in which application for registration was made.***
- **Section 12A(2) 2nd proviso – *Once registration is granted u/s 12AA or 12AB, that status quo should be applied in all pending assessments of earlier years.***
- **Section 12A(2) 3rd proviso - *Once registration is granted u/s 12AA or 12AB, earlier year's assessments should not be reopened just because the trust was not registered in those years***
- **Section 12A(2) 4th proviso – *Trust will not get any immunity if registration is cancelled or application for registration is rejected***

Proposal

- **Second and third provisos are taken away – i.e. henceforth there is no immunity vis-à-vis earlier years for an already existing trust that applies for registration for the first time.**
- **Fourth proviso is also omitted.**

FA 2023 - Regarding provisional / regular registration / approval

Section: Regimes 1 & 2 & 80G

Clause of FB: 5,8,9,40

Effective date: 01.10.2023

Discussion

Situation 1 :

- **Trusts or institutions formed or incorporated during the previous year are not able to get exemption in the year of formation because they are required to apply for registration or approval at least one month before the previous year for which exemption is sought.**

Situation 2

- **Trusts / Institutions, where activities have already commenced, are required to apply for two registrations / approvals (i.e. provisional and regular) simultaneously.**

Proposal

In Situation 1

- **Henceforth, the trusts / institutions shall be allowed to make application for provisional registration / approval before the commencement of activities.**

In Situation 2

- **The trusts / institutions that have already commenced their activities, shall make application for regular approval / registration (i.e. provisional can be skipped). IT authorities' powers are also spelt out.**

FA 2023 - Violations vis-à-vis the new registration / approval regime

Section: Regimes 1 & 2 & 80G

Clause of FB: 5 & 9

Effective date: 01.04.2023

Discussion

- **The process of granting provisional approval / registration for new trust and the reregistration / re approval of already registered / approved trusts / institutions are automated.**
- **Application is filed in the portal and provisional approval / registration or re approval /re registration in such cases is granted in an automated manner without verification.**

Proposal

- **In many cases it is found that applications are defective, not complete and contain incorrect particulars**
- **Therefore, proposal is made to empower CIT / PCIT to cancel the registration / approval when application referred to above is incomplete or it contains false or incorrect information.**

FA 2023 - Trusts / Institutions not filing application in certain cases

Section: Regimes 1 & 2

Clause of FB: 57

Effective date: AY 2023-24

Discussion

- **Certain existing registered / approved trusts have not made application for re-registration or re approval**
- **Certain provisionally registered / approved trusts have not made application for regular registration**
- **Likely scenario in future – A trust registered / approved for 5 years may not apply for re registration or re approval**
- **Section 115TD provides for levy of exit tax on accreted income when a charitable trust gets converted to a non charitable trust in the manner laid down in the Act.**
- **By not applying for regular registration / approval or re registration or re approval the trust gets an easy route to exit without payment of exit tax.**

Proposal

- **Amendment is proposed in Section 115TD**
- **If the trust fails to make application for re registration or re approval or regular registration or regular approval within the stipulated time, it shall be deemed to have been converted into any form that is not eligible for registration or approval. It will attract exit tax.**
- **Procedural part and definition part are also amended.**

FA 2023 - Alignment of ITR, Accumulation and Audit report due dates

Section: Regimes 1 & 2	Clause of FB: 5 and 7	Effective date: AY 2023-24
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Discussion (Also see Circular dated 24.05.2023)

- Presently

Due date for	Due date	Remarks
ITR	31 st July	where there is no audit
	31 st October	where there is audit
Accumulation	same as ITR due date	Form 10 (section 11) / Form 9 A (section 10 (23C))
Audit report	1 month prior to ITR due date i.e. 30 th September	Form 10 B (section 11) / Form 10 BB (section 10 (23C))

Proposal

- Due date for filing Form No 10 / 9 A is made 2 month prior to ITR due date (31st August in audit cases and 31st May in non-audit cases) – Also see Circular 6 / 2023 dated 24.05.2023
- Reason as per Memorandum explaining the provisions – “The auditors are required to report the details of form 10/9A in the audit report. Since the due date for furnishing form 9A/10 *(It should have been Form 10 B / 10 BB)* is one month before the due date of furnishing the ITR, auditors find it difficult to report”

FA 2023 No exemption if return is not filed

**Section: Regimes 1
& 2**

**Clause of FB: 5
& 8**

**Effective date: AY 2023-
24**

Discussion

- **With the introduction of the scheme of filing updated return under section 139 (8A), there arose an unintended situation wherein trusts filing updated returns became eligible for exemption.**

Proposal

- **It is clarified that exemption will be available only if the return of income is filed under section 139 (1) or 139 (4)**

FA 2023 - Section 80 G

Section: 80 G

Clause of FB: 40

Effective date: AY 2024-25

Discussion

- Section 80G gives a list of certain specified donees.

Proposal

- Following 3 institutions are removed from the list of eligible donees
 - 80 G (2) (a) (ii) – Jawaharlal Nehru Memorial Fund
 - 80 G (2) (a) (iii c) – Indira Gandhi Memorial Trust
 - 80 G (2) (a) (iii d) – Rajiv Gandhi Foundation



AMENDMENTS
RELATING TO
CHARITABLE TRUSTS

FINANCE ACT 2024.

Limited merger of Section 10(23C) into

Effective Date: 01.10.2024

Clause of FB: 4, 6 & 9

- **Existing provision**

Many provisions in Section 10(23C)(iv)(v)(vi) & (via) are almost identical to Sections 11 to 13. Year to year amendments are made to synchronize both. Now they are proposed to be integrated to avoid duplication and to bring simplicity.

- **Proposal**

- Applications seeking approval or provisional approval u/s 10(23C)(iv), (v), (vi) or (via) filed on or after 01.10.2024 shall not be considered.
- Applications filed under these sub-clauses before 01.10.2024, and which are pending would be processed and considered under those provisions itself.
- Approved trusts, funds or institutions would continue to get the benefit of exemption, as per the provisions of 10(23C)(iv), (v), (vi) or (via), till the validity of the said approval.
- They would be eligible to apply for registration, subsequently, under sections 11 to 13. Amendments have accordingly been proposed in section 12A.
- Certain eligible modes of investment, specified in clause (b) of third proviso to S 10(23C) shall be protected in the second regime, by way of amendment in section 13.

Condonation of delay in filing application for registration (S

Effective Date: 01.10.2024

Clause of FB: 6

- **Existing provision**

A trust seeking registration under section 12AB must apply for registration / renewal etc. within the timelines specified in clause (ac) of sub-section (1) of section 12A. Failing which, it may lose exemption, it may be subject to exit tax u/s 115TD etc.

- **Proposal**

It is proposed that the Principal Commissioner/ Commissioner may be enabled to condone the delay in filing application and treat such application as filed within time. The delay may be condoned if he considers that there is a reasonable cause for the same.

Correcting Anomaly in proviso – clause iv(B) to

Effective Date: 01.10.2024

Clause of FB: 26

- **Existing provision**

Vide amendment effective from 01.10.2023, a trust, which had claimed exemption u/s 10(23C) or Section 11, could not make an application for approval u/s 80G. If applied, CITs rejected the applications. This was an unintended anomaly.

- **Proposal**

Clause B referred to above is proposed to be amended so that trusts that have claimed exemption u/s 10(23C) or 11 could also apply for approval u/s 80G. ***However this should have been proposed wef 01.10.2023 instead of 01.10.2024.***

Rationalizing timelines for disposing off applications u/s

Effective Date: 01.10.2024

Clause of FB: 7 & 26

- **Existing provision**

In both cases, applications are to be disposed off by the PCIT/CIT within 6 months from the end of the month in which they are filed.

- **Proposal**

For better administration and monitoring, it is proposed to rationalise timelines for disposing applications made by trusts or funds or institutions to **six months from the end of the quarter in which the application was received.**

Merger of a trust covered u/s 10(23C) with one u/s 11 &

Effective Date: 01.10.2024

Clause of FB: 7 & 26

- **Existing provision**

When a trust or institution which is approved / registered under the first or second regime, as the case may be merges with another approved / registered entity under either regime, it may attract the provisions of Chapter XII-EB, relating exit tax in certain circumstances.

- **Proposal**

It is proposed that conditions under which the said merger shall not attract provisions of Chapter XII-EB, may be prescribed, to provide greater clarity and certainty to taxpayers. **A new section 12AC is proposed to be inserted** for this purpose.



Registration of Charitable Institutions



Necessity of Registration of Charitable Institutions

- ▶ Registration of Charitable institution is required to avail exemptions provided under Section 11 & 12 of the IT Act, 1961
 - ❖ An NGO can get tax exemption simply by getting itself registered under sections 10(23C)/12AB and 80G – subject to fulfilment of some conditions.
 - ❖ The person/ entity making donations can avail tax benefits only if the NGO obtains a certificate under section 12AB and 80G.
 - ❖ The person will get a tax deduction on donation made from their total income.
 - ❖ An NGO will receive government funding, only if registered under sections 10(23C)/12AB and 80G



Land mark Changes as per Finance Act 2020

- ▶ Finance Act, 2020 has made changes with respect to provisions related to

Trusts and NGOs claiming exemption u/s 11 or u/s 12 of the Income Tax Act, 1961.

- Section 12AB was inserted with effect from 01-04-2021.
- Registration under section 12AA was effectively valid till cancellation but under the new regime of section 12AB, the registration is valid for a fixed tenure.

Changes in the Finance Act 2020

- ❖ Inserted **clause (ac)** in section **12A(1)**;
 - Classifies trusts into 6 baskets – (5 specific and 1 residuary);
 - Prescribes Application Forms and time limit for each category;.
- ❖ Inserted **Section 12AB** to prescribe modalities for fresh registration;
- CBDT revised **Rule 17A** on the procedure for registration

Finance Act, 2020 changes:

➤ Aim:

- To improve the process of registration with the advent of technology- **Online application/ registration.**
- **Resolve practical issue of difficulty** in obtaining registration/ approval/ notification before actually starting the activities.-
Provisional Registration.
- Conditional approval for 5 years
 - To ensure **conditions of approval or registration or notification are adhered** to for want of continuance of exemption.
 - Having a non-adversarial regime **and not conducting roving inquiry in the affairs of the exempt entities** on day to day basis.

Effective date for availing exemption

Sec. 12A(2) :

- Application under section 12A(1)(ac)(i)- applies from the assessment year from which such trust or institution was earlier granted registration.
- 12A(1)(ac)(iii)- applies from the assessment years for which it was provisionally registered.
- Provided such trust is registered under section 12AB

Land mark Changes as per Finance Act 2020

➤ A Snapshot of amendment:-

URN	All Existing entities to be re registered	Provisional Registration	Registration subject to renewal – not in perpetuity
Pending Cases as on 1st April 2021 transitioned to new scheme	Stiff Timelines Both for Application and Registration	One Switch between 10(23C) or 10(46) and 12AB permitted	Prior approval for modification/amendment of object/bye-laws



Two Regimes for Charitable trusts and institutions

Under the scheme of I.T Act until Union Budget presented on July 2024, there were two options available for a charitable institution to avail exemptions. **Here exemptions means your income is not subjected to tax.**

- No.1:- Approval u/s. 10(23C) of the Act (First Regime)
- No.2:- Registration u/s.12AB of the Act. (Second Regime)

Two Regimes for Charitable trusts and institutions

I. U/s.10(23C) approval there is broadly two further sub categories

➤ **category(1)** : (1) Any University/ Ed. Institutions existing solely for educational purpose and not for profit and wholly or substantially financed by Government [Rule 2BBB] or

(2) Any hospital or other Institution solely for philanthropic purpose and not for profit and wholly or substantially financed by Government with gross receipt less than

Rs.5 Crores w.e.f.2022-23

Sec 10(23C)(iiiab)/(iiiac)/(iiid)(iiiie)

No requirement of any approval, The only statutory obligation is to file ITR

➤ **category (2)**

Any other fund/institution/ trust / university /hospital engaged in public charitable activities, public religious activities, or a combination of activities with gross receipts above the threshold limit of Rs. 5 crores."

➤ Required approval u/s.10(23C)

Sec 10(23C)(iv)/(v)/(vi)/(vii)



Two Regimes for Charitable trusts and institutions

II. The second Regime of exemption is the regime called section 12AB registration and is required for all charitable entities irrespective of their gross receipts. So here the assessee desirous of availing exemptions under the second regime will have to apply for registration as per the procedure and on grant of Registration can avail the exemptions.

- As per section 11 and 12, charitable or religious trusts or institutions are allowed to be registered

Compliance Requirement [Till 01.10.2023]

Sec.12A (1)(ac)	Category	Compliance by Trusts	Application in
(I)	Old/Existing Trusts already registered u/s.12A/12AA	Within 3 months from 01.04.2021 [Extended up to 30.09.2023 for existing trusts vide circular no.06 of 2023 dated 24.05.2023]	Form 10A [Prescribed form for provisional registration]
		Extended to 30.06.2024 by circular no. 07 of 2024 dated 25.04.2024	Form 10AB
(ii)	Trusts registered u/s.12AB and registration is due to expire (5 years)	At least 6 months prior to expiry	Form 10AB
(iii)	Trusts provisionally registered u/s.12AB	At least 6 months prior to expiry or within 6 months of commencement of activities whichever is earlier	Form 10AB

Compliance Requirement(contd..)

Sec.1 2A(1)(ac)	Category	Compliance by Trusts	Application in
(iv)	Modification of objects	Within 30 days from modification	Form 10AB
(v)	Any other case	At least 1 month prior to commence of PY relevant to AY from which the registration is sought	Form 10A

Process Of Registration

Sec.1 2A(1)(ac)	Category	Action by CPC	Time line & Form
(i)	Old/Existing Trusts already registered u/s.12A/12AA	To pass an order registering for 5 years	Within 3 months from the filing month – Form 10AC
(vi)	Any other case	To pass an order provisionally registering for 3 years	Within 1 month from the filing month – Form 10AC


Process Of Registration(contd..)

Sec.1 2A(1)(ac)	Category	Action by CIT	Time line & Form
(ii)	Trusts registered u/s.12AB and registration is due to expire [5 years]	To call for documents and make enquiries to satisfy himself about	Within 6 months from ending of the month in which application - Form 10AD [Form 10AC registration order is issued by CPC]
(iii)	Trusts provisionally registered u/s.12AB (3 Years)	- Genuineness of activities - Compliances of other laws	
(iv)	Trust became inoperative as per Sec 11(7)	If satisfied, pass order of registration valid for 5 years	
(v) & (vi)	Modification of objects , Any other Case	Else, cancel the registration after affording opportunity	



Regime from 01.04.2021 to 30.09.2023

- From 01.04.2021 to 30.09.2023, all existing trusts which were registered u/s 12A/12AA or approved under section 10(23C) or section 80G were mandatorily required to obtain registration under new scheme under section 12AB or to obtain approval under section 10(23C) or section 80G. The registration was valid for five years from 01.04.2021.
- However, there were issued regarding time limits of “six months of commencement of activities”.
- Six months time limit already expired in the case of many trusts




Changes effective from 01.10.2023

- All trusts or institutions which have already commenced activity to file for direct registration which is valid for five years.
- Period from 01.04.2021 to 30.09.2023 – Period of two step registration, First provisional and subsequently regular registration.
- From 01.10.2023, only the trusts or institutions who have not commenced their activities have to apply for provisional registration which is to be converted to regular registration within six months of commencement of activities or expiry of the provisional registration whichever is earlier.
- However, another condition was also added in section 12A(1)(ac)(vi) w.e.f 01.10.2023. It was provided that such organisations who had already commenced their activities and going for direct registration should not have claimed exemption benefit for any previous year on or before the date of application.
- Further such assesses' whose registration **gets cancelled or not regularized cannot apply for re-registration.**



With effect from 01-10-2024, following changes made:

- ▶ No two regimes exists currently for trusts/institutions to whom approval of CIT(E) under the provisions of section 10(23C) was mandatory.
- ▶ That is for such cases/trusts/assesse whose income was exempted earlier u/s 10(23C) (iv)/(v)/(vi)/(via), the assesse needs to migrate or register u/s Section 12AB regime from 01.10.2024 onwards.
- ▶ PCIT/CIT granted authority to condone delay if there is reasonable merit [u/s 12AB]



Registration u/s.80G of the Income tax Act,1961

Charitable entities have an option to apply and obtain approval u/s.80G which enables the entities to seek donations and issue certificate to their respective donors based on which the donors can avail income tax deduction from their taxable income subject to qualifying limit.

Uniformity in the process of Registration in Both Regimes

- ❑ Amendment made with effect from 01.10.2024 and new applicants can get approval but no retrospective effect from 01.10.2023 to 01.10.2024.
- ❑ Limited to fifty per cent of the donations/aggregate of donations in case of ordinary trusts [Cash can be maximum of Rs. 2,000/- only]
- ❑ No fresh registration under section 80G from 01-10-23 to 30-09-24 for such entities which had already claimed exemption under IT Act



Amendment to section 47(iii) of IT Act

- ▶ Distribution of capital assets under a gift or will to an irrevocable trust.
- ▶ Such transactions were not regarded as “transfer” earlier.
- ▶ Now, this is limited to Individual or HUF. Therefore such “gifts” provided by companies etc. are affected and treated as transfer and capital gains could be attracted.

Rule 17A (substituted w.e.f 01-04-2021)

- The application from 10A/10AB shall be accompanied by the following documents:-
 - (a) Where the applicant is created, or established, under an instrument, self-certified copy of such instrument creating or establishing the applicant
 - (b) Where the applicant is created, or established, otherwise than under an instrument, self-certified copy of the document evidencing the creation or established of the applicant;
 - (c) Self certified copy of registration with Registrar of Companies or Registrar of Firms and Societies or Registrar or Public Trusts, as the case may be;
 - (d) Self-certified copy of registration under Foreign Contribution (Regulation) Act, 2010, if the applicant is registered under the such Act;
 - (e) Self certified copy of existing order 12A/12AA/12AB



Rule 17A(contd...)

- (f) Self – certified copy of order rejection of application for grant of registration under section 12A/12AA/12AB, as the case may be;
- (g) Financial statement not exceeding 3 years
- (h) Financial statements of business along with audit report not exceeding 3 years
- (i) Annual account of business in case of applicability of section 11(4A)
- (j) Self-certified copy of the documents evidencing adoption or modification of the objects
- (k) Note on the activities of the applicant



Relevant Forms – Form 10A or Form 10AB

- ▶ Sub Rule (3) to Rule 17A – shall be furnished electronically
- ▶ Sub Rule (4) to Rule 17A – shall be verified by the person authorised to verify the return of income under section 140
- ▶ Sub Rule (8) to Rule 17A
 - Final approval shall be in Form 10AD
 - in case of approval, sixteen digit alphanumeric number Unique Registration Number(URN) shall be issued



Documents to be produced

Application in the prescribed Form No.10A/10AB

- ▶ Instrument in original, together with one copy thereof
- ▶ Document evidencing the creation of trust or the establishment of the institution.
- ▶ Books of Account of the Trust
 - ▶ Normally consist of balance sheet, receipt and payments sheet/ income and Expenditure sheet and respective schedules and reports of the financial statements
- ▶ In case of companies – original and copies of MOA, AOA,
- ▶ Incorporation Certificate and shareholder details
- ▶ In case of society – original and copies of Bye-Laws and registration certificate



Documents to be produced

- ▶ Name, Address, Occupation of all the trustees along with KYC,
- ▶ Details of Donors along with KYC
- ▶ Details of immovable assets of the entity
- ▶ Details of PAN of the entity
- ▶ Notes on KYC
- ▶ Declaration u/s.13(1)(C) of the IT Act, 1961
- ▶ Rent Agreement along with No Objection Certification, if rented premise
- ▶ Proof regarding activities under taken
- ▶ FCRA registration along with FCRA Returns
- ▶ FIRC/SWIFT in case of foreign donation along with purpose of donation received and its utilization



Checklist for processing

- a) Basic details, dates, category of trusts etc.
- b) Irrevocability clause ?
- c) Beneficiaries without any discrimination of caste, creed or religion ?
- d) Dissolution clause?
- e) Whether undue benefits to specified persons u/s.13(3) ?
- f) Undertaking that no infringement to 1st proviso to sec. 2(15) ?
- g) Other laws applicable for achievement of objects ?
- h) Details of donation along with donor verification



Checklist for processing

- i) Specified violation ?
- j) No profit motive / if any business, separate books of accounts to be maintained and audited as per provisions of Income Tax Act, 1961
- k) Area of Operation in India
- l) No amendment/modification in objects without prior approval of jurisdiction Commissioner of Income tax
- m) Modes of investment is as per 11(5) or 13(1)(d) of the Income Tax Act, 1961
- n) Check Genuineness of Activities

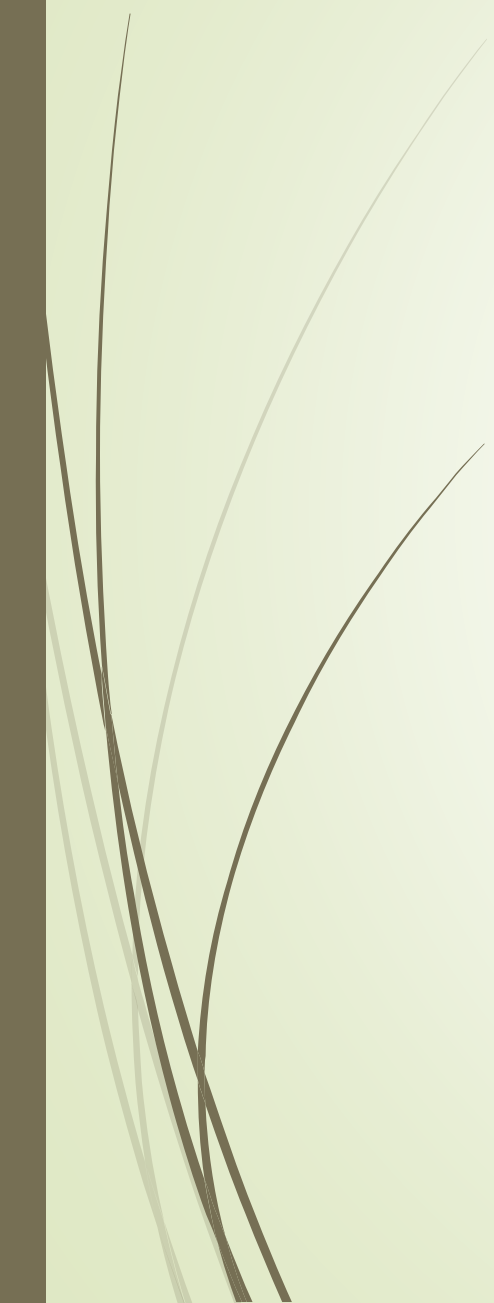


Approval/ Rejection by CIT (Exemptions)

- Provisional registration is granted by CPC on automated basis
- Final/Renewal registration is granted/rejected by the Jurisdiction CIT(E) after satisfying the following:-
- The objects of the trust or institution, whether it is charitable or religious
- Genuineness of the activities
- PCIT/CIT call such documents / information from the trust/ make enquiry
- Afford reasonable opportunity of being heard
- Passes order granting/ cancelling registration / refusing to cancel
- Send copy of order to Assessing Officer & assessee



Registration Number



In order to simplify the compliance for the new and existing charity institutions, It is proposed to make the process of registration completely electronic under which a unique registration number (URN) shall be issued to all new and existing charity institutions. Further, to facilitate the registration of the new charity institution which is yet to start their charitable activities, allow them provisional registration for three years."



Specified Violations

- Income applied other than for the objects for which it was established
- Income from profits & gains of business which is not incidental to the attainment of its objectives
- Separate books of a/c not maintained in respect of business which is incidental to the attainment of its objectives
- Applied any part of the income from the property held under trust for private religious purposes which does not ensure to the benefit of the public



Specified Violations

- ▶ Applied any part of income for the benefit of any particular religious community or caste
- ▶ Any activity carried out is not genuine/ not being carried out in accordance with all or any of the conditions subject to which it was registered
- ▶ Not complied with the requirement of any other law & the order, direction or decree holding such non-compliance has occurred, neither disputed / attained finality




Major Reasons for Rejection

- ▶ Trust did not provide Registered Trust Deed though all evidential documents were available
- ▶ Benefit are directed towards certain caste or religion
- ▶ Trust has not carried out any activity before applying for registration, not for adhoc registration
- ▶ Trust deed does not contain dissolution clause
- ▶ Amendment in Trust Deed was carried out though such amendment related to future administration of trust
- ▶ Violation of any other law
- ▶ Activities of the trust are sham/bogus or not as per objects of the entity
- ▶ Specific Violations



Effect of cancellation of registration

- ▶ Section 115TD is applicable – Accreted value of assets to be taxed
- ▶ Section 115TE – Simple interest @ rate of 1 %
- ▶ Section 115TF – Principal officer or the trustee can be deemed to be assessee in default for collection and recovery proceedings under IT Act 1961
- ▶ Applicable only if the order cancelling registration is upheld by the ITAT
- ▶ With effect from 01-04-2023



Financial action task force - FATF

- ▶ FATF is an independent inter-governmental body with a mandate to protect the global financial system against money laundering and terror financing
- 



Risk or vulnerability to NPOs

- ▶ FATF tries to address risk to Non Profit Organisations [NPO] as they are vulnerable for a variety of reasons:
- ▶ NPOs enjoy public trust – Accessible to considerable sources of funds and are often cash intensive.
- ▶ Some NPOs have a global presence – National and international operations and financial transactions
- ▶ In some cases, organizations with nefarious intentions including terrorist organisations have infiltrated into NPOs and misuse funds and operations to cover or support their anti social activities.

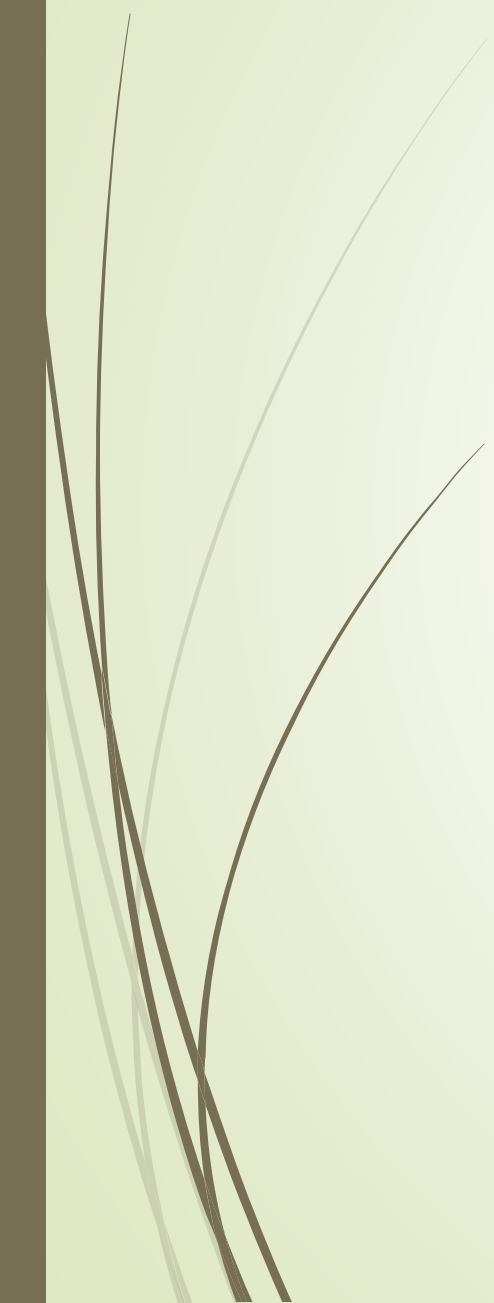


Know the functionaries

- ▶ Due diligence about various functionaries eg. Trustees, Directors, Managers, Accountants, employees and beneficiaries etc.
- ▶ Collect complete details of the beneficiaries and donors including Id Proof, past employment and activities
- ▶ Due diligence on sponsors and the activities undertaken
- ▶ Encourage transactions through banking channel or regulated financial channels only
- ▶ Keep complete trail of the transactions



Measures

- ▶ Complete details of the donors
 - ▶ Know about activities and operations of the donors
 - ▶ Background and antecedents
- 

Maintenance of Books of account & Other Documents and Audit of accounts

- With effect from A.Y. 2023-24, where the total income of the trust or institution or fund referred under these two regimes without giving effect to the provisions of section 10(23C)(iv)/(v)(vi)(via) or section 11 and 12, as the case may be exceeds the maximum amount which is not chargeable to income-tax in any previous year, such entities shall
 - – keep and maintain books of account and other documents in such form and manner and at such place,
 - – get the accounts audited by a chartered accountant and the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such prescribed particulars, should be furnished on or before the specified date i.e., one month prior to the due date for filing return of income.

Summary of Rule 17AA

• 23 Every charitable institution is required to keep and maintain the following books of accounts and other documents:

- Books of account including the cash book, ledger, journal, copies of bills, original bills, and any other books.
- Books of account for a business undertaking and business carried on by assessee
- Other documents for maintaining a record of:
 - All projects and Institutions run by the person containing details of the name address and objectives
 - Income in respect of voluntary contribution containing details of donor
 - income from property held under trust along with the list of such property and other income of institution or trust, etc
 - The application of income in and outside India, deemed application of income, income accumulated or set apart, money invested in the specified mode etc
 - Voluntary contribution received and its application
 - Loans and borrowings
 - Properties held by trust
 - The specified person

Summary of Rule 17AA contd...

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Mode in which documents may be kept

The books of account and other documents may be kept in written form, electronic form, digital form or as printouts of data stored digitally

Place where to be kept

The books of account and other documents shall be kept and maintained by the entities at their registered office. However books may be kept in another place if management decides to do so by passing a resolution.

Period for which books to be maintained

The books of account and other documents shall be kept and maintained for 10 years from the end of the relevant assessment year



RETURNS

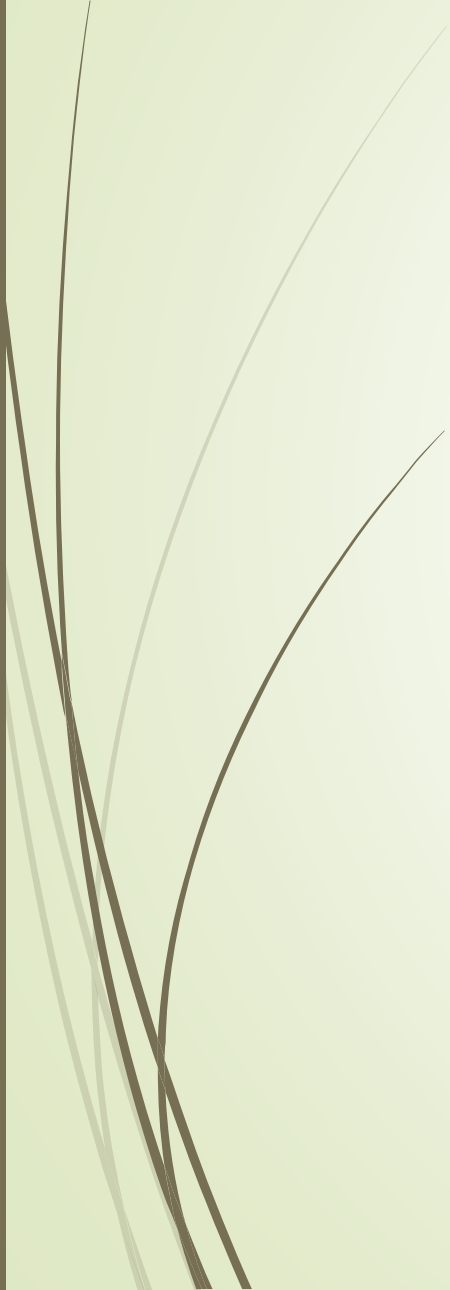
DUE DATES FOR AY 24-35

Types of Person	Due Date for ITR Filing 2023-24	Types of ITR/ FORM
Charitable Trust	31 st May 2024	Form 10BD-10BE – Statement of Donations
Charitable Trust	31 st July 2024	ITR 7
Charitable Trust	31 st August 2024	Form 9A – Application of income of previous year in the next year or in future
Charitable Trust	31 st August 2024	Form 10 – Accumulation of income for future application for 5 years
Charitable Trust	30 th September 2024	Audit Report with Charity Commissioner.
Charitable Trust	31 st October 2024	ITR 7 in case Trust is applicable to 10B/10BB
Charitable Trust	30 th September 2024	Audit under Income Tax – Form 10B/10BB



AUDIT





THANK YOU