



Focus on income tax
amendments

**Saturday, 13th May 2023 at
Pimpri-Chinchwad branch of WIRC of The Institute
of Chartered accountants of India, New Delhi**

Workshop on Audit and taxation of charitable trust

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The requirement of fresh registration – Clause 12A(1)(ac)

1. Already registered trust under old regime to reapply **Now use Form 10AB (earlier 10A)**
2. Renewal of registration under new regime to apply for renewal -6 Months prior to expiry **Use form No 10AB**
3. Re-apply within 3 years of provisional registration **or within 6 months of start of activity, whichever is earlier**
Use form No 10AB
4. To make the registration u/s 11 to be operative— **6 months prior to the commencement of the Assessment Year** **Use form no 10AB**
5. Application in case of modification of objects 30 days from the change of object **Use Form no 10AB**



Amendment in Finance Act 2023

6. in any other case, where activities of the trust or institution have ...

(a) not commenced, at least one month prior to the commencement of the previous year relevant to the assessment year from which the **said registration is sought**

(b) commenced and no income or part thereof of the said trust or institution has been excluded from the total income on account of applicability of sub-clause (iv) or (v) or (vi) or (via) of clause (23C) of section 10, or section 11 or section 12, for any previous year ending on or before the date of such application, at any time after the commencement of such activities



Amendment in Finance Act 2023

- income on account of applicability of sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10, or section 11 or section 12, for any previous year ending on or before the date of such application, at any time after the commencement of such activities



10(23C) Re-approval

1. Already approved trust under old regime to reapply **Use form no 10AB (earlier 10A)**
2. Renewal of approval under new regime to apply for renewal -6 Months prior to expiry **Use form no 10AB**
3. Reapply within 3 years of provisional approval- or Within 6 months of start of activity, whichever is earlier **Use form no 10AB**
4. Any other case including new cases – One month prior to the commencement of the previous year relevant to Assessment Year **Use form no 10A**



80G Re-approval

1. Already approved trust under old regime to reapply **Use form no. 10AB (earlier 10A)**
2. Renewal of approval under new regime to apply for renewal -6 Months prior to expiry **Use form no 10AB**
3. Reapply within 3 years of provisional approval or within 6 months of start of activity, whichever is earlier
Use form No 10AB
4. Any other case including new cases – One month prior to the commencement of the previous year relevant to Assessment Year
Use form no 10A



charitable purpose

Section 2(15)- "charitable purpose" includes

- i. relief of the poor,
- ii. education (*has wide meaning- but restricted to formal education-SC*)
- iii. yoga,
- iv. medical relief,
- v. -preservation of environment (including watersheds, forests and wildlife) and
- vi. -preservation of monuments or places or objects of artistic or historic interest, and
- vii-the advancement of any other object of general public utility



Advancement of any other object of general public utility

Such Object shall not be a charitable purpose, if it involves the carrying -on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business for a Cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity



Advancement of any other object of general public utility

- **Exception**
- -such activity is undertaken in the course of actual carrying out of such object **AND** the aggregate receipts from such activity or activities during the previous year, do not exceed 20% of the total receipts
- **As per section 13(8)- in the year in which such receipts are more than 20%-No Exemptions-**



New Noble Educational Society Civil Appeal No. 3795 of 2014 (SC)

- Solely means solely and not predominantly
- Education means scholastic education
- Activity other than education now divided into (1) incidental to education and (2) other activities not incidental to education
- Incidental to education has to be related to own students
- Activities not relating to own students, even if educational, will fall in other activities affecting the exemption.
- Effective prospectively (whether from the date of Supreme Court judgment or from next financial year) to me it will be 19th Oct 2022



Ahmedabad Urban Development Authority -SC

- The judgment applies to general public utility not falling in the first six categories given in S. 2(15)
- Proviso cannot alter the essence of the main provision
- If the incidental activities are carried at cost or marginal profit, it is not a business activity.
- If however, incidental business carried with the high profit motive, it will be considered as business attracting proviso 1 to S. 2(15), namely, 20% of the Gross Revenue affecting the exemption.
- Although 2 judgments are separate, the interpretation and observations given in one judgment may be used in other judgment and vis-a-vis



New Exemption introduced S. 10(46A) to overcome Ahmedabad Urban decision effect

- With effect from the 1st day of April, 2024; (i) after clause (46), the following clause shall be inserted with effect from the 1st day of April, 2024, namely:---
- (46A) any income arising to a body or authority or Board or Trust or Commission, not being a company, which-
- has been established or constituted by or under a Central Act or State Act with one or more of the following purposes, namely: (i) dealing with and satisfying the need for housing accommodation;
- (ii) planning, development or improvement of cities, towns and villages;



New Exemption introduced S. 10(46A) to overcome Ahmedabad Urban decision effect

(iii) regulating, or regulating and developing, any activity for the benefit of the general public;

(iv) regulating any matter, for the benefit of the general public, arising out of the object for which it has been created; and

(b) is notified by the Central Government in the Official Gazette for the purposes of this clause;



Relevant provisions for claiming exemptions

1. Any person deriving income from property held wholly under trust for charitable or religious purpose-**Section 11 (12,12A,12AB,13)-Exempt to the extent Applied to purposes In India & Accumulated (upto 15%)**
2. University or other educational institution -solely for education & Not for profit -Substantially Financed (above 50%) by Gov-**10(23C)(iiiab)**
-Aggregate annual receipts of PERSON below 5 Crore - **10(23C)(iiid)** [Rs. 5cr to be computed all institutions put together -01.04.2022- Earlier per institution Rs.1 Cr] -
3. other (not covered above)- **10(23C)(vi)**



Relevant provisions for claiming exemptions

4. Hospital or other medical institution –solely for philanthropic purpose & Not for profit

Substantially Financed by Gov- 10(23C)(iii ac)-**Aggregate**
annual receipts of **PERSON** below 5 Crore –10(23C)(iii ae)
-other (not covered above) 10(23C)(vi a)- **Approval required**

**5. Any other fund or institution charitable purpose-
national/state importance- 10(23C)(iv)- **Approval required****

**6. Any trust or institution-Wholly public religious
Or Wholly public religious & charitable purpose-
10(23C)(v)- **Approval Required****



Relevant provisions for claiming exemptions

- **For claiming exemption u/s 11, 10(23C)(iv)(v)(vi)(via)**
- Minimum 85% of income is to be applied towards purpose in India (Either revenue or capex) **i.e., income upto 15% can be Freely Accumulated or set apart** for application for such purpose in India
- ***(Addl. CIT Vs. ALN Rao Charitable Trust 1996 AIR 344- 15% is exempt without any condition)***



Accumulation

Accumulation (over and above 15%) is allowed if

- 📁 Accumulated funds are invested as per 11(5)-
various modes are provided- 5 years
- 📁 Form 10 is filled - before 139(1) -
- Against- for a definite and concrete purpose & mere reproduction of objects of the trust not sufficient.
- *DIT(E) v Trustees of Singhanian Charitable Trust [1993] 199 ITR 819 (Cal) &*
- *Cotton Textiles Export Promotion Council v. First ITO [1983] 4 ITD 642 (Mum Trib)*



Accumulation of income

- Favour- Plurality of purposes is permitted & an assessee may utilize the funds for some or all of the objects of the trust. Sufficient to state that amount would be utilized for objects of the trust in general
- DIT(E) v Envisions [2015] 378 ITR 483 (Kar) & Bharat Kalyan Pratisthan v DIT(E) [2008] 299 ITR 406 (Del) &
- Mitsui & Co. Environmental Trust, 211 CTR 352 (Del)



Accumulation of income

- Accumulated income will be taxed if

Accumulated income is :

- 📁 credited/paid to other registered trusts

- 📁 applied to other purpose

- 📁 not invested or ceases to be invested as per 11(5)

- 📁 Not utilized for the purpose for which it was accumulated or set apart during the period

- Then it will be treated as income in the year of default or 6th year as applicable. (Now in the fifth year only)



Accumulation of income

- *However, in case beyond control-Application can be made to AO seeking permission to apply accumulated income for purpose other than for which it was accumulated. But in no case AO can allow paying the accumulated money to another registered trust, except during dissolution.*



Restrictions on application of funds

- If Income received is **contributed as corpus of** any other registered trust etc. then this wont be considered as **application**. *Donation can be given for application towards objects. (So, corpus fund be used to contribute Corpus of another trust.- This is one of the reasons why corpus fund is to be invested separately.)*



Restrictions on application of funds

- 📄 **Section 40(a)(ia) and 40A(3) & (3A) applies-** i.e., amount disallowed as per these sections not to be considered for determining the amount of application (i.e. while computing 85%)
- 📄 **Any excess application or preceeding previous year not be considered** in the year under consideration (no set-off of earlier deficit/excess application) [applicable from 01.04.2023]



Restrictions on application of funds

- Depreciation cannot be claimed on that Capital Asset the acquisition of which was considered as Application of income (FA 2015)
(what if Asset purchased from corpus?)
- 📁 Exp. allowed as application on Actual Payment basis & not on accrual basis (FA 2022, 01.04.2023)
- 📁 Use of corpus & Loan fund for Application towards objects Not allowed (FA 2021, 2023)



Finance Act 2023 Changes

- 1. Previously loans raised for activities of the trust were considered as application of money. Now under the amendments passed in 2022, it will be considered as application of money only when the loan is repaid. In the year 2023 further amendment has been made and now such loan is required to be repaid within five years time. If not repaid it will not be considered as application of income.**



Finance Act 2023 Changes

2. Previously sums withdrawn from the corpus of the fund for the activities of the trust were considered as application of money. Now under the amendments passed in 2022, it will be considered as application of money only when the amount is restored in the corpus fund . In the year 2023 further amendment has been made and now such sum is required to be repaid within five years time. If not repaid it will not be considered as application of income.



Finance Act 2023 Changes

3. 85% of the donations to other trust will be treated as application of income (in other words, 15% of the donations given will not be considered as application of income)
4. Existing charitable organisations which already have commenced the activities can directly make an application for regular approval under the specified sections 10(23C)/12AB/80G and need not apply for provisional registration. The provisional registration now only for new trusts or old trust commencing activity now. The amendment to take effect w.e.f 1st October 2023



Finance Act 2023 Changes

5. Filing false or incomplete or incorrect information in the application for provisional registration or re-registration which was done by already registered organization has been included in the definition of specified violations which may lead to cancellation of registration under section 10(23C) or Section 12A
6. After the grant of attraction of section 115TD i.e. tax on accreted income at the income at the maximum marginal rates in case where the application for reregistration or regular approval after the grant of provisional registration is not done within the due date so specified in IT Act



Finance Act 2023 Changes

- 7. Exemption under Section 11, 12 or Section 10(23C) will be available to charitable organisations only if return of income has been furnished within the time allowed under section 139(1) or Section 139(4) of the income tax act 1961.**

This implies even in the case of belated return, the exemption shall not be revoked for charitable institutions This amendment has been made to negate the effect of amendment passed by introducing updated return under section 139(8) of the income tax act 1961, The amendment would be applicable for financial year 2022-23



Multiple exemptions

- Can a trust claim exemption u/s 10(23C) and 11 simultaneously?

📖 Exemption u/s 10(23C)(iv)(v)(vi)(via) and 11 cannot be claimed simultaneously owing to section 11 (7) - Since, the moment registration is sought in another regime, earlier registration will become inoperative.

📖 A registered trust cannot claim exemption under any clause of section except clause (1), 10(23C) and (46).



Income from PGBP

- -PGBP earned by trust shall not be considered for exemption.
- Unless such activity is incidental to attainment of the objectives of the trust - and separate books of accounts are maintained in respect of such business.



Entire receipts to be taxable : Amendment

In Existing Scenario- In cases where Receipts from commercial activities (advancement of any other object of GPU) exceeds 20% or Audit report or ITR is not furnished in time Entire receipts were taxed.

FA 2023 has brought amendment- Clarificatory in Nature- [Sec 13(10) and 23rd proviso to 10(23C)] - owing to which tax to be computed after allowing deduction of expenditure (exp from corpus, loan, depreciation on cap. Asset claimed as application, donation to any other person not to be considered)- 40(a)(ia), 40A(3) and (3A) shall also apply.



Deemed application

- Only Allowed for claiming exemption u/s 11 and not u/s 10(23C)
- -Income was derived but not received- Deemed Application, if said income is applied in the year of receipt or immediate next year- otherwise treat it as income in year following the year of receipt
- Deemed Application- if said income is applied in year following the year of receipt -otherwise treat it as income in the year following the year of receipt



Form 9A

Upon filing form 9A-

Income to that extent will be deemed to be applied in the year in which it is derived and same income will not be considered as application of income in the year in which it is applied.

If an organisation is not able to apply 85 per cent of its income in a particular year, then it can also accumulate the income in excess of 15 percent of income. Such excess accumulation has to be used for religious or charitable purposes within the next 12 months or in the year of receipt of income under explanation to section 11(1). Such



Form 9A

- accumulation is otherwise called **deemed application**.
For example, if the income of the organisations was Rs. 10 lakh and the actual utilisation was Rs. 8 lakh. Then the organisation can indefinitely accumulate Rs. 1.5 lakh (i.e. 15 percent) and has to accumulate Rs. 0.50 lakh for next 12 months by filing Form 9A. When spent next year, it will be called as deemed application.
- This under utilisation may be possible due to donation being received on the last day of financial year making it difficult for the institution to spend the sum.



Form 9A

- The accumulation for 1 year is normally done when the income is received towards the end of the year and utilisation is not feasible.
- An accumulation under this provision is also possible if the income is not available for utilisation, e.g the Bank Accounts are attached by authorities etc. Accumulation for 1 year under Expln. to Section 11(1)
- Online Application in Form 9A should be filed within due date under section 139(1), w.e.f. Assessment Year 2016-17.



Form 9A

- If an organisation is not able to apply 85 per cent of its income in a particular year, then it can also accumulate in excess of 15 percent of income; such excess accumulation has to be used for religious or charitable purposes within the next 5 years. For example, if the income of the organisation was Rs. 1000 lakh and the actual utilisation was Rs. 200 lakh. Then the organisation can indefinitely accumulate Rs. 150 lakh (i.e. 15 percent) and has to accumulate Rs. 650 lakh to be utilized next five years by filing Form 10.
- ***Accumulation for 5 years under Expln. to Section 11(2) :***



Form 10

- The following formalities are required to be complied:
- (a) Online Application in Form No. 10 along with the Income Tax Return within the time provided under section 139(1), w.e.f. Assessment Year 2016-17, Form 10 needs to be filed within the due date and at the same time income tax return has also to be furnished within the due date.
- (b) Accumulation possible only for 5 years (plus one year grace period for attracting of section 11(3)(c) within which the income has to be utilised for specified purposes.



Form 10

- (c) The purposes for which the income has been accumulated have to be specified in Form No. 10.
- (d) All accumulated income is required to be invested in the form of investment prescribed in section 11(5).
- (e) Once the income is accumulated, it can only be utilised for specific purposes and inter-charity donation will not be possible.
- (f) Form No. 10 should be accompanied by a board resolution regarding the accumulation and the specific objects for which the income is accumulated. The details of investments and copies of annual accounts should be enclosed with it.



Form 10

- The accumulated income will become taxable in the immediately following year in the following circumstances :
 - (a) income is applied to purposes other than charitable or religious purposes as aforesaid or ceases to be accumulated or set apart for application thereto, or
 - (b) it ceases to remain invested or deposited in any of the forms or modes specified in section 11(5), or



Form 10

- (c) it is not utilised for the purpose for which it is so accumulated or set apart within the period of 5 years or in the immediately succeeding year. Therefore, effectively the organisation has 6 years to utilise the accumulated funds, or
- (d) it is credited or paid to any trust or institution registered under section 12AA or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution.



Form 10

- (e) Form 10 is not filed within the due date of filing of return under section 139(1) with effect from 1st April 2016 i.e. Assessment Year 2016-17.
- (f) The income which becomes taxable as mentioned above will not be entitled to the 15 per cent accumulation as is available to the normal income of charitable organisations.



Form 10

- (g) Violation related with section 11(5), i.e., investment in non-specified securities, should always be read with section 13(1)(d) because for violation of section 11(2) only the contravened portion of the income will be taxed but for violation under section 13(1)(d), the entire exemptions may be lost though judicial precedence of the contrary is also available.



Form 10B:

- Form 10B is to be furnished by a charitable or religious trust or institution that has been registered u/s 12A or who has submitted an application for registration by filing Form 10A. Form 10B is an audit report which is provided by a CA upon nomination by the taxpayer. Form 10B can be accessed and submitted in the online mode only and it is to be filed on or before the specified date referred to in Section 44AB, i.e., 2 months prior to the due date for furnishing the Return of Income under subsection (1) of Section 139 i.e. before 31st August 2023



New Form 10B for filing Tax Audit Report by Trusts and NGOs

- CBDT *vide* Notification No. 7/2023 in GSR 118(E) dated 21.02.2023 and through Income-tax (3rd Amendment) Rules, 2023 amended **Rule 16CC** and **Rule 17B** of the Income-tax Rules, 1962 and also amended the tax audit report required to be furnished by Charitable Trusts or Institutions including NGOs registered under section 12A or approved under section 10(23C) of the Income-tax Act, 1961 ('Act') in Form No. 10B and Form No. 10BB. **This amendment shall come into force from 01.04.2023.**



New Form 10B for filing Tax Audit Report by Trusts and NGOs

- This amendment has shifted the focus of the applicability of forms for furnishing the tax audit report **from the basis of registration to the basis of total income**. Prior to the amendment, Form No. 10B was required to be filed by a trust or institution registered u/s 12A of the Act while the institutions or funds approved u/s 10(23C) were required to furnish their tax audit reports in Form No. 10BB.
- Post amendment, Form No. 10B shall be required to be used for furnishing the tax audit report where the total income of the trust or institution or fund or hospital, or



New Form 10B for filing Tax Audit Report by Trusts and NGOs

university or any other educational institution is **more than Rs. 5 crore** during the previous year. Besides, if such trust or institution **has received any amount of foreign contribution under FCRA, 2010** or **applied any part of its income outside India** then also such trust or institution is required to furnish its tax audit report in Form No. 10B irrespective of the fact whether the trust or institution is registered under section 12A of approved under section 10(23C) of the Act.



New Form 10B for filing Tax Audit Report by Trusts and NGOs

- In this context, it is noteworthy that no threshold limit is prescribed for receipt of foreign contribution or application of income outside India. Hence, if any trust or institution received even Rupee One as foreign contribution or applies a nominal amount of its income outside India, it has to furnish tax audit report in Form No. 10B.
- Tax Audit Report in any other cases is required to be furnished in Form No. 10BB irrespective of the fact whether the trust or institution is registered under section 12A or approved under section 10(23C) of the Act.



New Form 10B for filing Tax Audit Report by Trusts and NGOs

- The new Form No. 10B and Form No. 10BB are more comprehensive compared to the pre-amended forms. A simple 3-4 page audit report is now expanded to 17-page and 6-page notification forms respectively.



Anonymous Donation

- Anonymous Donation means any voluntary contribution [as per 2(24)(iia)] where Person receiving donation **does not**
- **maintain the Record of identity** indicating the **name and address** of the person giving such contribution-taxed @ 30% of the Aggregate anonymous donation received in excess of the higher of the following i) Rs.1,00,000/- ii) 5% of the total donations received



Form 10 BD

- Section 80G of the Income-tax Act, 1961 provides for deduction on payment of donations. Until the last financial year, there was no way to counter check the accuracy of the donations paid. The Income-tax Department (ITD) allowed deduction based on the claim made by the assessee
- However, the CBDT through Notification No. 19/2021 dated 26.03.2021, has notified Form No. 10BD and Form No. 10BE to facilitate more transparency and accuracy on the reconciliation of deductions claimed by the assessee and donations received by the Charitable Organizations.



Form 10 BD

- Form No. 10BD is a statement of donations containing the details of donations received by the Charitable Organizations during the financial year.
- Form is divided into 3 parts: a. Basic information b. Details of donations c. Verification
- The due date to file Form No. 10BD is 31st May of the immediately financial year in which donation is received (i.e. for Financial Year 2021-2022, it is 31.05.2022) (Rule 18AB(9))



Form 10 BD

- Post filing of Statement of Donations in Form 10BD, the concerned assessee/donee is required to download and issue Certificate of Donation in Form 10BE. The certificate would contain details of recipient like its Name, PAN, Address, URN u/s 80G & 35(1) along with details of donations and donor. For the financial year 2022-23, Form 10BE is to be issued by 31st May 2023. Ideally, Form 10BE information would be reflected in Form 26AS/AIS/TIS of the Donor



Form 10 BD

- In case of any inadvertent errors or mistakes in Form 10BE, then there are provisions to rectify the errors or mistakes by filing a correction form (filing Form 10BD again). The reporting entity is mandated to comply with the filing of Form 10BD and failure to comply will attract a fee of Rs.200/- per day of delay as per newly inserted section 234G. However, the late fee should not exceed the donation amount in respect of which delay has occurred in filing Form 10BD.



Form 10 BD

- Apart from the fee for delay in furnishing statement of donations in Form 10BD, failure to file such statement will also attract penalty u/s 271K, which shall not be less than Rs.10,000/- but may extend up to Rs.1,00,000/- in with corrections
- Furnishing of Form 10BD is relevant from the perspective of Donor
- Explanation 2A to section 80G provides that *‘For the removal of doubts, it is hereby declared that claim of the assessee for a deduction in respect of any donation made*



Form 10 BD

- *to an institution or fund to which the provisions of subsection (5) apply, in the return of income for any assessment year filed by him, shall be allowed on the basis of information relating to said donation furnished by the institution or fund to the prescribed income-tax authority or the person authorised by such authority, subject to verification in accordance with the risk management strategy formulated by the Board from time to time.*



Practical difficulties

- **1. Donations received in kind:** Form 10BD requires reporting of donations received in kind as well. However, there will be practical difficulties in reporting the same as there is no basis of valuation prescribed in the Income Tax Act or rules. Donations received in kind may need to be converted in some monetary value. The same should be measured on reasonable or fair basis
- **2. Small or Penny donations:** This type of donations is also required to be reported under Form 10BD. There is no threshold limit prescribed for reporting donations



Practical difficulties

- reporting donations under this form. Hence, every amount of donation needs to be reported
- **3. Donations received in foreign currency:** In order to report the same, donations in foreign currency needs to be converted at the exchange rate which may be taken as the date of receipt of donation. If donation is received from foreign donor, it is advisable that organisation must obtain the tax identification number like SSA no, etc. Moreover, donation from foreign sources must comply with the provisions of Foreign contribution(Regulation) Act.



Practical difficulties

- **4. Donations received through Digital Platform Channel:** Such donations should ideally not form part of anonymous donation under the Income tax law as such donations are made via banking channels and may be accordingly reported.
- **5. Whether religious trust also required to file form 10BD and 10BE:** This issue is not yet clear and on a safer note such trust may file form 10BD. However, as religious trust are generally not eligible for approval u/s 80G, and these trusts are generally having Hundi



Practical difficulties

- **Donations, the provisions of furnishing information in Form No 10BD to such donation is not applicable.** However, where public religious trust is registered under section 80G, then donations to such a trust qualify for deduction under section 80G and for such a trust, it is mandatory to furnish Form 10BD and issuing Form 10BE.
- **6. PAN details of donor not available with donee at the time of filing:** In this regard, ‘Notes to file Form 10BD’ should be referred which states that if neither



Practical difficulties

- PAN or Aadhar number is available, other type of identification like Passport number/Driving license number/Elector's photo identity number/Ration card number/Taxpayer Identification number of country where the person resides can be filled
- **7. No Identification number of donor is available with donee:** *An organisation must put effort to obtain PAN or others IDs from the donor, if any of them is not available then it may amount to anonymous donation as*



Practical difficulties

- *per Section 115BBC of Income Tax Act, 1961 which reads as: For the purposes of this section, 'anonymous donation' means any voluntary contribution referred to in sub-clause (iia) of clause (24) of section 2, where a person receiving such contribution does not maintain a record of the identity indicating the name and address of the person making such contribution and such other particulars as may be prescribed.' As per Section 115BBC(1), includes any income by way of any anonymous donation, the income-tax*



Practical difficulties

- *payable shall be the aggregate of—*
- (i) the amount of income-tax calculated at the rate of thirty per cent on the aggregate of anonymous donations received in excess of the higher of the following, namely:—
- (A) five per cent of the total donations received by the assessee; or
- (B) one lakh rupees, and



Practical difficulties

- **8. Whether an institution shall file Form 10BD if provisional approval under section 80G:** Form 10BD is required to be filed by every person having approval under section 80G or section 35. It is irrelevant whether the organization has provisional approval or regular approval.
- **9. What if organisation has not received a single donation or grant during the financial year:** In this case you need not file Form 10BD, the Income tax portal so far not permit to file Nil Form 10BD.



Practical difficulties

- **10. Whether Form 10BD can be revised:** Yes, in case of any Error/Correction in Filing Form 10BD, it can be revised as per ‘Notes to fill Form 10BD’ , ‘Pre Acknowledgement Number’ is mentioned which is to be left blank in case of the original filing, the same will be generated once Form 10BD is filed. However, while filing the revised Form 10BD the same pre acknowledgment number should be mentioned.



Practical difficulties

- **11. How many times Form 10BD can be filed:**
Multiple form 10BD may be filed by the same reporting person, as per the procedures laid down by the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be.



Practical difficulties

- **12. Donations received prior to registration under relevant provisions of Income-tax Act, 1961 of the concerned assessee:** While filing Form No. 10BD (Statement of Donations), a pertinent question arises whether donations received before the date of registration granted by Income-tax department under section 80G/35 have to be considered for furnishing the same in Form 10BD meant for FY 2021-22. Eg section 80G registration granted on, say 28.02.2022. Then, donations received during the year FY 2021-22 but



Practical difficulties

- before 28.02.2022 are eligible for section 80G benefit and whether the same have to be reported in Form 10BD? The CBDT needs to clarify the same.
- **13. Incomplete Information:** If the complete information is not available for all donations, it is not possible to furnish Form 10BD. In such circumstances, as a matter of prudence, the institution may consider furnishing the Form 10BD in respect of donations where all particulars are available. This is because, delay attracts fees and penalty and there is a provision to furnish a correction statement.



Practical difficulties

- **14. Correction Statement:** On how many occasions correction statement can be furnished? It is noted that proviso to clause (viii) of section 80G(5) states that “Provided that the institution or fund may also deliver to the said prescribed authority, a correction statement for rectification of any mistake or to add, delete or update the information furnished in the statement delivered under this sub-section in such form and verified in such manner as may be prescribed”. There is no mention that correction



Practical difficulties

- statement can be furnished only once. This is also the case considering object of it is to correct any mistake.
- **15. Donations in Offering Box:** In Religious places like temple, gurudwara, church, mosque etc. donations are put in offerings box by devotees. Since no particulars of donors would be available in such a situation, it is not possible to include such donations in Form 10BD. Further, section 115BBC(2) excludes such donations from purview of anonymous donation.



Anonymous Donation Section 115BBC

- Section not applicable to
 - i) Wholly Religious trust or institution
 - ii) Wholly Religious and charitable trust or institution (other than specific donation for university/hospital/ educational or medical institution)
 - iii) Anonymous donation received by educational institutions and hospital wholly or substantially financed by the government



Anonymous Donation (Section 115BBC)

- Whether section 69/ 69A can be invoked?
- *Keshav Social and Charitable Foundation Vs. DIT (E) 278 ITR 152 (2005) Delhi.*
- *It is observed even if the donors are not introduced or the lists of the donors are not filed the AO cannot infer that the assessee was trying to introduce unaccounted money*



Transfer of Capital asset Section 11(1A)

Capital Asset, **being Property held under trust wholly for charitable or religious purpose- transferred :**

- If cost of new asset $>$ Net Consideration from Asset transferred- **Whole of capital gain will be deemed as Application**
- If cost of new Asset $<$ Net consideration from Asset transferred- **(Cost of new Asset – cost of asset transferred)- will be deemed as Application.**
 - **Cost of Asset transferred** = cost as per sec 48 and 49
 - **Net Consideration** = full value of consideration accrued/recd less exp. Incurred for transfer.



Transfer of Capital asset Section 11(1A)

- **Whether Cost of Asset means Indexed cost of acquisition?**
- Explanation ii to section 11(1A) provides that cost means aggregate of the cost of acquisition as ascertained for the purpose of section 48 and 49
- **Whether 50C applicable? (explanation iii to section 11(1A) provides meaning of Net Consideration)?**
- *ITAT, Lucknow, following and referring the decisions of various courts, in the case of ACIT, Kanpur vs. M/s. The Upper India Chamber of Commerce, in ITA/601/Lkw/2011 (AY2 008-19, dated 5.11.2014) has held that “section 11(1A) has specifically defined the meaning of "net consideration" for the purposes of capital gains and so the same shall prevail over the deemed sale consideration as provided u/s 50C.*



Transfer of Capital asset Section 11(1A)

- Whether other provision of capital gains be applicable?
- Sec 11- Income not to be included in Total Income- section 14 heads of income is for computing Total income- so when determination is of income which is not to be included in Total Income then income need not be categorized u/s 14. (Phrase used in Sec 11 is Income and not Total income)



Transfer of Capital asset Section 11(1A)

- Whether investment in FD for acquiring another capital asset is allowed?- [CBDT *instruction no. 883 dated 24.09.1975* clarified that investment in FDs for acquiring ‘another capital asset’, with the tenure of more than 6 months, would be regarded as utilization of net consideration]- *However- few HC’s have held that 6month condition is incorrect.*



Transfer of Capital asset Section 11(1A)

- **Time Limit of investing in New Asset?**
 - 📁 Section 11(1A) doesn't provide any time limit
 - 📁 Basically sale proceeds are considered as income from property u/s 11(1)(a)-
- so application be done in same year
 - 📁 So automatically provisions of deemed application and Accumulation will be applicable.
- **Any holding period is prescribed for transferred cap. asset or new cap. asset??**
 - 📁 No such minimum holding period is prescribed.



Corpus fund

- **Voluntary**

- 📁 While voluntary contribution with **specific direction** to form part of corpus-

- Exempt - Section 11(1)(d) / 3rd Proviso to 10(23C)- in case of registered trust. Such corpus fund is to be invested separately as per 11(5)**

- contribution is income as per section 2(24)(iia)

- **Interest received on Corpus fund?**

- *-Commissioner of Income-Tax. (Exemption), Kochi vs. Mata Amrithanandamayi Math Amritapuri [2018] 94 taxmann.com 82 (SC)- if it is specifically mentioned by the donor that interest shall also form part of corpus*



Section 164(2)

- **The income of the trusts shall be taxed at slab rates.**
- 📖 However, in the following situations they shall be taxed at maximum marginal rate:
 - a) If any part of the income of the charitable trust enures directly or indirectly for the benefit of persons specified in sec. 13(3). [13(1)(c)]
 - b) If funds of the trust are invested in modes other than those specified in Sec 11(5)- [13(1)(d)]
- Maximum Marginal Rate shall **apply to only that part of income** where provisions of Sec. 13(1)(c) and 13(1)(d) are attracted and the balance income shall be taxed at normal slab rates.



Thank You
Learned attendees for
patient hearing

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