

RECENT AMENDMENTS IN TAXATION OF CHARITABLE TRUSTS

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1. **BACKGROUND:**

There have been significant amendments in the provisions of the Income tax Act (Act) relating to taxation of Charitable Trusts. This process has been started by our Finance Minister, Smt. Nirmala Sitharaman, when she presented the Union Budget on 1st February, 2020. Since then, in her successive Budgets presented in 2021 and 2022, many significant amendments are made. All these amendments have increased the compliance burden of the Charitable Trusts. In this Article, Public Charitable Trusts and Public Religious Trusts claiming exemption under sections 11, 12 and 13 of the Act are referred to as "Charitable Trusts". Further, Universities, Educational Institutions, Hospitals etc., claiming exemption under section 10 (23 C) of the Act are referred to as "Institutions". Some of the important amendments made in the taxation provisions relating to Charitable Trusts and Institutions are discussed in this article.

2. **REGISTRATION OF TRUSTS:**

Prior to the recent amendments, Institutions claiming exemption under section 10(23C) of the Act were required to get approval from the designated authority (Principal Commissioner or a Commissioner of Income tax). The procedure for this was provided in section 10(23C). The approval once granted was operative until cancelled by the designated authority. For other Charitable Trusts the procedure for registration was provided in section 12AA. Registration, once granted, continued until it was cancelled by the designated authority. The Charitable Trusts and other Institutions were entitled to get approval under section 80G from the designated authority. This approval under section 80G was valid until cancelled by the designated authority. On the strength of the certificate under section 80G the donor to the Charitable Trust or other Institutions could claim deduction in the computation of his income for the whole or 50% of the donations as provided in section 80G. The Finance Act, 2020, has amended sections 10(23C), 11, 12A, 12AA and 80G and inserted section 12AB to completely change the procedure for registration of Trusts. These provisions are discussed below.

2.1 New Procedure for Registration:

- (i) A new section 12AB is inserted effective from 01.10.2020. This section specifies the new procedure for registration of Charitable Trusts. Similarly, section 10(23C) is also amended and similar procedure, as stated in section 12AB, has been provided. All the existing Charitable Trusts and other Institutions registered under section 10(23C) or 12AA will have to apply for fresh registration under the new provisions of section 10(23C) / 12AB within 3 months i.e. on or before 31.12.2020. By CBDT Circular No.16 dated 29.08.2021, this date was extended upto 31.3.2022. The fresh registration will be granted for a period of 5 years. Thereafter, all Institutions / Trusts claiming exemption under section 10(23C)/11, will have to apply for renewal of registration every 5 years. For this purpose the application for registration is to be made in Form No.10A. The application for renewal of registration is to be made in Form No. 10AB.
- (ii) Existing Charitable Trusts, and Institutions, have to apply for fresh registration under section 12AB or 10(23C) on or before 31.03.2022. The designated authority will grant registration under section 12AB or 10(23C) for a period of 5 Years. This order is to be passed within 3 months from the end of the month in which application is made. Six months before the expiry of the above period of 5 years, the Trusts/Institutions will have to again apply to the designated authority for renewal of Registration which will be granted for a period of 5 years. This order has to be passed by the designated authority within six months from the end of the month when the application for renewal is made.
- (iii) For new Charitable Trusts, or Institutions the following procedure is to be followed:
 - (a) The application for registration in the prescribed form (Form No.10AB) should be made to the designated authority at least one month prior to the commencement of the previous year relevant to the assessment year from which the registration is sought.
 - (b) In such a case, the designated authority will grant provisional registration for a period of 3 assessment years. The order for provisional registration is to be passed by the designated authority within one month from the last date of the month in which application for registration is made.

- (c) Where such provisional registration is granted for 3 years, the Trust/Institution will have to apply for renewal of registration in Form No.10AB at least 6 months prior to expiry of the period of the provisional registration or within 6 months of commencement of its activities, whichever is earlier. In this case designated authority has to pass order within 6 months from the end of the month in which application is made. In such a case, renewal of Registration will be granted for 5 years.
- (iv) Section 11(7) is amended to provide that the registration of the Trust under section 12A/12AA will become inoperative from the date on which the trust is approved under section 10(23C)/10(46) or on 01.10.2020 whichever is later. In such a case the trust can apply for registration under section 12AB. For this purpose the application for registration under section 12AB will have to be made at least 6 months prior to the commencement of the assessment year from which the registration is sought. The designated authority will have to pass the order within 6 months from the end of the month in which application is made.
- (v) Where a Trust or Institution has made modifications in its objects and such modifications do not confirm with the conditions of registration, application should be made to the designated authority within 30 days from the date of such modifications.
- (vi) Where the application for renewal of registration is made, as stated above, the designated authority has power to call for such documents or information from the Trust / Institution or make such inquiry in order to satisfy about (a) the genuineness of the Trust / Institution and (b) the compliance with requirements of any other applicable law for achieving the objects of the Trust or institution. After satisfying himself, the designated authority will grant renewal of registration for 5 years or reject the application after giving hearing to the trustees. If the application is rejected, the Trust or Institution can file appeal before ITA Tribunal within 60 days. The designated authority has also power to cancel the registration of any Trust or Institution under section 12AB on the same lines as provided in the existing section 12AA. All applications for Registration

pending before the designated authority as on 01.10.2020 will be considered as applications made under the new provisions of section 10(23C) / 12AB.

2.2 Section 80G(5):

Proviso to Section 80G (5) (vi) is added from 01.10.2020. Prior to this date, certificate granted under section 80G was valid until it was cancelled. Now, this provision is deleted and a new procedure is introduced. Briefly stated, this procedure is as under.

- (i) Where the trust/institution holds certificate under section 80G it will have to make fresh application in the prescribed form (Form No.10A) for a new certificate under that section on or before 31.03.2022. In such a case the designated authority will give a fresh certificate which will be valid for 5 years. The designated authority has to pass the order within 3 months from the last date of the month in which the application is made.
- (ii) For renewal of the above certificate, application in Form 10AB will have to be made at least 6 months before the date of expiry of such certificate. The designated authority has to pass the order within 6 months from the last date of the month in which the application is made.
- (iii) In a new case, the application for certificate under section 80G will be required to be filed at least one month prior to commencement of the previous year relevant to the assessment year for which the approval is sought. In such a case the designated authority will give provisional approval for 3 years. The designated Authority has to pass the order within one month from the last date of the month in which the application is made. In such a case application is to be filed in Form No.10AB. By CBDT Circular No.16 of 29.08.2021 the date for filing such application in Form 10AB is extended to 30.09.2022.
- (iv) In a case where provisional approval is given, application for renewal will have to be made in Form No.10AB at least 6 months prior to the expiry of the period of provisional approval or within 6 months of commencement of the activities by the trust/ institution whichever is earlier. In this case the designated

authority has to pass the order within six months from the last date of the month in which application is made.

In case of renewal of approval as stated in (ii) and (iv) above, the designated authority shall call for such documents or information or make such inquiries as he thinks necessary in order to satisfy that the activities of the trust/institution are genuine and that all conditions specified at the time of grant of registration earlier have been complied with. After he is satisfied he shall renew the certificate under section 80G. If he is not so satisfied, he can reject the application, after giving hearing to the trustees. The trust/institution can file appeal to ITAT within 60 days if the approval under section 80G is rejected.

2.3 Section 80G(5) (viii) AND (ix):

- (i) Clauses (viii) and (ix) are added in Section 80G(5) from 01.10.2020 to provide that every trust/institution holding section 80G certificate will be required to file with the prescribed Income-tax Authority particulars of all donors in the prescribed Form No.10BD on or before 31st May following the Financial Year in which Donation is received. The trust/institution has also to issue a certificate in the prescribed Form No 10BE to the donor about the donations received by the trust/institution. The donor will get deduction under section 80G only if the trust/institution has filed the required statement with the Income-tax Authority and issued the above certificate to the donor. In the event of failure to file the above statement or issue the above certificate to the donor within the prescribed time the trust / institution will be liable to pay fee of Rs.200/- per day for the period of delay under new section 234G. This fee shall not exceed the amount in respect of which the failure has occurred. Further, penalty of Rs.10,000/- (minimum) which may extend to Rs.1 Lakh (Maximum) may also be levied for the failure to file details of donors or issue certificate to donors under the new section 271K.
- (ii) It may be noted that the above provisions for filing particulars of donors and issue of certificate to donors will apply to donations for scientific research to an association or company under section 35(1)(ii)(iia) or (iii). These sections are also amended. Provisions for levy of fee or penalty for failure to comply with these

provisions will also apply to the donee Company or Association which received donations under section 35. As stated earlier, the donor will not get deduction for donations as provided in section 80GG if the donee company or association has not filed the particulars of donors or not issued the certificate for donation.

- (iii) Further, there is no provision for filing appeal before CIT(A) or ITAT against the levy of fee under section 234G.

2.4 **Audit Report:**

Sections 12A and 10(23C) are amended, effective from 01.04.2020 to provide that the Audit Reports in Form 10B or 10BB for A.Y.2020-21 (F.Y.2019-20) and subsequent years shall be filed with the tax authorities one month before the due date for filing the return of income

2.5 **Corpus Donation To Charitable Trust or Institutions:**

- (i) A Corpus donation given by an Institution claiming exemption under section 10 (23C) to similar institution claiming exemption under that section was not considered as application of income under that section. By an amendment of this section, effective from 01.04.2020, the scope of this provision is enlarged and a Corpus Donation given by such an institution to a Charitable Trust registered under section 12A, 12AA or 12AB will not be considered as application of income under section 10(23C).
- (ii) Similarly, section 11, provided that Corpus Donation given by a Charitable Trust to another Charitable Trust registered under section 12A or 12AA was not considered as application of income. This section is also amended, effective from 01.04.2020, to provide that Corpus Donation by a Charitable Trust to an Institution approved under section 10(23C) will not be considered as application of income.
- (iii) It may be noted that Section 10(23C) is amended, effective from 01.04.2020, to provide that, subject to the above exceptions, any Corpus Donation received by an Institution approved under that section will not be considered as income. This provision is similar to the existing provisions in sections 11 and 12.

3. **AMENDMENTS MADE BY THE FINANCE ACT, 2021:**

The Finance Act, 2021, has further amended the provisions relating to Charitable Trusts and Institutions claiming exemption under section 10(23C) and 11. These amendments are as under:

3.1 **Enhancement In The Limit Of Receipts Under Section 10(23C):**

At present, an Education Institution or Hospital etc, as referred to in section 10 (23C) (iiiad) and (iiiiae) is not taxable if the aggregate annual receipts of such institution does not exceed Rs.1 Crore. If this limit is exceeded the institution is required to obtain approval under section 10(23C) (vi) or (via). This section is amended, effective from F.Y. 2021-22 (A.Y. 2022-23), to provide that the above exemption can be claimed if the aggregate annual receipts of such Institution does not exceed rupees 5 Crores.

3.2 **Accounting Of Corpus Donation and Borrowed Funds:**

Hitherto, Corpus Donations received by a Charitable Trust or Institution Claiming exemption under section 10(23C) or 11 are not treated as Income and hence exempt from tax. No conditions are attached with reference to the utilization of this amount. These sections are amended effective from 01.04.2021 as under:-

- (a) Corpus Donation received by a charitable trust or institution will have to be invested or deposited in the specified mode of investment such as in Bank deposit or other specified investments as stated in section 11(5). Further, they should be earmarked separately as Corpus Investment or Deposit.
- (b) Any amount withdrawn from the above Corpus Investment or Deposit and utilized for the objects of the Trust will not be considered as application of income for the objects of the trust or institution for claiming exemption. Therefore, if a Charitable trust withdraws Rs.5 Lakhs from the bank in which Corpus Donation is deposited, and utilizes the same for giving relief to poor persons affected by floods, this amount will not be counted for calculating 85% of income required to be spent for the objects of the Trust.
- (c) If the Trust deposits back the said amount in the Corpus Bank Account in the same year or any subsequent year from its other normal income, such amount will be considered as application of income for the objects of the trust

- (d) It is also provided that if the Charitable Trust or Institution borrows money for meeting its requirement of funds, the amount utilized for the objects of the Trust or Institution, out of such borrowed funds, will not be considered as application of income for the objects of the Trust or Institution. When the borrowed monies are repaid, such repayment will be considered as application of income for the objects of the Trust or Institution.
- (e) It will be noted that the above amendments will raise some issues relating to accounting of Corpus Donations and Borrowed Funds. The Trusts and Institutions will have to open separate bank account for Corpus donations and Borrowed Funds and keep a track of these Funds.

3.3 **Set Off of Deficit of Earlier Years:**

One more amendment affecting the Charitable Trusts or institutions is very damaging. It is provided that if the trust or institution has incurred expenditure on the objects of the trust in excess of its income in any year, the deficit representing such excess expenditure will not be allowed to be adjusted against the income of subsequent year. Hitherto, such adjustment was allowed in view of several judicial decisions. All these decisions of various High Courts are now overruled by this amendment. In view of this provision, accumulated excess expenditure of earlier years incurred upto 31.03.2021 will not be available for set off against the income of F.Y. 2021-22 and subsequent years.

4. **AMENDMENTS MADE BY THE FINANCE ACT, 2022:**

Significant amendments are made in Sections 10(23C), 11, 12 and 13 of the Income tax Act by the Finance Act, 2022. These amendments are as under:

4.1 **Institutions Claiming Exemptions Under Section 10(23C):**

Section 10(23C) granting exemption to specified Institutions is amended as under:

- (i) Section 10(23C) (v) grants exemption to an approved Public Charitable or Religious Trust. It is now provided that if any such Trust includes any temple, mosque, gurudwara, church or other notified place and the Trust has received any voluntary contribution for the purpose of renovation or repair of these places of worship, the Trust will have option to treat such contribution as part of the Corpus of the Trust. It is also provided that this Corpus amount shall be used

only for this specified purpose and the amount not utilized shall be invested in specified investments listed in Section 11(5) of the Act. It is also provided that if any of the above conditions are violated, the amount will be considered as income of the Trust for the year in which such violation takes place. This provision will come into force from **A.Y.2021-22 (F.Y.2020-21)**

It may be noted that similar provision is added, effective **A.Y.2021-22 (F.Y:2020-21)**, in Section 11 in respect of Charitable or Religious Trusts claiming exemption under Section 11 of the Act.

- (ii) At present, an Institution claiming exemption under Section 10(23C) is required to utilize 85% of its income every year. If this is not possible it can accumulate the unutilized income for the next 5 years and utilise the same during that period. However, there is no provision for any procedure to be followed for such accumulation. The amendment of Section 10(23C), effective from **A.Y.2023-24 (F.Y.2022-23)** now provides that the Institution should apply to the A.O. in the prescribed form before the due date for filing the Return of Income for accumulation of unutilized income within a period of 5 years. The Institution has to state the purpose for which the Income is being accumulated. By this amendment the provisions of Section 10(23C) are brought in line with the provisions of Section 11 of the Act.
- (iii) At present, Section 10(23C) provides for audit of accounts of the Institution. By amendment of this Section it is now provided that, effective from A.Y.2023-24 (F.Y.2022-23), the Institution shall maintain its accounts in such manner and at such place as may be prescribed by the Rules. Such Accounts will have to be audited by a Chartered Accountant and report in the prescribed form will have to be given by him.
- (iv) Section 10(23C) is also Amended by replacing the existing proviso XV to give very wide powers to the Principal CIT to cancel Approval or Provisional Approval given to the Institution for claiming exemption. If the Principal CIT comes to know about Specified Violations by the Institution he can conduct inquiry and after giving opportunity to the Institution cancel the Approval or Provisional Approval. The term “Specified Violations” is defined in this amendment.

- (v) By another amendment of Section 10(23C), effective from **A.Y.2023-24 (F.Y. 2022-23)**, it is provided that the Institution shall file its Return of Income by the due date specified in Section 139(4C).
- (vi) A new Proviso XXI is added in Section 10(23C) to provide that if any benefit is given to persons mentioned in Section 13(3) i.e. Author of the Institution, Trustees or their related persons such benefit shall be deemed to be the income of the Institution. This will mean tht if a relative of a trustee is given free education in the Educational Institution the value of such benefit will be considered as income of the Institution. In this case tax will be charged at the rate of 30% plus applicable surcharge and Cess under Section 115BBI.
- (vii) It may be noted that Section 56(2)(x) has been amended from A.Y.2023-24 (F.Y.2022-23) to provide that if the Author, Trustees or their related persons as mentioned in Section 13(3) receive any unreasonable benefit from the Institution or Charitable Trust, exempt under sections 10(23C) or 11, the value of such benefit will be taxable as Income from Other Sources.
- (viii) At present, the provisions of Section 115TD applies to a Charitable or Religious Trust registered under Section 12AA or 12AB. Now, effective from A.Y.2023-24 (F.Y.2022-23), the provisions of Section 115TD will apply to any Institution, claiming exemption under Section 10(23C) also. Section 115TD provides that if the Institution loses exemption under section 10(23C) due to cancellation of its approval or due to conversion into non-charitable organization or other reasons the market value of all its assets, after deduction of liabilities, will be liable to tax at the rate of 30% plus applicable surcharge and Cess.

4.2 **Charitable Trusts Claiming Exemption Under Section 11:**

Sections 11, 12 and 13 of the Act provide for exemption to Charitable Trusts (including Religious Trusts) which are registered Under Section 12A, 12AA or 12AB of the Act. Some amendments are made in these and other sections as stated below:

- (i) As stated in Para 4.1(i), if a Charitable Trust owns any temple, mosque gurudware, church etc., it can treat any contribution received for repairs or

renovation of such place of worship as Corps donation. This amount should be used for the specified purpose. The unutilized amount should be invested as provided in Section 11(5). This provision will come into force from **A.Y.2021-22 (F.Y.2020-21)**.

- (ii) At present, if a Charitable Trust is not able to utilize 85% of its income in a particular year it can apply to the A.O. for permission for accumulation of such income for 5 Years. If any amount out of such accumulated income is not utilized for the objects of the Trust upto the end of the 6th year, it is taxable as income in the Sixth Year. This provision has now been amended, effective from **A.Y.2023-24 (F.Y.2022-23)**, to provide that if the entire amount of the accumulated income is not utilized upto the end of the 5th Year, the unutilized amount will be considered as income of the fifth year and will become taxable in that year.
- (iii) If a Charitable Trust is maintaining accounts on accrual basis of accounting, it is now provided that any part of the income which is applied to the objects of the Trust, the same will be considered as application for the objects of the Trust only if it is actually paid in that year. If it is paid in a subsequent year, it will be considered as application of income in the subsequent year. Similar amendment is made in Section 10 (23C) of the Act. This amendment will come into force from **A.Y.2022-23 (F.Y.2021-22)**.
- (iv) Section 13 deals with the circumstances in which exemption under Section 11 can be denied to the Charitable Trusts. At present, if any income or property of the trust is utilized for the benefit of the Author, Trustee, or related persons stated in Section 13(3), the exemption is denied to the Trust. Now, effective from **A.Y.2023-24 (F.Y.2022-23)**, this section is amended to provide that only that part of the income which is relatable to the unreasonable benefit allowed to the related person will be subjected to tax in the hands of the Charitable Trust. This tax will be payable at the rate of 30% plus applicable surcharge and cess.
- (v) At present, Section 13(1)(d) provides that if any funds of the Charitable Trust are not invested in the manner provided in Section 11(5), the Trust will not get

exemption under Section 11. This Section is now amended, effective from A.Y.2023-24 (F.Y.2022-23), to provide that the exemption will be denied only in respect of the income from such prohibited investments. Tax on such income will be chargeable at the rate of 30% plus applicable surcharge and Cess.

- (vi) Section 12A has been amended, effective from **A.Y.2023-24 (F.Y.2022-23)** to provide that the Charitable Trust shall maintain its accounts in the manner as may be prescribed by Rules. These accounts will have to be audited by a Chartered Accountant.
- (vii) In line with the amendment in Section 10(23C) Provisio XV, vary wide powers are now given by amending Section 12AB (4) to the Principal CIT to cancel Registration given to a Charitable Trust for claiming exemption. If the Principal CIT comes to know about specified violations by the Charitable Trust he can conduct inquiry and after giving opportunity to the Trust cancel its Registration. The term “Specified Violations” is defined by this amendment.

4.3 **Special Rate of Tax:**

A new Section 115BBI has been added, effective from **A.Y.2023-24 (F.Y.2022-23)**, for charging tax at the rate of 30% plus applicable Surcharge and Cass. This rate of tax will apply to Registered Charitable Trusts, Religious Trust, Institutions, etc., claiming exemption under Section 10(23C) and 11 in respect of the following specified income

- (i) Income accumulated in excess of 15% of the Income where such accumulation is not allowed.
- (ii) Where the income accumulated by the Charitable Trust or Institution is not utilized within the permitted period of 5 years and is deemed to be the income of the year when such period expires.
- (iii) Income which is not exempt under Section 10(23C) or Section 11 by virtue of the provisions of Section 13(1)(d). This will include value of benefit given to related persons, income from Investments made otherwise then what is provided in Section 11(5) etc.

- (iv) Income which is not excluded from the Total income of a Charitable Trust under Section 13(1)(c). This refers to the value of benefit given to related persons.
- (v) Income which is not excluded from the Total Income of a Charitable Trust under Section 11(1) (c). This refers to income of the Trust applied to objects of the Trust outside India.

4.4 **New Provisions for Levy of Penalty:**

New Section 271 AAE is added in the Income tax Act for levy of Penalty on Charitable Trusts and Institutions claiming exemption under Sections 10(23C) or 11. This penalty relates to benefits given by the Charitable Trusts or Institutions to related persons. The new section provides that if an Institution claiming exemption under Section 10(23C) or a Charitable Trust claiming exemption under Section 11 gives an unreasonable benefit to the Author of the Trust, Trustee or other related persons in violation of proviso XXI of Section 10(23C) or section 13(1) (c), the A.O. can levy penalty on the Trust or Institution as under:

- (i) 100% of the aggregate amount of income applied for the benefit of the related persons where the violation is noticed for the first time.
- (ii) 200% of the aggregate amount of such income where the violation is noticed again in the subsequent year.

5. **TO SUM UP:**

- 5.1 The provisions granting exemption to Charitable Trusts and Institutions are made complex by the above amendments made by three Finance Acts passed in 2020, 2021 and 2022. When the present Government is propagating for ease of doing business and ease of living, it has made the life of such Trustees more difficult. The effect of these amendments will be that there will be no ease of doing Charities. In particular, smaller Charitable Trusts and Institutions will find it difficult to comply with these procedural and other requirements. The compliance burden, including cost of compliance, will considerably increase. The Trustees of Charitable Trusts and Institutions are rendering honorary service. To put such onerous burden on such persons is not at all justified. If the Government wants to keep a track on the activities of such Trusts, these new

provisions relating to renewal of Registration, renewal of Section 80G Certificates etc., should have been made applicable to Trusts having net worth exceeding Rs.5 Cr. or Trusts receiving donations of more than Rs.1Cr. every year. Further, the provisions for filing details of Donors and giving Certificates to Donors in the prescribed form should have been made mandatory only if the aggregate donation from a Donor exceeds Rs.5 Lakhs in a year.

- 5.2 Some of the amendments made by the Finance Act, 2022 are beneficial to the Charitable Trusts and Institutions. However, the manner in which the amendments are worded creates lot of confusion. To simplify these provisions, it is now necessary that a separate Chapter is devoted in the Income tax Act and all provisions of Sections 10(23C), 11, 12,12A, 12AA, 13 etc., dealing with exemption to these Trusts and Institutions are put under one heading. This Chapter should deal with the provisions for Registration, Exemption, Taxable Income, Rate of Tax, Interest, Penalty etc., applicable to such Trusts and Institutions. This will enable persons dealing with Charitable Trusts and Institutions to know their rights and obligations.