

CHARITIES TAXATION : AMENDMENTS BY THE FINANCE ACT 2023

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Synopsis

- **Introduction**
- **Amendments by the Finance Act 2023**
 - Due date for filing Form no. 9A (deemed application) [Explanation 1(2) to section 11(1)]
 - Due date for filing Form no. 10 (secondary accumulation for 5 years) [section 11(2)]
 - Time limit and conditions for treating restoration of corpus as application of income [Explanation 4(i) to section 11(1)]
 - Time limit and conditions for treating repayment of loan as application of income [Explanation 4(ii) to section 11(1)]
 - Donations to another charitable institution to be allowed to the extent of 85% [Explanation 4(iii) to section 11(1)]
 - Change in the time limit for furnishing return of income for claiming exemption within time [section 12A(1)(ba)]
 - Changes in registration conditions for unregistered institutions [section 12A]
 - Cancellation of registration [Explanation (g) to section 12AB(4)]
 - Omission of provisions relating to exemption for years prior to the year in which registration was granted [provisos to section 12A(2)]
 - Changes in section 80G
 - Changes in procedure for approval under section 80G
 - Amendment in provision relating to Exit tax (section 115TD)
 - Changes in section 10(23C)

Introduction

- (a) **Special scheme** of taxation for eligible charitable or religious trusts or institutions (“charitable trusts”) under
- s. 11 to 13.
 - s. 10(23C) (for certain educational institutions / hospitals, etc.)

Introduction (Cont...)

- (b) Broad format of computation of income under section 11 to 13 (subject to compliance with conditions)
- (i) Income (excluding exempt corpus donations)
 - (ii) Less : income **applied to charitable purposes in India [section 11(1)(a) read with certain Explanations]**
 - (iii) Less : accumulation up to 15% of income (“basic exemption”) [section 11(1)(a)]
 - (iv) Less : **“deemed” application of income** (that is, **application of subsequent year treated as application of current year**) (subject to limit of 85% of income **minus** application of income) [Explanation 1(2) to section 11]
 - (v) Less : **“secondary” accumulation** up to 5 years (subject to limit of 85% of income **minus** application/deemed application of income) [section 11(2)]
 - (vi) Taxable Income [(i)–(ii)–(iii)–(iv)–(v)]

Amendments have been made to (ii), (iv) and (v); computation is affected by (iii)

Amendments by the Finance Act 2023

Due date for filing Form no. 9A (deemed application) [Explanation 1(2) to section 11(1)]

Preamendment law

Benefit of deemed application not available if Form 9A not filed before the due date for filing of return of income (ROI), that is, 31st October.

Amendment (w.e.f. assessment year 2023-24)

Form 9A to be filed **atleast** 2 months before the due date of filing ROI, that is, by 31st August.

Analysis

(a) Consequent change in rule 17(1) needed

(b) Statutory timelines:

Form no.	Regarding	Due date for filing/finalization
9A	Deemed application [Explanation 1(2) to section 11(1)]	31 st August
10	Secondary accumulation for 5 years [section 11(2)]	31 st August
10B or 10BB	Audit report [section 12A(1)(b)(ii)]	30 th September
ITR 7	ROI [section 139(1)]	31 st October

Due date for filing Form no. 9A (deemed application) [Explanation 1(2) to section 11(1)] (Cont...)

(c) Remedy If the Form is not filed by 31st August:

Make application under section 119(2) for condonation of delay; Power to condone delay in filing Form 9A delegated to CIT/CCIT/PCIT – see Circulars dated 3.1.2020 and 11.7.2022

(d) Rate of tax

any “specified income” shall be taxable @ 30% on the aggregate of such specified income (excluding surcharge/cess) [section 115BBI(1)].

“specified income” includes – “income accumulated or set apart in excess of 15% of the income where such accumulation is not allowed under any specific provision of this Act”

If Form 9A is not filed on time, the income on which benefit is denied is liable to tax @ 30% (excluding surcharge/cess) under section 115BBI.

Due date for filing Form no. 9A (deemed application) [Explanation 1(2) to section 11(1)] (Cont...)

(e) If application of income is less than 85% of income, difficulty in quantifying exact amount of “deemed application” without finalizing the accounts/audit report in Form 10B or 10BB.

Possibility of the amount stated in Form 9A being different from the exact amount of “deemed application” (“permissible deemed application”) in Form 10B/10BB and ROI

Consequences of such difference:

Automatic adjustment in intimation under section 143(1)?

Can Form 9A be revised to align it with the amount in ROI and Form 10B/10BB?

- (i) No express provision for revision of Form 9A or prohibiting such revision.
- (ii) appears that an assessee is entitled to revise Form 9A under general principles atleast before filing of the return of income or 31st October, whichever is earlier. **Please see**
 - CIT v. Industrial Extension Bureau, (2014) 43 taxmann.com 392 (Guj) [If there is a mere oversight or bona fide error in not indicating the correct and full amount for the option under Explanation 1(2) to section 11(1), the assessee may be allowed the benefit for the entire amount, even when the claim for revised amount was made during assessment]

Due date for filing Form no. 9A (deemed application) [Explanation 1(2) to section 11(1)] (Cont...)

- Shree Jain Swetamber Sangh v. Anil Kumar, (2017) 81 taxmann.com 64 (Guj), para 4 [technical mistakes in Form 10 can be rectified by appropriate intimation to the AO before assessment].
- Nandlal Tolani Charitable Trust v. ITO(E), 2019 (4) TMI 762 – ITAT Mum, para 12] (for assessment year 2012-13) [there is no bar under the Act to file a revised form 10 for accumulation of income to subsequent period under section 11(2)]

GST

- Blue Bird Pure (P.) Ltd. v. UOI, (2019) 108 taxmann.com 218 (Del) [the Respondents directed to either open the online portal so as to enable the Petitioner to again file the rectified TRAN-I Form electronically or accept the manually filed TRAN-I Form with the correction on or before 31st July, 2019].
- Goods & Service Tax Network v. Leo Distributors, (2020) 117 taxmann.com 672 (Ker)
- G&C Infra Innovations v. UOI, (2022) 142 taxmann.com 214 (Ker)

Practical issue : whether online portal will permit revision?

Due date for filing Form no. 9A (deemed application) [Explanation 1(2) to section 11(1)] (Cont...)

(g) Q. If revision not permitted, consequences of the estimated amount in Form 9A more or less (say, 95 or 105) be than the permissible amount (Say, 100)?

Situation 1 :

- The amount stated in Form 9A (95) < the amount of permissible deemed application (100); and
- ITR 7 reflects permissible deemed application (100)

Situation 2:

- amount stated in Form 9A (105) > the amount of permissible deemed application (100); and
- ITR 7 reflects permissible deemed application (100)

Situation 3:

- The amount stated in Form 9A (95) < the amount of permissible deemed application (100); and
- ITR 7 reflects the amount stated in Form 9A (95)

Due date for filing Form no. 9A (deemed application) [Explanation 1(2) to section 11(1)] (Cont...)

Sr. No.	Particulars	Situation		
		1	2	3
1	Permissible deemed application	100	100	100
2	As per Form 9A	95	105	95
3	As per ITR 7 / Form 10B/10BB	100	100	95
4	Adjustment in intimation under section 143(1)	?	?	No
5	Claim in ITR 7 ultimately allowable	100	100	95
6	Litigation	Likely	Likely	No

Summary

- (a) Form 9A to be filed by 31st August
- (b) If not filed, apply for condonation of delay under section 119(2)(b)
- (b) Revision of Form 9A, although permitted legally, may not be permitted by online portal.
- (c) Difference between amount stated in Form 9A and permissible deemed application as per ROI or Form 10B/10BB, could result in
 - (i) adjustment in intimation under section 143(1); and
 - (ii) litigation

Due date for filing Form no. 9A (deemed application) [Explanation 1(2) to section 11(1)] (Cont...)

Dos & Don'ts

- Maintain regular books of accounts as per Rule 17AA so that accurate computation of income can be done by 31st August, even if accounts and audit report are not finalised
- **Desirable time lines:** (to avoid inconsistency between amount of deemed application as per Form 9A and permissible deemed application)

Finalisation of accounts (subject to signature):	before 31 st August
Audit report in Form 10B/10BB (or at least auditor's view on amount of permissible deemed application)	before 31 st August
Form 9A/10	by 31 st August
ROI:	31 st October

Due date for filing Form no. 10 (secondary accumulation for 5 years) [section 11(2)]

Preamendment law

Due date for filing Form no. 10 : 31st October

Amendment (w.e.f. assessment year 2023-24)

Form no. 10 to be filed **atleast** 2 months before the due date of filing return, that is, by 31st August.

Analysis

- **Similar to analysis for Form 9A.**
- Section 13(9) provides that benefit of secondary accumulation for five years under section 11(2) is not available if return of income not filed by due date.
Section 13(9) not amended
Consequently, **inconsistency between section 11(2) and 13(9)**

Time limit and conditions for treating restoration of corpus as application of income [Explanation 4(i) to section 11(1)]

Preamendment law

- (a) Corpus donation exempt from tax provided corresponding amount invested in permissible modes under section 11(5) (“corpus fund”) [section 11(1)(d)] **(say, Year 1)**
- (b) Any amount utilized from corpus funds was not to be treated as application of income [Explanation 4(i) to section 11(1)] **(say, Year 2)**.
- (c)
 - Any amount invested back in the corpus was allowable as application of income [proviso to Explanation 4(i) to section 11(1)] **(say, Year 3)**
 - No time limit specified for such reinvestment into corpus.
 - No conditions attached for such reinvestment being treated as application of income

Amendment (w.e.f. assessment year 2023-24)

- (a) The following reinvestment into corpus funds will not be allowed as application of income:
 - (i) any reinvestment (Year 3) against amount which was utilized (applied) out of the corpus on or before 31st March 2021 (Year 2).

Time limit and conditions for treating restoration of corpus as application of income [Explanation 4(i) to section 11(1)](Cont...)

- (ii) Reinvestment beyond 5 years (Year 3) from the end of the financial year in which the initial application out of corpus was made (Year 2)
- (b) Reinvestment into corpus allowed as application of income (Year 3) only if the following provisions satisfied at the time of original application out of corpus (Year 2):
 - (i) No application outside India without approval [section 11(1)(c)]
 - (ii) Utilization was not for giving corpus donation to another registered charitable institution [Explanation 2 to section 11(1)]
 - (iii) Utilization was made without default in payment of TDS [Explanation 3 to section 11(1)]
 - (iv) Payments exceeding Rs.10,000 was made in specified modes (and not in cash etc.) [Explanation 3 to section 11(1)]
 - (v) actual payment was made before year end (Explanation to section 11)
 - (vi) No excess of application over income [Explanation 5 to section 11(1)]
 - (vii) utilization did not result in any benefit to any interested party referred to in section 13(1)(c) [section 13(1)(c)]

Time limit and conditions for treating restoration of corpus as application of income [Explanation 4(i) to section 11(1)](Cont...)

Analysis

(a) Essentially, the amount reinvested into corpus shall be treated as application of income (Year 3) only if the original utilization out of corpus was allowable as application towards charitable purpose (Year 2).

(b) Applies to assessment year 2023-24

(c) Illustration

(i) Year 1

A charitable institution receives Rs.1 crore as corpus donation, exempt under section 11(1)(d) and invests Rs.1 crore (as corpus investment).

(ii) Year 2

The institution utilises the corpus investment of Rs.1 crore as corpus donation to another institution.

- Corpus donation to another institution is not allowable as application of income [Explanation 2 to section 11(1)]
- Such utilisation is not allowable as application of income [Explanation 4(i) to section 11].

Time limit and conditions for treating restoration of corpus as application of income [Explanation 4(i) to section 11(1)](Cont...)

(iii) Year 3

- The institution earns income of Rs.2 crores.
- It reinvests Rs.1 crore into Permissible Mode under section 11(5) as corpus investment and thus restores the amount of corpus.
- It applies Rs.50 lakhs towards other charitable purposes.
- Rs.1 crore will not be allowed as application of income since original utilisation of Rs.1 crore in Year 2 towards corpus donation is not allowed.

Computation of income for Year 3

	(Rs. in crores)	
	<u>Preamendment</u>	<u>Post amendment</u>
a. Income :	2.00	2.00
b. Application of income towards		
(i) corpus restoration:	1.00	0.00
(ii) charitable purposes	<u>0.50</u>	<u>0.50</u>
	<u>1.50</u>	<u>0.50</u>
c. Income less application [a. - b.]	0.50	1.50
d. 15% basic exemption [15% of a.]:	<u>0.30</u>	<u>0.30</u>
e. Taxable income [c. – d.] :	<u>0.20</u>	<u>1.20</u>

Time limit and conditions for treating restoration of corpus as application of income [Explanation 4(i) to section 11(1)](Cont...)

- (d) Utilization should not result in violation of condition in Explanation 5 [that is, “**carry forward and set off of excess application is not allowed**” (Explanatory Memorandum)]
- (e) (i) Amount reinvested or redeposited into corpus shall not be treated as application of income in the year of restoration if original application from corpus was made on or before 31st March 2021.
- (ii) No prohibition on corpus created on or before 31st March 2021, but utilised after the said date.

Illustration

Particulars	Situation 1	Situation 2
a. Receipt of corpus donation:	March 2018	March 2018
b. Utilisation of corpus donation:	March 2021	March 2023
c. Restoration of corpus out of income:	May 2025	May 2025
d. Whether original utilisation made on or before 31 st March 2021?	Yes	No
e. Whether restoration to be considered as application of income?	No	Yes

Time limit and conditions for treating restoration of corpus as application of income [Explanation 4(i) to section 11(1)](Cont...)

(f) Following benefits to be calculated only after considering **total application, including the amount so restored to corpus:**

(i) 15% basic exemption

(ii) deemed application [Explanation 1(2) to section 11(1)]

(iii) secondary accumulation [section 11(2)]

Illustration

(Rs. in lakhs)

a. Amount of income	100
b. Application (excluding c.)	60
c. Amount of income utilised to restore corpus	15
d. Total application (b. + c.)	75
e. Income minus application	25
f. Basic exemption (15% of a.)	15
g. Deemed application (e. – f.) (balancing figure)	10
h. Net income (e. – f. – g.)	Nil

Time limit and conditions for treating restoration of corpus as application of income [Explanation 4(i) to section 11(1)](Cont...)

Summary

the amount reinvested into corpus shall be treated as application of income only if

- (i) the original utilization out of corpus (Year 2) was allowable as application towards charitable purpose.
- (ii) The gap between original utilisation (Year 2) and reinvestment into corpus does not exceed 5 years

Dos & Don'ts

- (a) Maintain proper details of utilization of corpus investment
- (b) Judiciously decide the year of utilisation, with proper evidence.
- (c) Ensure that initial utilisation out of corpus investment satisfies the conditions in the amended provision
- (d) Ensure that restoration of corpus is done within 5 years from the end of the financial year in which original utilisation was made.

Time limit and conditions for treating repayment of loan as application of income [Explanation 4(ii) to section 11(1)]

Preamendment law

- (a) Any amount utilised from loan or borrowing was not to be treated as application of income;
- (b)
 - Any repayment of such loan or borrowing shall be treated as application of income
 - No time limit specified for such repayment of such borrowings
 - No condition attached for such repayment being treated as application of income

Amendment (w.e.f. assessment year 2023-24)

Conditions similar to those for treating restoration of corpus as application of income, that is,

- (a) repayment of loan beyond 5 years from end of financial year in which application was made out of loan will not be allowed as application of income
- (b) repayment of loan allowed as application of income only if following provisions satisfied at the time of original application from the loan

Time limit and conditions for treating repayment of loan as application of income [Explanation 4(ii) to section 11(1)] (Cont...)

- (i) No application outside India without approval [section 11(1)(c)]
- (ii) Utilization not for giving corpus donation to another charitable institution [Explanation 2 to section 11(1)]
- (iii) Utilization without default in payment of TDS [Explanation 3 to section 11(1)]
- (iv) payments exceeding Rs.10,000 in specified modes (and not in cash etc.) [Explanation 3 to section 11(1)]
- (v) actual payment is made before 31st March (Explanation to section 11)
- (vi) No excess application over income [Explanation 5 to section 11(1)]
- (vii) Utilization not resulting in any benefit to any interested party referred to in section 13(1)(c) [section 13(1)(c)]

Analysis

Similar to analysis for restoration of corpus donation

Donations to another charitable institution to be allowed to the extent of 85% [Explanation 4(iii) to section 11(1)]

Preamendment law

- (a) Corpus donations by one charitable institution to another not allowed to the donor as application [Explanation 2 to section 11].
- (b) Non corpus donation by one institution to another institution for permitted object allowable as application by the donor.

Amendment (w.e.f. assessment year 2024-25)

Only 85% of donation to another charitable institution to be allowed to the donor as application of income.

Rationale

“Instances have come to the notice that certain trusts or institutions are trying to defeat the intention of the legislature by forming multiple trusts and accumulating 15% at each layer. By forming multiple trusts and accumulating 15% at each stage, the effective application towards the charitable or religious activities is reduced significantly to a lesser percentage compared to the mandatory requirement of 85%.”

Analysis

- (a) Applies to all donations treated as application of income**
 - whether donor is a charitable trust or a religious trust

Donations to another charitable institution to be allowed to the extent of 85% [Explanation 4(iii) to section 11(1)] (Cont...)

- whether donee is an interested party or not;
- even if donee spends the entire donation
- even if donee does not give further donation
- irrespective of smallness of amount

(b) Whether basic exemption of 15% available?

- available only if income is accumulated [see section 11(1)(a)]
- In case of donation given, no accumulation is possible since the amount is spent.
- **15% of donation is taxable income.**

(c) Illustration

(Rs. in lakhs)

(i) Income of Trust A	100
(ii) Donation by Trust A to Trust B	100 (entire amount donated)
(iii) Donation by Trust B to Trust C	85

Computation of taxable income of Trust A:

(Rs. in lakhs)

	<u>Pre amendment</u>	<u>Post amendment</u>
(i) Income:	100	100
(ii) Application of income	100	85
(iii) Basic exemption	Nil	Nil *
(iv) Taxable income [(i) – (ii)–(iii)]	0	15

*since no accumulation

Donations to another charitable institution to be allowed to the extent of 85% [Explanation 4(iii) to section 11(1)] (Cont...)

	(Rs. in lakhs)	
	<u>Pre amendment</u>	<u>Post amendment</u>
(i) Income	100	100
(ii) Application of income	85	72.25*
(iii) Basic exemption	15	15**
(iv) Taxable income [(i) – (ii)–(iii)]	0	12.75

*(85% of 85 is 72.25)

** since 15 apart from donation of 85 is accumulated

(d) For non corporate institutions, taxable income up to Rs.2.5 lakhs is not taxable and above it, taxable in slab rates, applicable to individuals

(e) **Restriction does not apply to donations** from

(i) corpus investments

(ii) income accumulated in preceding years (say 15% of income)

(iii) capital gains included as income under section 11(1)(a) **(to the extent of cost)**

(iv) capital gains already exempt by reinvestment into capital asset [section 11(1A)]

and

donation made from proceeds of such capital asset

Donations to another charitable institution to be allowed to the extent of 85% [Explanation 4(iii) to section 11(1)] (Cont...)

- (v) tied up grants not treated as income
 - (vi) CSR funds received as implementing agency under rule 4 of CSR Rules if the funds are not treated as income
- (e) Restriction does not apply to donation to unregistered charitable institution [Areez Khambatta Benevolent Trust v. DCIT(E), 2019-TIOL-545-HC-AHM-IT, para 18, SLP admitted in DCIT v. Areez Khambatta Benevolent Trust, 2019-TIOL-537-SC-IT].
- Contra**
Maharaja Ranjit Singh War Museum Society v. CIT, 2020 (3) TMI 1033 – P&H HC, [in the context of section 11(2)]
- (f) Whether provision applies to donations in kind?
- (i) See Shridhas Krishnarao v. Narayan Namaji, AIR 1939 Nag 227 (usual meaning of “amount” may not include payment in kind)
 - (ii) Provision applies to amount “**credited or paid**”
 - (iii) Intent is to plug successive donation; non corpus donations in kind (say, medicines) are usually not donated again

Donations to another charitable institution to be allowed to the extent of 85% [Explanation 4(iii) to section 11(1)] (Cont...)

(g) Constitutional validity

The word 'income' should be construed liberally and in a very wide manner and the power to legislate will take in all incidental and ancillary matters, including the authorisation to make provision to prevent evasion of tax, in any suitable manner [Punjab Distilling Industries v. CIT, (1965) 57 ITR 1 (SC)(CB)]

Contra:

- (i) Doctrine of liberal interpretation does not mean that Parliament can choose to tax as income an item which in no rational sense can be regarded as a citizen's 'income' [Navnit Lal C. Javeri v. ACIT, (1965) 56 ITR 198 (SC)(CB)].
- (ii) Remedy should not be disproportionate to the evil that prevailed (UOI v. A. Sanyasi Rao (1996) 85 Taxman 321 (SC)).

Reading down?

A Court will not read a provision literally but will construe it in a more limited sense or will read some condition into it to retain the constitutionality [Arun Kumar v. UOI, (2006) 155 Taxman 659 (SC); C. B. Gautam v. UOI, (1993) 199 ITR 530 (SC)];

Donations to another charitable institution to be allowed to the extent of 85% [Explanation 4(iii) to section 11(1)] (Cont...)

Summary

- (a) Only 85% of donation to another charitable institution to be allowed to the donor as application of income.
- (b) 15% of donation given is taxable income (since basic exemption of 15% is not available in respect of such donation)
- (c) Restriction does not apply to donations from corpus investments etc.

Dos & Don'ts

- As far as possible, give donations from receipts which are not current income (e.g. corpus, basic accumulation of 15% of preceding financial years, etc.)
- However
 - consult auditor before giving such donations
 - decide on appropriate disclosure in records maintained under Rule 17AA
- Consider a condition with the donee that the donation will not be utilised for further donation

Change in the time limit for furnishing return of income for claiming exemption within time [section 12A(1)(ba)]

Preamendment law

- (a) If ROI was not furnished within the time under section 139, exemption under section 11/12 was not available
- (b) Section 139(8A) provides an option to tax payers to furnish “updated ROI” up to 2 years from the end of assessment year
- (c) Exemption could not be denied if original ROI not filed within specified time but “updated ROI” was filed.

Amendment (with effect from assessment year 2023-24)

Provisions of section 11 and 12 shall apply only if the ROI is furnished within the time allowed under section 139(1) or section 139(4) (belated return)

Change in the time limit for furnishing return of income for claiming exemption within time [section 12A(1)(ba)] (Cont...)

Analysis

- (a) For claiming exemption under section 11/12
 - (i) the time limit for filing of ROI curtailed to the time limit under section 139(1)/139(4); and
 - (ii) time for filing updated ROI no longer available
- (b) Option to furnish **updated ROI** continues to be available to charitable institutions;
- (c) Tabular presentation:

Filing of original ROI	Updated ROI permitted?	Exemption under section 11/12	Basis of assessment
Within time specified in section 139(1)/(4)	Yes	Yes	Updated return
Not filed within specified time	Yes	No	Updated return

Changes in registration conditions for unregistered institutions [section 12A]

Preamendment law

- (a) Provisional registration available to all institutions which were not registered under the preamendment regime [section 12A(1)(ac)(vi)]
- (b) Such provisional registration was required, whether or not the activities had commenced;
- (c) Application for provisional registration required before commencement of previous year relevant to the assessment year from which the said registration is sought [section 12A(1)(ac)(vi)].
- (d) Provisional registration was granted without inquiries.
- (e) Subsequent regular registration required upon earlier of the following:
 - (i) at least six months prior to expiry of provisional registration; and
 - (ii) within six months of commencement of activities
[section 12A(1)(ac)(iii)]
- (f) Such regular registration available
 - (i) for five years
 - (ii) only upon inquiries by and satisfaction of PCIT
[section 12AB(1)(b)]

Changes in registration conditions for unregistered institutions [section 12A] (Cont...)

Amendment (with effect from 1st October 2023)

- (a) Provisional registration available only to unregistered institutions which have not commenced activity [section 12A(1)(ac)(vi)(A)]
- (b) If the unregistered institution has commenced activity, it has to seek regular registration [section 12A(1)(ac)(vi)(B)] which is available
 - (i) for five years
 - (ii) only upon inquiries by and satisfaction of PCIT [section 12AB(1)(b)]

Analysis

(a) Tabular presentation

Whether institution has commenced activity?	Whether change in procedure?
No	No
Yes	Yes. Has to obtain regular registration

Changes in registration conditions for unregistered institutions [section 12A] (Cont...)

- (b) May not significantly impact institutions: obligated under preamendment law to file application for regular registration immediately upon commencement of activities: the three year window was not relevant.
- (c) Commencement of activity after filing of application for provisional registration is permitted.
Such institutions will have to seek regular registration within six months of commencement of activity

Dos and Don'ts

Reevaluate the decision to register !!!

Cancellation of registration [Explanation (g) to section 12AB(4)]

Preamendment law

- (a) Registration application required in Form no. 10A/10AB
 - (b) Registration liable to cancellation upon “specified violation” [section 12AB(4)/(5)]
 - (c) Specified violations mentioned in Explanation to section 12AB(4)
 - (d) Registration also liable to cancellation if Form 10A was defective:
 - (i) not providing information or documents required to be provided under Rule 17A(1)/(2)
 - (ii) providing false or incorrect documents
[Rule 17A(6)]
- No provision corresponding to Rule 17A(6) in “specified violations” in section 12AB**

Amendment (with effect from 1st April 2023)

“Specified violation” includes a situation where the application for registration is not complete or it contains false or incorrect information

Cancellation of registration [Explanation (g) to section 12AB(4)] (Cont...)

Analysis

- (a) Rule 17A(6) not yet amended
- (b) Rule 17A(6) also provides for cancellation if Form No. 10A
 - (i) not verified properly
 - (ii) not furnished under digital signature or electronic verification code.Registration continues to be liable to cancellation under Rule 17A(6) in above circumstances
- (c) Registration can be cancelled
 - (i) subject to fulfilment of conditions in section 12AB(4)/(5).
 - (ii) but with retrospective effect
 - (iii) if the Form is defective, **even if it has been given for five years after due inquiries and satisfaction of the CIT** (on a literal reading).
 - (iv) for **defective Form 10A as well as Form 10B**, unlike Rule 17A(6) which applies to defective Form 10A only
 - (v) **in respect of first registration as well as subsequent registration under any clause in section 12AB.**
 - (vi) **at any time** (since no express time limit for cancellation: whether cancellation has to be within reasonable time?)

Dos and Don'ts

Seek professional help to ensure that there is no defect in Form 10A/10AB

Omission of provisions relating to exemption for years prior to the year in which registration was granted [provisos to section 12A(2)]

Preamendment law

- (a) where registration under section 12AB obtained, **exemption was available with respect to**
- (i) the assessment year relevant to the financial year in which the application is made and subsequent assessment years.[section 12A(2)];
 - (ii) **any assessment year preceding the aforesaid assessment year if**
 - **assessment proceedings are pending before the AO as on the date of such registration; and**
 - **the objects and activities of the trust remain the same for such preceding assessment year** [second proviso to section 12A(2)].
- (b) no action under section 147 could be taken by the AO for any assessment year preceding the aforesaid assessment year only for nonregistration of such trust for the said assessment year.[third proviso to section 12A(2)]
- (c) provisions contained in the second and third proviso to section 12A(c) did not apply to a trust which was refused registration or the registration granted to it was cancelled at any time under section 12AA or section 12AB [fourth proviso to section 12A(2)]

Omission of provisions relating to exemption for years prior to the year in which registration was granted [provisos to section 12A(2)] (Cont...)

Amendment (with effect from 1st April 2023)

Second, third and fourth proviso to section 12A(2) deleted

Analysis

Exemption will not apply to years preceding the year of registration

Changes in section 80G

Preamendment law

- (a) Donations to Jawaharlal Nehru Memorial Fund, Indira Gandhi Memorial Trust and Rajiv Gandhi Foundation were exempt under 80G under specific sub-clauses [section 80G(2)(a)(ii)/(iiic)/(iiid)].
- (b) The aforesaid funds did not have to take specific approval under section 80G for being eligible as institutions to which donations were exempt under section 80G.

Amendment (w.e.f. assessment year 2024-25)

The aforesaid sub-clauses are deleted

Analysis

Donations to above referred institutions will

- no longer be exempt under 80G.
- qualify for exemption only if they obtain registration under section 12AB and approval under section 80G.

Changes in procedure for approval under section 80G

Changes in approval procedure similar to that in section 12A inserted with effect from 1st April 2023.

Amendment in provision relating to Exit tax (section 115TD)

Preamendment law

- (a) Exit tax was liable in certain situations, including cancellation of registration under section 12AB or approval under section 10(23C)(iv)/(v)/(vi)/(via).
- (b) Registered/approved assessee which failed to make an application for approval under section 10(23C) or registration under section 12A was not liable to exit tax.

Amendment [with effect from 1.4.2023 (assessment year 2023-24)¹]

- (a) Exit tax shall be leviable upon a charitable institution, if the following conditions are fulfilled:
 - (i)
 - the institution was registered under the old regime and has not applied for registration under the new regime [section 12A(1)(ac)(i)]; or
 - the institution has been granted regular registration under the new regime and does not apply for re-registration [section 12A(1)(ac)(ii)]; or
 - the institution is provisionally registered under the new regime and has not opted for regular registration [section 12A(1)(ac)(iii)]
 - (ii) the application for registration is not made before the last date for making such application and which has expired in the previous year.

1. As per Explanatory Memorandum

Amendment in provision relating to Exit tax (section 115TD) (Cont...)

- (b) Exit tax shall also be leviable if “reapproval” under section 10(23C) not sought by the institution approved under old regime or provisionally approved under new regime.
- (c) Exit tax shall be calculated on the basis of FMV of assets less liabilities on the last date on which application ought to have been made [Explanation (i)(c) to section 115TD]
- (d) Principal Officer or the trustee and the assessee shall be liable to pay Exit tax within 14 days from end of the previous year [section 115TD(5)(iii)]

Analysis

- (a) Amendment is not applicable to institutions which have never applied for registration.
- (b) Illustration
 - Last date for making application: 30th June 2024
 - Exit tax to be computed on FMV of assets less liabilities: as on 30th June 2024
 - Exit tax payable on or before: 14th April 2025

Amendment in provision relating to Exit tax (section 115TD) (Cont...)

(c) An institution registered under old regime but has not applied under the new regime – Is it liable to Exit tax under the amended provision?

View 1 : On a literal interpretation and the rationale mentioned in the Explanatory Memorandum, section 115TD(3)(iii) covers such a case

View 2 :

- (i) • Amendment applies when the institution failed to make an application, inter alia, in accordance with section 12A(1)(ac)(i) within the period specified in the said clause, **which expired in the said previous year.**
- the timeline under section 12A(1)(ac)(i) was extended up to 31.3.2022
 - Vide Circular No. 22 / 2022 dated 1.11.2022, the delay up to 25.11.2022 in filing Form No.10A was condoned
Vide this circular, the Board did not “extend” the timeline but “condoned” the delay in filing the application up to 25.11.2022.
 - **Thus, the period specified in the relevant clause expired on 31.3.2022 and not during previous year 2022-23.**
 - The amendment is applicable from assessment year 2023-24

Amendment in provision relating to Exit tax (section 115TD) (Cont...)

- Arguable that amendment no applicable to registration application for which last date was not during previous year 2022-23
- (ii) Sometimes the attempt of the legislature to tax may misfire. [CIT v. R.M. Chidambaram Pillai, (1977) 106 ITR 292 (SC); Bombay Mutual Life Assurance Society Ltd. v. CIT, (1951) 20 ITR 189 (Bom); Elphinstone Spg. & Wvg. Mills Co. Ltd. v. CIT, (1955) 28 ITR 811 (Bom)].
- (iii) Penal provision: cannot apply with retrospective effect, unless legislative intent and expression is clear beyond ambiguity [Jawahar Singh Bhagat v. State of GNCT of Delhi, (2009) 6 SCC 490 cited in Sukhdev Singh v. State of Haryana, (2013) 2 SCC 212]
- (iv) Ambiguity in penal provision to be decided in favour of the assessee [CIT v. Vegetable Products Ltd. (1973) 88 ITR 192]
- (v) Penal provision to be strictly interpreted against the tax department [Govind Impex (P.) Ltd. v. Appropriate Authority, (2011) 330 ITR 10 (SC)]
- (vi) The more stringent a law, the more strict construction is necessary [T. Ashok Pai v. CIT, (2007) 292 ITR 11 (SC)]

Dos and Don'ts

For new charitable institutions, re-evaluate the decision to seek registration

Changes in section 10(23C)

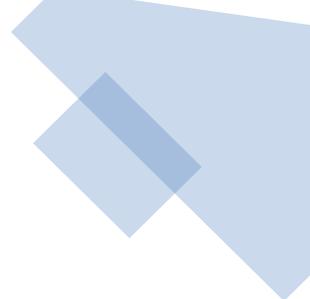
Amendments

Changes similar to those in section 11/12A/12AB made in section 10(23C)

Regarding	Corresponding provision in section 11 to 13
Procedure for approval under section 10(23C)(iv)/(v) /(vi)/(via) for unregistered trusts [first/second proviso to section 10(23C)]	section 12A(1)(ac)(vi)/ 12AB(1)(b)(ii)(B)/ 12AB(1)(c)
Time limit and conditions for treating restoration of corpus as application of income [Explanation 2(i) to third proviso to section 10(23C)]	Explanation 4(i) to section 11(1)
Conditions for treating repayment of loan or borrowing as application of income [Explanation 2(ii) to third proviso to section 10(23C)]	Explanation 4(ii) to section 11(1)
Donation given to be allowed as application of income to the extent of 85% [Explanation 2(iii) to third proviso to section 10(23C)]	Explanation 4(iii) to section 11(1)
Due date for furnishing Form No. 10 for accumulation for five years [Explanation 3(c) to third proviso to section 10(23C)]	section 11(2)
Cancellation of registration [Explanation 2(e) to fifteenth proviso to section 10(23C)]	Explanation (vii) to section 12AB(4)
Change in time limit for filing return of income [twentieth proviso to section 10(23C)]	section 12A(1)(ba)

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Thank You