

DIRECT TAX REFRESHER COURSE

(DTRC)

BY

WIRC OF ICAI

CHARITABLE TRUST –

AMENDMENTS AND COMPLIANCE FORM 10B & LAW

ON 16<sup>TH</sup> JUNE, 2023

-CA. VIPIN BATAVIA-

## Corpus Donations

### Finance Act 2021 w.e.f. 01.04.2022 i.e. AY 2022-23 –

A) Section 11(1) (d) has been amended

Corpus donations are allowed as deduction subject to condition that such contribution are to be **invested or deposited in specified mode prescribed u/s. 11(5)** and maintain specifically for such corpus.

B) Explanation 4 to section 11(1) has been inserted from A Y 2022-23 –

Explanation- 4 -For the purpose of determining the amount of application –

i) **Application / spending from corpus shall not be treated as application of income in that year**  
(Same provision applicable for Loans & Borrowings)

ii) **Corpus Deposited Back** - However it will be allowed as application of income or part thereof is invested back into u/s. 11(5) modes out of income of that year and maintained specifically for such corpus. (Similar provision will be applicable in the year of re-payment of borrowings)

## **Finance Act, 2023 w.e.f. 01.04.2023**

### **Further conditions for deposit back**

Further amended that the allowable application for investments or deposited back (For Corpus Donations) will be subject to no violation of following conditions –

- a) No Corpus Donations to other trust
- b) TDS provisions applicable
- c) Cash payments u/s. 40A(3) and (3A)
- d) On actual payment basis
- e) Directly or indirectly benefited to persons covered u/s. 13 (3)
- f) Activity outside India 11(1)(c)

**Finance Act, 2023 w.e.f. 01.04.2023 (Further Amendment)**

**Restriction of period for a depositing back (5 years)**

**A) The amount invested or deposited back shall not be treated as application for charitable or religious purposes unless such investment or deposit is **made within a period of five years** from the end of the previous year in which such application was made from corpus.**

**(Similar provision applicable for Loans & Borrowings)**

**Comment –**

**However this 5 years limit will have an adverse impact on institution with long gestation period or those compel to continue their activities from the corpus for several years.**

**(The restriction for re-payment of borrowing is not justified since the borrowing period are generally for longer period.)**

**B) The utilization of corpus by a charitable or religious trust on or before 31.03.2021 will not be considered an application for charitable or religious purposes if the amount is subsequently deposited back into the corpus**

## **Technical flaw of not amending section 12(1)**

As per Sec. 12(1) **any voluntary contribution not being towards corpus donation** shall be deemed to the income derived from trust property held for charitable and religious purposes. It may be noted that under the existing law as well as the amended law there are two sections where corpus donation can be claimed as exempt:

- (a) The first option is to treat corpus donation as income under Sec. 11(1) and then again treat it as an application under section 11(1)(d).
- (b) The second option is to directly treat corpus donation as exempt income under section 12(1)

There should have been a corresponding amendment in section 12(1) also otherwise organizations will not include corpus donation in the income, at all, by applying section 12(1), which will negate the very purpose of these amendments.

## INTER-CHARITY DONATIONS –

**Finance Act, 2023 w.e.f. 01.04.2024 from AY 2024 - 25 onwards**

### **Background–**

- (a) Inter-charity donation is permissible but it is to be ensured that inter charity donation is given for the **similar objects** for which the donor trust is created.
- (b) Inter charity donation (other than towards corpus) is **treated at par with direct application** for the purpose of sections 11(1) (a) and 10(23C). It is also held that inter charity donation is treated at par with direct utilization of funds.
- (c) Corpus donation given by a section 12AA/12AB registered trust/institution and as 10(23C) approved trust out of the income to any 12AA/12AB registered or to section 10(23C) approved institution is **not treated as an application of income. (As per explanation 2 to Sec. 11(1) by Finance Act, 2017)**
- (d) Funds accumulated under **Sec. 11(2) are not allowed** to be donated to other trust /institution. It is to be directly applied for the specific purpose for which it is accumulated. However, inter-charity donation out of accumulated funds under Sec. 11(2) may be permissible in case of dissolution of a trust.

- (e) Inter-charity donation to a non-section 12AA or a non-FCRA organization is generally not permissible but has not been held as illegal activity or a reason for cancellation.
- (f) A charitable organization can be considered as charitable in nature even if the entire donation mobilized is given as inter-charity donation.
- (g) The funds given as inter-charity donation shall be treated as application of income even if it might not have been applied by the donee trust. However, the donee trust has to apply them for charitable purposes only.  
(CBDT instruction No. 1582, dated 19-10-1984)

The Finance Act , 2023 inserted clause 3 in explanation 4 to Sec 11(1) w.e.f. 01.4.2024 as under –

“(iii) Any amount credited or paid other than the amount referred to in explanation 2, to any registered fund / trust or institution as the case may be shall be treated as application for charitable or religious purposes only to the extent of 85% of such amount credited or paid.”

**Examples for inter-charity donation and its impact (My personal view) –**

<b>Sr. No.</b>	<b>Particular</b>	<b>Income</b>	<b>Donated to another Trust</b>	<b>Amount spent</b>	<b>Total Application of Income</b>	<b>15% Accumulation</b>	<b>Accumulation (Form 9A or 10)</b>	<b>Balance Income (Tax Rate ?) (Refer notes)</b>
<b>1</b>	<b>As per Old Provision</b>	<b>1.00 Cr.</b>	<b>50 Lakh</b>	<b>50 Lakh</b>	<b>1.00 Cr.</b>	<b>NIL</b>	<b>NIL</b>	<b>NIL</b>
<b>2</b>	<b>New Provision</b>	<b>1.00 Cr.</b>	<b>1.00 Cr. (@85%)</b>	<b>NIL</b>	<b>85 Lakh</b>	<b>NIL</b>	<b>NIL</b>	<b>15 Lakh</b>
<b>3</b>	<b>New Provision</b>	<b>1.00 Cr.</b>	<b>50 Lakh @85%= (42.5 Lakh)</b>	<b>50 Lakh</b>	<b>92.50 Lakh</b>	<b>NIL</b>	<b>NIL</b>	<b>7.50 Lakh</b>
<b>4</b>	<b>New Provision</b>	<b>1.00 Cr.</b>	<b>50 Lakh @85%= (42.5 Lakh)</b>	<b>25 Lakh</b>	<b>67.50 Lakh</b>	<b>15 Lakh</b>	<b>17.50 Lakh</b>	<b>NIL</b>
<b>5</b>	<b>New Provision</b>	<b>1.00 Cr.</b>	<b>50 Lakh @85%= (42.5 Lakh)</b>	<b>25 Lakh</b>	<b>67.50 Lakh</b>	<b>15 Lakh</b>	<b>16.00 Lakh</b>	<b>1.50 Lakh</b>

Notes – i) Whether the balance income falls under specified income ?

ii) If yes, then the tax rate will be 30% or it will be taxed at normal rate and no tax up to 2.5 lakhs.

iii) As per my view the balance income should be taxed at normal rate.



**New Section 115BBI is inserted to define specified income of certain institution**  
**(w.e.f. AY 2023-24)**

- 1) Where the total income of any trust or institution includes any income by way of any specified income, notwithstanding anything contained in any other provision of this Act.  
The income-tax payable shall be aggregate of -
  - i) the amount of Income-tax calculated @30% on the aggregate of such specified income and
  - ii) the balance other income other than specified income will be taxed at normal provisions.
- 2) No deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee under any provision of the Act in computing specified income

**Explanation defines specified income.**

- (a) Income accumulated or set apart in excess of fifteen percent of the income where such accumulation is not allowed under any specific provisions of the Act or
- (b) Violation of accumulation with reference to form **9A & 10**
- (c) Investment of funds in impermissible modes or
- (d) Benefit to interested person directly or indirectly Sec. 12(2) or
- (e) Income applied **outside in India** not permitted

## **SUMMARY OF PENAL TAX RATES (As per Mr. Manoj Fogla book)**

The Penal tax rates as applicable on different violations have been summarized in the below table:

<b>Section Providing for the rate of tax</b>	<b>Income Subject to tax</b>	<b>Rate Of Tax</b>
<b>Taxation u/s.115BBI for specified violation</b>	<b>1. Surplus –if the application falls short of 85% after option &amp; accumulation</b>	<b>30%</b>
	<b>2. Income u/s 11(B)-for default of not spending the amount opted to be spent in the subsequent year or in the year of receipt</b>	<b>30%</b>
	<b>3. Income u/s 11(3)-Violation of condition of accumulation u/s 11(2)</b>	<b>30%</b>
	<b>4. Amount of income applied outside India in contravention of section 11(1)(c)</b>	<b>30%</b>
	<b>5. Income u/s 13(1)(c) Benefit to Interested person</b>	<b>30%</b>
	<b>6. Income u/s 13(1)(d) Investment of fund in impermissible modes</b>	<b>30%</b>
<b>Anonymous Donation u/s 115BBC</b>	<b>Taxable Portion of Anonymous Donation</b>	<b>30%</b>
<b>Taxability u/s 164(2)</b>	<b>1. Income Computed u/s 13(10)&amp;13(11) for specified situation</b>	<b>As An AOP</b>
	<b>2. Section 12(2)-value of service (being medical &amp; education)to A Specified Person</b>	<b>As An AOP</b>
	<b>3. Violation of condition in terms of Explanation 3A to Section 11(1)for treating the donation u/s 80G(2)(b) as corpus donation [Explanation 3B to Section 11(1)]</b>	<b>As An AOP</b>
	<b>4. Income Chargeable under Section 11(4)</b>	<b>As An AOP</b>
<b>Accreted Income u/s 115TD</b>	<b>Accreted Income</b>	<b>Maximum Marginal Rate</b>

## **Other Amendments**

### **Finance Act, 2021**

**A) Loans & Borrowings** - Similarly any loan and borrowings shall not be treated as an application of income during the year however it will be allowed as an application of income in the year in which the loan and borrowings or part thereof, is repaid out of the income of that year and to the extent of such re-payment.

**B) Excess spending (Deficit) is not allowed to be set off w.e.f. AY 2022-23 –**

**Explanation 5 to section 11(1) has been inserted.**

**C) Amendment in Section 10(23C) clause (iiiad) and (iii ae) –**

The limit for exemption u/s. 10(23C) (iiiad) & (iii ae) is increase from 1 crore to 5 crore w.e.f. AY 2022-23.

## **FINANCE ACT, 2022**

### **A) Exemption to trust or institution is available under the Income Tax Act under two regimes.**

- i) Regime for the trust or institutions obtained approval u/s.10 (23C) (iv), (v), (vi) or (via) of the Act; and
- ii) Regime for the trusts registered u/s.12AA/12AB of the Act.

### **B) Amendment in provisions related to accumulation of income by 10(23C) trusts Brought in par with Sec. 11(2).**

Third proviso to section 10(23C) had similar provisions as 11(2), but there was no provision to file Form 10 now form 10 is required to be filed for the accumulation more than 15% of income is accumulated.

### **C) Utilization of accumulated fund to be spent in 5 years (Not in the 6<sup>th</sup> year) (w.e.f. AY 2023-24)**

**D) Application of Income to be allowed on payment basis u/s. 11(7) (w.e.f. AY 2022-23)** Irrespective of method of accounting and earlier liabilities will not be allowed as application.

## **E) CANCELLATION OF REGISTRATION/APPROVAL IN CERTAIN CIRCUMSTANCES**

### **Substituted sub sec. (4) and (5) to Sec. 12AB by Finance Act, 2022 (w.e.f. 01.04.2022)**

As per the substituted Section 12AB (4) & (5) and Section 10(23C) and where the registration or provisional registration has been granted to the trust or institution and subsequently it is noticed by PCIT/CIT –

- i) Occurrence of one or more specified violations or**
- ii) Has received a reference for cancellation from the Assessing Officer U/s. 143(3) or**
- iii) Such case has been selected in accordance with the risk management strategy formulated by the Board from time to time for any previous year,**

## Specified Violations (Explanation to Sec. 12AB(4))

- a) Income has been applied other than for the objects of the trust.
- b) Trust or institution has income from profits and gains of business –  
Incidental to the attainment of its objectives or  
Separate books of account are not maintained
- c) Income applied for private religious purposes which does not ensure for the benefit of public
- d) Income applied for the benefit of any particular religious community or caste (As per explanation 2 trust created for the benefit of SC, BC, ST or women and children will not be covered);
- e) Any activity being carried out by the trust or the institution
  - (a) is not genuine; or
  - (b) is not being carried out in accordance with all or any of the conditions subject to which it was registered; or

f) **Not complied with the requirements of any other law, which are material for the purpose of achieving its objects and the order, direction or decree, by whatever name called, holding that such non-compliance has occurred, has either not been disputed or has attained finality.**

g) The application referred to in clause (ac) of sub-section (1) of section 12A is not complete or it contains false or incorrect information. **(Inserted by Finance Act, 2023 w.e.f. 01.04.2023)**

**Time limit for passing cancellation order (Sec. 12AB (5))**

Before expiry of period of six months from the end of the quarter in which the first notice is issued on or after 01.04.2022.

**AO shall send reference for cancellation**

Moreover, as per the amendment in.143(3), where the Assessing Officer is satisfied that any trust or institution under both regime has committed any specific violations

## **F) Computation of income in case of denial of exemption**

**(New Sec. 13(10) inserted w.e.f. 01-04-2023)**

→ **Under both the regime –**

**i) Applicability of proviso to Sec. 2(15)**

**ii) In case of not getting the books of accounts audited (Not filing of audit report form 10B & 10BB)**

**iii) Not filed return of income u/s. 139(4A) within time allowed u/s. 139(1) or 139(4) (Belated)**

Income shall be computed after allowing deduction for the expenditure (**other than capital expenditure**) incurred in India for the objects of the trust or institution.

### **Subject to fulfillment of following conditions.**

**(i) Such expenditure is not from the corpus;**

**(ii) Such expenditure is not from any loan or borrowing;**

**(iii) Claim of depreciation which is not allowable as per Sec. 11(6)**

**(iv) Such expenditure is not in the form of any contribution or donation to any person.**

**(v) The provisions of section 40A (ia) and section 40A (3) and (3A) are also applicable.**

**(vi) No expenditure or allowance or set-off of any loss shall be allowed to such trust or institution**

**(vii) Also, no deduction in respect of any expenditure or allowance or set-off of any loss shall be allowed under any other provisions of this Act.**



**G) Penalty for passing on unreasonable benefit to trustee or specified persons Sec. 271AAE w.e.f. AY 2023-24**

If during any proceedings under this act it is found that trust / institution has violated provisions of 21<sup>st</sup> proviso to Sec. 10(23C) or Sec. 13(1)(c) (Directly or Indirectly for the benefit of persons covered in Sec. 13(3), as the case may be, the AO may levy penalty –

**Penalty for violation**

- i) **Violation for first time during any previous year** - Equal to the aggregate amount of income so applied (100%).
- ii) **Violation for subsequent year** - Twice the amount of aggregate amount where the violation is noticed again in any subsequent previous year (200%).
- iii) This penalty is leviable in addition to the penalty leviable, if any under any of the provisions of Chapter – XXI.

## **H) Treatment of donation received for renovation and repair of temple (w.e.f. AY 2021-22)**

Temple, Mosque, Gurudwara, Church or other places notified u/s. 80G (2)(b) donations received for renovation or repair at its option to be treated as corpus donations.

Subject to the condition that the trust or institution-

- a) applies such corpus only for the purpose for which the voluntary contribution was made;
- b) Does not apply such corpus for making contribution or donation to any person; and
- c) maintains such corpus as separately identifiable;
- d) Invests or deposits such corpus in the forms and modes specified under subsection (5) of section 11.

### **Violation of condition**

However, if the trust or institution has treated such donation as forming part of corpus donation and subsequently any of the conditions mentioned above are violated, such sum shall be deemed to be the income of such trust or institution of the previous year during which the violation takes place. This is by inserting explanation 3B in section 11(1) and explanation 1B in section 10(23C) of the Act.

## Other Amendments

### FINANCE ACT, 2023

A) Application of Income – Corpus & Loans and Borrowings

B) Amendment in due date for submission of form 9A & 10 (Accumulation) (w.e.f. 01-04-2023 and will accordingly apply to AY 2023-24 and subsequent years) –

**At least two months prior** to the due date for filing the return of income (i.e. by 31<sup>st</sup> August)

However there is no corresponding amendment for filing of form no. 10 (Accumulation u/s. 11(2)) in Sec. 13(9) which is still contains that it is to be furnished on or before due date of filing of return u/s. 139(1).

As per **CBDT Circular No. 06 of 2023 dated 24.05.2023** – Form 9A & 10 furnished on or before the due date of furnishing the return as provided in sub-section (1) of section 139 of the Act.

C) Filing of ITR Belated for claiming exemption –

Return of income is furnished within time limit prescribed under Sec. 139(1) or 139(4) (w.e.f. 01-04-2023 and will accordingly apply to AY 2023-24 and subsequent years) belated return can be filed.

**D) Updated Return**

(w.e.f. 01-04-2023 and will accordingly apply to AY 2023-24 and subsequent years)

**E) Omission of provisos second, third and fourth to **section 12A (2)****

(w.e.f. 01 April, 2023)

**F) Trust / Institution can apply directly for final Registration / Approval**

(w.e.f. 01 October, 2023)

**G) Exemption to Development Authorities**

(w.e.f.01-04-2024 and will accordingly apply to AY 2024-25 and subsequent years)

## **H) Accreted Income U/s. 115TD**

(w.e.f 01-04-2023 accordingly apply to AY 2023-24 onwards)

### **The provisions of Sec. 115TD will also apply in following 3 more situations –**

- i) In case where certain trusts or institutions under first and second regime have not applied for regular registration / approval after obtaining provisional registration / approval.
- ii) Further some trusts or institutions under both the regime have not applied for re-registration / approval.
- iii) The trusts or institutions if not applied for re-registration after the expiry of 5 years / 3 years.

***CBDT Circular 06 of 2023 dated 24.05.2023 has extended certain dates for filing of 10A for re-registration & approval and for form 10AB for regular registration. Explained in details at slide no.46 & 47***

## **I) Removal of certain funds from section 80G (From 100% deduction)**

(w.e.f. 01-04-2024 and accordingly will be applicable for AY 2024-25 and subsequent years)

Jawaharlal Nehru Memorial Fund, Indira Gandhi Memorial Trust & Rajiv Gandhi Foundation

## Maintenance of Books of Accounts and Other Documents –

The Finance Act, 2022 Substituted in Sec. 12A (1) (b) and tenth proviso to Sec. 10(23C) w.e.f. 01.04.2023, accordingly it will be applicable from AY 2023-24 (FY 2022-23).

In pursuance to the aforesaid amendment the CBDT issued a notification on 10<sup>th</sup> August, 2022 vide G.S.R. no 622(E) and made amendments to rules by Income tax (24<sup>th</sup> Amendment) rules, 2022. These rules came in to force from the date of the notification i.e., w.e.f. 10-08-2022.

The new rule 17AA is inserted after rule 17A.

### Notes-

i) *It is to be noted that there is an income limit is prescribed for the keeping and maintaining the books of accounts and other documents. The said income limit presently is 2.50 lakhs.*

ii) *There is an ambiguity about the applicability of the date of the provision, vis-à-vis to Assessment Year, since the section says it is to be maintained for the F Y 2022-23 onwards however the notification is issued and is came into force with effect from 10-08-2022.*

*Hence it is advisable to follow the act and to make attempt to maintain books of accounts and documents for the F Y 2022-23 to the best extant it is possible.*

As per new rule 17AA – Every fund or trust or institution etc. which is required to keep and maintain books of account and other documents under clause (a) of tenth proviso to section 10(23)(C) or under sub clause (i) of section 12A(1)(b) shall keep and maintain books of account and other documents as mentioned herein below.

1) Cash book, ledger, journal, original and copies of bills, any other book that may be required to be maintained in order to give a true and fair view of the state of affairs.

2) Books of Accounts as referred above for business undertaking (Sec. 11(4) and business carried on by the trust (Sec. 11(4A))

3) Other Documents for maintaining

i) Record of all projects undertaken

ii) Record of all income: Voluntary contribution, income from property, other income

iii) Details of application of income, donation to other charitable entities, application outside India, details of income deemed as income of next year on receipt, accumulation of income, money invested in 11(5), not invested in 11(5)

- iv) Details of application out of accumulation income, accumulation invested in 11(5), not invested in 11(5)
- v) Details of corpus donation: application out of it, amount credited back out of current year income, donation to other charitable entities, invested in 11(5) or not invested in 11(5)
- vi) Details of amount received for repair/renovation of 80G(2)(b) religious place treated as corpus donation: application out of it, amount credited back out of current year income, donation to other charitable entities, invested in 11(5) or not invested in 11(5)
- vii) Details of loan and borrowings: Details of loans and borrowings name and address of the lender, PAN and Aadhar (If available) of the lender, receipt, terms and conditions of repayment, application out of loans of current year and earlier years, details of repayment.
- viii) Details of properties held –
- a) Immovable Property – Nature and address of properties, **Cost of Acquisition of Assets**, registration documents.
  - b) Movable Properties including details of nature and cost of acquisition.



ix) Record of specified persons (As referred to Sec. 13(3)) and details and nature of transaction and **documents to the effect that such transaction is directly or indirectly not for benefit for them.**

x) Any other documents containing other relevant documents.

4) The books of accounts and other documents may be kept in written form or in electronic form or in digital form or as printouts of data or any other form of electromagnetic data storage device.

5) The books of accounts and other documents shall be kept and maintained at its registered office.

Provided the books of accounts and other documents may be kept at such other place in India as the management decide by way of resolution and **the said resolution to be intimated to AO in writing within 7 days thereof with giving full address of that other place.** The said intimation is to be given by the person who is authorized to verify return of income.

6) The books of accounts and other documents shall be kept and maintained for a period of **10 years** from the end of the relevant assessment year.

In case where the assessment reopened under section 147, the books of accounts and documents which were kept and maintained at the time of reopening shall continue to be so kept and maintained till the re-assessment has become final.

## **AUDIT REPORT in form 10B & 10BB**

**Notification issued by CBDT on 21.02.2023 vide G.S.R. 118(E) w.e.f. 01.04.2023 (AY 2023-24)**

Regarding amendment in rule 16CC and rule 17B about New form of report of audit prescribed common under both the regime in new extensive form 10B & 10BB

### **(a) Form No. 10B where—**

- (I) the total income of such fund or institution or trust exceeds rupees five crores during the previous year; or
- (II) Received any foreign contribution during the previous year; or
- (III) Income outside India during the previous year;

### **(b) Form No. 10BB in other cases.**

**Note – There are separate annexures prescribed for form 10B & form 10BB being statement of particulars.**

## **CBDT CIRCULAR No – 6 of 2023 dated 24-05-2023**

### **SUMMARY**

#### **1) Registration Provision**

(i) Application in Form No. 10A for registration / approval and Application in Form No. 10AB for approval 10(23C) (i) or re-registration 12A (1) (ac) (i) or under 80G(5)(i) of the Act, Extended till 30.09.2023

(ii) All pending applications in form 10AB with CIT (Exemp) will be considered valid applications and to be disposed off as per normal provisions.

(iii) All applications in form 10AB rejected earlier solely on account of the fact that the application was furnished after the due date, the trust may furnish a fresh application in form 10AB within the extended time i.e. 30.09.2023.

(iv) Accordingly if registration/approval is granted, the provisions of section 115TD (3) (iii) shall not apply on account of delay in making of application.

## **2) Extension of due date for furnishing of Form No. 10BD**

The due date for uploading form 10BD and issue of form 10BE F Y 2022-23 are extended from 31-5-2023 to 30.6.2023.

(There is ambiguity in extension of filing of form 10BD vis-à-vis to filing of form 10A by 30.09.2023.)

## **3) Clarification regarding applicability of provisional approval / registration**

It is clarified that in case of trusts, funds or institutions seeking provisional approval or provisional registration, shall be effective from Assessment Year relevant to the previous year in which the application is made and shall be valid for a period of three Assessment Years subject to the provisions of 10(23C)(iii) or 12A(1)(ac)(iii) or 80G(5)(iii) of the Act, as the case may be.

## **4) Clarification regarding filing of forms 9A & 10 for accumulation were required to filed by August.**

Now it is to be filed before filing of ITR since the details of accumulations are furnished in ITR and in case of belated return it is to be furnished by 31<sup>st</sup> October.

**5) Clarification regarding audit report to be furnished in Form No. 10B & 10BB.**

It is clarified that for the purposes of form No. 10B & 10BB electronic modes referred to in para 18 are in addition to the account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account.

- THANK YOU -

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