

AMENDMENTS RELATING TO CHARITABLE INSTITUTIONS



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The last 7 years have witnessed massive overhaul in the Scheme of Regulatory and Compliance Matters applicable to charitable trusts and institutions. Keeping in line with its vision of - 'Minimum Government, Maximum Governance', the Government has introduced plethora of amendments since 2015 to put the onus on the Trusts to comply with the laws or face the risk of losing exemptions, if found non-compliant. With the seamless flow of information between various departments and technological tools available, the government is engaging itself pro-actively by seeking timely compliances from the Trusts / NGOs. With string of amendments already introduced earlier to curb double / triple deductions by Trusts on its expenses, and new registration mechanisms, the Budget 2022 has focussed mainly on the following aspects:

- A. Expenses to be allowed on payment basis only and not on accrual / mercantile basis;
- B. Providing clear-cut procedure for cancellation of existing 12AB registration and disallowance of exemption by A.O.;
- C. Retrospective amendment to exempt donations received for maintenance of places of worship;
- D. Rationalisation of disallowance of expenses/application in case of violation of any provision by the Trusts;
- E. Strict Penalties in case a Trust is found to have passed undue benefit to Trustees or Specified Persons;
- F. Introducing amendments to bring clarity to already settled principles;
- G. Bringing parity between exemptions u/s 10(23C) and u/s 11/12.

A. Expenses to be allowed on payment basis only and not on accrual/mercantile basis:

1. Insertion of Explanation to sec. 11 and similar amendment in sec. 10(23C):
Application of Income shall be allowed to Trusts / Institutes on the basis of actual payment only. Even if accrual/mercantile system of accounting is followed by the assessee, the application of Income will not be allowed in the year in which the liability to pay arises, but only in the year in which such amount is actually paid.
2. The Receipts & Payments Account shall now form an integral part of the Financials of the Trust. Though many Trusts follow cash system of accounting, the applicability of GST to many Trusts led such Trusts to follow accrual / mercantile system of accounting. However, there were several instances where application was being claimed only the basis of book entries without actual payment / discharge of such liabilities by the Trust. To curb the same, the above amendment has been introduced.

B. Providing clear-cut procedure for cancellation of existing 12AB registration and disallowance of exemption by A.O.:

The procedure for cancellation of sec. 12AB Registration, contained in earlier sec. 12AB(4) and 12AB(5) have been overhauled and a detailed procedure has been laid down with respect to (i) defining the violation; (ii) Cause to commence the cancellation proceedings; and (iii) Procedure for cancellation. Summary as under:

Insertion of Explanation to Sec. 12AB(4) to define 'Specified Violation'	Cause to initiate the proceedings for	Procedure to be followed for
<p>a. If income is applied, other than for objects of the Trust;</p> <p>b. Trust has income from profits/gains of business, which is not incidental to the attainment of objects, or separate books are not maintained in respect of business incidental to objects;</p> <p>c. Trust has applied income for private religious purposes which does not endure public benefit;</p> <p>d. Trust has applied income for the benefit of any particular religious community or caste;</p> <p>e. Activity carried out is either: (i) not genuine or (ii) not carried out as per conditions of 12AB registration;</p> <p>f. Trust has not complied with the requirement of any other law and such non-compliance under other law has attained finality or has not been disputed.</p>	<p>a. PCIT or CIT notices occurrence of specified violation; or</p> <p>b. PCIT or CIT has received reference from A.O. under 2nd proviso to sec. 143(3); or</p> <p>c. The case has been selected in accordance with the risk management strategy formulated by the Board.</p>	<p>1. Call for such documents to satisfy himself;</p> <p>2. Pass an order in writing, cancelling the registration, after affording reasonable opportunity, if he is satisfied that specified violation has occurred.</p> <p>3. Pass an order, refusing to cancel the registration, if he is satisfied that specified violation has not occurred;</p> <p>4. Forward copy of such order to A.O. and the assessee.</p>

2. New Sec. 12AB(5) provides the timeline to pass the order for the above proceedings u/s 12AB(4) to 6 months from the end of the quarter in which the first notice is issued by the PCIT or CIT for calling of information.
3. Amendment has also been carried out in sec. 143 (Assessment Proceedings) to lay the procedure for allowing / disallowing exemption u/s 10 at the time of assessment by A.O. to assessee covered under registered under sub-clauses (iv) or (v) or (vi) or (via) of sec. 10(23C) has been amended and such procedure has also been made applicable to Trusts claiming exemption u/s 12AB. The procedure suggests that, if the A.O. notices any 'specified violation' (*see sub-clause 1 above*) at the time of assessment, then the A.O. shall:
 - i. Send a reference to the PCIT / CIT to withdraw the approval or registration;

- ii. The A.O. shall not make any assessment until and unless the PCIT / CIT passes any order (either cancelling / refusing to cancel) pursuant to such reference by the A.O.

C. Retrospective amendment to exempt donations received for maintenance of places of worship:

1. In case of Trust/Institution maintaining temple, mosque, gurudwara, church or other notified place, any income received as voluntary contribution towards repair or renovation of such place or worship, may at the option of the Trust, be deemed as Corpus of the Trust, subject to certain conditions. [Explanation 3A inserted to sec. 11(1)]
2. Earlier, only such donations which were made with 'specific direction' were treated as Corpus Donation u/s 11(1)(d).
3. With the insertion of this Explanation, in the case of Trusts maintaining places of worship, no 'specific direction' is needed to be obtained from the Donors for treating such donations as 'Corpus Donations'.
4. This explanation has been added retrospectively w.e.f. 01/04/2021

D. Rationalisation of disallowance of expenses/application in case of violation of any provision by the Trusts:

1. We all have come across situations, where in case the Trust has missed filing Form 10B or Form ITR-7 in time, then the CPC used to disallow the entire expenditure / application, and levy tax at MMR on the income of the Trust. Also, in case of any violation, the A.O. used to disallow the benefits of sec. 11 and 12 to the Trust.
2. There are two amendments which rationalize the disallowance of exemption u/s 11 and 12 in certain scenarios in case of Trusts registered u/s 12AB.
3. Firstly, sub-section (10) and (11) have been inserted in section 13 to cover the following 3 violations:
 - i. Violation of sec. 13(8), where 1st proviso to sec. 2(15) becomes applicable, i.e., the amount of receipts of the Trust from sources other than donation, exceeds 20%, if such trust is engaged in advancement of objects of general public utility;
 - ii. Violation of 12A(1)(b), i.e. Audit Report in Form 10B is not filed in time;
 - iii. Violation of 12A(1)(ba), i.e. Income Tax Return in Form ITR-7 is not filed in time;
 Then, earlier, no deduction / application was allowed from the Income of such Trust. However, with the above amendments, expenses / application, shall be allowed against the incomes, subject to certain conditions.
4. Secondly, amendments have been carried out in sub-section (1) of section 13 to cover the following two violations:
 - i. For 13(1)(c) violation, i.e., where income has been applied to the benefit of any trustee or specified persons;
 - ii. For 13(1)(d) violation, i.e., where the investments are made in modes other than sec. 11(5) modes, Then, earlier, the entire exemptions u/s 11 and 12 were forfeited. However, with the Budgetary Amendment, now only such exemption shall be forfeited, upto the extent of violation of sec. 13(1)(c) or 13(1)(d), as the case may be.
5. With the above amendments, we can now expect that the CPC will tax the gross Income of the Trusts at MMR for above compliance lapses by the Trusts.

E. Strict Penalties in case a Trust is found to have passed undue benefit to Trustees or Specified Persons:

This newly inserted penal section provides that, in case of infringement of 21st Proviso to sec. 10(23C) or of sec. 13(1)(c), i.e., if trust or institution is found to have passed any unreasonable benefit to its trustee or specified person, then the A.O. may levy penalty as under:

1. Where such violation is noticed for the first time, 100% of such amount applied to the benefit of such Trustee / Specified Person;
2. Where such violation is noticed again in any subsequent previous year, 200% of such amount applied to the benefit of such Trustee / Specified Person.

F. Introducing amendments to bring clarity to already settled principles:

1. Earlier certain Trusts, whose incomes exceeded maximum amount not chargeable to tax (Rs. 2,50,000) were required to get the accounts audited. However, there was no explicit provision which mandated such Trusts to maintain Books of Accounts. Amendment has now been made in sec. 12A(1)(b) to mandate such Trusts to first maintain the accounts in appropriate manner and subsequently get them audited.
2. Sec. 11(2) allowed any Trust to accumulate unspent amount, over and above the 15% limit, for a period of 5 years. Further, the Form 10 and Income Tax utilities also allowed such accumulation only for a period of 5 years. However, sec. 11(3) used the words – '*accumulated or set apart during the period referred to in clause (a) of that sub-section or in the year immediately following the expiry thereof*' This created confusion and also led the Trusts to believe that the actual period of accumulation is of 6 years. Now, amendment has made in sec. 11(3) to bring clarity to the taxation of accumulated amount u/s 11(2), not utilized by the end of 5th year.

F. Bringing parity between exemptions u/s 10(23C) and u/s 11/12:

1. There are 2 schools of claiming exemption – either sec. 10(23C) or sec. 11/12. The Basic difference between the two is that exemption u/s 10(23C) is qua fund/institution and sec. 11/12 is qua trust. It was believed that the provisions of sec. 10(23C) were lenient as compared to the provisions of sec. 11 and 12.
2. Suitable amendments in the Provisos to sec. 10(23C) have been introduced to bring the taxation of assessee covered under sub-clauses (iv), (v), (vi) or (via) of sec. 10(23C) at par with the Trusts registered u/s 12AB. Budgetary Amendments carried out in sec. 11, 12A and 12AB have also been extended to the aforesaid assessee covered under sub-clauses (iv), (v), (vi) or (via) of sec. 10(23C).
3. There is one notable amendment in respect of accumulation of income over and above 15% in the case of assessee covered under sub-clauses (iv), (v), (vi) or (via) of sec. 10(23C). Earlier no intimation (*like Form 10 in case of Trusts*) was required to be made to the A.O. for such accumulation. The same has been amended now, to bring them at par with sec. 11(2), where intimation is required to be made to the A.O., and other conditions like sec. 11(5), etc. have to be fulfilled.
4. Also, the provisions of sec. 115TD (*Accreted Tax*) are now extended to assessee covered under sub-clauses (iv) or (v) or (vi) or (via) of sec. 10(23C).

