Taxation of Charitable and Religious Trusts Overview, Recent Developments & Practical Issues

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Coverage

- Overview
- Amendments brought in by Finance Acts 2020, 2021, 2022 & 2023
- Recent circular
- ITR 7 – No significant changes seen except to give effect to amendments, that are discussed in this paper
- Certain practical issues
- Major Changes brought in Form 10B & 10BB

Overview

- History from 1973 – Then FCRA in 1976 – Misuse led to tightening of the noose.
- Sections discussed are 11, 12, 12A, 12AA, 12AB and 13. Also reference is made to S 10(23C) & S 80G, wherever necessary
- Assessee should be a legally constituted entity (i.e. public trust, declared religious trust, society, not-for-profit company etc.)
- The objects shall be *either*
  - Public religious purposes *or*
  - Public charitable purposes as envisaged in S 2(15)
- Computation and assessment of trusts is distinct from that of a business entity. For e.g., trust can c/f income, claim capital expenses etc.

Overview - Charitable purposes – S. 2(15)

1. Relief of the poor
2. Education
3. Medical relief
4. Yoga
5. Preservation of environment, monuments, places of artistic / historical relevance etc.
6. Advancement of any other objects of general public utility – E.g. library, gaushala, sports promotion, arts promotion etc.

Overview - Object of general public utility not to comprise receipts from trade, commerce, business etc.

- There is no total embargo on commercial receipts. Receipts from these activities up to the following limits are acceptable
  - AY 2009-10 to 2011-12: up to Rs. 10 lakhs/year
  - AY 2012-13 to 2015-16: up to Rs. 25 lakhs/year
  - From AY 2016-17: up to 20% of the total receipts
- This embargo does not apply to
  - Public religious trusts
  - Charitable trusts carrying on the first five limbs of charity as defined in S. 2(15) – Circular 11/2008 dt 19.12.2008

Trade associations carrying out commercial activities will be hit – They can charge fees at cost or with nominal margin – ACIT vs. Ahmedabad Urban Development Authority (SC) (2022) 143 taxmann.com 278 (SC) 19.10.2022

Reporting requirement in new 10B

Overview - Pitfalls

- Religious trust can do charity but a charitable trust cannot pursue religious objects – Charitable trust having mixed objects – very dangerous scenario

- Problem situations – Charitable trust with religious objects, public religious trusts with private religious objects, benefits given to specified persons, trust property misused, amounts not invested in specified mode, problems in accounts, audit, Violation of other allied laws, ITR / TAR non filing etc. – Can lead to denial / disallowance of exemption, cancellation of registration and accreted tax.

- Denial of exemption vs. cancellation of regn

Overview – source of income and application of income

- Sources of income
  - Voluntary Contributions (domestic / foreign / anonymous / kind)
  - Corpus Donation (Donor direction, Investment u/s 11(5))
  - Income from property held under trust
  - Other income including interest
  - Income exempt under other sections (Agrl Inc, S 10(23C))

- Application of income (Revenue or capital permissible)
  - Not less than 85% of CY income to be applied in India for charitable or religious purposes (on cash basis).
  - Spending from earlier year's surplus, corpus donation, loans etc not treated as application of income
  - Depreciation not deductible if cost of asset is claimed as application of income

Overview Accumulations of income

- Section 11(1) – 15% of Income of CY

- Explanation to S 11(1) – Accumulate till the year of receipt or next year (after stating the reason for shortfall), as the case may be. Option (Form 9 A) to be exercised within 2 months before the ITR due date. (income not received or any other reason) – Relaxed by Circular 6 / 2023 – Form 9A to be filed within 139(1) due date – Condonation of delay upto 3 years by PCIT and delay upto 365 days by CIT – Cir 17/2022

- Section 11(2) – Can be accumulated for a period up to 5 years (after stating the purpose). Option (Form 10) to be exercised within 2 months before the ITR due date. Invest as per S11(5) – Relaxed by Circular 6 / 2023 – Form 10 to be filed within 139(1) due date – Condonation of delay upto 3 years by PCIT and delay upto 365 days by CIT – Cir 17/2022

Overview – other conditions

- Trusts having business income – business should be incidental to objects, books to be maintained & income to be used for objects
- Registration of trusts now compulsory u/s 12AB (10(23C) and 80G also as the case may be) – *Earlier Sections 12A/12AA – Relaxation by Cir 6 / 2023*
- Maintain books (Rule 17AA)
- Get accounts audited and file audit report by due date (Form 10B / Form 10BB) – 1 month prior to S.139(1)
- 10 (23C) – 5 crore income institiutions – audit not required – ITR must – registration not required
- File ITR u.s.139(4A) – *(139(1) or 139(4) ?)– circular 173/193/2019-ITA-I-23.04.2019 – can't claim by updated return*
- Order of filing Form 10 / 9A, 10B and then ITR

Overview – Anonymous Donations (S. 115 BBC)

- Donation where donor's identity is unknown (be careful with UPI and imps fund transfers)
- Not taxable in the case of religious trusts and religious and charitable trusts receiving anonymous donations for religious purposes.
- For others anonymous donations are taxable at 30% + SC + Cess
- Threshold limit – Rs. 1,00,000 or 5% of total donations, whichever is higher

Overview – Tax at special situations

- When assessment of a year is completed without giving exemption – Assessed income of that year is taxable at MMR – till AY 2022-23 and from subsequent years 30%. This is a year to year affair. Note – AO cannot cancel registration.
- Exit tax on conversion to non charitable trust or trust cease to exist – E.g. cancellation of registration, modification of objects without taking fresh registration etc. – Exit tax = Accreted income x MMR, where Accreted income is the value of net assets on the specified date.

Finance Act 2020

- Provisions regarding re-registration, provisional registration, regularisation of provisional registration etc. introduced in Sections 10(23C), 12AB & 80G. Cut off date got extended up to 31.03.2022 – Discussed elsewhere. **Re registration time further extended to 25.11.2022. Again extended to 30.09.2023.**
- Audit reports – Form 10B or Form 10BB – now required to be e-filed 1 month prior to the ITR due date u/s 139(1) – earlier they need be filed only along with ITR (wef AY 2020-21) – Refer circular 15/2022 & 16/2022 for CIT's power to condone delay. – Forms have undergone change
- Corpus donation given to other registered entities shall not be regarded as application of income u.s. 11 & 10(23C) – (wef AY 2020 – 21)
- Section 80G – Filing of statement in respect of donors – Forms 10BD & 10BE – Cut off date got extended up to 30.06.2023 from 31.05.2023 – Circular 6 /2023. - Failure – Late fee Rs. 200 per day (S. 234G) – Penalty Rs. 10K to Rs. 100 K (S. 271 K)

Finance Act 2021

- Section 10(23C) – (iiiad) & (iiiae) – Small income institutions (educational / medical)– Ceiling enhanced from Rs. 1 crore to Rs. 5 Crores (wef AY: 2022 – 23)
- Amendment common to S 11 and S 10(23C) – wef AY: 2022 – 23
  - Corpus donations must be invested in S 11(5) modes
  - Amounts spent from the following sources will not be allowed as application of income
    - Corpus donation
    - Income accumulated to the extent of 15% year to year
    - Loans.

    However when the funds are replenished or loan is repaid, application disallowed can be claimed as deduction – Refer Finance Act 2023 also
  - Excess application of earlier years cannot be set off

Finance Act 2022

- Two regimes are spelt out
  - Section 10(23C) regime (10(23C) cases)
  - Section 12A / 12AA / 12AB r/w/s 11 regime (12 A Cases)

- 12 A cases have self contained code for taxation. However, 10(23C) cases depend on 12A provisions on many procedural aspects like accumulation of income, related party transactions etc.

- The amendments mainly seek to bring consistency between S 10(23C) and S 12A.

FA: 2022 – Amendments to bring consistency

- A trust/institution is required to apply at least 85 percent of its income towards charitable activities in a particular year. However, in the event this threshold is not met, the law allows for **accumulation of funds** to be applied for charitable purposes in the future years (**not exceeding 5 years**). Such accumulation is subject to certain conditions (S 11(2) / 11(5) etc). Now, such conditions are **made applicable to 10(23C) cases also**. (AY 2023-24)

- Currently, under the 12A regime, income diverted/excessive benefits provided to **trustees/other specified persons** result in such amount becoming taxable for the trust/institution. Now, such conditions are **made applicable to 10(23C) cases also. (AY: 2023 – 24)**

- Currently, under the 12A regime, there is a requirement to **file a Return of Income** for claiming exemption. Now, such a condition is **made applicable to 10(23C) cases also**. (AY 2023 – 24)

- Currenly, re-organisation (i.e., conversion, merger or transfer of assets on dissolution) of trusts/institutions governed by 12A regime with any non-qualifying entity (i.e., an entity that is not governed by either of the regimes) triggers a taxation under the **accreted income provisions**. Now, the accreted income provisions are **made applicable to 10(23C) regime as well**. AY 2023-24

FA 2022 - Period of utilisation of accumulation

- A trust/institution is required to apply at least 85 percent of its income towards charitable activities in a particular year. However, in the event this threshold is not met, the law allows for the **accumulation of funds** to be applied for charitable purposes in the future years (not exceeding **5 years**), subject to certain conditions.

- Currently, such **accumulated funds can be applied even in the year subsequent to the previous year upto which accumulation is done**—if it is not used in such subsequent year as well, then the funds not applied become taxable in such subsequent year.

- Now, **the option of allowing application in such subsequent year is done away** with — therefore, if the accumulated funds are not entirely applied up to the previous year of accumulation, then the funds not applied become taxable in such last year.

- Effective from AY 2023-24

- Issue - income accumulated in earlier years - whether become income in the 6^{th} year or 5^{th} year ?

FA 2022 – Application of income to be reckoned only on ‘payment’ basis

•Currently, there is no explicit provision determining the manner of reckoning the application of income (i.e., either accrual basis or cash basis could be followed).

•Now, it is proposed that the **application of income shall be reckoned only on ‘payment’ basis**.

•***This change is effective from FY 2021–22 (AY: 2022 – 23)***

•Closing balances of creditors and accounts payable must be reduced from application of income. In the first year we cannot add thereto opening balance of creditors and accounts payable. Whether advances paid could be deducted is a debatable point.

FA: 2022 – Computation of taxable income resulting on account of certain prescribed non-compliances AY 2023 – 24 onwards

•Currently, there is no explicit provision determining the manner of computation of taxable income resulting on account of non-compliances. **Presently officers tax the gross receipts without allowing application of income.**

•Now, it is provided that the taxable income resulting on account of prescribed non-compliances (such as (a) **not maintaining prescribed books** of accounts, (b) **not filing the Return of Income**, and (c)**carrying on commercial activities for consideration** beyond the prescribed threshold of 20%) shall be computed **after allowing deduction of revenue expenditure** incurred in India, but subject to the following conditions:

•Expenditure should not be a donation or contribution to any person.

•Expenditure incurred without withholding appropriate tax or expenditure incurred in cash beyond the prescribed threshold shall not be allowed.

•Expenditure incurred from the corpus or any loan or borrowing shall not be allowed.

•Depreciation on an asset, the cost of which is claimed as application of income in any year, shall not be allowed.

FA: 2022 – New tax rate prescribed for certain specified income – 115BBI

- Currently, there is an ambiguity on the tax rate that applies, where certain specified income of the trust/ institution become taxable.

- Now, it is provided that **specified income (resulting from violations such as (i) accumulation of funds for prohibited purposes, (ii) partial application of accumulated funds, (iii) deployment of funds in prohibited investments, and (iv) diversion of income/provision of excessive benefits to trustees/other specified persons)** would be taxable at a **flat rate of 30 percent (plus applicable surcharge if any and cess)** without reduction of any expenditure or allowances or set off of losses.

- Other incomes (if any) of the trust/institution will be taxable per the currently applicable provisions.

FA: 2022 – Proportionate income (instead of entire income) now made taxable on account of prescribed non- compliance

- It is provided that if trust/institution **diverts income/ provides excessive benefits to trustees/other specified persons or deploys its funds in prohibited investments only that part of income** that is diverted/regarded as excessive benefit/deployed in prohibited investments **would be taxable**. (items iii & iv) in the previous slide

- This position has been upheld in certain rulings even before the amendment. As discussed above, such income will be taxable at a flat rate of 30 percent without any deductions.

FA 2022: – Penalty for diversionof income/provision of excessive benefits to trustees/other specified persons - Section 271 AAE

- A trust/institution will be liable to **penalty for diversion of income/provision of excessive benefits to trustees/ other specified persons**.

- The penalty will be equal to **100 percent of the amount diverted in case of the first instance and will go up to 200 percent of the amount diverted in case of violations in subsequent years**.

- This penalty will be in addition to any other penalties that may be levied under the existing law.

FA: 2022 – Streamlining of the administrative/procedural framework

- Maintenance of the prescribed books of accounts
  - Where the total income of the trust/institution exceeds the basic exemption limit, it is required to get its books of accounts audited.
  - Currently, there are no specific books of accounts that the trust/institution is required to maintain.
  - Now, it is proposed that such a trust / institution would be required to maintain the prescribed books of accounts.
  - Reference is made in Form 10B and 10BB Forms
  - Rule 17AA notified on 10.08.2022 – Refer notification GSR 622(E) dated 10.08.2022 (https://taxguru.in/income-tax/books-accounts-maintained-university-charitable-medical-institutions.html)

Summary of Rule 17AA (Content courtesy – Taxguru)

- Every charitable institution is required to keep and maintain the following books of accounts and other documents:
  - Books of account including the cash book, ledger, journal, copies of bills, original bills, and any other books.
  - Books of account for a business undertaking and business carried on by assessee
  - Other documents for maintaining a record of:
    - All projects and Institutions run by the person containing details of the name address and objectives
    - Income in respect of voluntary contribution containing details of donor
    - income from property held under trust along with the list of such property and other income of institution or trust, etc
    - The application of income in and outside India, deemed application of income, income accumulated or set apart, money invested in the specified mode etc
    - Voluntary contribution received and its application
    - Loans and borrowings
    - Properties held by trust
    - Details of specified persons

Summary of Rule 17AA contd…

Mode in which documents may be kept

The books of account and other documents may be kept in written form, electronic form, digital form or as printouts of data stored digitally

Place where to be kept

The books of account and other documents shall be kept and maintained by the entities at their registered office. However books may be kept in another place if management decides to do so by passing a resolution.

Period for which books to be maintained

The books of account and other documents shall be kept and maintained for 10 years from the end of the relevant assessment year

FA : 2022 – Withdrawal of registration/approval provisions revamped

- The provisions dealing with withdrawal of the registration/approval of a trust / institution have been revamped.

- Notably, the new provisions enumerate certain ‘specified violations’ that will lead to a withdrawal of the registration/approval—amongst them is having a business that is not incidental to the attainment of its objectives, material non-compliances in other legislations, etc.

Finance Act 2023
For the discussions below

Regime 1	Entities referred to in section • 10(23C)(iv) – Approved charitable trust • 10(23C)(v) – Public religious or religious / charitable trust • 10(23C)(vi) – University / Educational Institutions • 10(23C)(via) – Hospital / Medical institutions
Regime 2	12AA / 12AB registered entities

FA 2023 – Allowability vis-a- vis depositing back of amount spent from corpus		
Section: Regimes 1 & 2	**Clause of FB: 5**	**Effective date: AY 2023 – 24**
Discussion • **Amount spent from corpus donation is not allowed as deduction.** • **But if amount spent from corpus donation is replenished from income it can be claimed as application subject to conditions**		
Proposal		

Whether amount spent from corpus is replenished during the year from income of the current year?

No

Yes

Whether the amount replenished is attributable to amount spent from corpus on or before 31.03.2021?

Yes

No

Whether the concerned amount spent from the corpus,which is replenished now, was applied subject to following conditions?

a. Not given as corpus donation to another trust

b. TDS, if applicable, had been done on amount spent

c. The payment did not violate limits u/s 40A(3)

d. The payment was not sourced from excess application of any earlier year

e. The payment was actually done (not accounted as payable)

f. The payment did not benefit any person specified u/s 13

g. The payment was for its objects in India

No

Yes

Whether the present replenishment of corpus from CY income is within 5 years of the application from corpus?

No

Yes

Corpus replenished from CY income is deductible

No deduction is available

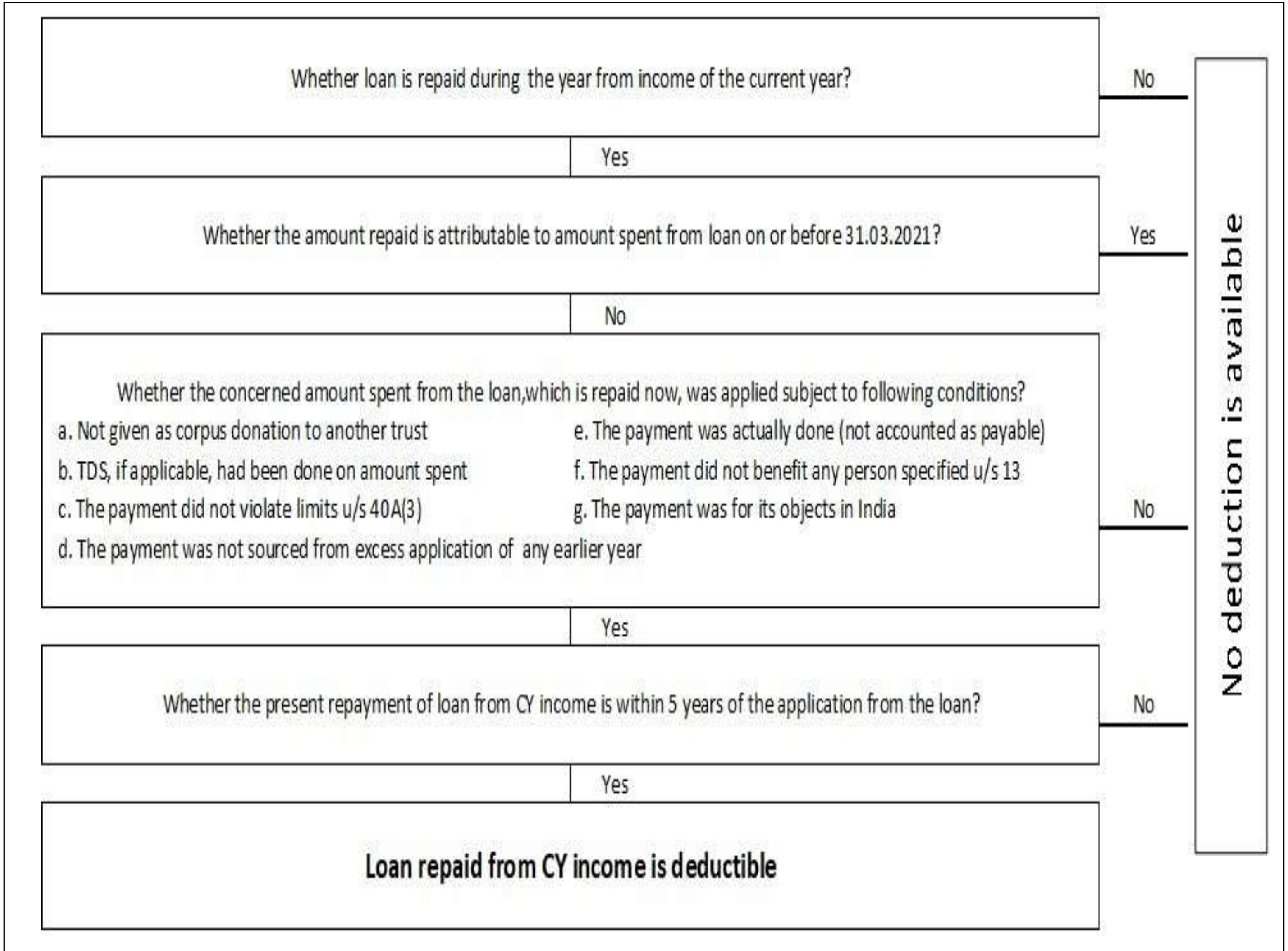
FA 2023 – Allowability vis-a- vis repayment of loan

Section: Regimes 1 & 2	Clause of FB: 7	Effective date: AY 2023 – 24

Discussion

- **Amount spent from loan is not allowed as deduction.**
- **But if the loan is repaid from income it can be claimed as application subject to conditions**

Proposal


Whether loan is repaid during the year from income of the current year?
No
Yes
Whether the amount repaid is attributable to amount spent from loan on or before 31.03.2021?
Yes
No
Whether the concerned amount spent from the loan,which is repaid now, was applied subject to following conditions?
a. Not given as corpus donation to another trust
b. TDS, if applicable, had been done on amount spent
c. The payment did not violate limits u/s 40A(3)
d. The payment was not sourced from excess application of any earlier year
e. The payment was actually done (not accounted as payable)
f. The payment did not benefit any person specified u/s 13
g. The payment was for its objects in India
No
Yes
Whether the present repayment of loan from CY income is within 5 years of the application from the loan?
No
Yes
Loan repaid from CY income is deductible
No deduction is available

FA – 2023 Treatment of donation to other trusts

Section: Regimes 1 & 2	Clause of FB: 5 & 7	Effective date: AY 2024 – 25

Discussion

- **Certain trusts falling within a group roll funds from one trust to another by way of donation so that each trust in the loop gets the benefit of accumulating 15% of the respective donation**
- **E.g. Trusts A to E are under same group. Trust A's income of Rs. 1,00,000 is donated to Trust B. Trust B donates Rs. 85,000 (85% of Rs. 1,00,000) to Trust C. Trust C donates Rs. 72,250 (85% of Rs. 85,000) to Trust D. Trust D donates Rs. 61,413 (i.e. 85% of Rs. 72,250) to Trust E. Now Trust E has to apply Rs. 52,201 (i.e. 85% of Rs. 61,413). However, this effectively is only 52% of A's income of Rs. 1,00,000.**

Proposal

- **It is proposed that only 85% of eligible donations made by a trust or institution in the first regime or second regime to another trust or institution in the first regime or second regime shall be treated as application in the hands of the donor.**

FA 2023 - Omission of certain provisions relating to dating back of exemption

Section: Regimes 1 & 2	Clause of FB: 8	Effective date: 01.04.2023

Discussion

- **Section 12A(2):** ***Once registered under section 12AA or 12AB, exemption shall be available to the trust from the assessment year relevant to the financial year in which application for registration was made.***
- **Section 12A(2) 2nd proviso** – ***Once registration is granted u/s 12AA or 12AB, that status quo should be applied in all pending assessments of earlier years.***
- **Section 12A(2) 3rd proviso** - ***Once registration is granted u/s 12AA or 12AB, earlier year's assessments should not be reopened just because the trust was not registered in those years***
- **Section 12A(2) 4th proviso** – ***Trust will not get any immunity if registration is cancelled or application for registration is rejected***

Proposal

- **Second and third provisos are taken away – i.e. henceforth there is no immunity vis-à-vis earlier years for an already existing trust that applies for registration for the first time.**
- **Fourth proviso is also omitted.**

FA 2023 - Regarding provisional / regular registration / approval

Section: Regimes 1 & 2 & 80G	Clause of FB: 5,8,9,40	Effective date: 01.10.2023

Discussion

Situation 1 :

- **Trusts or institutions formed or incorporated during the previous year are not able to get exemption in the year of formation because they are required to apply for registration or approval at least one month before the previous year for which exemption is sought and registration would be granted from next AY.**

Situation 2

- **Trusts / Institutions, where activities have already commenced, are required to apply for two registrations / approvals (i.e. provisional and regular) simultaneously.**

Proposal

In Situation 1

- **Henceforth, the trusts / institutions shall be allowed to make application for provisional registration / approval before the commencement of activities and they get exemption from that AY.**

In Situation 2

- **The trusts / institutions that have already commenced their activities, shall make application for regular approval / registration (i.e. provisional can be skipped). IT authorities' powers are also spelt out.**

Please see notification amending Rules 2C, 11AA and Forms 10A & 10AB to give effect to the above amendment. There are minute changes in Forms 10B and 10BB also vide this notification (i.e. reporting 269SS cases) – Notification GSR 457E dated 23.06.2023 - ***https://incometaxindia.gov.in/communications/notification/notification-45-2023.pdf***

FA 2023 - Violations vis-à-vis the new registration / approval regime

Section: Regimes 1 & 2 & 80G	Clause of FB: 5 & 9	Effective date: 01.04.2023

Discussion

- **The process of granting provisional approval / registration for new trust and the re-registration / re-approval of already registered / approved trusts / institutions are automated.**
- **Application is filed in the portal and provisional approval / registration or re-approval / re-registration in such cases is granted in an automated manner without verification.**

Proposal

- **In many cases it is found that applications are defective, not complete and contain incorrect particulars**
- **Therefore, proposal is made to empower CIT / PCIT to cancel the registration / approval when application referred to above is incomplete or it contains false or incorrect information.**

FA 2023 - Trusts / Institutions not filing application in certain cases

Section: Regimes 1 & 2	Clause of FB: 57	Effective date: AY 2023-24

Discussion

- **Certain existing registered / approved trusts have not made application for re-registration or re approval**
- **Certain provisionally registered / approved trusts have not made application for regular registration**
- **Likely scenario in future – A trust registered / approved for 5 years may not apply for re registration or re approval**
- **Section 115TD provides for levy of exit tax on accreted income when a charitable trust gets converted to a non charitable trust in the manner laid down in the Act.**
- **By not applying for regular registration / approval or re registration or re approval the trust gets and easy route to exit without payment of exit tax.**

Proposal

- **Amendment is proposed in Section 115TD**
- **If the trust fails to make application for re registration or re approval or regular registration or regular approval within the stipulated time, it shall be deemed to have been converted into any form that is not eligible for registration or approval. It will attract exit tax.**
- **Time limits for re-registration etc. are extended upto 30.09.2023 (refer Circular 6 /2023)**
- **Procedural part and definition part are also amended.**

FA 2023 - Alignment of ITR, Accumulation and Audit report due dates

Section: Regimes 1 & 2	Clause of FB: 5 and 7	Effective date: AY 2023-24

Discussion *(Also see Circular dated 24.05.2023)*

- **Presently**

Due date for	Due date	Remarks
ITR	31st July	where there is no audit
	31st October	where there is audit
Accumulation	same as ITR due date	Form 10 (section 11(2)) / Form 9 A (expln. to s.11 (1))
Audit report	1 month prior to ITR due date i.e. 30th September	Form 10 B / Form 10 BB

Proposal

- **Due date for filing Form No 10 / 9 A is made 2 month prior to ITR due date (31st August in audit cases and 31st May in non-audit cases) – Circular 6 / 2023 – aligned with S.139(1) due date for Form 10 / 9A**
- **Reason as per Memorandum explaining the provisions – "The auditors are required to report the details of form 10/9A in the audit report. Since the due date for furnishing form 9A/10 *(It should have been Form 10 B / 10 BB)* is one month before the due date of furnishing the ITR, auditors find it difficult to report"**

FA 2023 No exemption if return is not filed

Section: Regimes 1 & 2	Clause of FB: 5 & 8	Effective date: AY 2023-24

<u>Discussion</u>

- **With the introduction of the scheme of filing updated return under section 139 (8A), there arose an unintended situation wherein trusts filing updated returns became eligible for exemption.**

<u>Proposal</u>

- **It is clarified that exemption will be available only if the return of income is filed under section 139 (1) or 139 (4)**

FA 2023 - Section 80 G

Section: 80 G	Clause of FB: 40	Effective date: AY 2024-25

Discussion

- **Section 80G gives a list of certain specified donees.**

Proposal

- **Following 3 institutions are removed from the list of eligible donees**
  - **80 G (2) (a) (ii) – Jawaharlal Nehru Memorial Fund**
  - **80 G (2) (a) (iii c) – Indira Gandhi Memorial Trust**
  - **80 G (2) (a) (iii d) – Rajiv Gandhi Foundation**

Circular No. 6 / 2023 dated 24.05.2023

- Re-registration of trusts registered (12A / 10(23C) and 80G) under the old regime – i.e. Form 10 A cases –
  - Original due date 30.06.2021
  - Extended to 31.08.2021 (C.12/2021 – 25.06.21)
  - Extended to 31.03.2022 (C.16/2021 – 29.08.21)
  - Extended to 25.11.2022 (C.22/2022 – 01.11.22)
  - Now extended to 30.09.2023
- Conversion of provisional registration to regular registration (12A and 10(23C)) – Form 10AB cases –
  - Original due date 31.03.2022
  - Extended to 30.09.2022 (C.8/2022 – 31.03.22)
  - Now extended to 30.09.2023
- Consequent relief also provided to those who missed the deadline

Circular No. 6 / 2023 dated 24.05.2023 (contd…)

- Accumulation – filing of Form 10 (s. 11 (2)) or Form 9A (Expln to S. 11(1)) – FA 2023 – due date is 2 months prior to ITR due date u.s. 139(1)

- ***It is now clarified that accumulation / deemed application shall not be denied so long as Form 10 or Form 9A, as the case may be, is furnished on or before the ITR due date u.s. 139(1) – The clarification is not year specific***

Circular No. 6 / 2023 dated 24.05.2023 (contd…)

- Form 10 B / Form 10 BB require application of income / payments to be reported as ‘by electronic modes’ and ‘other modes’. It is clarified that electronic modes referred to in the form are in addition to account payee cheque / draft / ECS

- Form 10 BD – statement of donations u.s. 80 G – Form 10 BE certificate of said donation – cut off date is 31st May of subsequent year – For FY 2022-23, the due date is extended to 30.06.2023

Other matters

- Whether administration of sports and games a charitable purpose – Yes – Circular 395/24.09.1984
- Compulsory acquisition of trust property (Instruction 883 – 24.09.1975) or (Right of Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act, 2013)
- Whether micro finance an activity of mutuality or a charitable purpose?
  - Shalom Charitable Ministries Vs. ACIT – ITA No. 644/Coch/2019 – ITAT Cochin – **Against the assessee**
  - Society for rural improvement Vs. DCIT – ITA No. 329/Coch/2014 – ITAT Cochin – **In favour of the assessee**
  - Mutuality is to be argued and established

Other matters

- **Preparation of financial statements** - Guidance note on Financial statements of non corporate entities – exposure draft dated 07.02.2023 – still lying as exposure draft – Technical guide on financial statements of non corporate entities is in vogue – There is also a technical guide on accounting for not for profit organizations. – How far the formats are compatible for NPOs?

- Capital asset out of loan not allowable – Repayment of loan allowable subject to conditions (taken on or after 01.04.2021, repayable in 5 years etc.) – what about depreciation on asset?

- For amendment of objects – CIT's permission – Form 10AB – code 4

- Please read carefully the conditions specified in the new registration order u.s. 12 AB / 80 G by CIT

Other Matters

- Social auditor course – Need of the hour?

- Section 10(23C) – govt funded (iiiab & iiiac), less than Rs. 5 crs (iiiad & iiiae) and approved instns (vi & via) – use the word 'solely' for charitable purpose – SC held that 'solely' should be strictly construed – Involvement in activities unrelated to the main object make them ineligible for exemption – Concept of incidental and non-incidental activities discussed in the judgement – Applies prospectively –***New Noble Educational Society Vs. CIT (2022) 143 taxmann.com 276 (SC) 19.10.2022.*** No direct impact on section 12A/12AA/12AB r/w/s 11 (personal view)

Changes in Form 10 B and 10BB

See separate PPT

For your valuable views

Thank You