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Taxability of income of charitable or religious trusts

A charitable and religious trust is taxable in accordance with the provisions of Section 11 to Section 13. Section 11 provides for exemption in respect of income derived from property held under trust for charitable or religious purposes to the extent to which such income is applied or accumulated during the previous year for such purposes. The exemption is allowed on fulfilment of conditions specified in Section 11, Section 12, Section 12A, Section 12AA/12AB, and Section 13 of the Income-tax Act.

Meaning of 'Charitable Purpose'

Section 2(15) of the Income-tax Act provides an inclusive definition of 'charitable purpose'. It includes the following:

- (a) Relief of the Poor;
- (b) Education;
- (c) Yoga;
- (d) Medical Relief;
- (e) Preservation of the environment (including watersheds, forests, and wildlife);
- (f) Preservation of monuments or places or objects of artistic or historic interest; and
- (g) Advancement of any other object of general public utility.

The advancement of any other object of general public utility shall not be a charitable purpose if it involves the carrying on of any activity in the nature of trade, commerce or business (or any activity of rendering any service in relation to any trade, commerce or business) for a cess or fee or any other consideration.

This exception, however, does not apply if such activity is undertaken in the course of the actual carrying out of such advancement of any other object of general public utility and the aggregate receipts from such activity during the previous year, do not exceed 20% of the total receipts of such trust during that previous year.

Registration of Trust

The income of a trust shall not be exempt under Section 11 unless it has obtained registration under Section 12AA/12AB. The person in receipt of the income is required to make an application for registration of trust in the prescribed form. The process of registration up to 31-03-2021 is governed by Section 12AA. A new Section 12AB has been inserted with effect from 01-04-2021 which lays down the new process to obtain registration and the period for which such registration shall be granted.

The registration of trusts or institutions shall be required in the following circumstances:

Trust registered under old Section 12A/12AA

The trusts or institutions that had been granted perpetual registration before 01-04-2021 are required to make an application for re-registration under the new scheme of registration under Section 12AB. The registration obtained under Section 12AB shall remain valid for a period of 5 years.

A trust/institution has to make an online application in Form 10A for registration within 3 months from the date on which the provision comes into force. The due date for filing an

application for registration has been extended multiple times, and the latest due date is 30-06-2024.

The order of registration shall be passed by the Commissioner within 3 months from the end of the month in which the application for registration is received.

Renewal of Registration

Trusts or institutions are registered under Section 12AB for a period of 5 years. Where the existing registration is due to expire, the trust or institution shall apply for renewal of registration at least six months prior to the completion of the 5 years.

Note: For trusts or institutions whose total income before exemption does not exceed Rs.5 crores in each of the two previous years preceding the year of application, the validity of registration shall be 10 years.

The Finance (No. 2) Act 2024 has amended Section 10(23C) and Section 12A to shift the approval-based category of exemption under Section 10(23C) to registration-based exemption under Section 12AB. Therefore, the trusts or institutions previously approved under Section 10(23C) (iv), (v), (vi), or (via) whose registration is due for renewal on or after 01-10-2024 are now eligible to apply for registration under Section 12A, subject to similar conditions.

The Commissioner is required to pass an order granting the registration or refusing to grant the registration within 6 months from the end of the month in which the application for registration was received. W.e.f. 01-10-2024, the order has to be passed within six months from the end of the quarter in which the application was received rather than six months from the end of the month in which the application was received.

Conversion of provisional registration into regular registration

The trust or institution provisionally registered under Section 12AB shall be required to convert such provisional registration into normal registration by filing an application in Form 10AB at least 6 months before the expiry of the period of the provisional registration or within 6 months of commencement of its activities, whichever is earlier.

After the amendment by the Finance (No. 2) Act 2024, the trusts or institutions provisionally approved under Section 10(23C) (iv), (v), (vi), or (via) whose registration is due for conversion on or after 01-10-2024, are now eligible to apply for registration under Section 12A, subject to similar conditions.

The Commissioner is required to pass an order granting the registration or refusing to grant the registration within 6 months from the end of the month in which the application for registration was received. W.e.f. 01-10-2024, the order has to be passed within six months from the end of the quarter in which the application was received rather than six months from the end of the month in which the application was received.

Registration of trust whose registration has become inoperative

The registration under Section 12AB shall become inoperative if approval is obtained under Section 10(23C) or the institution is notified under Section 10(23EA), 10(23EC), 10(23ED) or Section 10(46) or Section 10(46A) or, the 1st day of April of the previous year relevant to the assessment year for which the exemption is claimed under Section 10 (46B). Thus, if the registration becomes inoperative, the trust or institution will not be entitled to claim an exemption under Section 11 or 12.

The trust or institution, whose registration has become inoperative may apply to get its registration again operative under Section 12AB. The application for registration in such cases shall be made at least 6 months before the assessment year from which the said

registration is sought to be made operative. Once the registration becomes operative, the trust or institution will not be entitled to claim an exemption under Section 10(23C)/10(23EA)/10(23EC)/10(23ED)/10(46)/10(46A)/10(46B).

The Commissioner is required to pass an order granting the registration or refusing to grant the registration within 6 months from the end of the month in which the application for registration was received. W.e.f. 01-10-2024, the order has to be passed within six months from the end of the quarter in which the application was received rather than six months from the end of the month in which the application was received.

Registration in conformity with the modified objects

If the trust or institution has adopted or undertaken modifications of the objects which do not conform to the conditions of registration, then such trusts or institutions are required to make an application for fresh registration under this provision. Application for fresh registration in such cases is required to be made within 30 days from the date of adoption or modification of objects of such trust or institution.

The Commissioner is required to pass an order granting the registration or refusing to grant the registration within 6 months from the end of the month in which the application for registration was received. W.e.f. 01-10-2024, the order has to be passed within six months from the end of the quarter in which the application was received rather than six months from the end of the month in which the application was received.

Provisional registration

(a) until 30-09-2023

The new trusts or institutions applying on or before 30-09-2023 for registration under Section 12AB must make the application for provisional registration even if such trusts or institutions have commenced the activities. Subsequently, such trusts or institutions have to convert their provisional registration into regular registration.

The application for provisional registration shall be filed in Form 10A at least 1 month before the commencement of the previous year relevant to the assessment year from which the registration is sought. Such provisional registration shall be valid for a period of 3 years. The trust or institution shall subsequently file an application for conversion of provisional registration into regular registration in Form 10AB at least 6 months before the expiry of the provisional registration period or within 6 months of the commencement of its activities, whichever is earlier.

(b) on or after 01-10-2023

The new trust or institution applying on or after 01-10-2023 shall file an application for provisional registration only if it has not commenced its activities. The trust or institution need not apply for provisional registration if it has commenced activities.

The application for provisional registration shall be filed at least 1 month before the commencement of the previous year relevant to the assessment year from which the registration is sought. Such provisional registration shall be valid for a period of 3 years. The trust or institution shall subsequently file an application for conversion of provisional registration into regular registration at least 6 months before the expiry of the provisional registration period or within 6 months of the commencement of its activities, whichever is earlier.

The order of registration shall be passed by the Commissioner within one month from the end of the month in which the application for registration was received.

Direct regular registration

Until 30-09-2023, the trust or institution has to apply for two registrations (provisional and regular) simultaneously, even if it has commenced the activities. However, on or after 01-10-2023, a trust or institution can apply directly for regular registration if it has already commenced the activities without applying for provisional registration.

The trusts or institutions satisfying the following two conditions can apply directly for regular registration:

- (a) A trust/institution that has already commenced its activities.
- (b) No income or part thereof of the said trust or institution has been excluded from the total income on account of applicability of Section 10(23C)(iv)/(v)/(vi)/(via), or Section 11 or Section 12, for any previous year ending on or before the date of such application, at any time after the commencement of such activities.

The Commissioner is required to pass an order granting the registration or refusing to grant the registration within 6 months from the end of the month in which the application for registration was received. W.e.f. 01-10-2024, the order has to be passed within six months from the end of the quarter in which the application was received rather than six months from the end of the month in which the application was received.

Condonation of Delay in Filing Registration Application

The Finance (No. 2) Act, 2024, inserted a proviso to Section 12A(a)(ac) w.e.f. 01-10-2024, to provide that, where the application is filed beyond the time allowed in sub-clauses (i) to (vi), the Principal Commissioner or Commissioner may, if he considers that there is a reasonable cause for delay in filing the application, condone such delay and such application shall be deemed to have been filed within time.

Period for which income is exempt

The exemption to a trust is generally available from the assessment year relevant to the previous year in which the application for registration is made. Hence, once the registration is granted, the exemption under Sections 11 and 12 shall be available from the assessment year immediately following the financial year in which the application is made.

In other words, the exemption shall be available prospectively from the following previous years:

- (a) If the trust or institution has applied for the provisional registration at least one month before the subsequent previous year, the exemption shall be available for that subsequent previous year for which the provisional registration has been granted, provided the provisional registration has been converted into a normal registration within the prescribed time limit;
- (b) If the trust or institution has applied directly for the normal registration, the exemption shall be available from the previous year in which the application for normal registration has been filed, and the registration has been granted.

Maintenance of Books of Account

To avail the exemption under Section 11 and Section 12, it is mandatory for a trust to keep and maintain books of account and other documents in such form and manner and at such place, as may be provided. This provision applies only if the total income of the charitable trust, without giving effect to the provisions of Sections 11 and 12, exceeds the maximum

amount which is not chargeable to income tax in the previous year. The books of account and other documents shall be kept and maintained for a period of 10 years from the end of the relevant assessment year.

Rule 17AA prescribes the books and other documents to be kept and maintained by entities approved under Section 10(23C) or registered under Section 12AB. The books of account and other documents may be kept in the following forms:

- (a) Written;
- (b) Electronic form;
- (c) Digital form;
- (d) Print-outs of data stored in electronic or digital form; or
- (e) Any other form of electromagnetic data storage device.

Audit of Accounts

Further, to avail the exemption under Section 11 and Section 12, it is mandatory for a trust to get its books of accounts audited. The books of accounts are required to be audited where the total income of the trust before exemption under sections 11 and 12 exceeds the maximum amount not chargeable to tax. The accounts of the trust for that year should be audited by a Chartered Accountant. The audit report has to be furnished in Form 10B or Form 10BB at least one month prior to the due date of submission of the return of income.

Filing of return of income

The entities registered under Section 12AB are required to file the return of income under Section 139(4A) if the total income without giving effect to the provisions of Sections 11 and 12 exceeds the maximum amount which is not chargeable to Income-tax.

The exemption shall be available only if the return of income is filed within the time allowed to file the original return of income under Section 139(1) or the belated return of income under Section 139(4). Therefore, it means that the trusts or institutions cannot claim the exemption by filing an updated return of income under Section 139(8A).

Accumulation of Income

An organisation can accumulate 15 per cent of its income indefinitely. In other words, up to 15% of income can be transferred to the corpus every year. Income accumulated or set apart in excess of 15% of the income where such accumulation is not allowed under any specific provisions of the Act shall be taxable under Section 115BBI. The exemption is allowed to a trust for the income accumulated in excess of 15% subject to fulfilment of certain conditions. This exemption, however, shall be withdrawn if such conditions are not complied with by the assessee.

As per Section 11(2), if a trust is not able to apply 85 per cent of its income in a particular year, it can accumulate the shortfall to be used for religious or charitable purposes within the next 5 years. This accumulation is allowed if the assessing officer is informed about the purpose of the accumulation and the period for which the income is being accumulated. The information is to be furnished in Form 10 at least two months prior to the due date specified under Section 139(1) for furnishing the return of income for the previous year.

Even if a charitable institution is not able to utilise 85% of its income for charitable or religious purposes in India, it shall be deemed to be applied for such purposes in the situations described below. Such deemed application of income shall be considered when the institution furnishes the details electronically in Form 9A at least two months prior to the due

date specified under Section 139(1) for furnishing the return of income for the previous year.

- (a) Where income has not been received in the previous year;
- (b) Where income could not be applied due to other reasons.

CBDT Circular No. 6/2023, dated 24-5-2023, clarified that the benefit of deemed application and accumulation shall be available even if Forms 9A and 10 are submitted on or before the due date for filing the return under Section 139(1).

Taxation of income accumulated u/s 11(2)

The circumstances in which the exemption for the accumulated amount under section 11(2) shall be withdrawn and the year in which such amount shall be taxable have been mentioned below:

- (a) If the amount is applied for purposes other than religious or charitable or ceases to be accumulated or set apart for application to religious or charitable purposes. It shall be deemed to be the income of the previous year in which it is so applied or ceases to be so accumulated or set apart.
- (b) If it ceases to remain invested in the statutory form of investment specified under Section 11(5). It shall be deemed to be the income of such person of the previous year in which it ceases to remain so invested or deposited.
- (c) If it is not utilised for the purpose for which it is so accumulated within the allowed period of 5 years. It shall be deemed to be the income of such person of the previous year being the last previous year of the period, for which the income is accumulated or set apart but not utilised for the purpose for which it is so accumulated or set apart.
- (d) It is credited or paid to any other trust or institution registered under Section 12AA/12AB or any other fund, institution, trust, hospital, university or other educational institution, or hospital or any other medical institution referred under Section 10(23C)(iv), (v), (vi) and (via). It shall be deemed to be the income of such person of the previous year in which it is credited or paid to such trust, or institution.

The deemed income arising in the above circumstances shall be taxable under Section 115BBI.

Utilisation of income accumulated u/s 11(2)

The amount so accumulated by the trust shall be utilised for the charitable and religious purposes for which it has been created. Until its utilisation, the amount shall be invested in the statutory forms as specified in Section 11(5). Any use of the accumulated funds for any other purpose or if it is not utilised at all, the exemption allowed in the year of accumulation shall be withdrawn.

Where it is beyond the control of the assessee trust or institution to spend the income for which it was accumulated, the Assessing Officer may allow the trust to apply the income so accumulated for any other religious or charitable purposes provided such other purposes are in conformity with the objects of the trust. In such cases, the exemption, granted to the assessee, cannot be withdrawn and the provisions of Section 11(2) will continue to apply.

Statutory form of investment or deposit [Section 11(5) and Rule 17C]

The fund shall be invested or deposited in the following permissible modes:

- (a) Immovable property;
- (b) Investment in Government Savings Certificates;
- (c) Deposit in any Post Office Savings Bank Account;
- (d) Deposit in any account with any scheduled bank or a cooperative bank (including a cooperative land mortgage bank or cooperative land development bank);
- (e) Investment in units of UTI;
- (f) Investment in Central Government or State Government Securities;
- (g) Investment in debentures of any corporate body, the principal whereof and the interest whereon are guaranteed by the Central or a State Government;
- (h) Investment or deposit in any public sector company. It is to be noted that if the company ceases to a public sector company subsequent to investment or deposit, the investment in shares will be considered as valid for 3 years from the date the company ceases to be a public sector company. Any other investment or deposit will be considered valid until the company repays them.
- (i) Investment or deposits in any bonds issued by a financial corporation engaged in providing long-term funds for industrial development in India, if the corporation is eligible for deduction under Section 36(1)(vii);
- (j) Investment or Deposits in any bonds issued by any public sector company carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes, provided the company is eligible to claim deduction under Section 36(1)(viii);
- (k) Deposits with a public sector company or investment in any bonds issued by a public sector company providing long-term finance for urban infrastructure in India.
- (l) Deposits with IDBI;
- (m) Investment in the units issued under any scheme of mutual fund;
- (n) Investment in any transfer of deposit to the Public Account of India;
- (o) Deposits with authority constituted in India under any law for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or for both;
- (p) Investment by way of acquiring equity shares of a depository as defined in section 2(1)(e) of the Depositories Act, 1996;
- (q) Investment in certain securities by a recognised stock exchange;
- (r) Investment by way of acquiring equity shares of an incubatee by an incubator;
- (s) Investment by way of acquiring shares of National Skill Development Corporation;
- (t) Investment in debt instruments issued by any infrastructure finance company registered with the RBI;
- (u) Investment in 'stock certificate' as defined in paragraph 2(c) of the Sovereign Gold Bonds Scheme, 2015;
- (v) Investment made by a person authorised under section 4 of the Payment and Settlement Systems Act, 2007 in the equity share capital or bonds or debentures of a company;

- Which is engaged in operations of retail payments system or digital payments settlement or similar activities in India and abroad and is approved by the RBI for this purpose; and
 - In which at least 25% of equity shares are held by the National Payments Corporation of India.
- (w) Investment made by a person authorised under Section 4 of the Payment and Settlement Systems Act, 2007 in the equity share capital or bonds or debentures of Open Network for Digital Commerce Ltd, being a company incorporated under Section 7(2) *read with* Section 8(1) of the Companies Act, 2013, for participating in network-based open protocol models which enable digital commerce and inter-operable digital payments in India.
- (x) Investment by way of acquiring units of POWERGRID Infrastructure Investment Trust.

Corpus Donation

Any voluntary contributions received by a trust or an institution, created wholly for charitable or religious purposes, with a specified direction (corpus donations) that they shall form part of the corpus of the trust or institution shall not be included in the total income. The corpus donation shall be invested or deposited in one or more of the forms or modes specified in Section 11(5) maintained specifically for such corpus.

Thus, the corpus donation received by an organisation will not be treated as exempt income if it is not invested or deposited in one or more of the forms or modes specified in Section 11(5) maintained specifically for such corpus.

Voluntary contribution for renovation and repair of religious institutions

Where the property held under a trust or institution includes any temple, mosque, gurdwara, church or other place notified under Section 80G(2)(b), any sum received by such trust or institution as a voluntary contribution for renovation or repair of such temple, mosque, etc., may, at its option, be treated as forming part of the corpus of the trust or the institution.

The option can be exercised subject to the fulfilment of the following conditions:

- (a) The trust or institution applies such corpus only for the purpose for which the contribution was made;
- (b) Such corpus is not utilised for making contributions or donations to any person;
- (c) The corpus is maintained in a manner that is separately identifiable; and
- (d) The corpus is invested or deposited in the forms specified in Section 11(5).

If the above conditions are violated, the amount of exempt corpus donation shall be deemed to be the income of the institution of the previous year during which the violation took place.

Anonymous Donation

‘Anonymous Donation’ means any voluntary contribution where the person receiving such contribution does not maintain a record of the identity of the donor indicating his name, address, and such other particulars as may be prescribed. The anonymous donations are taxable in the hands of specified trusts (except a religious trust) and institutions only if it exceeds higher of the following limit:

- (a) Rs. 1 lakh; or

(b) 5% of total donation received.

The tax shall be levied only on the amount which exceeds higher of the above-referred limit. Anonymous donations are chargeable to tax at the rate of 30% (*plus* Surcharge and Health & Education Cess).

The exemptions under section 11 are not available to the taxable portion of anonymous donations and they are to be taxed as per the provisions of Section 115BBC. The taxable anonymous donations shall not be subject to 85% application for charitable purposes. However, exempted portions of anonymous donations shall be subject to 85% application for charitable purposes.

Merger of Trust

The Finance (No. 2) Act 2024 inserted a new Section 12AC to facilitate the merger of charitable trusts under the exemption regimes of Sections 10(23C) and 12AB with other trusts or institutions having similar objectives without the imposition of exit tax provisions.

If any trust or institution registered under Section 12AB or approved under sub-clauses (iv), (v), (vi), or (via) of Section 10(23C) merges with another trust or institution, the provisions of Chapter XII-EB shall not apply, provided the following conditions are met:

- (a) The other trust or institution has the same or similar objects as the other trust or institution;
- (b) The other trust or institution is registered under Section 12AA or Section 12AB or approved under sub-clauses (iv), (v), (vi), or (via) of Section 10(23C);
- (c) The merger complies with conditions that may be prescribed by rules.

Taxability of Accreted Income

Income-tax Act provides for the levy of tax on accreted income of a specified person. Such tax is levied to ensure that the benefit conferred to a charitable trust over the years by way of tax exemption is not misused by converting it into a non-charitable organization. The tax on accreted income is levied in the following circumstances:

- (a) If a trust is converted into any form which is not eligible for registration under Section 12AA or Section 12AB or approval under sub-clause (iv)/(v)/(vi)/(via) of Section 10(23C);
- (b) If a trust is merged with an entity which is not having similar objectives and is not registered under Section 12AA or Section 12AB or approved under sub-clause (iv)/(v)/(vi)/(via) of Section 10(23C);
- (c) In case of dissolution, the trust fails to transfer all its assets to any other trust or institution registered under Section 12AA or Section 12AB or approved under sub-clause (iv)/(v)/(vi)/(via) of Section 10(23C) within 12 months from the end of the month in which the dissolution takes place.

When is a specified trust or institution deemed to be converted?

A specified trust or institution shall be deemed to have been converted into any form not eligible for registration under Section 12AA or Section 12AB or approval under Section 10(23C) in the following cases:

- (a) If registration granted to it under Section 12AA or Section 12AB or approval under Section 10(23C) has been cancelled; or

- (b) If the specified person has modified its objects which do not conform to the conditions of registration or approval and it:
- has not applied for fresh registration under Section 12AA or Section 12AB or approval under Section 10(23C);
 - has filed an application for fresh registration under Section 12AA or Section 12AB or approval under Section 10(23C), but the said application has been rejected.
- (c) If any trust or institution fails to make an application under Section 10(23C) or Section 12A(1)(ac) for:
- Re-registration/re-approval;
 - Conversion of provisional registration/approval to regular registration/approval;
 - Renewal of registration/approval within the specified period.

Calculation of accreted income

Accreted income shall be the amount of aggregate fair market value (FMV) of the total assets of the specified trust or institution as reduced by the total liability as on the specified date. The specified date shall be the following:

- a. the date of the order cancelling the registration under Section 12AA or Section 12AB, or approval under Section 10(23C) as the case may be;
- b. the date of adoption or modification of any object;
- c. the last date for making an application for registration or approval expires;
- d. the date of merger with an entity which is not having similar objectives and is not registered under Section 12AA or Section 12AB or approved under Section 10(23C);
- e. the date of dissolution where the specified trust or institution fails to transfer all its assets to any other registered trust or institution.

Payment of Tax

The tax on accreted income shall be levied at the maximum marginal tax rate and this tax is in addition to income-tax chargeable in the hands of a specified person. The specified trust or institution shall be liable to pay the tax on accreted income to the credit of the Central Government within 14 days from the specified date.

If the specified trust or institution fails to pay the tax on the accreted income within the specified time, simple interest at the rate of 1% for every month or part thereof on the amount of such tax shall be charged for the period beginning on the date immediately after the last date on which such tax was payable and ending with the date on which the tax is actually paid.

Specified income under Section 115BBI

Exemption under Section 11 is available to a trust in respect to the income applied for charitable or religious purposes in India. If the income is applied for purposes other than religious or charitable purposes, it shall be taxable under Section 115BBI. Section 115BBI provides a special rate to tax the following specified income of a specified charitable institution:

- (a) Income accumulated or set apart in excess of 15% of the income where such accumulation is not allowed under any specific provisions of the Act;

- (b) Deemed income as referred to in Section 11(1B) [option is exercised but the income is not applied in the year of receipt or immediately following the year of receipt or accrual];
- (c) If accumulated income is applied for purposes other than religious or charitable purposes or ceases to be accumulated or set apart for application to religious or charitable purposes;
- (d) If the amount is applied for purposes other than the objects of the institution approved under Section 10(23C)(iv), (v), (vi) and (via) or ceases to be accumulated or set apart for application thereto;
- (e) If accumulated income ceases to remain invested in the statutory form of investment specified under Section 11(5);
- (f) If it is not utilised for the purpose for which it is so accumulated within the allowed period of 5 years;
- (g) If accumulated income is credited or paid to any other trust or institution registered under Section 12AA/12AB or approved under Section 10(23C)(iv), (v), (vi) and (via);
- (h) any income which is not exempt under Section 10(23C) on account of investment in impermissible mode as referred to in Section 11(5);
- (i) any income which is not exempt under Section 11/12 on account of investment in impermissible mode as referred to in Section 11(5);
- (j) any income which is not exempt under Section 10(23C) on account of its application for the benefit of any interested person;
- (k) any income which is not exempt under Section 11/12 on account of its application for the benefit of any interested person;
- (l) any income which is not excluded from total income due to its application towards charitable purposes outside India.

The aggregate of the specified income shall be charged to tax at the rate of 30% *plus* applicable surcharge and cess. Other income (not being a specified income) shall be taxed as per the tax rates applicable to the entity and the nature of income, as the case may be.

Cancellation of registration

The registration can be cancelled by the Principal Commissioner (PCIT) or Commissioner (CIT). The cancellation order, or an order refusing to cancel the registration, shall be passed before the expiry of 6 months. Such period of 6 months shall be calculated from the end of the quarter in which the first notice is issued by the PCIT or CIT calling for any document, information, or making any inquiry. The registration can be cancelled in any of the following situations:

PCIT/CIT notices the occurrence of the specified violation

The cancellation proceedings can be initiated if the PCIT/CIT has noticed the occurrence of a specified violation, and the violation need not be noticed only upon assessment. If the CIT independently concludes that there has been a specified violation, he can *suo moto* take cognizance of such violation even before the assessment by the Assessing Officer. The following shall be considered as '*Specified Violation*':

- (a) If any income derived from a property held under trust, wholly or in part, has been applied other than for the objects of the trust or institution.

- (b) If the trust or institution has income from profits and gains of business which is not incidental to the attainment of its objectives.
- (c) If separate books of account are not maintained by the trust or institution in respect of the business, which is incidental to the attainment of its objectives.
- (d) If the trust or institution has applied any part of its income from the property held under a trust for private religious purposes, which does not enure for the benefit of the public.
- (e) If the trust or institution established for charitable purposes has applied any part of its income for the benefit of any particular religious community or caste.
- (f) If any activity being carried out by the trust or institution is not genuine or is not being carried out in accordance with the conditions subject to which it was registered.
- (g) If the trust or institution has not complied with the requirement of any other law for the time being in force as is material to achieve 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.
- (h) If the application referred to in Section 12A(1)(ac) contains false or incorrect information. Hence, the PCIT/CIT can also initiate the cancellation proceedings if the registration application filed by the trust or institution contains false or incorrect information.

Reference is received from AO

If the Assessing Officer is satisfied about the specified violation committed and the PCIT or CIT has received a reference from him for any previous year under the *second proviso* to Section 143(3).

Selection of case with Risk Management Strategy

Cancellation proceedings can be initiated if the case is selected in accordance with Risk Management Strategy formulated from time to time.

Consequences of cancellation of registration

The following consequences may arise on the cancellation of the registration of a trust:

- (a) The exemption under Sections 11 and 12 would not be available;
- (b) The income will be computed under the normal provisions of the Act;
- (c) Any donation or aid to an individual will be regarded as his income taxable under Section 56(2)(x) if it exceeds the threshold limit of Rs. 50,000;
- (d) The approval granted under Section 80G may be cancelled;
- (e) Levy of accreted tax under Section 115TD.

Withdrawal of exemption

The exemption to a charitable or religious organisation will be withdrawn if any of the provisions of Section 13 are violated, even if other conditions of Sections 11, Section 12, and Section 12A are complied with. Thus, incomes which are otherwise exempt will not be exempted if the provisions of Section 13 are contravened. An organisation, under the following circumstances, may lose its exemptions under Section 11 and Section 12:

- (a) The exemption under Section 11 and Section 12 shall not be available if any part of the income from the property held under a trust for private religious purposes does not enure for the benefit of the public.

- (b) If a charitable trust or institution is created for the benefit of any particular religious community or caste, no part of the income applied to such purposes is exempt from tax.
- (c) If part of the income is used or applied for the benefit of an interested person, then only such part of the income shall not be considered for the exemption to the trust or institution. The exemption for the balance income shall not be withdrawn just because a part of the income is applied for the benefit of the interested person.

The following persons are categorised as ‘interested person’:

- (a) The author of the trust or the founder of the institution;
- (b) Any person who has made a total contribution up to the end of the relevant previous year of an amount exceeding Rs.1 lakh or his total contribution during the lifetime of the trust up to the end of previous year exceeds Rs.10 lakhs
- (c) Where the author, founder or substantial contributor is a HUF, a member of the HUF;
- (d) Any trustee of the trust or manager of the institution;
- (e) Any relative of such author, founder, member, trustee or manager as aforesaid; and
- (f) Any concern in which any of the persons referred to above [except (b)] has a substantial interest.

Meaning of Relative

Relative in relation to an individual means:

- ✓ Spouse of the individual;
- ✓ Brother or sister (and their spouses) of the individual;
- ✓ Brother or sister (and their spouses) of the spouse of the individual;
- ✓ Any lineal ascendant or descendant (and their spouses) of the individual;
- ✓ Any lineal ascendant or descendant (and their spouses) of the spouse of the individual;
- ✓ Any lineal descendant of a brother or sister of either the individual or of the spouse of the individual.

Meaning of Substantial Interest

A person is deemed to have a substantial interest in concern if he (or along with ‘interested persons’ as mentioned above) at any time during the previous year:

- ✓ Holds at least 20% of equity share capital, in case of a company; or
- ✓ Entitled to at least 20% of profits in the case of any other concern.

When is an Interested Person deemed to be benefited?

The income or the property of the trust shall be deemed to have been applied for the benefit of an interested person in the following cases.

- Loan without adequate interest or security
- Use of property without adequate rent
- Excess payment of salary
- Inadequate remuneration for services rendered
- Excess payment for purchases of any share, security or other property
- Inadequate consideration for sales of any share, security or other property
- Diversion of income or property where the aggregate value exceeds Rs. 1,000

- Investment in concern in which an interested person has a substantial interest
- (d) If funds are deposited or invested in impermissible mode, then only income to the extent of such deposit or investment shall not be considered for the exemption. The exemption for the balance income shall not be withdrawn just because funds are deposited or invested in an impermissible mode.
- (e) The exemptions under Section 11 and Section 12 shall not be available in respect of the anonymous donations taxable as per the provisions of Section 115BBC.
- (f) The exemptions under Section 11 and Section 12 shall not be available if the trust violates the *proviso* to Section 2(15). In other words, the exemption shall be withdrawn if a trust is engaged in business activity and the aggregate receipts from such activity during the previous year exceed 20% of the total receipts.
- (g) The exemption shall not be available for the amount accumulated under section 11(2) if the Form 10 and Income-tax return for the corresponding financial year are not submitted within the due date prescribed under Section 139(1).

Computation of Income under special circumstances

In the following situations, the income chargeable to tax shall be computed after allowing a deduction for expenditure incurred for the objects of the institution:

- (a) where the provision of section 13(8) is applicable
- (b) the institution has not obtained the audit report [section 12A(1)(b)(ii)]
- (c) the institution has not maintained books of account in the prescribed form [section 12A(1)(b)(i)]
- (d) the institution has not furnished the return of income within the time allowed under section 139(4A) [section 12A(1)(ba)]

Income to be computed after deduction of expenditure

The income chargeable to tax due to withdrawal of exemption shall be computed after allowing a deduction for expenditure (other than capital expenditure) incurred in India for the objects of the institution. The deduction is allowable subject to the satisfaction of the following conditions:

- (a) The expenditure is not from the amount of corpus donations credited in the books of account up to the end of the financial year immediately preceding the relevant previous year;
- (b) The expenditure is not from any loan or borrowing;
- (c) Depreciation shall not be allowed in respect of an asset whose full cost has been claimed as an application of income;
- (d) The expenditure is not in the form of contribution or donation to any person.

No deduction is to be allowed of certain expenditure

The income shall be computed without deduction of the following expenditures:

- (a) No deduction shall be allowed for the capital expenditure;
- (b) Disallowance shall be made under Section 40(a)(ia) for the default made in deduction of tax;
- (c) Disallowance shall be made Section 40A(3)/40A(3A) for the payment made in cash;
- (d) No deduction shall be allowed for the expenditure not incurred in India.

It should be noted that the disallowance made of the above expenditure or allowance shall not



be allowed as a deduction to the assessee under any other provision. Further, if any loss arises due to such expenditure, no set-off shall be allowed for such losses.

INCOME TAX DEPARTMENT



MCQs on Taxability of charitable or religious trusts

Q1. Which of the following purposes are covered in the definition of charitable purpose?

- (a) Education
- (b) Yoga
- (c) Medical Relief
- (d) All of the above

Correct answer – (d)

Explanation: Section 2(15) of the Income-tax Act provides an inclusive definition of 'charitable purpose'. It includes the following:

- (a) Relief of the Poor;*
- (b) Education;*
- (c) Yoga;*
- (d) Medical Relief;*
- (e) Preservation of the environment (including watersheds, forests, and wildlife);*
- (f) Preservation of monuments or places or objects of artistic or historic interest; and*
- (g) Advancement of any other object of general public utility.*

Q2. Where the existing registration under Section 12AB is due to expire, the trust or institution shall apply for renewal of registration at least _____ prior to the completion of the 5 years.

- (a) 6 months
- (b) 3 months
- (c) 1 month
- (d) 15 days

Correct answer – (a)

Explanation: Trusts or institutions are registered under Section 12AB for a period of 5 years. Where the existing registration is due to expire, the trust or institution shall apply for renewal of registration at least six months prior to the completion of the 5 years. For trusts or institutions whose total income before exemption does not exceed Rs.5 crores in each of the two previous years preceding the year of application, the validity of registration shall be 10 years.

Q3. What is the time limit to convert provisional registration into normal registration where the trust or institution is provisionally registered under section 12AB?

- (a) At least 6 months before the expiry of the period of the provisional registration
- (b) Within 6 months of the commencement of its activities
- (c) Earlier of (a) and (b)

(d) None of the above

Correct answer – (c)

Explanation: The trust or institution provisionally registered under Section 12AB shall be required to convert such provisional registration into normal registration by filing an application in Form 10AB at least 6 months before the expiry of the period of the provisional registration or within 6 months of commencement of its activities, whichever is earlier.

Q4. The exemption under section 11 and 12 shall be available only if the return of income is filed within the time allowed to file the return of income under _____.

- (a) Section 139(1)
- (b) Section 139(4)
- (c) Either (a) or (b)
- (d) Section 139(8A)

Correct answer – (c)

The exemption under sections 11 and 12 shall be available only if the return of income is filed within the time allowed to file the original return of income under Section 139(1) or the belated return of income under Section 139(4).

Q.5. Which of the following are the statutory form of investment or deposit specified under section 11(5)?

- (a) Immovable property
- (b) Investment in Government Savings Certificates
- (c) Deposit in any Post Office Saving Bank Account
- (d) All of the above

Correct answer – (d)

Explanation: Immovable property, Investment in Government Savings Certificates, and Deposit in any Post Office Savings Bank Account all are covered in the list of statutory forms of investment or deposit specified under Section 11(5).

Q6. The anonymous donations are taxable in the hands of specified trusts (except a religious trust) and institutions only if it exceeds _____.

- (a) Rs. 1 lakh
- (b) 5% of the total donation received
- (c) Higher of (a) and (b)
- (d) Lower of (a) and (b)

Correct answer – (c)

Explanation: The anonymous donations are taxable in the hands of specified trusts (except a religious trust) and institutions only if it exceeds higher of the following limit:

- (a) Rs. 1 lakh; or
- (b) 5% of total donation received.

Q7. What are the consequences of cancellation of the registration of a trust?

- (a) Exemption under sections 11 and 12 would not be available
- (b) Income will be computed under the normal provision of the Act
- (c) Approval granted under section 80G may be cancelled
- (d) All of the above

Correct answer – (d)

Explanation: The following consequences may arise on the cancellation of the registration of a trust:

- (a) The exemption under Sections 11 and 12 would not be available;*
- (b) The income will be computed under the normal provisions of the Act;*
- (c) Any donation or aid to an individual will be regarded as his income taxable under Section 56(2)(x) if it exceeds the threshold limit of Rs. 50,000;*
- (d) The approval granted under Section 80G may be cancelled;*
- (e) Levy of accreted tax under Section 115TD.*

Q8. Which of the following persons can be categorised as interested person?

- (a) Author of the trust
- (b) Any trustee of the trust
- (c) Any relative of such author or trustee
- (d) All of the above

Correct answer – (d)

Explanation: The following persons are categorised as 'interested person':

- (a) The author of the trust or the founder of the institution;*
- (b) Any person who has made a total contribution up to the end of the relevant previous year of an amount exceeding Rs.1 lakh or his total contribution during the lifetime of the trust up to the end of previous year exceeds Rs.10 lakhs.*
- (c) Where the author, founder or substantial contributor is a HUF, a member of the HUF;*
- (d) Any trustee of the trust or manager of the institution;*
- (e) Any relative of such author, founder, member, trustee or manager as aforesaid; and*
- (f) Any concern in which any of the persons referred to above [except (b)] has a substantial interest.*

Q9. In which cases, an Interested Person deemed to be benefited?

- (a) Loan given without adequate interest or security
- (b) Excess payment of salary
- (c) Inadequate remuneration for service rendered
- (d) All of the above

Correct answer – (d)

Explanation: The income or the property of the trust shall be deemed to have been applied for the benefit of an interested person in the following cases.

- *Loan without adequate interest or security*
- *Use of property without adequate rent*
- *Excess payment of salary*
- *Inadequate remuneration for services rendered*
- *Excess payment for purchases of any share, security or other property*
- *Inadequate consideration for sales of any share, security or other property*
- *Diversion of income or property where the aggregate value exceeds Rs. 1,000*
- *Investment in concern in which an interested person has a substantial interest*

INCOME TAX DEPARTMENT