

Recent Development: Charitable Trust



The Chamber of Tax Consultants

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Background

C & AG reports and PAC reports observations may be source & rationale of amendments related to Taxation of Religious and/or Charitable Trust & Institution



C & AG Reports

Report No. 20 of 2013

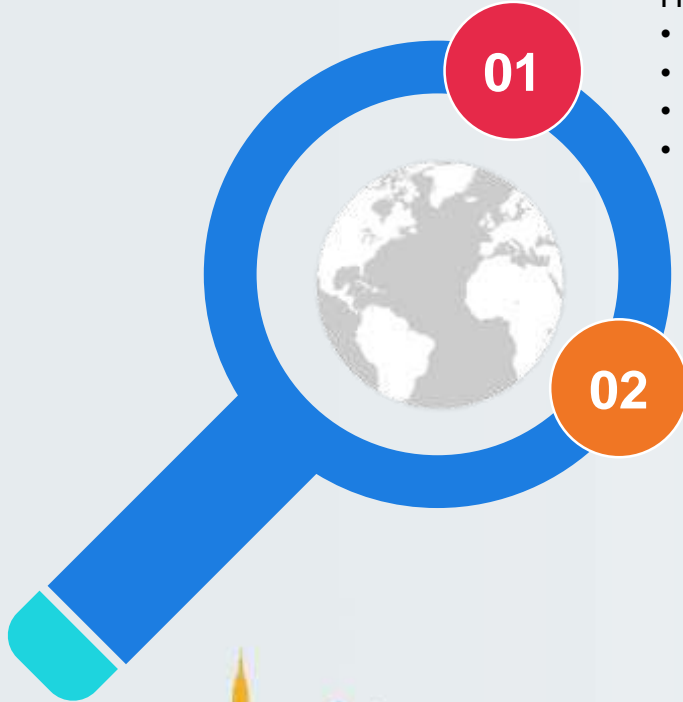
Highlighted certain lapses by income-tax department (ITD) such as -

- Grant of approval/registration without adequate documents;
- Irregular exemptions to trusts creating huge surpluses consistently;
- Application of income in prohibited mode of investment;
- Non-monitoring of foreign contributions received by trusts

Report No. 27 of 2017

Highlighted certain lapses

- Exemptions to trusts is allowed as there is no performance-specific bar to deny such exemption
- trusts not fulfilling the criteria for charity under Governing Act and claiming exemption
- Exemption allowed to trust hospitals engaged in non-charitable activities
- Overlapping nature of section 10(23C) and section 11
- Consider adopting the global best practices in respect of maintaining databases on exempt entities
- Donations not being watched properly
- Irregular allowance of depreciation/expenses resulting in double deduction



C & AG Reports

Report No. 9 of 2019

Observed following the irregularities

- Diversion of income/property to related group trusts/institutions considered as application of income;
- Exemptions granted for activities were not charitable in nature;
- Lack of monitoring for the investment as specified by law;
- Exemption to assessee where voluntary contribution including foreign currency donation was considered as corpus fund without specific direction of donor
- Non-cancellation of registration where activities is not in accordance with the provisions of the Act.



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Public Accounts Committee 104th Report July 2018

Action Taken by the Government on the observations/recommendations of the Committee contained in their 27th Report (16th Lok Sabha) on 'Exemptions to Charitable Trusts and Institutions' *inter alia* expressed their concern that public charitable trusts were being used to run commercially for profit business and had repeatedly violated provisions of the Income-tax Act. The Committee was concerned over the serious nature of all the violations and failure of the Income Tax Department to monitor whether the trusts were fulfilling the objectives under which they have been established and also ensuring that there is no abuse of the concession enjoyed by such trusts

Past Amendments



Excess Application



Carryforward of Deficit

- Computation of income is complete code in itself
- Provisions of set off & carry forward of losses not applicable.
- Excess application allowed to be set off by courts.
- Ex. 5 to S. 11 now bars set off or deduction or allowance of excess application of earlier years



Past Situation

AY 2018-19

Excess application 400

AY 2019-20

Income 300

In view of judicial decision CIT(E) vs Subros Educational Society [2018] 11 ITR-OL 468 (SC), 400 is set off against 300 and taxable income is NIL (400-300= (-) 100 restricted to NIL)



Current Situation

AY 2021-22

Excess application 100

AY 2022-23

Income 300

In view of the amendment taxable income is 300. 100 is not allowed to be set off in future

Application from Borrowing



Application from loans

- Current provisions- application out of loan and repayment of loan considered as application
- Repayment of the loan originally taken to fulfil one of the objects of the trust will amount to an application of the income – Cir. No. 100, dtd 24-1-1973.
- Now, application from loan not considered as application. Repayment of loan is application



Past Situation

AY 2019-20

- Borrowing 100
- Application 100

Application of Income 100

AY 2020-21

- Repayment of borrowing 100

Application of Income 100



Current Situation

AY 2022-23

- Borrowing 100
- Application 100

Application of Income NIL

AY 2022-23 or subsequent years

- Repayment of borrowing 100

Application of Income 100

Corpus Donation



Corpus donation

- Currently blanket exemption on all receipts of Corpus donation.
- Now, Corpus donation not considered as income if invested as per S. 11(5)
- Application out of corpus will not be treated as application of income
- Spending out of corpus not treated as application, shall be considered as application if investments are replenished out of income of that year



Past Situation

AY 2020-21

Corpus Donation 100
Other Donation 100

Applied 85
Investment NIL

Taxable income NIL



Current Situation

AY 2022-23

Corpus Donation 100
Investment 100
Taxable income NIL

Within what time investments to made?

AY 2023-24

Investments premature 60
Acquired Assets 60

AY 2024-25

Corpus Donation 20
Investment Replenished 60
Exemption 40



Registration & Re-registration

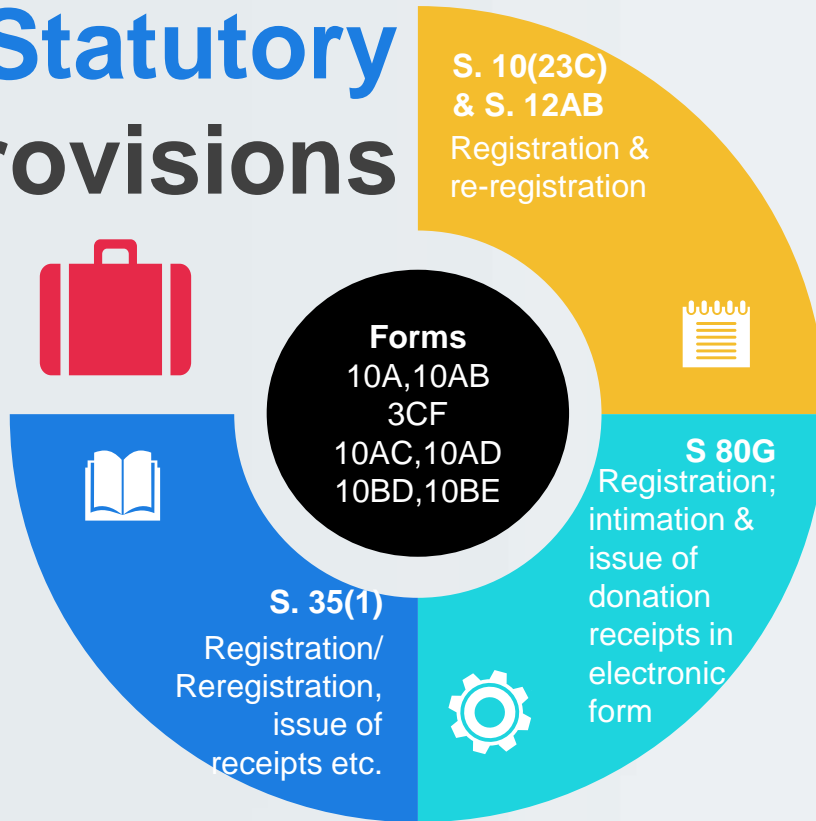
The present process of registration of trusts, institutions, funds, university, hospital etc. under section 12AA or under sub-clauses (iv), (v), (vi) or (via) of clause (23C) of section 10, and approval of association, university, college, institution or company etc. need improvement with the advent of technology and keeping in mind the practical issue of difficulty in obtaining registration/ approval/ notification before actually starting the activities.

It is also felt that the approval or registration or notification for exemption should also be for a limited period, say for a period not exceeding five years at one time, which would act as check to ensure that the conditions of approval or registration or notification are adhered to for want of continuance of exemption. This would in fact also be a reason for having a non-adversarial regime and not conducting roving inquiry in the affairs of the exempt entities on day to day basis, in general, as in any case they would be revisiting the concerned authorities for new registration before expiry of the period of exemption. This new process needs to be provided for both existing and new exempt entities.

– Explanatory Memorandum Finance Bill 2020



Statutory provisions



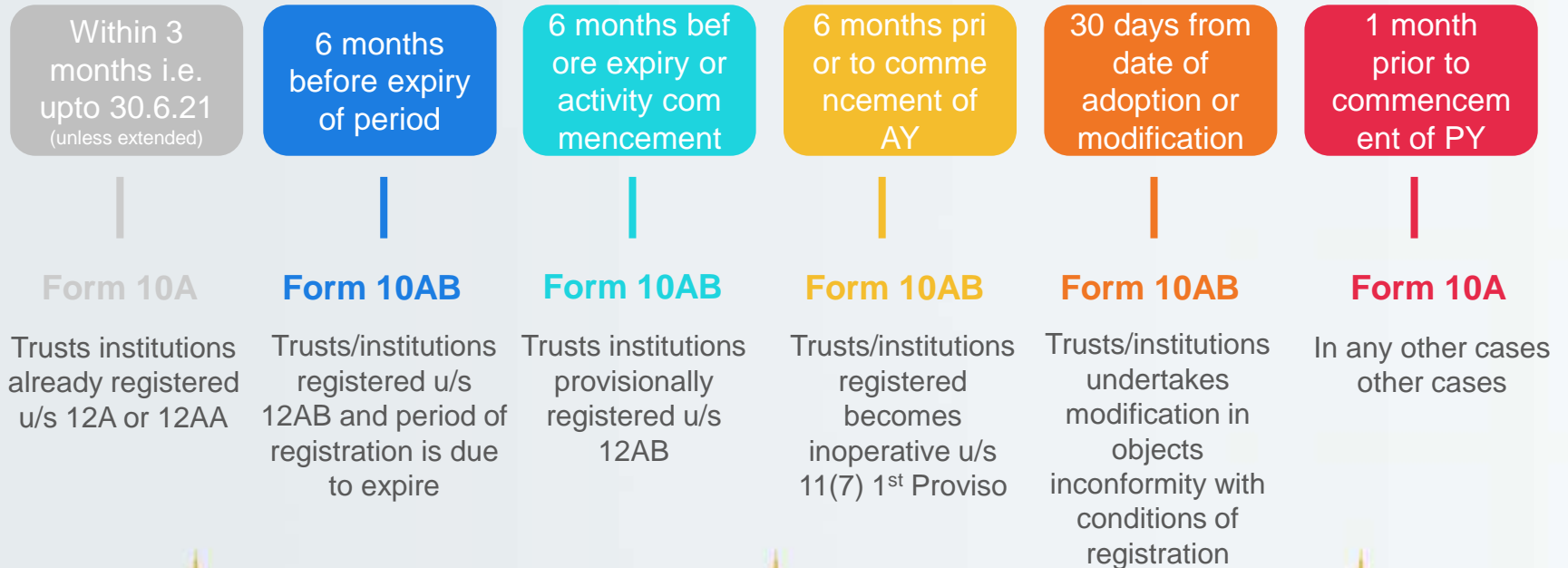
Rules Amended at Glance

- Rule 2C is substituted to provide for online filing and approval u/s 10(23C)
- Rule 17A is substituted to provide for migration to the new registration scheme for an Institution or Trust u/s 12AB
- Rule 11AA is substituted to provide for online approval u/s 80G(5)(vi) to an institution or fund.
- New Rule 18AB is inserted to provide for online furnishing of statement of donations received u/s 80G or u/s 35
- Rule 5C is amended to substitute Form 3CF-I/II with a single Form No. 3CF to provide for online approval u/s 35(1)(ii)/(iii).
- New Rule 5CA inserted to provide for intimation under 5th proviso to section 35(1) for approval u/s 35(1)(ii)/(iii)
- Amendment in Rule 5F for approval under section 35(1)(ia) and substitution of Form 3CF-III with Form 3CF.

Timeline for Application

Applicable to trust or institution

Applications filed under old provisions and pending would be automatically transferred into new provisions

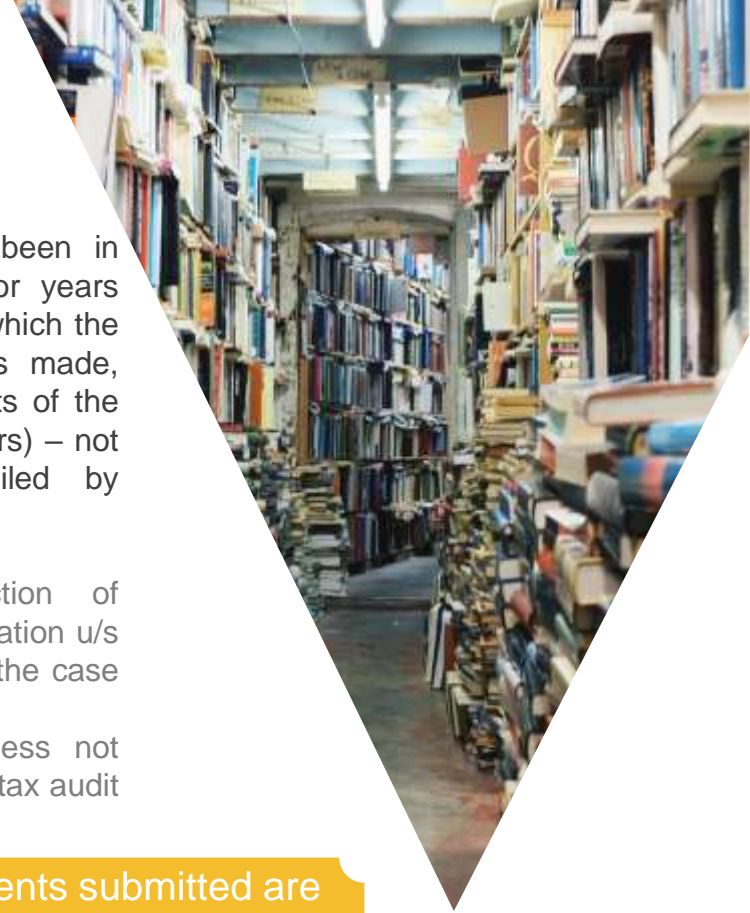


Documents Along with Application

- Copy of the instrument by which applicant is created, or is established
- Copy of document evidencing the creation or establishment of the applicant, in case applicant is created, is established, otherwise than under an instrument
- Copy of registration with Registrar of Companies or Registrar of Firms and Societies or Registrar of Public Trusts
- Copy of registration under FCRA, if applicant is registered
- Copy of existing order granting registration u/s 12A/12AA/12AB/10(23C)/80G, as the case may be.

- In case the applicant has been in existence during any year or years prior to the financial year in which the application for registration is made, copies of the annual accounts of the trust or institution (max 3 years) – not required if returns are filed by registered trust.
- Copy of order of rejection of application for grant of registration u/s 12A/12AA/12AB/10(23C), as the case may be, if any;
- Copy of accounts of business not exceeding 3 years along with tax audit report

Unlike in past documents submitted are self certified & not certified by regulatory authority



Issues



- Till re-registration is made, whether old registration is valid during FY 2021-22?
- Trust was registered under IT during March 21. Whether provisions of re-registration applies?
- Old registration certificates are not available. Way forward?
- Trust changed its objects during April 2021. Application under which category?



- What are consequences if application for re-registration is not made by 30-06-2021?
- Whether 12AA & 80G application to be filed together or separate application is required?
- Trust is registered in past but 80G was rejected. Under what category application for 80G registration is to be made?



- In past registration was rejected but approved by ITAT. How to respond?
- In case application is rejected whether penal provisions will follow for earlier years?
- When it is said that trust has commenced its activities?

Action by Pr. Commissioner

Application in Form 10A

- Pass an order in writing within 3 months from the end of the month in which application is made, granting registration in Form 10AC for five years
- Issue a 16 sixteen-digit alphanumeric Unique Registration Number (URN).

Deemed Registration?

If, at any point of time, it is noticed that form 10A has not been duly filled in by not providing information, fully or partly, or by providing false or incorrect information or documents required to be, the Pr. Commissioner or Commissioner, after giving an opportunity of being heard, may cancel the approval granted in Form No. 10AC and Unique Registration Number, and such approval or such URN shall be deemed to have never been granted or issued.



Application in Form 10AB

- Call for such documents or information from it or make such inquiries as he thinks necessary to **satisfy** himself about the **objects and the genuineness** of its activities and the **compliance of such requirements of any other law** for the time being in force by the trust or institution as is material to achieve its objects.
- Pass an order in writing in within 6 months from the end of the month in which application is made in Form 10AD granting approval to it for 5 years.
- If he is not so satisfied, pass an order in writing rejecting such application and also cancelling its approval after affording it a reasonable opportunity of being heard.

Timeline for Application

Applicable to institution registered u/s 10(23C) and 80G registration

Applications filed under old provisions and pending would be automatically transferred into new provisions

Within 3 months i.e. upto 30.6.2021
(unless extended)

Form 10A

Institutions already registered u/s 10(23C) or 80G

6 months before expiry of period

Form 10AB

Institutions registered u/s 10(23C) / 80G and period of registration is due to expire

6 months before expiry or activity commencement

Form 10AB

Institutions provisionally registered u/s 10(23C) / 80G

1 month prior to commencement of PY

Form 10A

In any other cases





Automated mechanism for cross verification of donation claims!

C&AG Audit Suggestion: The CBDT may consider the possibility of introducing automated generation of 80G certificates above a certain threshold.

CBDT Response: The CBDT replied (May 2017) that automated generation of 80G certificates on similar lines as under TRACES would not be feasible to implement and would be extremely complicated for small donors and small exempt organizations who would have to submit a statement to the Department and then obtain a certificate to be given to the donor.

Source: C & AG Report No. 27 of 2017 (Performance Audit)

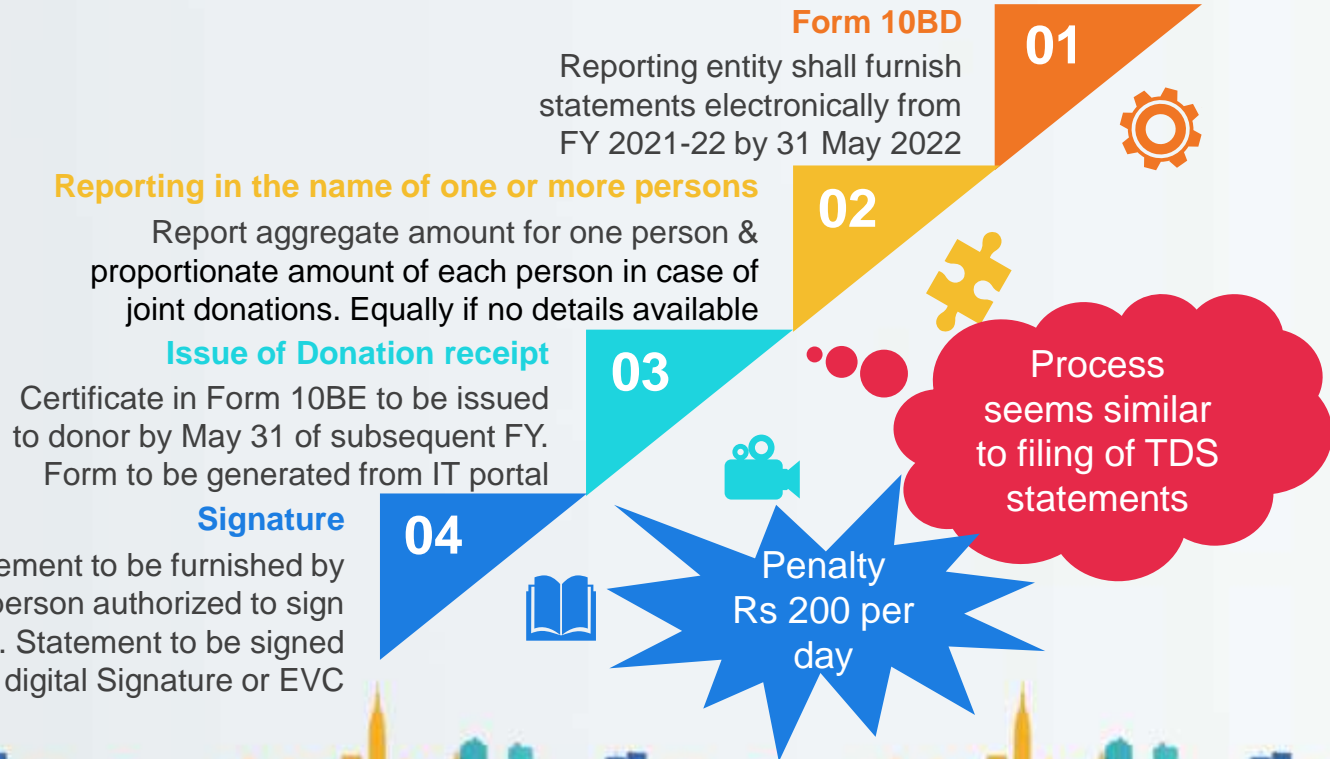


Digitisation of Donation Receipts

New **Rule 18AB** u/s **35(1A)/80G(5)(ix)**

Trust u/s 80G(5)(viii)/(ix) and any research association, university, college or other institution or company or fund u/s 35(1A) requires furnishing of a statement of donation received and the issue of donation certificates in electronic format to the donors for claiming deduction from the gross total income.

Statement to be furnished by the person authorized to sign u/s 140. Statement to be signed using digital Signature or EVC





Thank you

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