

Changes in provisions relating to Charitable entities

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Changes in the Finance Act 2021 – application out of corpus donation or loan

Finance Act 2021 has deferred the counting of application out of corpus from the year of application to the year when the corpus is replenished from that year income. This is for the reason that Corpus receipt is not income. Hence, application out of receipt not counted as income should not be counted as expenditure. This is illustrated with the help of this example.

	Year 1	Year 2	Year 2 alternative
Corpus donation	50	Nil	Nil
Non corpus donation	100	200	200
Mandatory 85%	85	170	170
Actual application	135	120	120
Excess (short) application	50	(50)	(50)
Replenishment of corpus			50
Total Application now	85	120	170
Excess (short) application	nil	(50)	nil

Same example would work for loan and borrowing instead of corpus

Changes in the Finance Act 2022 – Alignment of two regimes

- Exemption u/s10(23C), let us call it first regime
- Exemption for charitable entities registered under 12AA/12AB, let us call it second regime

The followings have now been aligned to provide level playing field between two regimes

1) **Accumulation for five years under both regimes but conditions/deeming provision/AO power prescribed only in first regime [11(2)(3)(3A)].**

- Now similar conditions have been prescribed in the first regime by Expl 3 to 3rd proviso to 10(23C) like, filing Form no 10 (already amended from next year) before due date stating purpose of accumulation, accumulation to be deposited in 11(5) modes, five years period to exclude court injunction.
- Expl 4 deems the violation as income: application or ceases to be accumulated for non-object, violation of 11(5) investment, not applying to purpose stated in form 10 or for giving it as donation to any other charitable entity under first or second regime.
- Expl 5 enables AO to allow accumulated income to be applied for other purposes other than as donation to any other charitable entity under first or second regime

2) **In which year the un-utilised accumulation to be taxed?** In the first regime nothing is specified and hence it is taxed in the fifth year and in second regime it was taxed in the sixth year. Now in both regimes it has been provided that it would be taxed in the fifth year in case not utilised within five years.

Changes in the Finance Act 2022 – Alignment of two regimes

3) Unreasonable benefit to specified person was prohibited in second regime and exemption not allowed for such benefits under section 13, but not in first. Now It has been provided in the 21st proviso of section 10(23C) that it would be the income of the trust. All other provisions of section 13 relating to this shall also apply to the second regime.

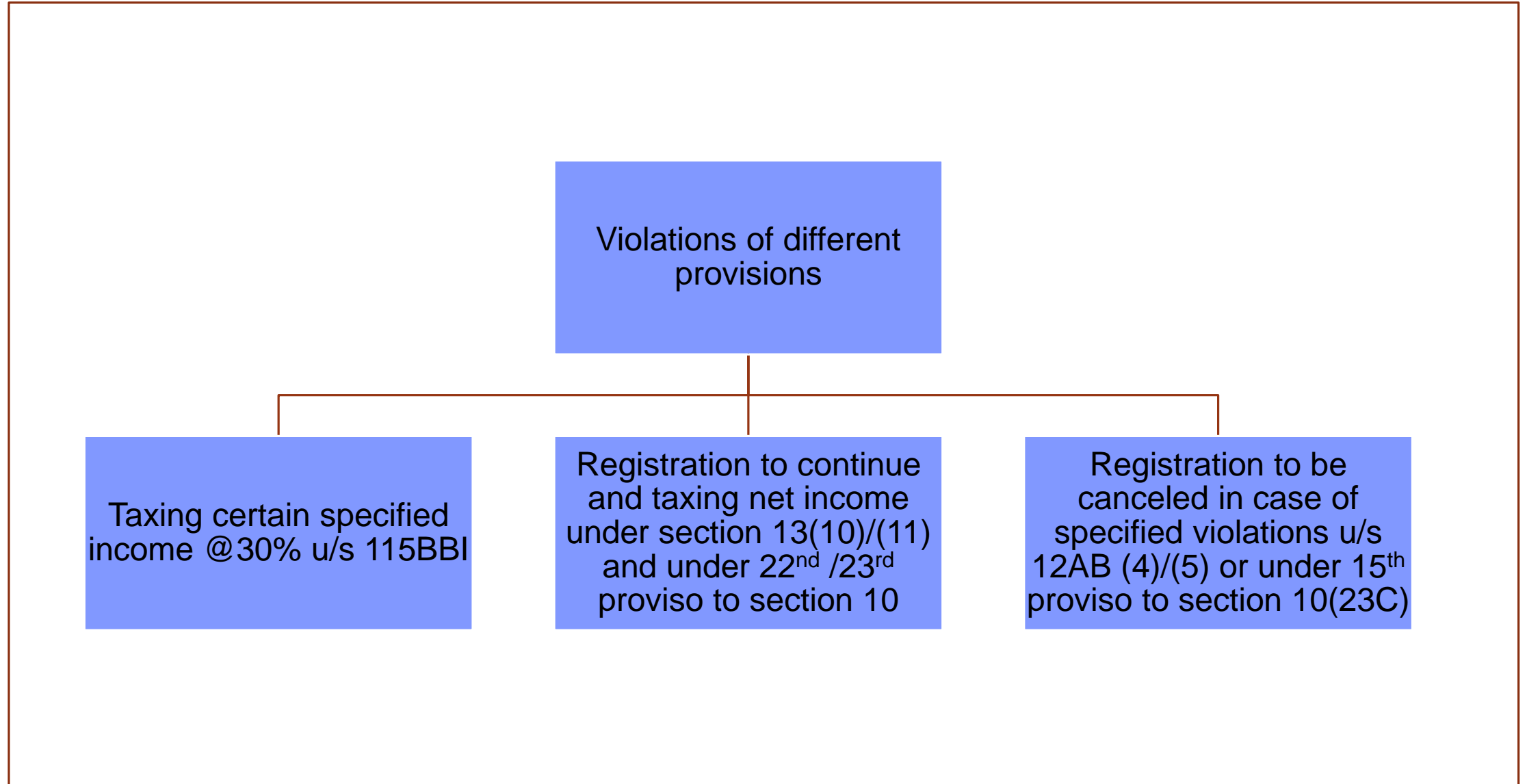
Apart from denying the exemption (or deemed taxation) under both regimes, now penalties on these entities under section 271AAE has also been provided, which is 100% of benefit for first time violation and 200% for subsequent violations.

4) The provision of section 115TD (taxation of accreted income in certain situations) applies only to the second regime, not to the first regime. Now it has been made applicable to the first regime as well.

5) Filing of return by entities claiming exemption under first regime is compulsory for claiming exemption[12A(1)(ba)], but not for second. Now it has been made compulsory even for the second regime [22nd proviso to section 10(23C)]

6) For cancellation, approval of prescribed authority was needed for the first regime but not for the second regime. This has now been aligned and AO shall make reference for both regimes

Changes in the Finance Act 2022- Providing clarity in taxation



Changes in the Finance Act 2022- Providing clarity in taxation

- **Taxing certain specified income under section 115BBI @30%- no deduction in respect of any expenditure or allowance or set off of any loss shall be allowed**
 - 1) Accumulation without Form 10,
 - 2) Violation with respect to accumulated income under section 11(3), 11(1B), 3rd proviso to 10(23C), ie application or ceases to be accumulated for non-object, violation of 11(5) investment, not applying to purpose stated in form 10 or for giving it as donation to any other charitable entity under first or second regime,
 - 3) Income invested in mode other than 11(5)
 - 4) Benefits to specified person, 13(1)(c) and 21st Proviso to 10(23C)
 - 5) Application outside India other than for international welfare in which India is interested 13(1)(d)

Changes in the Finance Act 2022- Providing clarity in taxation

- **Registration to continue and net income to be taxed [section 13(10), 13(11) and 22nd/23rd proviso to 10(23C)]**

- 1) Violation of proviso to section 2(15). That is in case of charitable activity being advancement of any object of general public utility, any activity in the nature of trade/commerce/business (or services related thereto) should be undertaken in the course of actual carrying out of such advancement of any other object of general public utility and the aggregate receipts from such activity is not more than 20% of total receipts.
- 2) Not maintaining prescribed books of accounts
- 3) Not getting the books of account audited or submitting the audit report in time
- 4) Not furnishing the return of income in time

Net income is computed after deducting application as expenditure [after applying provisions of 40 (a)/(ia) and 40A(3)/(3A)]. Following expenditure not allowed:

- Such expenditure is from corpus/loan or borrowing
- Claim of depreciation is in respect of an asset, whose acquisition has been claimed as application in any year
- Such expenditure is in the form of any contribution or donation to any person.

No deduction in respect of any expenditure or allowance or set off of loss allowed under any other provision

Changes in the Finance Act 2022- Providing clarity in taxation

- **Registration to be cancelled for specified violation [section 12AB(4)/(5) and 15th proviso to 10(23C)]**

Specified violations are

- Application of income for purpose other than the objects
 - Income from P&G of business which is not incidental to objects or separate books not kept
 - Application for private religious purpose which does not enure benefit to the public
 - Application for benefit of any particular religious community or caste
 - Non genuine activity or violation of any condition of registration/approval (See circular no 11 of 2022 dated 3rd June 2022)
 - Violation of any other law and the such order not disputed or have become final
- ✓ PrCIT/CIT to cancel registration on own notice or on reference from AO or in accordance with risk management strategy of Board
 - ✓ He has to pass order in writing within six months of end of quarter of first notice issued. For notices issues prior to current F. Yr and still pending they are deemed to be issued in the first quarter of this F. Yr. Order required to be passed even when he thinks that there is no violation
 - ✓ Time period from the date of AO reference to PrCIT/CIT order to be excluded from assessment
- **Application to be counted on actual basis**

Changes in the Finance Act 2022 – Steps for effective monitoring

There was a requirement in the law for audit in Form 10B but there was no prescription for books of account. This has now been provided in section 12A(1)(b) and in 10th proviso to 10(23C) for those having total income (before exemption/deduction) of above 2.5L. Rule 17AA has been notified which mandates following books of account:

- Cash book, ledger, journal, original and copies of bills
- Above for business undertaking and non business undertaking separately
- Record of all projects undertaken
- Record of all income: Voluntary contribution, income from property, other income
- Details of application of income, donation to other charitable entities, application outside India, details of income deemed as income of next year on receipt, accumulation of income, money invested in 11(5), not invested in 11(5)

Changes in the Finance Act 2022 – Steps for effective monitoring

Books of accounts (Contd)

- Details of application out of accumulation income, accumulation invested in 11(5), not invested in 11(5)
- Details of corpus donation: application out of it, amount credited back out of current year income, donation to other charitable entities, invested in 11(5) or not invested in 11(5)
- Details of amount received for repair/renovation of 80G(2)(b) religious place treated as corpus donation: application out of it, amount credited back out of current year income, donation to other charitable entities, invested in 11(5) or not invested in 11(5)
- Details of loan and borrowings: receipt, application, repayment
- Details of properties held
- Record of specified person and transaction with them

