



The Chamber of Tax Consultants

3, Rewa Chambers, Ground Floor, 31, New Marine Lines, Mumbai - 400 020

Tel. : 2200 1787 / 2209 0423 / 2200 2455 | E-mail : office@ctconline.org

Visit us at : www.ctconline.org

Representation on Charitable Trust



President
Parag Ved

Hon. Jt. Secretaries
Vijay Bhatt | Mehul Sheth

Vice President
Haresh Kenia

Hon Treasurer Imm. Past President
Neha Gada Ketan Vajani

26th August, 2022

Shri K. C. Varshney,
Joint Secretary,
Tax Policy and Legislation (TPL – I),
CBDT, Government of India,
Ministry of Finance, Department of Revenue,
New Delhi –110001

Respected Sir,

Subject: Representation on Charitable Trust

We are pleased to submit our suggestions on Charitable Trust. We have concentrated on only few suggestions which, we are sure, will meet with your approval. Each of the suggestions has been necessitated on account of the serious hardship or inconsistency in the law.

Thanking you,

Yours Sincerely,

For THE CHAMBER OF TAX CONSULTANTS

Sd/-

PARAG VED
PRESIDENT

Sr. No.	Existing provision under the Income-tax Act, 1961 ("the Act")	Difficulties Obstacles / Hurdles either Interpretative, Administrative or otherwise	Suggestion or new clause Suggested
1	Section 11(1)(d) read with 11(5): Income in the form of voluntary contributions made with the specific direction that they shall form the part of the corpus of the Trust or institution and if invested in specified mode as specified in section 11(5), shall not be included in the Total Income.	<p>Many times, corpus donations are received for acquiring capital assets with the direction that it shall form part of the corpus of the trust such as equipment's / furniture / fixtures etc or it many, receives donation in kind of the above said capital assets, in this situation it is not possible for the trust to invest the donation amount in the modes specified u/s 11(5). Such donation amount cannot be invested if used for acquiring the capital assets or if invested in mode specified u/s 11(5) then cannot be used for acquiring the capital assets which is against the directions of the donor.</p> <p>For the purpose of section 11 (1)(d), if the corpus is not invested in the mode specified it will be considered as Income of that year and provision of act will apply accordingly with respect to taxability of such income, which should not be intention of the Act.</p>	<p>Section 11(5) needs to be amended to cover the investments in the movable capital assets.</p> <p>Alternatively Section 13(5) shall be amended to this extent.</p>
2	Explanation 2 to section 10(23C) and Explanation 5 to section 11(1): clarifies	The trust or institutions have been registered for perusing the charitable or other specified objects and	It is suggested that book losses of the trust representing excess expenditure incurred

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	that calculation of income required to be applied or accumulated during the previous year shall be made without any set off or deduction or allowance of any excess application, of any of the year preceding the previous year.	in many cases there is an excess application of income by the trust or institutions and in subsequent year such trust / institution may generate surplus, if one aggregates the total income and application still there may be deficit. So by not allowing the deficit or excess application over income (book losses), such trust / institution are put to hardship as they have scarcity of financial resources.	over its receipts / Income, for charitable and religious purposes in the earlier years, be considered as application of income against the income earned by the Trust in the subsequent year, considering the benevolent provisions of section 11 of the Act. The charitable trust has constraint of financial resources, and such provision will help them to continue its charitable objects without restricting to any particular financial year. Further it is also in line of the commercial principles.
3	Section 10(23C) Under section 10(23C) (iiiad) and (iiiie) of Income-tax Act, it is provided that the income of University / Educational institutions / hospitals / other institutions specified therein will be exempt provided they comply with the conditions stipulated therein. Also, it is provided that "aggregate annual	(a) What constitute "annual receipts" for educational / hospital institutions has not been specified which results into controversies; (b) There is no clarity whether the casual receipts, other income received, voluntary contribution, donation in kind and capital gains etc which are not operational income will form part off of the annual receipts or not?	(i) Only operation income of such institution be considered as "Annual receipts"; (ii) The income which has not been received or received subsequently shall not be considered for calculating the above receipts.

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	receipts" of such institutions shall not exceed the amount of annual receipts as may be prescribed. Annual receipts have been prescribed at Rs. 5 crores (from AY 2022 - 2023).	<p>(c) The amount of Rs. 1 crore has been specified in the rule 2BC of the Income tax Rules which creates confusion.</p> <p>(d) Considering the operations of university / hospital / other associations the limit of Rs. 5 crores as specified in clause 3(iiiad) and (iii ae) is still lower.</p>	<p>(iii) The limit of Rs. 1 crore specified in Rule 2BC needs to be deleted.</p> <p>Considering the size / scale of operations of the university / hospital etc, the limit of Rs. 5 crores as specified in the explanation to the said clause needs to be increased to Rs. 10 crores.</p>
4	Exemption Section 10(23C) and Section 11	Section 10 (23C) and section 11 to 13 specify provisions for claiming exemption from income subject to satisfaction of conditions laid therein. Section 10(23C) of the Act provides for exemption of income received by any person on behalf of different funds or institutions etc. specified in different subclauses. In other words, exemption to funds, institutions, trusts etc. carrying out religious or charitable activities is provided under section 10(23C) of the Act and sections 11 and 12 of the Act. Section 12A of the Act, inter alia,	It is suggested that necessary amendment be made allowing such trust to claim the exemption u/s. 11 of the Act. (iv)

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		<p>provides for procedure to make application for the registration of the trust or institution to claim exemption under section 11 and 12. Section 12AB is the new section which comes into effect from 01.04.2021. As per current provisions, both Section 11 and section 10(23C) are not simultaneously available for the same assessee. It creates difficulties and complexity for trust registered u/s. 10(23C). Eg. The annual receipts of the trust registered under section 10(23C) crosses the ceiling of Rs. 5 crores then it loses the exemption u/s. 10(23C) and then it will not get the benefit u/s. 11 also. There appears to be no reasonable and sound logic as the object of charity is already pursued. Such trusts object remains the same. This these results into hardship.</p>	
5	Section 12AB – Registration / renewal of registration	The Finance Act 2020 inserted a new section 12AB providing for procedure for fresh registration for charitable trust after every 5 years. The trusts are charitable in nature and does not have necessary wherewithal or infrastructure and object are always charitable in nature from the date it comes into	<p>The period of renewal of registration should be made 10 years instead of 5 years.</p> <p>Alternatively, threshold limit should be</p>

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		existence. So, registration after every 5 years creates unnecessary burden on the charitable trust. Further the charitable trusts are also subject to income tax scrutiny year on year basis. So, this creates unnecessary burden on the charitable trust.	kept based on the criteria such as net assets, Gross Income or corpus fund for renewal of registration of trust for a period of 10 years, for smaller trust.
6	Section 12A (1)(ac): The said section sets the time limit for a new charitable trust to file application for registration atleast one month prior to the commencement of previous year relevant to the assessment year from which registration is sought	As per sub -clause (vi) of section 12A(ac) requires the trusts/ institutions wanting to register for the first time under section 12A of the Income Tax Act, needs to make an application at least one month prior to the commencement of the previous year relevant to assessment year for which the registration is sought. Though it is welcome step, but it is difficult to comprehend why the condition of making application one-month prior to commencement of previous year relevant to assessment year, is required. Such condition has been diluted due to Covid for AY 2022-23, by bringing amendment in the sub rule (7) to rule 17A. However, it is not so for subsequent assessment years, in that case if the Trust in between the year makes an application, its applications shall be valid only for the subsequent previous year. On the contrary rather than facilitating the	Necessary amendment to be made in the Act for the same.

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		trusts/institutions by issuing provisional certificate, it will create more delays and hence the purpose will be lost.	
7	<p>Explanation 3 to clause (23C) of section 10 and Explanation given below the section 11(7) which is effective from 01/04/2022:</p> <p><i>"Explanation. —For the purposes of this section, any sum payable by any trust or institution shall be considered as application of income in the previous year in which such sum is actually paid by it (irrespective of the previous year in which the liability to pay such sum was incurred by the trust or institution according to the method of accounting regularly employed by it)"</i></p>	<p>The explanation envisages claiming of expenses on cash basis.</p> <p>This results into lot of difficulties and undue hardship to trusts, following accrual basis of accounting. Larger Trusts are maintaining accounts on accrual basis of accounting for e.g. Hospitals, for there internal control and for reporting purpose.</p> <p>Also, Trust registered under section 8 of Companies Act, 2013 or section 25 of Companies Act, 1956, needs to maintain account on accrual basis as per the Companies Act.</p> <p>Also, the trust following accrual basis of accounting needs to deduct Tax at Source, as and when the transactions are recorded in the Books, but at the</p>	<p>The expenditure account on the accrual basis should also be considered as application of Income.</p> <p>However the Trust should not be allowed to claim any double deduction based on the method of accounting followed by it.</p>

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		<p>same time the said expenses will not be considered as application, if paid in the subsequent year.</p> <p>As per Technical Guide on Accounting for Not-for-Profit Organisations issued by the Institute of Chartered Accountants of India, "Accrual is the scientific basis of accounting and has conceptual superiority over the cash basis of accounting. It is, therefore recommended that all NPOs, including non-company NPOs, should maintain their books of account on accrual basis."</p> <p>Further, trusts need to make provision for expenses which are actually payable, there can be non-recovery of income, nonpayment to suppliers in a particular year, etc and making all such adjustments for arriving at the amount of application on cash basis, is a difficult task. The trust needs to maintain two separate accounts which further drain on the resources of the trust where they are pursuing charitable objects.</p>	