



The Institute of Chartered Accountants of India
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Income Tax Provision

TRUST AND CHARITABLE INSTITUTIONS

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Exemption Sections

Section 10(23C)

➤ Approval not required

- Section 10(23) (iiiab) , Section 10(23- (iiiac), Section 10 (23)(iiiad), Section 10(23(iiiac)

Educational institute substantially financed by government, Medical institution substantially financed by government, Education institution annual receipt upto 5 Cr medical institution annual receipt upto 5 Cr

➤ Approval required (Ist Regime)

- Section 10(23C)(iv), Section 10(23C)(v), Section 10(23C)(vi) Section 10(23C) (via)

Charitable institute of national importance, Religious institute for public religious purpose, or religious cum Charitable Trust Education institutions receipt more than 5 Cr, medical institution receipt more than 5 Cr.

Section 12AA/12AB (IInd Regime)

Meaning of Charitable Purpose

- ▶ As per Section 2(15) Charitable Purpose means
 - Relief of the poor,
 - Education
 - Yoga
 - Medical relief
 - Preservation of environment (including watersheds, forests and wildlife)
 - Preservation of monuments or places or objects of artistic or historic interest
 - The advancement of any other object of general public utility

The advancement of any other object of general public utility

- ▶ The advancement of any other object of general public utility **shall not be considered as charitable if:-**
- it involves the carrying on of any activity in the nature of trade, commerce or business, unless-:
 - such activity is undertaken **for advancement of any other object of general public utility**
 - the aggregate receipts from such activity or activities during the previous year, do not exceed **20% of the total receipts during the previous year**

Requirement for claiming exemption (Section 11)

- ◆ It should be registered with the Principal Commissioner of Income Tax (PCIT) or Commissioner of Income Tax (CIT)
- ◆ Books and Records to be maintained Section 128(1)
 - According to Section 128(1) every company to prepare and keep the books of account and other relevant books and papers and financial statements **at its registered office**. However, all or any of the books of accounts **may be kept at such other place in India as the Board of directors may decide**.
 - As per Section 11(4A), Separate books of Accounts for business
 - separate books of account are maintained in respect of business income
 - Separate books for business is not required if business is incidental to the attainment of the objectives of the trust.

Requirement for claiming exemption (Section 11)

- ▶ Financial statements has to prepare every year
- ▶ Audit Section 12A(1)(b)
 - Mandatory –if total income exceeds the **Maximum amount chargeable to Tax**
 - **For calculation of maximum amount**
 - **Should include -Contribution towards corpus**
 - **Should not include** -Income Exempt under section 10
 - Auditor report has to be obtained in form No 10B/10BB one month prior to the due date for furnishing the return of income under sub-section (1) of section 139”.

Income

- ▶ Voluntary Contributions
- ▶ Donation (Corpus) Voluntary Contribution made with a specific direction- Specific exemption under section 11(1)(d)
- ▶ Anonymous donations i.e., donations where donee does not maintain record of identity/any particulars of the donor
- ▶ All the incomes of the trust arising from its own sources, from external sources and from properties, movable as well as immovable shall be considered as income from property of trust.
- ▶ Capital gain from asset held under trust.

Taxation Mechanism

For claiming exemption u/s11

- ▶ **Minimum 85% of income to be applied** towards charitable and religious purposes in **India** (Revenue and Capex)
- ▶ Income 15% can be freely accumulated and set apart for trust purpose in **India. Can be accumulate till indefinite period**

Application of Income

- ▶ Expenses expenditure incurred for charitable and religious purpose (Revenue and Capital Expenses Both)
- ▶ Payment of taxes
- ▶ Donation to other charitable or religious institutions (85% of donation amount is eligible as application of income) (Circular 3/ 2024 dated 6th March 2024)(Corpus Donation to other trust is not allowed)

*******Cash basis of accounting** for consideration of any expenditure as application is mandatory under Explanation to section 11. payments made up to the due date of furnishing return **of income are eligible for deduction**

Analysis of Circular-3/2024

- ▶ 85% of eligible donation made by trust/institutions
- ▶ Shall be treated as application for charitable or religious purpose
- ▶ 15% (Rs. 15) of such donations by the donor trust / institution ***shall not be required to be invested in specified modes under section 11(5) of the Act***

Analysis of Circular-3/2024

Sl. No.	Particulars	Trust1		Trust2		Trust3	
1.	Income (A)	300		100		100	
2.	Income which is required to be applied (B = 85% of A)		255		85		85
3.	Application of income						
4.	Donation to other trusts under the first or second regime (C)	100		100			Nil
5.	Amount to be considered as application of income against the donations at row no. 3 [as per clause (iii) of the Explanation 2 to third proviso to clause (23C) of section 10 or clause (iii) of the Explanation 4 to sub-section (1) of section 11 of the Act]. (D = 85% of C)		85		85		
6.	Balance income for application (E = A - C)	200		Nil		100	
7.	Application other than Sl. No. 4 (F = 85% of E)		170		Nil		85
8.	Remaining income which may be accumulated without Form No. 10 / 9A (G = 15% of E)		30		Nil		15
9.	Funds required to be invested in section 11(5) modes (H = G)		30		Nil		15
10.	Exemption of income (I = C + F + G)	300		100		100	

Capital Gain Exemption

- ▶ As per Section 11(1A) – reinvestment of *capital gain shall be deemed to have been applied to charitable purposes*
 - If cost of new assets > Net Consideration from Asset Transferred -**the whole of such capital gain will be deemed as application**
 - If cost of new assets < Net Consideration from Asset Transferred (**invested in purchase of new assets - cost of the transferred asset.**) will be deemed as application

Capital gain

- No time limit has been given for reinvestment
- No minimum period of holding is given
- Can invest in any permissible assets
- Can opt to reinvest in next year after filing form number-9A

Calculation of Capital Gain

Sr. No	Particulars	Scenario-1	Scenario-2
	Net Consideration	100000	100000
	Cost of Assets	40000	50000
	Capital Gain	60000	50000
	Invested in New Assets	80000	100000
	Shortfall in reinvestment	20000	Nil
	Capital gain deemed to have been applied for charitable purpose	40000	50000

If asset were used partially for charitable purpose than all the above figures will proportionate to the percentage of usage.

Not Considered as Application of Income

- ▶ Corpus donation not be treated as application in the year of spending. Will be treated as application in the year reinvested / repaid
- ▶ Any loan or borrowing . Will be treated as application in the year repaid
- ▶ In case TDS was not deducted under Section 40(a), then 30% of such expenditure or application shall not considered as application for money. To be allowed in year in which TDS deducted
- ▶ if payment made more than 10,000 under Section 40A (3) in cash, will not be treated as application of Money
- ▶ Application of Money outside- will not be considered as application of Money- Allowable only if spent after approval of CBDT

Accumulation of Income Section 11(1)

Trust unable to spend 85% of income due to following reason

- income has not been received during the year, the assessee can spend amount during the previous year in which it is received or during the previous year immediately following the said previous year. **[Section 11(1)(a)]-we have 2 years to spend the amount**
- **For any other reason- Amount needs to be spent in subsequent year (only next 1 year is available)**
- File **Form 9A** before due date of filing return of income u/s.139(1) (As per Section 11 of the Income Tax Act Form 10 should be filed at least 2 months before the due date for filing Income Tax Return(Circular No.6/2023 dated 24/05/2023 allows to file form before the due date of filing of income tax return)
- **In case of belated filing of form 9A- As per CBDT circular 15 dated 19/07/2022, Application for condonation of delay up to 3 years can be filed to Pr. CCIT/CCIT**

Accumulation of Income Section 11(2)

- ▶ Where Income of a trust or institutions is accumulated or set apart for accumulation for charitable or religious purposes in India. The amount so accumulated or set apart also qualifies for exemption.
 - Can accumulate for 5 years
 - File **Form 10** before due date of filing return of income u/s.139(1) and
 - Mention the purpose for which income is being accumulated or set aside
 - investing or depositing such money in forms or modes specified u/s. 11(5) of the Act
 - During the 5 years purpose can change after approval of AO
- ***the accumulated income is not utilized for the purpose in for which it is accumulated-, it shall be deemed to be the income of the previous year being the last previous year of the period of which it is accumulated (it means 5th year)***
- Amount of accumulation **can not be** utilized for donating to other trust approved under section 10(23AC) (iv),(v),(vi) or (via) or registered under 10AB
- Donation to other trust is allowed in case of dissolution of the company

Anonymous Donation (Section 115BBC(1))

- ▶ Anonymous donation – If Name and address and other prescribed details of donor are not maintained
- ▶ taxable in following entities:-
 - wholly charitable institutions
 - Taxability for partly religious and partly charitable institutions- anonymous donations directed towards medical or educational institutions
- ▶ Any income received by way of anonymous donations by the following entities shall be included in the total income and taxed at the rate of **30%. plus, surcharge and education cess**
 - If Donation amount exceeding higher of –
 - 5% of total donations received by trust or
 - Rs 1,00,000

Section 115BBC not applicable

- ▶ wholly religious institutions **are not liable to pay tax** on anonymous donations [section 115bbc(2)]

Loss of exemption (Section 13)

- ▶ Income of private religious purposes (Section 13 (1)(a)– Not for the benefit of public
- ▶ Income of Trust for the benefit of a particular Religion or Caste Section 13 (1)(b)
- ▶ Any Income Trust which Benefits Certain Person Section 13 (1)(C)
 - The author of the trust or the founder of the institution.
 - Any person who has made a **significant contribution amounting to rupees 50,000 by the end of the relevant previous year. (Total Contribution till the end of previous year)**
 - Where such author, founder or person is a member of the Hindu Undivided Family.
 - Any trustee of the trust or manager (by whatever name called) of the institution.

Loss of exemption (Section 13)

- Any person **related** to such author, founder, person, member, trustee or manager as aforesaid.
- **Any concern** in which any of the person mentioned in the above clauses has a **substantial interest**.
- ▶ Investment in or deposited other than mode specified in section 11(5) (Section 13(1)(d)

Exit tax (Section 115TD)

Three conditions under which exit tax would become leviable:

- Trust is converted into **any form which is not eligible for grant of registration** under section 12AA. Trust or an institution shall be deemed to have been converted into any form not eligible for registration under section 12AA:
- The registration granted to it under section 12AA has been **cancelled**
- Trust has **adopted or undertaken modification of its objects** which do not conform to the conditions of registration
- Trust **is merged with an entity** which is not having similar objectives and not registered u/s 12AA.
- Trust **failed to transfer upon dissolution all its assets** to any other trust or institution registered under section 12AA or approved u/s 10(23C) within a period of **twelve months from the end of the month in which the dissolution takes place**

Rate of accreted Income

- ▶ Tax on accreted income is to be paid at **Maximum Marginal Rate**
- ▶ $\text{Accreted Tax} = \text{Accreted Income} * \text{Maximum Marginal Rate}$

Section 115BBI

- ▶ section 115BBI become applicable when an organization fails to comply with the conditions under section 11 with regard to application of income:-
 - Income applied outside India [Not covered under section 11(1)(c)].
- ▶ Income under section 11(1B) where an organization fails to apply income after considering it deemed application by filing Form 9A.
- ▶ Income under section 11(3), where an organization fails to apply income after accumulating it by filing Form 10.

Section 115BBI

- ▶ Value of any Medical or Educational Services provided to Interested Persons
- ▶ Violation of conditions specified under section 12A(1).
 - Non-filing of Income-tax Return.
 - Non-obtaining & furnishing of Audit Report.
 - Non-maintenance of books of account as prescribed under Rule 17AA(w.e.f. Assessment Year 2023-24).
 - Non-applying for renewal of Registration or for making the provisional Registration into a normal registration

Section 115BBI

- ▶ Not applying for Re-registration for confirming the modification of the object Clause
- ▶ Violation of section 13(1).
 - Income applied for the private religious purpose [Section 13(1)(a)].
 - Income applied for particular religious community or caste [Section 13(1)(b)].
 - Benefit to interested person [Section 13(1)(c)].
 - Investment of funds in an unspecified manner [Section 13(1)(d)].
- ▶ Incidental business activity in excess of 20% of gross receipt [Section 13(8)].
- ▶ Anonymous donations in excess of the exemption limit [Section 13(7)].

Taxability under Section 115BBI

- ▶ Special Tax Rate-30% + Surcharge and Cess

Trust Registration

Category	Forms	Timelines
Trusts making application for provisional registration/approval	10A	1 month before the commencement of the Assessment year from which the registration is sought
Conversion of provisional registration into regular registration	10AB	At least 6 months before the expiry or within 6 months of commencement of its activities, whichever is earlier
Renewal of registration/approval after five year said registration period.	10AB	At least 6 months prior to expiry of the said registration period

Circular Number 7/2024 dated 25/04/2024

- ▶ Government has further extended the date for filing the form 10A ,10AB till 30/06/2024 through circular number 07/2024.

Amendment

▶ **Merger of Section 10(23C) and Section 11. It is proposed-:**

- Application for approval under subclause of (iv), (v), (vi) or (via) of clause (23C) of section 10, **and filed on or after 1st October 2024, shall not be considered.**
- Applications already filed before 1st October 2024 – will be considered under the extant provisions of the first regime itself.
- Approved trusts, funds or institutions would continue to get the benefit of exemption till the validity of the said approval
- They would be eligible to apply for registration, subsequently, under the second regime. Amendments have accordingly been proposed in section 12A
- **Certain eligible modes of investment**, under the first regime (Specified in 10(23C) shall be protected in the second regime, by way of **amendment in section 13.**

Amendment

- ▶ Power of condonation of delay in filing application for approval and renewal under Section 12A in case of reasonable cause of delay –Power given to Commissioner (Last extension was given till 30/06/2024) (amendment will effect from 1st October 2024)

(earlier in case trust was unable to file application within specified period trust may be liable to pay exit tax)

Amendments

- ▶ **Timelines for funds or institutions to file applications seeking approval under section 80G**
- ▶ Section 80G of the Act,- Deduction is available for donations to approved funds or institutions, in the hands of the assessee making such donations.
- ▶ Section 80 G(5) provides timelines for filing application for approval, for funds or institutions
- ▶ In case unable to file application within specified time limit permanent exit of fund and institutions from section 80G approval may also arise.
- ▶ **Now trust can apply 80G application at any time after commencement of operation**
- ▶ **To speed up the process govt has proposed that PC is required to pass the order within 3 month after receipt of application (effective from 1st October 2024) (Earlier it was 6 Month) (Amendment will effect from 1st October 2024)**
- ▶ **12A registration is mandatory for applying 80G certificate**

Amendments

Earlier Section 115TD is applicable When-:

- ▶ when a specified person is converted into any ineligible form,
- ▶ merges with another entity or
- ▶ fails to transfer its assets upon dissolution to any other specified person within the prescribed period.
- ▶ Proposed to insert 12AC to prescribe the conditions under which a merger shall not attract section 115TD . Conditions are as follows-:
 - the other trust or institution has same or similar objects
 - the other trust or institution is registered under section 12AA or section 12AB or approved under subclause (iv) or sub-clause (v) or sub-clause (vi) or subclause (via) of clause (23C) of section 10, as the case may b
 - the said merger fulfils such conditions as may be prescribed."
 - Amendment shall be applicable from **01st April 2025**.

10B and 10BB

Form No. 10B is applicable where—

- ▶ The total income of trust or other institutions without giving effect to the provisions of mentioned clauses/sections **exceeds rupees five crores** during the previous year: (**Gross receipt not Net receipt should be considered (including corpus fund)**)
 - sub-clauses (iv), (v), (vi) and (via) of clause 23C of section 10
 - Sections 11 and 12 of the Act
- Or Auditee has received any foreign contribution during the previous year;
- Or Auditee has **applied any part of its income outside India** during the previous year;

10 BB for other cases

form 10BB

- ▶ General Information (Total Clauses-11)
 - Basic Details
 - Legal (status or type of assessee for whom audit has been conducted)
 - Management
 - Commencement of Activities
 - Details of place where books of accounts maintained
- ▶ Computation of Income(Total Clause-14)
 - Voluntary Contributions Total Voluntary Contribution received including foreign Contribution
 - Anonymous donations
 - Application outside India
 - Voluntary contributions required to be applied by the auditee during the previous year

form 10BB

- Income to Be Applied
 - Voluntary Contribution required to be applied
 - Income other than Voluntary Contribution this is inclusive of Income from Trust property, Business Income, Incidental Income
 - Total income subject to Application
- Application of Income and Taxable Income
 - Amount applied for Charitable & religious purpose during the year
 - Amount not actually paid during the previous year [if included in (i)]
 - Amount actually paid during the previous year which accrued during any earlier previous year but not claimed as application if income in earlier previous year
 - Total amount applied in India on payment basis
 - Amount invested or deposited back to corpus fund
 - Repayment of loan or borrowing

form 10BB

- Application of Income Out of Different Sources
 - Income accumulated under third proviso to clause 10(23C) or Section 11(2) – (Form 10)
 - Income deemed to be applied under clause (2) of Explanation 1 under section 11(1) – (Form 9A)
 - Statutory Accumulation u/s. 15%
 - Corpus
 - Borrowed Fund
 - Any Other (Please Specify)

form 10BB

Income not subject to application

- Section 115BBI
- Anonymous Donation

▶ Other Penal Provision

- Person referred to in 13(3) and details of transaction 13(2)
- Specified Violation of 12AB(4)

▶ Other Compliance

- Claim of Depreciation
- TDS Compliances

Addition in form 10B

- ▶ General Information-
 - Registration details
 - Objects
- ▶ Additional Sections (Total Clause-4)
 - GPU and Business Details
- ▶ Computation of Income
 - Capital Assets u/s 11(1A) (Clause 36)
 - Payment or credit in excess of Rs 50 lacs to a Single person during the previous year(Clause 38)

Addition in form 10B

- ▶ Income subject to application
 - Other Income not subject to application (Clause 35)
- ▶ Other Penal Provisions
 - 13(10) and 22nd Proviso to Section 10(23C)
- ▶ Other Compliances
 - TDS on Receipts
 - Expenditure incurred for religious purposes
 - Claim of Depreciation u/s 10 other than 10(1), 10(23C) and 10(46)
 - Loan taken/ Accepted exceeding limit u/s 269SS
 - Received an amount u/s 269ST
 - Loan repaid exceeding limit u/s 269T

Income Tax Return

- ▶ ITR-7 needs to be file
- ▶ Due date
 - 31st July – if audit is not applicable
 - 31st October –If audit is mandatory



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