

To

Public Charitable Trusts/Societies/Associations/Non-Profit Companies

Sub: Amendments to the provisions of Income Tax Act relating to Public Charitable Trust /Institutions - Applicable for Financial Year 2022-23 and for Financial Year 2023-24 - Intimation of

1.1 All Public Charitable Trust/Institutions belonging to a Trust/Society/Association/Non-Profit Company, are generally assessed to Income Tax under two stream tax regime viz.,

- (i) U/s. 10(23C), which may be an Educational Institution, University or hospital or other medical institution governed by relevant sub clauses under the said Section.
- (ii) U/s. 11 and 12 for a Public Charitable Trust/Institution assessed to Income tax, having taken registration or approved U/s. 12A/12AB.

1.2 Through Finance Act 2022 and Finance Act 2023, amendments have been made to the above provisions of the Income Tax Act, which are applicable for the financial year 2022-23 and from financial year 2023-24. Further, vide New Rule No. 17AA, the department has prescribed a detailed list of books of accounts and various other records to be maintained by a Charitable Trust/Institution. Further vide Notification No. G.S.R. 118(e) dt. 21st February 2023, Rule 16CC has been substituted to provide for revised form of Audit Reports to be obtained by a Charitable Trust or Institution, by which detailed reporting is required to be made by Auditors, in line with Form 3CD of the Tax Audit Report prescribed u/s. 44AB of the Income Tax Act for a business assessee.

- 1.3 We have outlined in brief, the relevant changes, for your information and to take necessary action in maintenance of books of accounts and furnishing of details for issue of Audit Report in Form 10B or Form 10BB, as may be applicable.

2. Amendments effective from the financial year 2023-24 (introduced vide Finance Act 2022 and Finance Act 2023):-

2.1 Donation to other trust:-

Donation by a Charitable Trust/Institution assessable u/s. 10(23C) or u/s. 11 of the Act, to another Registered/approved trust or institution, will be considered as an application of income **only to the extent of 85% of the amount credited or paid to another trust or institution.** This means, 15% of the income will be disallowed in computing the total income either under the provisions of Section 10(23C) or under the provisions of Section 11 and 12.

- 2.2 From the financial year 2021-22, any donation received by a Charitable Trust/Institution towards its corpus, shall be kept invested by the Trust or institution, in one or more mode of eligible investments; If the corpus fund is utilised as application towards performing any charity, such application will be ignored in the year of spending; The amount of Corpus fund restored and reinvested will be treated as an application of income of the year in which such restoration/reinvestment is made. For such purpose, a timeline **of five years has been prescribed** for restoration of the corpus fund utilised effective from 01.04.2021.

- 2.3 Change in status of the trust from Registered/approved charitable institution - levy of tax u/s. 115TD on Accreted income.

A trust or institution registered or provisionally registered under section 12AB, which fails to make application within the time limit specified for re registration, shall be deemed to have been converted into any other form of taxable entity, not eligible for assessment u/s. 10(23C) or u/s. 11 & 12 ; It will be liable to pay tax on accreted income within 14 days from the end of the previous year in which the time for renewal expired. Accreted income is the amount of aggregate of Fair Market Value (FMV) of total assets as reduced by the liabilities as on the specified date. Tax is leviable at maximum marginal rate.

3. Amendments effective from the financial year 2022-23 (Assessment Year 2023-24):-

- 3.1 A Public Charitable Trust /Institution whose total income (other than receipts towards corpus of the trust or institution) before deduction for application of income exceed the taxable limit, shall spend 85% of its income within the financial year towards application on performing charities; 15% of the income is allowed to be accumulated; Where the amount spent in a financial year falls short of 15% of its income, accumulation of additional amount is allowed for spending towards specified objects within a period of five years, subject to approval by Assessing Officer; For such purposes, the trust/institution is required to file an application in Form 10.
- 3.2 Similarly, a Trust or institution is required to file application in Form 9A where there is shortfall in application of income earned according to the method of accounting regularly followed, due to the reason that the relevant income is actually realised in the next following previous year.

3.3 The timeline for filing of application in Form 10 and application in Form 9A, is fixed as **two months before the due date for filing the return of income**. Accordingly, for the Assessment Year 2023-24, Form 9A/Form 10 shall be filed on or before 31.08.2023 in the case of a Charitable Trust/Institution whose return of income is due for filing on or before 31.10.2023. Hence you are advised to close the books of accounts well in advance, prepare the draft financial statement and verify the need for filing Form 9A or Form 10, as may be applicable based on the status of application of income with reference to the prescribed limit of 85%.

4. **Filing of Audit Report in Form 10B or 10BB w.e.f A.Y 2023-2024 :-**

4.1 The Contents of the Audit Reports in Form 10B and Form 10BB are enlarged in the lines of Tax Audit Report in Form 3CD.

4.2 Form 10B is required to be filed in the following cases where:-

- (i) Total Income of the Trust or Institution without giving effect to the provisions of Section 11 and 12 of the Act, **exceeds Five Crore Rupees during the year** or
- (ii) Trust has received Foreign Contribution during the year or
- (iii) Trust has spent a part of its income outside India during the previous year.

4.3 Audit Report in Form 10BB is required to be filed in all other cases.

4.4 We are enclosing as part of this Circular, the relevant portion of the Annexures of Form 10BB/Form 10B, for furnishing the details along with draft financial statements for audit of trust accounts. Please furnish the details in full in the format prescribed (**Enclosure 1**).

4.5 The Audit Reports shall be uploaded in the Income tax Portal atleast one month before the due date for filing the Return (i.e before 30.09.2023).

5. Change in contents of ITR 7 (Form of Return of Income applicable to a Charitable Trust/Institution):-

5.1 Public Charitable Trust/Institution is required to maintain elaborate records, apart from regular books of accounts with reference to its various sources of income for the relevant financial year, application of such income within the current financial year, Income accumulated in the preceding year and brought forward, application out of income of the preceding year for which accumulation was obtained, deviation in such application, mode of investments made etc. These particulars are required to be filled up in relevant Schedule of ITR - 7 (**Enclosure - 2**).

5.2 Please note that any error in filling up the details in ITR 7 may lead to adverse consequence when the return of income is taken for processing by CPC, by treating the income as taxable income or in disallowance of payments claimed as application or in levy of higher rate of tax @30%, besides levy of tax at maximum marginal rate, as may be applicable.

5.3 Submission of Trust/Society Accounts for Audit/Filing of Tax Return (Financial 2022-23/Assessment Year 2023-24):-

In view of the comprehensive details to be furnished in the return of income, all the Charitable/Institutions are required to send their draft financial statement, comprising of their trial balance, Income & Expenditure account, Balance Sheet etc. **not later than 30th June 2023**. Based on the details of transactions appearing in such financial statements, our office will send a requirement list, calling for additional details required to be filled up in ITR 7 or in Audit Report in Form 10BB or Form 10B.

All the Trust/Institutions are advised to follow the timeline for filing the Applications in Form 9A and Form 10 (if applicable) and to furnish details in time to complete/upload audit reports (10B or 10BB) before the respective due date.

VKS AIYER & CO
Chartered Accountants