

BRLF

*Welcome Participants to
(Alert, Advise, Awake)*

Session -1

Code of Taxation for NGOs Pt I

Objective of the course

1. **Educate** on regulatory and statutory provisions in an ever-changing landscape for charitable Institutions
2. **Empower** NGO teams-key functionaries and finance staff since regulatory compliance is (a) digital and (b) faceless
3. 360-degree overview help action '**on the desk**'

Curriculum content

Sessions plan:

1. Code of Taxation for NGOs – New scheme of Registration and donation reporting. Sections 11-13 of IT Act
2. Compliances under the Income Tax and GST Act
3. Decoding the CSR Law for NGOs
4. FCRA & FCRR 2020 and updates
5. Social security laws & recently enacted Labour Codes
6. Principles of Grant Accounting & Management
7. Risk & Control for Charitable Organisations
8. Live demo of statutory portals: FCRA, Income Tax, NGO Darpan, MCA, GST, EPFO etc- Part I
9. Live demo of statutory portals: FCRA, Income Tax, NGO Darpan, MCA, GST, EPFO etc- Part II

“We are gearing up for a marathon and not a 100 meter sprint 😊”

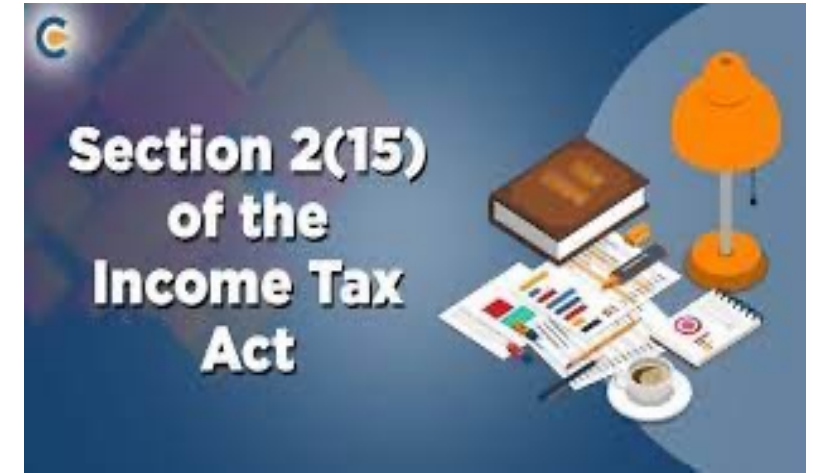
Definition of Charitable purpose in Income Tax

Section 2(15) "charitable purpose" includes

- ✓ Relief of the poor,
- ✓ Education,
- ✓ Yoga,
- ✓ Medical relief,
- ✓ Preservation of environment (including watersheds, forests and wildlife) and
- ✓ Preservation of monuments or places or objects of artistic or historic interest, and
- ✓ The advancement of any other object of general public utility:

Provided that the advancement of any other object of general public utility shall not be a charitable purpose, *if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless—*

- (i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility;
- and**
- (ii) the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year;



Types of registration of charitable institutions under IT Act

1. 10(23C) approval

2. 12A, 12AA
now 12AB

3. 10(46)-body notified
by Central/State Govt
S 35-approved
institutions for
scientific research etc

4. 80G Approval
for tax
deductions for
Donations

Section 10(23C) entities

Section	Non Approval	Section	Approval
10(23C)(iiiab)	Educational institution wholly/substantially financed by Govt	10(23C)iv	National Fund/Charitable institution of national importance
10(23C)(iiiac)	Medical institution wholly/substantially financed by Govt	10(23C)v	Religious institution for public religious purposes or religious cum charitable institution notified by Govt
10(23C)(iiiad)	Educational institution gross receipts less than Rs.5 cr in a FY	10(23C)vi	Educational institution gross receipts more than Rs. 5 cr in a FY
10(23C)(iii ae)	Medical institution gross receipts less than Rs.5 cr in a FY	10(23C)via	Medical institution gross receipts more than Rs.5 cr in a FY

New regime of registration for charitable organisations wef 1.4.20221

- Section 12AB replaces 12AA and provides re - registration/approval of charitable entities u/s 10(23C), 12AA,35 and 80G approval for a period of 5 years, thereafter renewal once every 5 years. Perpetual registration abolished.
- Department wants to have a database of charitable institutions which has been fragmented and decentralised until now
- Types of Approvals:
 1. Re-registration/Revalidation of existing registration-5 years
 2. Provisional registration for new/unregistered entities-3 years
 3. Provisional to Normal registration- Total period 5 years
 4. Modification of objects clause for 12A entities
 5. If registered both under 10(23C) and 12A, then retain 10(23C) for 5 years
 6. Renewal of registration after 5 years

New Regime and Forms

Coverage:

1. Re registration/re approval under 10(23C)/12A/80G
2. Provisional registration under 10(23C)/12A/80G
3. Statement of donation u/s 80G
4. Receipt/Certificate of donation u/s 80G

Forms:

1. 10A-Re-registration and provisional registration
1. 10AC-Approval of 10A by CIT
3. 10AB-conversion of provisional to normal registration, Renewal, change in objects and one of the two registrations made inoperative.
4. 10AD- Approval of 10AB by CIT
5. 10BD-Statement of donations u/s 80G
6. 10BE-Rceipt of donation u/s 80G



CBDT notifies New Income Tax Rules and Forms for Trust and NGOs

Action for registered entities

- Common Form 10A for 10(23C), 12AA, 80G, 35 entities-select code for respective sections e.g. 01 for 12A and 11 for 80G.
- Same form to be filled for 10(23C)/12A and 80G separately.
- Submission date-31.3.2022
- CIT order within 3 months after month of application in 10AC Form
- No inquiry. 10A-not completely filled, CIT may cancel after giving opportunity of being heard
- No provision for delayed submission
- Registration valid for 5 years
- Renewal in Form 10AB after 5 years within 6 months of expiry and after due inquiry process
- Approval or refusal by CIT in Form 10AC.

Action for Provisional Registration

- Apply at least one month prior to the commencement of the previous year relevant to assessment year from which the said registration is sought
- Form 10A
- CIT approval within 1 month from end of month in which application made. No inquiry
- Validity 3 years, convert to normal registration within 6 months of commencement of charitable activities or 6 months before expiry of provisional registration
- For normal registration, Form 10AB. Due process of inquiry

Filing Form 10A

Three parts of Form 10A and 12 instructions: a. Constitution details (1-7) b. Other registration details (8) C. Details of assets, liabilities, income etc (9-21)

1. Objects of the applicant as per S.2(15) (sl. no. 5 of Form)
2. Darpan ID (if funding from Govt or Non- Govt)
3. Filing of S.No 9-20 not required if due ITR filed
4. FCRA registration, other registrations-10(23C), 10(46), 80G
5. Religious expenses-only for provisional Registration u/s 80G
6. Form specifies documents and reports to be uploaded
7. 16 digit alpha numeric URN
8. DG, Exemptions CPC is delegated authority under these rules

Section 80G-Statement of donation

- 80G provisions: Cash donation upto Rs.2k permitted, not in kind and only through banking channels. No anonymous donation permitted u/s 80G
- Form 10BD-points to remember:
 1. Details per person based on nature:
 - I. Corpus
 - II. Specific
 - III. Others
 2. UIN of donor-PAN, Aadhar
 3. Principle of proportionate division allowed for combined cheque
 4. Principle of proportionate division allowed for combined cheque
 5. File by 31st May 2022 for FY 21-22
 6. Penalty for delayed filing

Section 80G-Receipt/certificate of donation

1. Form 10BE
2. 31st May 2022 for FY 21-22
3. Linked to UIN of donor
4. Penalty for delay
5. Generation and download of donation receipt from web portal after filing 10BD
6. Issue the system generated 10BE only to donor for claiming 80G benefit.



Code of Taxation for Charitable Institutions

Chapter III-Incomes which do not form part of total income

1	<p><u>Section11</u> Income from property held under trust for charitable or religious purposes.</p>
2	<p><u>Section12</u> Income of trusts or institutions from voluntary contributions for charitable and religious purpose.</p> <p>Section12A – Conditions for applicability of sections 11 and 12 Section 12AA – Procedure for Registration-repealed Section12AB – Procedure for Registration under new regime</p>
3	<p><u>Section13</u> Section 11 not to apply in certain cases.</p>

Section 11

Income from property held for charitable or religious purposes.

Section 11(1): the following income shall not be included in the total income of the previous year of the person in receipt of the income—

- Income derived from property held under trust wholly for **charitable or religious purposes**, to the extent to which such income is **applied to such purposes in India**; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the **income so accumulated or set apart is not in excess of fifteen per cent** of the income from such property;
- Income in the form of voluntary contributions made with a **specific direction** that they shall form part of the **corpus** of the trust or institution.

Deemed Application-1 year

As per clause (2) of Explanation to section 11(1):

If, in the previous year, the income applied to charitable or religious purposes in India falls short of eighty-five per cent of the income derived during that year from property held under trust, or, as the case may be, held under trust in part, by any amount—

- (i) for the reason that the whole or any part of the income has not been received during that year, or
- (ii) for any other reason,

Then at the option of the person in receipt of the income (such option to be exercised before the expiry of the time allowed under sub-section (1) of section 139 for furnishing the return of income in form -9A), be **deemed to be income applied** to such purposes during the previous year in which the income was derived.

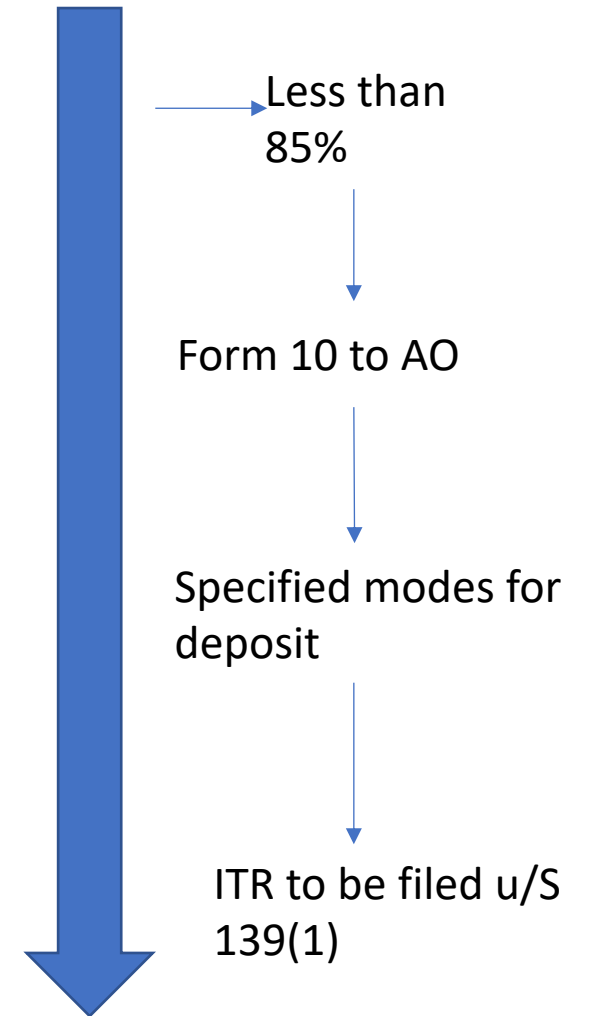
Note: If amount accumulated as per clause (2) of Explanation to section 11(1) is not utilized in the next year then the amount accumulated will be taxable income.

Accumulation-5 years

As per section 11(2):

If, in the previous year, the income applied to charitable or religious purposes in India falls short of eighty-five per cent of the income derived during that year from property held under trust, but is accumulated or set apart, either in whole or in part, for application to such purposes in India, such income so accumulated or set apart shall not be included in the total income of the previous year of the person in receipt of the income, provided the following conditions are complied with, namely:—

- a. such person furnishes a statement in the prescribed form (Form 10) and in the prescribed manner (Online) to the Assessing Officer, stating the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed five years;
- b. the money so accumulated or set apart is invested or deposited in the forms or modes specified in sub-section (5) and utilised for the purpose for which accumulated
- c. Not transferred to an entity covered under Section 12A of the Act
- d. the statement referred to in clause (a) is furnished on or before the due date specified under sub-section (1) of section 139 for furnishing the return of income for the previous year.



Section 11(4)-Business income of charitable institution

- (4) For the purposes of this section "property held under trust" includes a business undertaking so held, and where a claim is made that the income of any such undertaking shall not be included in the total income of the persons in receipt thereof, the Assessing Officer shall have power to determine the income of such undertaking in accordance with the provisions of this Act relating to assessment; and where any income so determined is in excess of the income as shown in the accounts of the undertaking, such excess shall be deemed to be applied to purposes other than charitable or religious purposes.
- (4A) Sub-section (1) or sub-section (2) or sub-section (3) or sub-section (3A) shall not apply in relation to any income of a trust or an institution, being profits and gains of business, unless the business is incidental to the attainment of the objectives of the trust or institution, and separate books of account are maintained by such trust or institution in respect of such business.

Section 11(5)-Modes of investment

The forms and modes of investing or depositing the money referred to in clause (b) of sub-section (2) shall be the following, namely :—

- a. investment in savings certificates as defined in clause (c) of section 2 of the Government Savings Certificates Act, 1959 (46 of 1959), and any other securities or certificates issued by the Central Government under the Small Savings Schemes of that Government;
- b. deposit in any account with the Post Office Savings Bank
- c. deposit in any account with a scheduled bank or a co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank or a co-operative land development bank)
- d. investment in units of the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963)
- e. investment in any security for money created and issued by the Central Government or a State Government
- f. investment in debentures issued by, or on behalf of, any company or corporation both the principal whereof and the interest whereon are fully and unconditionally guaranteed by the Central Government or by a State Government
- g. investment or deposit in any public sector company:
- h. deposits with or investment in any bonds issued by a financial corporation which is engaged in providing long-term finance for industrial development in India and which is eligible for deduction under clause (viii) of sub-section (1) of [section 36](#)
- i. deposits with or investment in any bonds issued by a public company formed and registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes and which is eligible for deduction under clause (viii) of sub-section (1) of [section 36](#);
- j. deposits with or investment in any bonds issued by a public company formed and registered in India with the main object of carrying on the business of providing long-term finance for urban infrastructure in India
- k. investment in immovable property.

Example of Computation

Case -1	
Income derived from property held under trust wholly for charitable purposes	1000
Less: Expenditure (Income applied to charitable purposes in India)	-850
Less: Accumulation under section 11(1)(a) No Specific Form	-150
Taxable Income	NIL
Case-2	
Income derived from property held under trust wholly for charitable purposes	1000
Less: Expenditure (Income applied to charitable purposes in India)	-600
Less: Accumulation under section 11(1)(a) No Specific Form	-150
Less: Accumulation under section (11) (2): Form 10, Specific Purpose	-250
Taxable Income	NIL
Case-3	
Income derived from property held under trust wholly for charitable purposes (Rs 200 was received in March)	1000
Less: Expenditure (Income applied to charitable purposes in India)	-650
Less: Accumulation under section 11(1)(a) No Specific Form (15% of 1000)	-150
Less: Accumulation as per clause (2) of Explanation to section 11(1), Form 9	-200
Taxable Income	NIL

Disallowance of Cash/bearer Payments

Section 40(A)(3) provides that “Where the assessee incurs any expenditure in respect of which a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft or use of electronic clearing system through a bank account [or through such other electronic mode as may be prescribed], exceeds Ten Thousand Rupees, no deduction shall be allowed in respect of such expenditure”.

Note:

1. The expenditure as disallowed above, will be taxed @ 31.2% at the time of filing the Income Tax Return.
 2. The cash payments made by staffs and reimbursed by organisation shall also be treated as cash payment
1. Disclose non-compliances in ITR, if same noticed by Assessing Office during Income Tax Assessment, additional penalty and interests may also be levied.
 2. Exceptions in Rule 60D

Disallowance for Non Deduction of Tax at Source

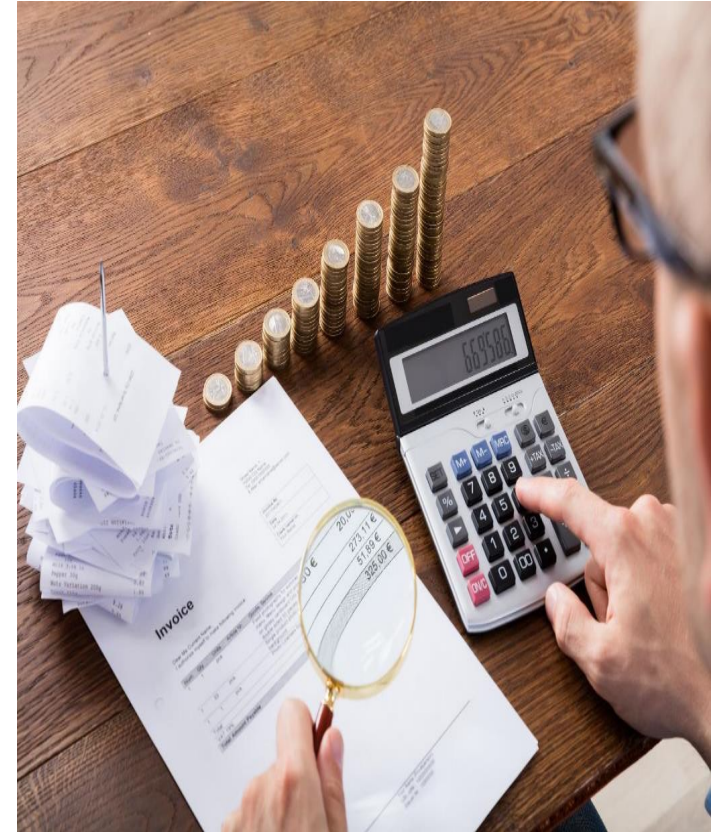
Section 40(a)(ia) provides that 'Where the assessee fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-B then *the amount equal to 30% of expenditure shall not be allowed at the time of computation of Income*'

Note:

1. The expenditure as disallowed above, will be taxed @ 31.2% at the time of filing the Income Tax Return.
2. Disclose non-compliances in ITR, if same noticed by Assessing Office during Income Tax Assessment, additional penalty and interests may also be levied.

Example of Computation

Case-4	
Income derived from property held under trust wholly for charitable purposes	1000
Less: Expenditure (Income applied to charitable purposes in India)	-650
Less: Accumulation under section 11(1)(a) No Specific Form (15% of 1000)	-150
Less: Accumulation under section (11) (2): Form 10, Specific Purpose	-200
Add: Expenditure disallowed under section 40 and 40A (30% Expenditure)	30
Taxable Income	30
Tax on Income @ 30%	9
Add: Surcharge @ 4%	0.36
Total Tax Liability	9.36



Section 12: Income of trust/ institution from Contribution

Section 12 (1):

Any voluntary contributions received by a trust created wholly for charitable or religious purposes or by an institution established wholly for such purposes (not being contributions made with a specific direction that they shall form part of the corpus of the trust or institution) shall for the purposes of section 11 be deemed to be income derived from property held under trust wholly for charitable or religious purposes and the provisions of that section and section 13 shall apply accordingly.

Section 12 (2)

The value of any services, being medical or educational services, made available by any charitable or religious trust running a hospital or medical institution or an educational institution, to any person referred to in clause (a) or clause (b) or clause (c) or clause (cc) or clause (d) of sub-section (3) of section 13, shall be deemed to be income of such trust or institution derived from property held under trust wholly for charitable or religious purposes during the previous year in which such services are so provided and shall be chargeable to income-tax notwithstanding the provisions of sub-section (1) of section 11

Section 12A-Conditions for Applicability of Section 11 & 12



• The provisions of section 11 and section 12 shall not apply in relation to the income of any trust or institution unless organization is registered under section 12AA now 12AB



• Books of accounts of the organization have been audited by the Chartered Accountant



• Organization has furnished the return of income for the previous year in accordance with the provisions of sub-section (4A) of section 139, within the time allowed under that section.

Section 13 of Income Tax

Section 13(1): Section 11 not to apply when

- a. Trust for **private religious purposes** which does not ensure for the benefit of the public.
- b. Trust for charitable purposes or a charitable institution created or established after the commencement of this Act, any income thereof if the trust or institution is created or established for the benefit of any **particular religious community or caste**.
- c. If such trust or institution has been created or established after the commencement of this Act and under the terms of the trust or the rules governing the institution, any part of such **income ensures**, directly or indirectly for the **benefit of any person** referred to in sub-section (3).
- d. If any part of such **income or any property** of the trust or the institution (whenever created or established) is during the previous year **used or applied, directly or indirectly for the benefit of any person** referred to in sub-section (3).
- e. Non compliance of Section 11(5)-**permitted modes of investment**

Section 13(6): The exemption under section 11 or section 12 shall not be denied in relation to any income, other than the income referred to in sub-section (2) of section 12, by reason only that such trust has provided educational or medical facilities to persons referred to in sub section 3.

Section 13(3): List of persons:

- a. the author of the trust or the founder of the institution.
- b. any person who has made a substantial contribution to the trust or institution, that is to say, any person whose total contribution up to the end of the relevant previous year exceeds fifty thousand rupees;
- c. where such author, founder or person is a Hindu undivided family, a member of the family; (cc) any trustee of the trust or manager (by whatever name called) of the institution;
- d. any relative of any such author, founder, person, member, trustee or manager as
 - e. aforesaid;
- f. any concern in which any of the persons referred to in clauses (a), (b), (c), (cc) and (d) has a substantial interest.
- g. "relative", in relation to an individual, means—
- h. spouse of the individual;
- i. brother or sister of the individual;
- j. brother or sister of the spouse of the individual;
- k. any lineal ascendant or descendant of the individual;
- l. any lineal ascendant or descendant of the spouse of the individual;
- m. spouse of a person referred to in sub-clause (b), sub-clause (c), sub-clause (d) or sub-
 - n. clause(e)
- o. any lineal descendant of a brother or sister of either the individual or of the spouse of the individual

Section 13(2): The income or the property of a trust deemed to have been used or applied for the benefit of a person referred to in 13(3)

- a. if any part of the income or property of the trust or institution is, or continues to be, **lent** to any person referred to in sub-section (3) for any period during the previous year without either **adequate security or adequate interest** or both.
- b. if any **land, building or other property** of the trust or institution is, or continues to be, made available for the use of any person referred to in sub-section (3), for any period during the previous year without charging **adequate rent** or other compensation;
- c. if any amount is paid by way of **salary, allowance or otherwise** during the previous year to any person referred to in sub-section (3) out of the resources of the trust or institution for services rendered by that person to such trust or institution and the amount so paid is **in excess of what may be reasonably paid for such services**;
- d. if the **services of the trust** or institution are made available to any person referred to in sub-section (3) during the previous year **without adequate remuneration** or other compensation;
- e. if any **share, security or other property is purchased** by or on behalf of the trust or institution from any person referred to in sub-section (3) during the previous year for **consideration which is more than adequate**;
- f. if any **share, security or other property is sold** by or on behalf of the trust or institution to any person referred to in sub-section (3) during the previous year for **consideration which is less than adequate**;
- g. if any **income or property** of the trust or institution is **diverted** during the previous year in favor of any person referred to in sub-section (3):

Finance Act 2022 Amendments for charitable entities

A. Monitoring and effective implantation –

1. Proper book of accounts to be maintained for 12AB and 10(23C) entities-form, manner and place as maybe prescribed effective 1.4.2023.
2. Power to cancel registration for specified violations i.e. spent income for other than object, business income not incidental and not separate books, private religious purpose, religious community/caste, violation of other laws, benefits u/s 13, non genuine, not compliant with section 11(5), conditions not complied specified in registration certificate under Form 10AC. Reference to be made by AO for passing order by CIT/PCIT who shall pass order cancelling or refusing within 6 months from quarter in which notice was issued.

Finance Act 2022 Amendments for charitable entities

B. Consistency in 2 regimes:

1. Accumulation of income-not spent in 5 years or taxed in 5th year itself, not 6th year and applicable to 10(23C) entities also. Delay due to court injunction etc, the period will be excluded in calculating the accumulation period. Repurposing of accumulation can be permitted by the Department. FY 22-23
2. 10(23C) IT return compliance as for 12 A entities and books of accounts also.
3. 115TD applicable to 10(23C) entities also. There is move to one regime in future since there is no difference between 12A and 10(23C) entities now.

C. Clarity :

1. Tax @30% (S. 115BBI) on denied income for 13(1)© and 13(1(d) violations. 2. Penalty for providing unreasonable benefits to specified persons- s 271AAE penalty equal to amount of benefit in first year and twice for subsequent year

Finance Act 2022 Amendments for charitable entities

2. Provision cannot be claimed as application wef 1.4.2021, actual spend/payment only is application. FY 21-22
3. VC received by religious institutions for repair and maintenance of religious institutions treated as corpus and not treated as income even without specific direction from the donor from FY 20-21 but should be invested in specified modes
4. Newly inserted section 13(10) & 13(11)-Computation of taxable income due to specified non compliance i.e. books of accounts, non filing ITR, Audit report, commercial receipts in excess of 20%. Claim admissible revenue expenditure from income subject to expenditure not from corpus, loans and borrowings, depreciation if cost claimed, donation to other organisations and after disallowing 40A(3) and 40(a)(ia) cases. FY 22-23. Beneficial since entire income is not taxed

Finance Act 2021 Amendments for charitable entities

- 1. Use of Corpus no longer application :** Application for charitable or religious purposes from the corpus fund shall not be treated as application of income for charitable or religious purposes. Provided that the amount not so treated as application, or part thereof, shall be treated as application for charitable or religious purposes in the previous year in which the amount, or part thereof, is invested or deposited back, into one or more of the forms or modes specified in sub-section (5) maintained specifically for such corpus, from the income of that year and to the extent of such investment or deposit.
- 2. Exclusion of Corpus Fund from Income (conditional):** Any Voluntary Contribution made with a specific direction that they shall form part of the corpus of the trust or institution shall not be included in the total income of such trust or institution unless *such voluntary contribution is invested or deposited in one or more of the forms or mode specified in the act.*
- 3. Use of Loans / Borrowings no longer application except during repayment :** Any expenditure made for charitable or religious purpose out of loan or borrowing shall not be treated as application for charitable or religious purpose.
Provided such amount shall be treated as application for charitable or religious purposes at the time of repayment of such loan.
- 4. Carry forward of Losses not allowed:** 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

BRLF

Thank You!

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