

## **Amendment in provisions related to Charitable Trust and institutions in Finance Bill, 2021**

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In India, charitable and religious trusts play a vital role in enriching our cultural heritage and in catering educational, medical, socio-economical and religious needs of people. Hence, since the introduction of the Income Tax Act, income derived from property held for charitable or religious purposes always enjoyed exemption from tax net. However, to ensure that tax privileges are not abused and are enjoyed only by deserving charitable and religious institutions, some changes have been made in provisions.

Income of the Charitable and religious trusts is exempt from tax subject to some conditions. The exemptions are provided to the trust under various provisions of section 10, 11 and 12 of the Income Tax Act. There are some amendments made in Finance Bill, 2021 for provisions related to charitable trust and non-profit institutions. Such amendments are discussed hereunder.

### **Raising limit for exemption under sub-clause (iiiad) and (iiiae) of section 10(23C):**

Section 10(23C) of the Income Tax Act provides for exemption of income received by any person on behalf of different funds or institutions etc. specified in different sub-clauses. Section Sub-clause (iiiad) of section 10(23C) provides that the income earned by any university or institution existing solely for the educational purposes and not for the purposes of profit shall be exempt from tax, if the aggregate annual receipt of such university or educational institution do not exceed the limit as may be prescribed. Sub-clause (iiiae) of the section 10(23C) provides that any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit, if the aggregate annual receipts of such hospital or institution do not exceed the limit as may be prescribed. As per Rule 2BC, existing prescribed limit is Rs.1 Crore each for sub-clause (iiiad) and (iiiae) of section 10(23C).

In order to provide benefit to small trusts and institutions, this limit has been increased to Rs.5 Crore w.e.f 1<sup>st</sup> April, 2022. Here, the notable point is that this limit of Rs.5 Crore is blanket limit. Hence if the trust is running educational as well as medical institution, such trust can avail exemption after amendment only when aggregate receipts from educational and medical institution shall not exceed Rs.5 Crore. This amendment is applicable from the assessment year 2022-23.

### **Changes in provisions of accumulation of income for the trust:**

The trust receives income from property held under trust and applies such income for the objects of the trust. Main source of income of the trust includes donation and interest income from banks and other financial institutions. Where the income of the trust is inadequate, such trust obtains loan from the bank or financial institutions. The trust receives voluntary donations in two forms:

- (1) Corpus donation or earmarked fund.
- (2) Other donations.

The donation received with specific instructions from donor that it shall for part of the corpus is considered as corpus donation. For a charitable trust, corpus donation is paramount important. It is permanent in nature and it can be utilized only for the purpose, for which it is given by the donor. Being capital receipt, corpus donations enjoyed specific exemptions from inclusion in income of the trust as per existing provisions of section 11(1)(d) of the Income Tax Act. Similar provisions were made in section 10(23C) to exclude corpus donation from part of income.

For the non-corpus income of the charitable trust, some conditions are specified to exclude it from part of income. As provided in section 11 of the Income Tax Act, income derived from property held under trust wholly for charitable and religious purpose does not form part of income, subject to the condition that the trust has to apply such income for such purposes in India. If the trust has not applied full amount of income, amount accumulated or set apart cannot exceed 15% of income of such property.

Some trusts were claimed amount of corpus donation as exempt and applied amount of corpus donation and claimed its application against mandatory 85% of application of non-corpus income. Hence, to avoid such double deduction, it has been proposed w.e.f. 1<sup>st</sup> April, 2022 that to claim exemption for corpus donation, the trust has to invest such corpus donation in forms or modes specified in section 11(5) maintained specifically for the corpus. The application of income from corpus donation will not be treated as mandatory 85% of application of income. It will be allowed as application of income, only when it is deposited back to corpus to the extent of such deposit or investment.

Similarly, some trusts have obtained loan or borrowings from bank or financial institution and made application of income out of loan proceeds. Moreover, such trusts have again at the time of repayment of such loan, claimed it as application of income. This has resulted in double deduction. Hence it has been proposed w.e.f 1<sup>st</sup> April, 2022 that application from proceeds of loan or borrowings shall not be considered as application of income. However, when loan or borrowing is repaid from the income of previous year, it will be considered as application of income.

Intention behind this amendment is to grant application of income only from income from property held under trust as specified in section 11. Borrowing funds cannot be equated with the income received from the property held under trust. Under the law, it is the income, not the fund that is required to be seen for the purpose of granting the exemption. If the claim of assessee that he borrowed fund were utilized for the objects of the trust is entertained and accepted, it will amount to double benefit, which cannot be the intention of the statute.

Generally, if for purchase or construction of assets, funds with the trusts are insufficient, the trust incurs such expenditure from borrowed funds. The trust transfer amount of loan to the common kitty and treats such expenditure incurred from common kitty as the revenue expenditure incurred for the trust objects and claims it as application of income. Deployment of loan or borrowings cannot be treated as application of income. Hence utilization of loan will be treated application of loan raised and not application of income of the trust. Only repayment of loan will be treated as application of income.

### **Set off of income from accumulation of income**

Sometimes, the trust applies income in excess of income of relevant previous year. When the trust or institution applies more than its income, it can only mean that such excess amount is applied from the corpus or future income. In Finance Bill, 2021, an amendment has been made

to the effect that utilization of corpus donation will not be treated as application of income. Hence to further restrict application of corpus donation, It is proposed w.e.f. 1<sup>st</sup> April, 2022 that no set-off or deduction or allowance of any excess application of any preceding previous year shall be allowed for computation of income required to be applied or accumulated during the previous year.