



# **kcm**Guide

**Charitable Trusts – Important  
Provisions relating to Tax  
Computation and Compliance  
AY 2023-24**

**September 2023**

## Background

Income of Charitable trusts & institutions registered u/s 12AA or u/s 12AB of the Income Tax Act, 1961 ("the Act") is not subject to tax in the manner provided u/s 11 of the Act. There are restrictions / conditions laid down in section 11 & other relevant sections which require due consideration for determining taxable income of such trust.

Over the last three years, Finance Acts have introduced various measures to curtail loopholes in such provisions and government has made an attempt to modify provisions governing taxation of trust in a way to achieve transparency, accountability, digitization, and governance.

However, due to introduction of all amendments in & around section 11 of the Act itself, taxation of trust has become more complex and difficult to understand and apply while computing taxable income for tax return purpose. Therefore, all relevant provisions including relevant amendments made till Finance Act 2023 have been analysed and summarized in the form of *kcm Guide* which one should take care while determining taxable income of a charitable trust and while filing income tax return for such trusts and institutions for AY 23-24 onwards.

This Guide is prepared to provide a brief on important provisions relating to tax computation & other tax compliances of trusts & institutions claiming exemption u/s 11 of the Act.

### Taxation of Income (excluding Corpus Donation) & deemed application of income by Charitable Trust registered u/s.12AA / 12AB

- All types of income of a charitable trust are chargeable to tax including voluntary contributions received by the trust by virtue of specific inclusion in the definition of 'income' under section 2(24) of the Act. However, income derived from property held for charitable purpose which has been applied towards objects of the trust in India, which are charitable in nature within the meaning of section 2(15) of the Act would be allowed as application of income. Income so applied shall not be subject to tax in accordance with section 11 of the Act.
- Income of the current year, if not applied towards object of the trust in the said year becomes taxable in the hands of the trust. However, such unspent amount shall not be liable to tax, maximum to the extent of 15% of income (excluding corpus donation) for the year.
- Further, if any income is not applied towards object of the trust for the reason that (i) whole or any part of the income is merely accrued but not actually received during the year or (ii) for any other reason, such shortfall shall be deemed to be applied towards object of the trust for such year subject to filing of Form 9A at least two months prior to due date of filing of return of income for such trust.

Such income so accumulated for the reasons of non-receipt shall be required to be applied in the year in which it is received or in

the year immediately following such year. If not, it shall be subject to tax in year following the year of receipt.

Similarly, where income is accumulated for any other reason, such income shall be required to be applied in the year immediately following the year in which it is accumulated. If not applied, it would be subject to tax in that year.

- The provisions of section 11(2) also permit accumulation of income for longer period i.e., 5 years where income could not be applied towards object of the trust for reasons which requires substantial period of time such as capital expenditure for any asset requiring extensive period of time for its construction / acquisition etc. If any income is not applied towards object of the trust for such type of reasons, a person can accumulate the same for application for charitable purpose in India for a period not exceeding five years subject to following conditions.
  - a) Trust is required to file Form 10 electronically at least two months prior to the due date specified u/s 139(1) of the Act for furnishing return of income.
  - b) The amount so accumulated shall remain invested in modes of investments specified u/s 11(5) of the Act.
  - c) Such income shall not be applied by way of payment or credit to other trusts & institutions registered u/s 12AA / 12AB / 10(23C)(iv)(v)(vi)(via) of the Act.

If any of the above conditions are not fulfilled at any point of time, such income so accumulated and to the extent of non-compliance of above conditions shall be subject to tax in the year in which such breach takes place.

- No exemption u/s 10 shall be available to trust or institutions registered u/s 12AA or 12AB in respect of income specified therein. However, exemption u/s 11 can be claimed against such income to the extent it is applied towards objects of the trust.

### Taxation of Corpus Donation and application of income

- Donation made with a specific direction that it shall form part of corpus shall not be subject to tax under provisions of section 11(1)(d) of the Act provided such donation amount shall mandatorily be required to remain invested in prescribed modes of investments (i.e., Deposits with Schedule or Co-operative Banks, Posts, Public Sector Company, Investment in specified bonds, Investment in Immovable property, Investments in Government Saving Certificates, UTI, Securities issued by Central of State government, etc.) as specified u/s 11(5) of the Act maintained specifically for such corpus.
- Any application out of such corpus funds so received shall not be treated as application of income for charitable purpose from AY 22-23 onwards. However, if any amount is spent out of such corpus fund and not treated as application, the same shall be considered as application of income in the year in which equivalent amount (out of income for the year) is invested back or deposited back within five years in any of the modes of investments as provided in section 11(5) of the Act maintained specifically for such corpus.

Further such benefit shall be available only when expenditure incurred out of corpus meets other requirements & conditions i.e., section 40A(3) - no cash payment exceeding Rs. 10,000, 40(a)(ia) – TDS if applicable, deducted and deposited, no donation by way of corpus

to other trusts & institutions, not mere accrual but actual payment, not for direct or indirect benefit of persons referred in section 13(1) being trustee, author, settlor etc.

The above relaxation regarding restoration of corpus fund shall not apply when expenditure is incurred out of corpus fund received on or before March 31, 2021. In other words, recoupment of corpus funds received prior to March 31, 2021, shall not be available as application of income u/s 11.

### Expenditure not to be considered as application of Income

- Any expenditure incurred by the trust or institution shall be considered as application of income in year in which it is actually paid and not in the year in which it is incurred.
- Expenditure incurred for charitable purpose, if the same is in violation of provisions as contained in section 40A(3) / 40A(3A) i.e. payment in cash exceeding Rs. 10,000 (Rs. 35,000 in case of transporters) shall not be considered as application of income.
- Expenditure incurred for charitable purpose, if same is liable to tax deduction at source under provisions of Chapter XVII-B but no tax is deducted or after deduction is not deposited, then such expenditure shall not be considered as application of income to the extent of 30% of such expenditure. [Akin to provisions of section 40(a)(ia) of the Act].  
However, such expenditure so not considered as application shall however be allowed as application of income in the year in which tax is deducted and deposited with government.
- Contribution or donation to other trust / institution registered u/s 12AA or 12AB / 10(23C)(iv)/(v)/(vi)/(via) with a specific direction that

it shall form part of corpus, shall not be treated as application of income for charitable purpose.

- Contribution or donation to other trust / institution registered u/s 12AA or 12AB or u/s 10(23C)(iv)/(v)/(vi)(via) shall be treated as application only to the extent of 85% of such amount paid or credited.
- Depreciation shall not be considered as application of income where cost of asset is claimed as application of income. However, when cost of asset is not claimed as application of income, depreciation relating to such asset can be claimed as application of income by trust.

Any expenditure incurred by utilizing borrowed funds or loan shall not be treated as application of income for charitable purpose. However, such expenditure incurred shall be considered as application of income in the year in which such loan is repaid from regular income provided such loan is repaid within five years from the year in which such expenditure is incurred. Further such benefit shall be available only when expenditure incurred out of loan proceeds meets other requirements & conditions i.e., section 40A(3) - no cash payment exceeding Rs. 10,000, section 40(a)(ia) i.e., TDS if applicable, deducted and deposited to the credit of government, no donation by way of corpus to other trusts & institutions etc.

However, the above relaxation regarding repayment of loan fund shall not apply when expenditure is incurred out of loan or borrowings received on or before March 31, 2021.

- Any excess application (i.e., excess of expenditure over income) of any earlier years shall not be considered as application of

income in subsequent year. In other words, set off or deduction of any excess expenditure incurred over income for that year shall not be permissible against subsequent year's income.

### Special Provisions attracting additional tax liability for specified violations.

- In respect of following violations, trust or institutions referred in section 11 shall be required to pay income tax at 30% on specified income u/s 115BBI in addition to income tax which is payable on remaining income as per provisions of the Act.
  - a) Income accumulated or set apart in excess of fifteen per cent of the income where such accumulation is not allowed under any specific provision of this Act.
  - b) Income which was accumulated by filing Form 9A (i.e., due to non-receipt of funds or for any other reason) but conditions attached to it (as discussed above) are not fulfilled.
  - c) Income which was accumulated by filing Form 10 (accumulation for five years by investing funds in mode prescribed u/s 11(5)) but conditions attached to such accumulation (as discussed above) are not fulfilled.
  - d) Income or property which is applied for benefit of persons referred in section 13(3) being trustees, settlor or author and their relatives etc.
- In case of following three circumstances, as per provisions of section 115TD, the trust shall be required to pay tax on accreted income @ maximum marginal rate over & above income tax chargeable on total income of such trust.

- a) When trust is converted to a form which is not eligible for grant of registration u/s 12AA or 12AB i.e., for trust existing as on March 31, 2021, failure to get re-registered before September 30, 2023, modification of the objects in violation of conditions given for grant of registration and no fresh application is made within time permitted or where application is made but rejected, where registration is cancelled.
- b) Merger of trust with an entity which is trust or institution registered u/s 12AA or 12AB but not having similar objects.
- c) Failure to transfer upon dissolution all assets to other trust registered u/s 12AA or 12AB within period of twelve months from end of month in which dissolution takes place.

Accreted income means excess of fair market value of total assets of the trust over total liabilities and no deduction shall be allowed against such accreted income determined. Such tax on accreted income shall require to be deposited by the trust or principal officer or trustee of such trust within fourteen days.

### Exemption Restricted u/s 11 under specified circumstances

- Exemption u/s 11 shall not be available in case where (i) objects of the trust is the advancement of any other object of general public utility if it involves the carrying out of activity which is in nature of trade, commerce or business or any activity of rendering any service in relation to such trade, commerce or business and receipt from such activities exceeds 20% of total annual receipts or (ii) books of accounts are not audited u/s 12A(1)(b) if required to do so or (iii) return of income is not filed on or before due date specified u/s 139(1) of the Act.

In above cases, provisions of section 13(10) provides that income of trust or institution shall be computed after allowing deduction of expenditure incurred in India towards object of the trust excluding capital expenditure and subject to conditions that (i) expenditure is not out of proceeds of loan (ii) expenditure is not in form of donation to any trusts (iii) TDS provisions is complied on such expenditure (iv) expenditure is not made in cash in excess of Rs, 10,000 in violation of provisions of section 40A(3) / (3A) (v) expenditure is not made out of corpus etc.

- Exemption u/s 11 is denied where there are violations of provisions of section 13(1)(c) or 13(1)(d) i.e., if trust applies its income directly or indirectly for the benefit of trustees or their relatives or other specified persons or where funds of the trusts do not remain invested in mode or forms specified u/s 11(5) of the Act. However, in such case exemption u/s 11 shall be restricted only to the extent of amount for which such violation has occurred and not for entire income of the trust for such year.

## Compliance Requirements – Mandatory maintenance of books of account

Trust shall also be required to maintain books of account if income for the year without claiming exemption u/s 11 exceeds the maximum amount which is not chargeable to tax (i.e., Rs. 2,50,000) in any year. Rule 17AA lists down a detailed list for books of account to be maintained (like cash book, ledger, journal, copies of bills machine or otherwise serially numbered when issued to others, original bills issued to such trusts, other books as stated in said rule). Same is required to be maintained for 10 years at registered office of the trust. For any other place, a resolution by trust with due intimation to Assessing officer within 7 days of passing of such resolution is required.

## Compliance Requirements – Mandatory filing of Statement of Donation & issue of certificate of donation

Trusts or institutions having registration u/s 80G(5) is required to file statement of donation in Form 10BD on or before 31st May after the end of relevant previous year. Further, trust is required to issue Form 10BE as a certificate of donation to donee in order to enable donee to claim such deduction u/s 80G of the Act.

## Compliance Requirements – Audit of Books of Account

Trusts or institutions registered u/s 12AA or 12AB shall be required to get their books of account audited if income for the year without claiming exemption u/s 11 exceeds the maximum amount which is not chargeable to tax (i.e., Rs. 2,50,000) in any year. In such case, such trusts or institutions shall be required to obtain and furnish audit report in Form 10B (where total gross income exceeds Rs. 5 crores in a year or income include foreign contribution or where income is applied outside India) and in Form 10BB in other cases.

## Compliance Calendar for AY 2023-24

Considering recent amendment in time limit for furnishing various forms relating to trust claiming exemption u/s 11, a Compliance Calendar in context of FY 2022-23 (AY 2023-24) for upcoming months is provided below for ready reference.

| Type of Form  | If books are not subject to audit  | If books of accounts are subject to audit |
|---|--|---|
| Form 9A – Accumulation where income is accrued but not received or for any other reason                           | May 31, 2023<br>(Refer Note 1)   | August 31, 2023<br>(Refer Note 1)         |
| Form 10 – Accumulation for period of five years   | May 31, 2023<br>(Refer Note 1)   | August 31, 2023<br>(Refer Note 1)         |
| Form 10B / 10BB – Audit Report  | N.A.   | October 31, 2023<br>(Refer Note 3)        |
| Income tax return in form ITR-7   | July 31, 2023  | November 30, 2023<br>(Refer Note 3)       |
| Form 10BD – Statement of Donations & Issuance of Certificate of Donation in Form 10BE                             | On or before 31 <sup>st</sup> May immediately following financial year in which donations are received. However, For FY 22-23, date was extended to June 30, 2023 (Refer Note 2) |   |
| Form 10A – Re-registration requirement for trusts registered u/s 12A / 80G as existed on or before March 31, 2021 | On or before September 30, 2023 (Refer Note 2), otherwise trust shall subject to tax on accreted income as per section 115TD   |   |

**Note 1** – CBDT vide Circular No.6 of 2023 has clarified that benefit of accumulation / deemed application shall not be denied if Form 10 / Form 9A is furnished on or before the due date of filing income tax return u/s 139(1) of the Act.

**Note 2** - In view of the extension provided by CBDT vide Circular No. 6 of 2023 dated May 24, 2023.

**Note 3** – In view of extension provided by CBDT vide Circular No. 16 of 2023 dated September 18, 2023.



## About **kcmGuide**

**kcmGuide** is a special publication prepared by area specific experts at K C Mehta & Co LLP. This publication is intended to provide overall guidance on select topics / areas that may be of interest to readers. The idea is to provide to the reader an overall perspective on a particular topic in the form of a Guide which could serve as a referencer while practically dealing with the topic.

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