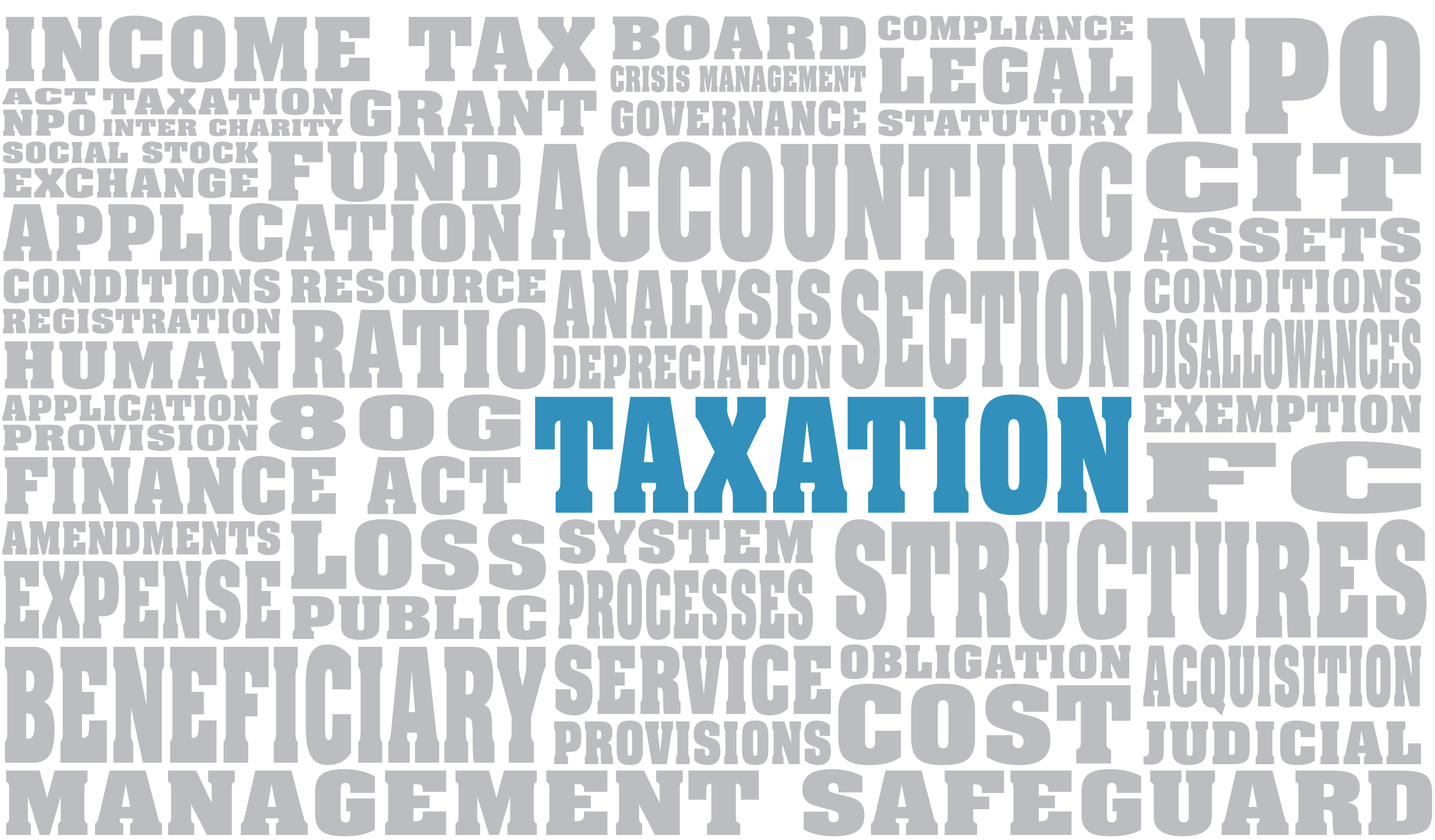
INTER *face*

July - December 2023



VOLUME XXIII, ISSUE 2

Editorial Team: Mr. Sandeep Sharma & Ms. Simran Mittal
Published by Mr. Sandeep Sharma on behalf of
Financial Management Service Foundation
"ACCOUNTABILITY HOUSE"- A-5, Sector-26, Noida-201301
Tel: 00-91-120-4773200
Email: fmsf@fmsfindia.org: **Website:** www.fmsfindia.org

"Innovation Distinguishes Between a Leader and a Follower"- Steve Jobs

Innovation is crucial for effective leadership, especially in today's rapidly changing environment where leadership is essentially about the ability to innovate. I see leadership not just as a matter of exercising authority, but as a dynamic force that inspires individuals and organizations towards the future. In order to remain relevant with the changing time, it is important to innovate and therefore innovation becomes the driving force for transformation, serving as the distinctive factor that sets leaders apart.

Those in leadership positions should not be satisfied with maintaining the status quo; rather, they should envision possibilities beyond the present, consistently questioning conventional wisdom and exploring new paths. As we embark on the journey of leadership, it is essential to understand that innovation is not a choice but a necessity - a compelling force driving us forward and differentiating leaders from followers in the ever-evolving landscape of our endeavors.

With this thought, let me introduce you with this edition of our newsletter "Interface", filled with insights related to governance, financial management and legal compliances which our sector needs in this volatile space.

As we continue to navigate the dynamic landscape of the nonprofit sector, it is essential to stay informed about the latest developments and regulations that shape our work. In this issue, we delve into crucial topics such as NPO Taxation, Social stock exchange registration process, Inter charity grants, Board's role in crisis, and various others. We hope these will be of value to you and your organization.

Sandeep Sharma
Executive Director

Acknowledgment

We are grateful to the authors who have contributed for the articles in this edition.

Our Authors

Dr. Manoj Fogla

Dr. Fogla is the principal author of the articles published in this edition. He is a Chartered Accountant by Profession and is a Development Consultant. He has been involved in the voluntary sector for many years. His area of specialization includes financial evaluations and reviews of development programs. Over the years, he has authored several books on governance, financial management, legal and taxation aspects of NGOs.

Mr. Suresh Kejriwal

Mr. Suresh Kejriwal is a Chartered Accountant, practising in Kolkata. He is working with NGO sector for more than 25 years. He is one of the prominent resource persons with vide knowledge of NGO sector, and is associated with FMSF as Consultant in the areas of Financial Management and Legal Compliance.

Mr. Sandeep Sharma

Mr. Sandeep Sharma is the Executive Director of Financial Management Service Foundation (FMSF). He has an extensive experience of working for the development sector. He has been involved in several organizational development processes for various national and international organizations. He is a seasoned trainer and has facilitated more than 300 workshops across the globe.

Dr. Sanjay Patra

Dr. Sanjay Patra is the Managing Director of CPA Services. He has experience of more than 30 years in the Voluntary & Development Sector and has been actively engaged with many national and international voluntary organizations in the areas of financial management, legal compliances, governance, transparency and accountability. He has engaged in major research, training and has also authored books on financial management, Governance and Audit and also written several articles.

Ms. Simran Mittal

Simran Mittal works as a Capacity Building Officer at FMSF. She served as a Gandhi Fellow for Piramal Foundation for a duration of two years. During this time, she collaborated with the Rajasthan State Institute of Educational Management and Training (SIEMAT) in conducting capacity building training workshops for education officers as part of the State Transformation Program.

Looking for more authors

Want to join our group of eminent authors? Write an article on Governance, Financial Management or Compliance and send it to us. We will review and get back to you.

- Editorial Team

CONTENTS

CANCELLATION POWERS OF CIT

Under Income Tax Act

1

INTRODUCTION

The registration, once granted shall remain in force till its validity period or it is cancelled by the Commissioner of Income Tax.

The Finance (No. 2) Act, 2004 had inserted the sub-section to Section 12AA. By virtue of this sub-section (3), the Commissioner, with effect from 1st day of October, 2004 had the power to cancel the registration, if s/he is satisfied that the activities of such trust/institution are not genuine or are not being carried out in accordance with the objects of the trust or institution.

The Finance Act, 2014 provided additional powers for cancellation under Section 12AA(4)(a), which provides cancellation due to the applicability of forfeiture of income under Section 13(1). It may be noted, under Section 13(1) various violations pertaining to investment, benefit to interested person etc. are regulated.

With effect from 1st September, 2019 again, additional powers have been provided for cancellation under Section 12AA(4)(b), wherein registration can be cancelled if the trust has not complied with the requirement of any other law which are material for the purpose of achieving its object and the order/decree by whatever name called, holding such non-compliance has occurred and has either not been disputed or attained finality.

Finance Act, 2020 had inserted a new Section 12AB. The existing Section 12AA providing for cancellation shall remain effective upto 31-03-2021. The new Section 12AB is applicable from 01-04-2021. It has the enabling provision on the same line as in the existing Section 12AA, empowering the Principal Commissioner or Commissioner to cancel the registration in specified cases, Section 12AB (5) corresponds to Section 12AA (4) & cancellation powers continue to remain similar except the fact that under Section 12AB(1)(b)(ii), the CIT may deny renewal of registration and also initiate cancellation proceedings at the time of renewal proceedings.

The new provision has provided yet another power of cancellation under Section 12AB(1)(b)(ii)(B) which can be exercised during the process of renewal under Section 12AB. The new provisions also provide powers of cancellation under Section 12AB (4) and (5), which are analogous powers prior to enactment of Finance Act, 2020.

The additional power of cancellation during the renewal process empowers the CIT to invoke the powers available under Section 12AB (4) and (5) at the time of renewal also. In other words, there is no power for any arbitrary or ex parte order at the time of renewal. However, the CIT may additionally initiate cancellation proceedings.

The Finance Act, 2022 substituted sub-sections (4) and (5) of the Section 12AB w.e.f. 1st April, 2022. This provides provisions regarding cancellation of the registration granted to a trust or institution on specified violations.

Section 12AB (4)/(5) prior to amendment by the Finance Act, 2022 did not cover cases of provisional registration under Section 12AB(1)(c). Now, the substituted Section 12AB (4) covers cases of provisional registration as well and hence, registration granted for the first time can also be cancelled.

Before the amendment by the Finance Act, 2022, Section 12AB (4) provided for cancellation of registration in case of any violation under Section 13. The amended Section 12AB (4) does not consider a violation of Section 13(1)(c) and Section 13(1)(d) as specified violations. Consequently, the registration cannot be cancelled on the ground that the assessee has violated Section 13(1)(c) or Section 13(1)(d).

The Finance Act 2023 has inserted clause (g) in Explanation to Section 12AB (4) to provide that giving incomplete, false, or inaccurate information in a registration application under Section 12A(1(ac) will be deemed as a "specified violation" that can lead to the cancellation of registration.

An assessee aggrieved by the order of cancellation passed by the Commissioner may prefer an appeal against such order with the Income Tax Appellate Tribunal.

CONSEQUENCES ON CANCELLATION OF REGISTRATION

- Once the trust or institution's registration stands cancelled, its income shall be computed as per the normal provisions of the Income-tax Act and that too without giving the benefit of sections 11 and 12. Hence, the income in such cases shall be computed as per the five heads of income.

- Approval under Section 80G will be liable for cancellation as after cancellation of registration under Section 12AA or 12AB, the exemption under sections 11 and 12 will not be available to the institution.

- If registration granted to trust or institution under Section 12A or 12AA or 12AB has been cancelled, it shall be deemed to have been converted into any form not eligible for registration as per Section 115TD.

In such a case, the accreted income of the trust or institution is liable to be taxed at the Maximum Marginal Rate i.e., MMR.

OVERVIEW OF THE POWERS OF CIT FOR CANCELLATION OF REGISTRATION

Through various amendments, the power of the Commissioner for cancellation has increased substantially as is evident from the following summarization:

(a) With effect from the 1st day of October, 2004, the Commissioner could cancel registration if the activities of trust or institution are not genuine, or the activities are not being carried out in accordance with the objects of the trust or institution. Hence, the power of cancellation was very limited.

(b) The Finance Act, 2014 provided additional conditions for cancellation for violation under Section 13(1). It may be noted under Section 13(1) the income is subjected to tax either partially or totally if the activity of the trust is being carried out in such manner that:

(i) Its income does not provide benefit of general public; private purpose trust;

(ii) It is for benefit of any particular religious' community or caste;

(iii) Any income or property of the trust is applied for the benefit of specified persons like author of trust, trustees, etc.; or

(iv) Its funds are invested in prohibited modes.

(c) The CIT is empowered to initiate cancellation for violation of Section 13(1).

(d) With effect from 1st September, 2019 further additional powers for cancellation have been given wherein registration can be cancelled if the trust has not complied with the requirement of any other law which are material for the purpose of achieving its object and the order/decree by whatever name called, holding such non-compliance has occurred and has either not been disputed or attained finality.

(e) On cancellation, in addition to income chargeable in respect of the total income of such trust or institution, the accreted income of trust or institution as on the specified date will be charged to tax at the maximum marginal rate.

(f) The new Section 12AB, with effect from 01-04-2021, has provided additional power for cancellation wherein the registration can be cancelled at the time of renewal at the end of a five-year period. It may be noted that the registration under Section 12AB is no longer permanent and has to be renewed every five years.

CANCELLATION OF REGISTRATION AFTER AMENDMENT BY FINANCE ACT 2022 (APPLICABLE FROM 01-04-2022)

Section 12AB (4)(5) has been substituted with effect from 1st April, 2022 to provide new provisions for the cancellation of registration granted to charitable institutions. The cancellation of registration on or after 1st April, 2022 can be completed only under the said provisions after satisfying the stipulated conditions under the new provisions. The scope of situations under which registration can be cancelled is found in Section 12AB(4) and (5) the text of which is provided in **Annexure 1**.

Who can cancel the registration ?

The registration can be cancelled by the Principal Commissioner (PCIT) or Commissioner (CIT).

WHICH REGISTRATION CAN BE CANCELLED

The PCIT/CIT can cancel the following registrations granted to a trust or institution:

- Final registration or provisional registration granted under Section 12AB(1)(a)/ (b)/(c);

- Final registration granted under Section 12AA(1).

The erstwhile provision did not cover cases of provisional registration granted under Section 12AB(1)(c). Now, the provisional registration granted for the first time can also be cancelled by the authorities.

UNDER WHAT CIRCUMSTANCES REGISTRATION CAN BE CANCELLED

- The registration can be cancelled under the following circu-mstances:

- The Principal Commissioner or Commissioner has noticed occurrence of one or more

'Specified Violations' during any previous year.

- The Principal Commissioner or Commissioner has received a reference from the Assessing Officer under the second proviso to Section 143(3) for any previous year.
- Such a case has been selected in accordance with the risk management strategy, formulated by the Board from time to time for any previous year.

MEANING OF 'SPECIFIED VIOLATION'

The following events shall be considered as specified violations as per clauses (a) to (g) of Explanation to Section 12AB(4):

Clause (a) Any income from the property held under trust is applied other than for the objects for which it is established.

Clause (b) Trust has earned profits and gains from business, which is not incidental to the attainment of its objectives or Trust does not maintain separate books of account in respect of the business, which is incidental to the attainment of its objectives.

Clause (c) Trust has applied any part of its income from the property held under trust for private religious purposes, which does not enure for the benefit of the public.

Clause (d) Trust established for charitable purposes has applied any part of its income for the benefit of any particular religious community or caste.

Clause (e) Any activity carried out by the trust is not genuine or is not being carried out in accordance with the conditions subject to which it was registered.

Clause (f) Trust has not complied with the requirement of any other law for the time being in force as is material to achieve its objects, and the order, direction or decree, by whatever name called, holding that such non-compliance has occurred, has either not been disputed or has attained finality.

Clause (g) The application for registration under Section 12A(1)(ac) is not complete or it contains false or incorrect information.

It is important to note that before the amendment by the Finance Act, 2022, Section 12AB(4) provided for cancellation of registration in case of any violation under Section 13. The amended Section 12AB(4) does not consider a violation of Section 13(1)(c) and Section 13(1)(d) as specified violations. Consequently, the registration cannot be cancelled on the ground that the assessee has violated Section 13(1)(c) or Section 13(1)(d). It may be noted that under Section 13(1)(c) any benefit given to interested person is disallowed and under Section 13(1)(d) investment in violation of Section 11(5) are disallowed.

Further, the Finance Act 2023 has inserted the following clause (g) in Explanation to Section 12AB(4) with effect from 01-04-2023. The insertion of clause (g) in the Explanation has now extended the scope of specified violations. Now, after this amendment, "specified violation" shall also include the case where the application referred to in Section 12A(1)(ac) is not complete or it contains false or incorrect information.

PROCEDURE TO BE FOLLOWED BY PCIT /CIT

- The PCIT or CIT shall call for such documents or information from the trust or institution or make such inquiry as s/he thinks necessary to satisfy himself/herself about the occurrence or otherwise of any specified violation. He shall pass an order in writing, cancelling the registration of such trust or institution after affording a reasonable opportunity of being heard, for such previous year and all subsequent previous years, if s/he is satisfied that one or more specified violations have taken place.

- Suppose s/he is not satisfied about the occurrence of one or more specified violations. In that case, s/he shall pass an order in writing, refusing to cancel the registration of such trust or institution.

- PCIT/CIT shall forward a copy of the cancellation order or order refusing to cancel the registration, as the case may be, to the Assessing Officer and such trust or institution.

Time limit to pass cancellation order

The cancellation order or order refusing to cancel the registration, as the case may be, shall be passed before the expiry of 6 months, calculated from the end of the quarter in which the first notice is issued by the PCIT or CIT, on or after the 01-04-2022, calling for any document or information, or for making any inquiry.

NO CANCELLATION OF REGISTRATION ON THE ATTRACTION OF PROVISO TO SECTION 2(15)

CBDT has issued Circular No. 21/2016 [F. No. 197/17/2016-ITA-I], dated 27-5-2016, regarding the cancellation of registration under section 12AA. In this circular, it has been clarified that if proviso to section 2(15) is attracted in any particular assessment year, then the charitable status of the organisation will not be lost. The circular has further emphasised that any such cancellation under proviso to section 2(15) read with section 13(8) will cause undue hardship to the assessee particularly after the enactment of section 115TD where the net worth of the assessee will be subjected to tax in case of cancellation. The relevant extract is as under:

"4. In view of the aforesaid position, it is clarified that it shall not be mandatory to cancel the registration already granted u/s 12AA to a charitable institution merely on the ground that the cut-off specified in the proviso to Section 2(15) of the Act is exceeded in a particular year without there being any change in the nature of activities of the institution. If in any particular year, the specified cut-off is exceeded, the tax exemption would be denied to the institution in that year and cancellation of registration would not be mandatory unless such cancellation becomes necessary on the ground(s) prescribed under the Act.

5. With the introduction of Chapter XII-EB in the Act vide Finance Act,2016, prescribing special provisions relating to tax on accreted income of certain trusts and institutions, cancellation of registration granted u/s 12AA may lead to a charitable institution getting hit by sub-section (3) of Section 115TD and becoming liable to tax on accreted income. The cancellation of registration without justifiable reasons may, therefore, cause additional hardship to an assessee institution due to attraction of tax liability on accreted income. The field authorities are, therefore, advised not to cancel the registration of a charitable institution granted u/s 12AA just because the proviso to Section 2(15) comes into play. The process for cancellation of registration is to be initiated strictly in accordance with Section 12AA(3) and 12AA(4) after carefully examining the applicability of these provisions.

6. The above may be brought to the notice of all concerned."

CONSEQUENCES ON CANCELLATION OF REGISTRATION

The following consequences may arise on the cancellation of the registration of a trust:

- **Income to be taxed as per normal provisions:** Sections 11 to 13 are special provisions governing the taxation of charitable or religious institutions. Section 11 of the Act provides for grant of exemption in respect of income derived from property held under trust for charitable or religious purposes to the extent to which such income is applied or accumulated during the previous year for such purposes in accordance with the provisions contained in sections 11 to 13 of the Act.

Once the registration of the trust or institution stands cancelled, its income shall be computed as per the normal provisions of the Income-tax Act i.e., without giving benefit of provisions of sections 11 and 12. The income in such cases has to be computed under five heads of income i.e., salary, house property, capital gains, PGBP and other sources. It may be noted in case of forfeiture of income, the income is calculated under Section 11 but in case of cancellation of registration, the income will be calculated under five heads of income.

Further, any specific exemption provided under any other provisions to the registered entity shall not be available to such trust or institution after the cancellation of registration.

- **Cancellation of approval under Section 80G:** Section 80G of the Income-tax Act provides deduction while computing the total income in the hands of donor. It provides deduction in respect of donations to certain funds, charitable institutions, etc. Section 80G(5) prescribes certain conditions to be satisfied to get the approval under Section 80G. One of the conditions provided under Section 80G is that an institution is eligible for approval under Section 80G if it's income is not liable to inclusion in its total income under the provisions of sections 11 and 12.

Now, if the registration is cancelled, the exemption under Sections 11 and 12 would not be available to the institution and the income would be liable to inclusion in total income. In such circumstances, the existing approval of the institution would be liable for cancellation.

- **Exemption under Section 10:** Where an institution has been granted registration under Section 12AB and the said registration is in force for any previous year, then the assessee is not eligible for exemption under Section 10 except exemption in respect of clauses (1), (23C), (23EC), (46) and (46A) of Section 10. By implication, once the registration is cancelled, the assessee would be entitled to claim an exemption under Section 10. Hence, if the registration of trust or institution is cancelled then it may avail the benefit of other exemptions provided under Section 10 which were erstwhile, not available.

- **Tax on accreted income:** The cancellation of registration can trigger the provisions of exit tax under Section 115TD. Section 115TD was inserted with effect from June 1, 2016, providing for levy of additional income-tax in case of conversion of a trust into a non-charitable form or on the transfer of assets of a charitable trust on its dissolution to a non-charitable institution.

Section 115TD prescribes circumstances under which exit tax is leviable. If registration granted to trust or institution under Section 12A or 12AA or 12AB has been cancelled, it shall be deemed to have been converted into any form not eligible for registration as per Section 115TD. In such a case, the accreted income of the trust or institution is liable to be taxed at Maximum Marginal Rate i.e., MMR.

APPEAL AGAINST THE ORDER OF CANCELLATION

An assessee aggrieved by the cancellation order passed by PCIT/CIT, may appeal to the Income Tax Appellate Tribunal against such order [Section 253(1)(c)].

Annexure 1 : Text of Section 12AB(4) and 12AB(5)

(4) Where registration or provisional registration of a trust or an institution has been granted under clause (a) or clause (b) or clause (c) of sub-section (1) or clause (b) of sub-section (1) of section 12AA, as the case may be, and subsequently,-

(a) the Principal Commissioner or Commissioner has noticed occurrence of one or more specified violations during any previous year; or

(b) the Principal Commissioner or Commissioner has received a reference from the Assessing Officer under the second proviso to sub-section (3) of section 143 for any previous year; or

(c) such case has been selected in accordance with the risk management strategy, formulated by the Board from time to time, for any previous year, the Principal Commissioner or Commissioner shall-

(i) call for such documents or information from the trust or institution, or make such inquiry as he thinks necessary in order to satisfy himself about the occurrence or otherwise of any specified violation;

(ii) pass an order in writing, cancelling the registration of such trust or institution, after affording a reasonable opportunity of being heard, for such previous year and all subsequent previous years, if he is satisfied that one or more specified violations have taken place;

(iii) pass an order in writing, refusing to cancel the registration of such trust or institution, if he is not satisfied about the occurrence of one or more specified violations;

(iv) forward a copy of the order under clause (ii) or clause (iii), as the case may be, to the Assessing Officer and such trust or institution.

Explanation - For the purposes of this sub-section, the following shall mean "specified violation"-

(a) where any income derived from property held under trust, wholly or in part for charitable or religious purposes, has been applied, other than for the objects of the trust or institution; or

(b) the trust or institution has income from profits and gains of business which is not incidental to the attainment of its objectives or separate books of account are not maintained by such trust or institution in respect of the business which is incidental to the attainment of its objectives; or

(c) the trust or institution has applied any part of its income from the property held under a trust for private religious purposes, which does not enure for the benefit of the public; or

(d) the trust or institution established for charitable purpose created or established after the commencement of this Act, has applied any part of its income for the benefit of any particular religious community or caste; or

(e) any activity being carried out by the trust or institution-

(i) is not genuine; or

(ii) is not being carried out in accordance with all or any of the conditions subject to which it was registered; or

(f) the trust or institution has not complied with the requirement of any other law, as referred to in item (B) of sub-clause (i) of clause (b) of sub-section (1), and the order, direction or decree, by whatever name called, holding that such non compliance has occurred, has either not been disputed or has attained finality.

(g) the application referred to in clause (ac) of sub-section (1) of section 12A is not complete or it contains false or incorrect information.

(5) The order under clause (ii) or clause (iii) of sub-section (4), as the case may be, shall be passed before the expiry of a period of six months, calculated from the end of the quarter in which the first notice is issued by the Principal Commissioner or Commissioner, on or after the 1st day of April, 2022, calling for any document or information, or for making any inquiry, under clause (i) of sub-section (4).

CHANGE IN FORM FC4 UNDER FCRA

NPOs to declare assets created out of FC

2

INTRODUCTION

REVISED REQUIREMENT OF ANNUAL REPORT FOR FC ASSETS

The Central Government has notified the Foreign Contribution (Regulation) Amendment Rules, 2023, vide notification dt. 22nd September, 2023.

This Foreign Contribution (Regulation) Amendment Rules, 2023 shall come into force on the date of its notification i.e. 22nd September, 2023. This amended rules require the NPOs to furnish the details of fixed asset under two new tables in Form FC-4. The notification is enclosed herewith as Annexure.

PRE-AMENDED POSITION

As per Pre-Amended Position, details of fixed asset purchased during the year was only required to be included in FC-4 Return through Point No. 3(b) which requires the following details :

(b) Details of purchase of fresh assets included in Para 3 (a) above:

S.No.	Name of project/activity	Details of fresh assets	Objective of acquiring fresh assets	Cost of fresh assets (in Rs.)
(1)	(2)	(3)	(4)	(5)

Hence as per the pre-amended position, only the assets acquired during the year was to be reported in the above format.

POST-AMENDED POSITION

The FCR Amendment Rules, 2023 has inserted table (ba) and (bb) after the above table 3(b) in FC 4 form which is reproduced here in below:

(ba) Details of movable assets created out of foreign Contribution (as on 31st March of Financial Year):

S.No.	Description of the assets	Value as on beginning of the Financial Year (in Rs.)	Value of assets acquired during the Financial Year (in Rs.)	Value of assets disposed of during the Financial Year (in Rs.)	Value as per the balance sheet at the end of the Financial Year (in Rs.)
(1)	(2)	(3)	(4)	(5)	(6)

(bb) Details of immovable properties acquired out of foreign contribution (as on 31st March of Financial Year):

S.No.	Details of immovable asset (Land/Buildings etc.)	Size	Location (Complete address)	Value as per the balance sheet (in Rs.)
(1)	(2)	(3)	(4)	(5)

SUMMARY OF NEW REQUIREMENT

- **For movable assets :** Details of movable assets created out of foreign contribution and held by the organisation as on 31st March of the respective year is to be reported in the table marked as 3(ba) above. This table requires description of assets, value of asset as on beginning, assets acquired during the year, assets disposed of during the year & value of assets at the end of the financial year.

The only issue for debate may be the meaning of description of assets as in most of the cases assets are accounted for under broad heads like furniture, equipment, medical equipment, etc. though item wise details are maintained in Fixed asset register. As the description of asset has not been defined, this reporting may vary from organisation to organisation depending upon the policy of accounting heads for fixed asset and its disclosure in the financial statement.

- **For Immovable assets :** Details of immovable assets created out of foreign contribution and held by the organisation as on 31st March of the respective year is to be reported in the table marked as 3(bb) above. Here the organistion has to give details of immovable assets, its size, location and value as per Balance Sheet of that FY.

Details of immovable assets seems to be in form of land, building or any other detailed format in which the organisation maintains the details of immovable assets like agricultural land, land for school building, land held as investment, etc.

ASSETS RECEIVED IN KIND

- **Charged as Application:** The requirement is to provide the details of assets out of FC fund and to reconcile the figure as mentioned in the Balance Sheet. However in certain cases the application out of FCRA fund is charged to revenue and assets are not recognised in the Balance Sheet by creating the Fixed Asset fund and therefore these assets though appearing in the Asset Register but may not be part of Balance Sheet. In our opinion all the assets created out of FC fund should be reported in the above schedule and suitable note in this regards may be provided.

- **Not Reported through Form FC-1:** In certain cases, assets received in kind may not have been reported through Form FC 1 form and therefore, all these issues need to be examined by the concerned entity before furnishing the new requirement of details of movable & immovable assets.

Recommendations for finalization of FC statements

It is recommended that while finalising accounts, the audited Financial Statement should contain the detailed information of movable & immovable properties in the same format as required as per the amended Rules so that the FC 4 return as submitted by the organisation can be verified with the audited Financial Statement attached with the CA certificate.

रजिस्ट्री सं. डी.एल.- 33004/99 REGD. No. D. L.-33004/99

भारत का राजपत्र
The Gazette of India

सी.जी.-डी.एल.-अ.-25092023-248983
CG-DL-E-25092023-248983

असाधारण
EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (i)
PART II—Section 3—Sub-section (i)

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं. 541] नई दिल्ली, सोमवार, सितम्बर 25, 2023/आश्विन 3, 1945
No. 541] NEW DELHI, MONDAY, SEPTEMBER 25, 2023/ASVINA 3, 1945

गृह मंत्रालय

अधिसूचना

नई दिल्ली, 22 सितम्बर, 2023

सा.का.नि. 683(अ).—केंद्रीय सरकार, विदेशी अभिदाय (विनियमन) अधिनियम, 2010 (2010 का 42) की धारा 48 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, विदेशी अभिदाय (विनियमन) नियम, 2011 का और संशोधन करने के लिए निम्नलिखित नियम बनाती है, अर्थात् :--

1. **संक्षिप्त नाम और प्रारंभ—**(1) इन नियमों का संक्षिप्त नाम विदेशी अभिदाय (विनियमन) संशोधन नियम, 2023 है।

(2) ये राजपत्र में प्रकाशन की तारीख को प्रवृत्त होंगे।

2. विदेशी अभिदाय (विनियमन) नियम, 2011 के प्ररूप एफसी-4 में, क्रम संख्यांक 3 में, खंड (ख) के पश्चात्, निम्नलिखित अंत:स्थापित किया जाएगा, अर्थात् :--

"(खक) विदेशी अभिदाय में से सृजित जंगम आस्तियों के ब्यौरे (वित्तीय वर्ष के 31 मार्च को) :

क्र.सं.	आस्तियों के वर्णन	वित्तीय वर्ष के आरंभ पर मूल्य (रु. में)	वित्तीय वर्ष के दौरान अर्जित आस्तियों का मूल्य (रु. में)	वित्तीय वर्ष के दौरान निपटान की गई आस्तियों का मूल्य (रु. में)	वित्तीय वर्ष के अंत में तुलन पत्र के अनुसार मूल्य (रु. में)
(1)	(2)	(3)	(4)	(5)	(6)

(खख) विदेशी अभिदाय में से अर्जित स्थावर संपत्तियों के ब्यौरे (वित्तीय वर्ष के 31 मार्च को) :

क्र.सं.	स्थावर संपत्ति के ब्यौरे (भूमि/भवन आदि)	आकार	अवस्थिति (पूर्ण पता)	तुलन पत्र के अनुसार मूल्य (रु. में)
(1)	(2)	(3)	(4)	(5)

".

[फा. सं. II/21022/23(12)/2020-एफसीआरए-III]

के. संजयन, निदेशक (एफसीआरए)

टिप्पण : मूल नियम, भारत के राजपत्र, असाधारण, भाग II, खंड 3, उपखंड (i) में अधिसूचना सा.का.नि. संख्यांक 349(अ), तारीख 29 अप्रैल, 2011 द्वारा प्रकाशित किए गए थे और तत्पश्चात्, सा.का.नि. संख्यांक 292(अ), तारीख 12 अप्रैल, 2012, सा.का.नि. संख्यांक 966(अ), तारीख 14 दिसंबर, 2015, सा.का.नि. संख्यांक 199(अ), तारीख 7 मार्च, 2019, सा.का.नि. संख्यांक 659(अ), तारीख 16 सितंबर, 2019, सा.का.नि. संख्यांक 695(अ), तारीख 10 नवंबर, 2020 और शुद्धिपत्र सा.का.नि. संख्यांक 17(अ), तारीख 11 जनवरी, 2021 और सा.का.नि. संख्यांक 506(अ), तारीख 1 जुलाई, 2022 द्वारा संशोधित किए गए।

MINISTRY OF HOME AFFAIRS
NOTIFICATION

New Delhi, the 22nd September, 2023

G.S.R. 683(E) .—In exercise of the powers conferred by section 48 of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010), the Central Government hereby makes the following rules further to amend the Foreign Contribution (Regulation) Rules, 2011, namely:-

1. Short title and commencement. — (1) These rules may be called the Foreign Contribution (Regulation) Amendment Rules, 2023.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Foreign Contribution (Regulation) Rules, 2011, in Form FC-4, in serial number 3, after clause (b), the following shall be inserted, namely:—

"(ba) Details of movable assets created out of foreign Contribution (as on 31st March of Financial Year):

Sl. No.	Description of the assets	Value as on beginning of the Financial Year (in Rs.)	Value of assets acquired during the Financial Year (in Rs.)	Value of assets disposed of during the Financial Year (in Rs.)	Value as per the balance sheet at the end of the Financial Year (in Rs.)
(1)	(2)	(3)	(4)	(5)	(6)

(bb) Details of immovable properties acquired out of foreign contribution (as on 31st March of Financial Year):

Sl. No.	Details of immovable asset (Land /Buildings etc.)	Size	Location (Complete address)	Value as per the balance sheet (in Rs.)
(1)	(2)	(3)	(4)	(5)

".

[F. No. II/21022/23(12)/2020-FCRA-III]

K. SANJAYAN, Director (FCRA)

Note: The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* notification number G.S.R. 349(E), dated the 29th April, 2011 and subsequently amended, *vide* G.S.R. 292 (E), dated the 12th April, 2012, G.S.R. 966 (E), dated the 14th December, 2015, G.S.R. 199 (E), dated the 7th March, 2019, G.S.R. 659 (E), dated the 16th September, 2019, G.S.R. 695(E), dated the 10th November, 2020 and a Corrigendum *vide* G.S.R. 17(E), dated the 11th January, 2021, and G.S.R. 506(E), dated the 1st July, 2022.

Uploaded by Dte. of Printing at Government of India Press, Ring Road, Mayapuri, New Delhi-110064
and Published by the Controller of Publications, Delhi-110054. AMIT KUMAR JAISWAL

DISALLOWANCES OF APPLICATION AFTER FINANCE ACT 2023

Specific disallowances of Application Under Section 11(1)

3

INTRODUCTION

Prior to Finance Act, 2018, all the incomes applied towards charitable & religious purposes were eligible to be claimed as application against the income of the year. However, since Finance Act, 2018, amendments have been made by virtue of which various specific applications were treated as ineligible even though the amount is applied towards charitable & religious purposes. In other words, the following type of applications were treated as valid and legitimate prior to Finance Act, 2018:

- Corpus donation to another charitable organisation
- Any application of fund without deduction of TDS (Tax Deduction at Source) at appropriate rate
- Any application of fund made in cash above Rs. 10,000/-
- Donation to another charitable organisation was allowed 100% now the amount is restricted to 85%.

DISALLOWANCES FOR INTER CHARITY DONATION TOWARDS CORPUS

As per Explanation 2 to Section 11(1) of the Income Tax Act, 1961 any inter charity grant towards corpus is no longer permissible as application, the statutory text is reproduced as under:

"Any amount credited or paid, out of income referred to in clause (a) or clause (b) read with Explanation 1, to any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or subclause (vi) or sub-clause (via) of clause (23C) of section 10 or other trust or institution registered under section 12AA or section 12AB, as the case may be, being contribution with a specific direction that it shall form part of the corpus, shall not be treated as application of income for charitable or religious purposes."

Therefore, any inter-charity donation towards corpus is not considered as application for the purpose of section 11. For example, if an organisation out of Income of Rs 100/- has applied the entire amount of Rs.100 as application towards charitable purpose including Rs. 30 as donation towards **corpus**. In this case, even though the total amount of Rs.100 is applied towards charitable purpose but the eligible application for the purpose of Income Tax Act be Rs. 70/- as inter-charity donations towards corpus are not considered as application. In this case it may be noted that though Rs. 30 was disallowed but only Rs. 15 can be subjected to tax. In other words, an organisation can make inter charity grant towards corpus out of the 15% available after applying 85%.

DISALLOWANCE DUE TO TDS VIOLATION AND CASH PAYMENTS

With effect from 01.04.2019 any cash payment above Rs. 10,000/- or any payment made in violation of TDS provisions is subject to disallowance. The Explanation 3 to Section 11(1) of Income Tax Act provides the quantum of disallowances in case of TDS violations and cash payment in excess of Rs. 10,000/-, the statutory text is reproduced as under:

"Explanation 3 to Section 11(1) of Income Tax Act [w.e.f. 01-04-2019] : For the purposes of determining the amount of application under clause (a) or clause (b), the provisions of sub-clause (ia) of clause (a) of section 40 and sub-sections (3) and (3A) of section 40A, shall, mutalis mutandis, apply as they apply in computing the income chargeable under the head "Profits and gains of business or profession".

In the light of the above explanation the following applications shall be disallowed in the following manner:

- The amount of application shall be reduced by 30% of the corresponding amount applied for because of non-compliance of TDS provisions or
- The amount of application shall be reduced by the full amount if the corresponding payment in excess of Rs.10,000 is made in cash.

DISALLOWANCE REGARDING INTER CHARITY INSERTED BY FINANCE ACT, 2023

The Finance Act, 2023, has inserted a new Clause (iii) in Explanation 4 to section 11(1) by virtue of which inter-charity donations are to be considered as application only to the extent of 85% of the donation. The relevant clause is reproduced as under:

"(iii) any amount credited or paid, other than the amount referred to in Explanation 2, to any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or subclause (via) of clause (23C) of section 10, as the case may be, or other trust or institution registered under section 12AB, as the case may be, shall be treated as application for charitable or religious purposes only to

the extent of eighty-five percent of such amount credited or paid.";

Hence, inter-charity donation (other than towards corpus) shall be considered as application only to extent of 85% for the purpose of section 11. For example, if an organisation out of Income of Rs 200/- has applied a sum of Rs.100/- as inter charity donation and Rs. 70/- as direct application towards charitable purposes.

In this case prior to 01.04.2023 the organisation would have got the benefit of 85% application as its income was Rs. 200/- and its consolidated application was Rs. 170/- which is 85% of income of Rs 200/-. However post amendment in this case the total application shall be Rs.155 (i.e. 85% of Rs. 100 and Rs 70/) instead of Rs.170/- .

TAX IMPLICATION ON DISALLOWANCE OF 15% OF INTER CHARITY GRANT

The question of law is whether the disallowance of 15% accumulation under the new Clause (iii) in Explanation 4 to section 11(1) will result in tax liability in the light of the fact no amount is actually available to be accumulated. In our opinion there will be no tax implication if the inter charity grant is allowed as application only to the extent of 85% of the grant made.

For example, if an organisation out of Income of Rs 100/- has applied a sum of Rs.100/- as inter charity donation and therefore under the amended law its application of income will be restricted to Rs. 85/-. In this case even though the organisation has applied 85% of its total income but it does not have any actual fund available to accumulate the remaining 15% as the actual cash flow was 100%. In this case the 15% accumulation shall be deemed to have been used for inter charity grant out of accumulated funds. It may be noted there is no bar in using the 15% indefinite accumulation in the year itself, for instance if an organisation has an income of Rs. 100/- and makes direct utilisation of Rs. 85/- and gives Rs. 15/- as corpus donation, even in this case the organisation will not be subjected to tax only because it did not accumulate 15% and instead donated it as corpus donation out of eligible statutory accumulation of 15%.

It is to be noted that as statutory accumulation upto 15% is available unconditionally and therefore one can take this benefit of statutory accumulation upto 15% of the income on the argument that this set apart fund has been used to fund the disallowance portion of application amount.

However, at the same time one cannot exercise the benefit of five years accumulation, as this requires the amount to be set apart and invested in Section 11(5) mode, whereas there is no fund available out of the income of the current year to allow such investment.

INTER CHARITY GRANT AFTER FINANCE ACT 2023

Application Restricted to
85% of Total Grant

4

INTRODUCTION

Inter-charity donation is permissible as application of income but it is to be ensured that inter-charity donation is given for the objects for which the donor trust is created. In other words, the donor and donee should share similar objects.

Inter-charity donation is treated at par with direct application for the purposes of sections 11(1)(a) and 10(23C).

The Finance Act 2023 has made a very important amendment with regard to inter charity grant. With effect from assessment year 2024-25 **only 85%** of the eligible donations made by a trust or institution registered under Section 12AB to another trust or institution registered under Section 12AB or approved under Section 10(23C), will be considered as the application of income.

The inter-charity donations with a specific direction that it shall form part of the corpus of the donee shall not be treated as an application of income for charitable or religious purposes.

Corpus donation given by a section 12AA/12AB registered institution to a section 12AA/12AB registered NGO as well as to a section 10(23C) approved institution will not be treated as an application of income.

Corpus donation given by a section 10(23C) approved institution to a section 12AA/ 12AB registered trust as well as to a section 10(23C) approved institution will not be treated as an application of income.

Once funds have been accumulated under section 11(2), they can only be utilized for charitable purposes directly by the organization in question, and cannot be transferred between organizations. However, if a charitable organization is dissolved, inter-charity donations from the accumulated funds under section 11(2) will be allowed.

While inter-charity donations should ideally be given to a trust with similar objectives, it is important to apply such conditions liberally, as an organization is allowed to participate in any incidental charitable activity, even if it is not explicitly mentioned in its objectives.

The funds given as inter-charity donation shall be treated as utilised in the books of the donor even if they might not have been applied for charitable purposes by the donee organisation in the year of receipt. However, the donee organisation must apply them for charitable purpose only; CBDT Instruction No. 1582, dated 19-10-1984 may be referred.

However, Inter charity donation to a trust with different objective shall not be treated as valid application. The ITAT Allahabad in the case of Nazareth Hospital Society v. Deputy Commissioner of Income-Tax (Exemption) Lucknow Uttar Pradesh 2021 (2) TMI 739 held that inter charity donation to an organisation which is engaged in some other type of activities is not permissible. It was necessary that both the trust should share similar objects and should have common activities.

DIRECT APPLICATIONS AND INTER CHARITY DONATIONS

In today's landscape of growing corporate involvement in the charitable sector, several innovative NGO models are emerging. One such model is the Mother NGO or Facilitating NGO, which does not implement programs directly but instead generates resources and funding for smaller, downstream NGOs.

The concept of a Mother NGO refers to a type of non-profit organization that serves as a hub or central organization that coordinates and supports the work of smaller or community-based NGOs. By supporting smaller NGOs, Mother NGOs can help build the capacity of local organizations and amplify their impact.

A charitable and religious trust is subject to tax in accordance with the provisions of Section 11 to Section 13. A trust deriving income from a property held under trust for charitable or religious purposes is not included in its total income if such income is applied for charitable purposes in India. The income of trusts and institutions is exempt under Section 11/12, provided a minimum of 85% of the income is utilised during the year for charitable or religious purposes. These trusts and institutions can accumulate 15% of their income annually.

The mandatory 85% utilisation can be done by the trust or institution itself or by donating to trusts with similar objectives. Donations to other trusts or institutions should not be towards corpus to ensure that the donee trust or institutions apply the donations.

The inter-charity donation is treated at par with direct application for the purposes of Sections 11(1)(a).

AMENDMENT BY THE FINANCE ACT 2023

The Finance Act 2023 inserted clause (iii) in Explanation 4 to Section 11(1) w.e.f. 01-04-2024 as under:

"(iii) any amount credited or paid, other than the amount referred to in Explanation 2, to any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10, as the case may be, or other trust or institution registered under section 12AB, as the case may be, shall be treated as application for charitable or religious purposes only to the extent of eighty-five per cent of such amount credited or paid.";

After the amendment by the Finance Act 2023, only 85% of the eligible donations made by a trust or institution registered under Section 12AB to another trust or institution registered under Section 12AB or approved under Section 10(23C) shall be treated as the application. This amendment will take effect from 01-04-2024 and will accordingly apply in relation to the assessment year 2024-25 and subsequent assessment years.

PURPOSE OF AMENDMENT

The objective of the amendment is to ensure the minimum level of application of 85% at each layer of inter-charity donation rather than taxing the disallowance amount of 15%. The Memorandum explaining the provisions in the Finance Bill, 2023 provides the rationale of the change as under :

"3.2 Instances have come to the notice that certain trusts or institutions are trying to defeat the intention of the legislature by forming multiple trusts and accumulating 15% at each layer. By forming multiple trusts and accumulating 15% at each stage, the effective application towards the charitable or religious activities is reduced significantly to a lesser percentage compared to the mandatory requirement of 85%.

3.3 In order to ensure intended application toward charitable or religious purpose, it is proposed that only 85% of the eligible donations made by a trust or institution under the first or the second regime to another trust under the first or second regime shall be treated as application only to the extent of 85% of such donation."

There will be no tax implications under both law i.e., pre-amended and post amendment. This amendment is intended to curb the 15% accumulation claimed by the donor as well as donee organisation.

CATEGORIES OF INTER CHARITY DONATIONS

The inter-charity donations can be classified for tax purposes into the following categories:

- Inter-charity donations out of income not towards the corpus
- Inter-charity donations out of income towards the corpus
- Inter-charity donations from accumulated funds under section 11(2)
- Inter-charity donations from accumulated funds that are not under section 11(2)
- Inter-charity donations from accumulated funds under section 11(2) in the case of dissolution.

TAXATION OF NPOs U/S 115BBI

Failure to comply conditions of application of Income

5

INTRODUCTION

Income derived from property held under trust or of an institution wholly for charitable/religious purposes is exempt if 85% of the income is spent on the objects of the trust during the year. As a matter of fact, charitable or religious institution are not subject to tax provided the follow all the conditions of registration as well as the compliance with regard to the application of income. Therefore, the tax liability is in the nature of a penalty against any violation of the provisions of the Act.

Income derived from property held under trust or an institution wholly for charitable/ religious purposes is exempt if 85% of the income is spent on the objects of the trust during the year. If the amount spent is less than 85% of the income, the shortfall is taxable.

It is to be noted that Sections 11 to 13 are a complete code governing the taxation of charitable and religious institutions. It provides various situations that result in non-compliance and the implication for such non-compliance. In the event of non-compliance, such incomes shall not be subject to application and/or the benefit of section 11 and 12 will be withdrawn or the registration status will be lost for that particular year of non compliance.

In this issue we shall discuss the provisions of section 115BBI which become applicable when an organisation fails to comply with the conditions under section 11 with regard to application of income.

OVERVIEW OF THE NON COMPLIANCE SUBJECT TO TAX

The provisions of section 14 and five heads of income do not apply to NGOs. Computation of income of NGO should be made only under sections 11 to 13, and the other provisions of the Act are not applicable. As a matter of fact, in the case of a charitable or religious institutions, the income subject to tax is not computed. What is computed is the income eligible for exemptions under sections 11 and 12. This is the fundamental difference between a normal assessee and an exempt institution; therefore, the tax liability is in the nature of a penalty against any violation of the provisions of the Act.

Section 11(1)(a) makes it clear that the income derived from the property held under trust wholly for charitable and religious purposes, to the extent to which such income is applied to such purposes in India, is excluded. Once the income from property, as such, is excluded, there is no question of computing the income from the property by applying the provisions of section 14 and such income shall be subjected to tax under various specific provisions under sections 11 to 13.

It is to be noted that Sections 11 to 13 are a complete code governing the taxation of charitable and religious institutions. It provides various situations that result in non-compliance and the implication for such non-compliance. In the event of non-compliance, such incomes shall not be subject to application and/or the benefit of sections 11 and 12 will be withdrawn or the registration status will be lost for that particular year of non-compliance.

The following are the situations, the non-compliances of which shall be subject to penal tax:

- 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.

- Value of any Medical or Educational Services provided to Interested Persons [Section 12(2)]

- Violation of conditions specified under section 12A(1)

(i) Non-filing of Income-tax Return
(ii) Non-obtaining & furnishing of Audit Report
(iii) Non-maintenance of books of account as prescribed under Rule 17AA (w.e.f. Assessment Year 2023-24)
(iv) Non-applying for renewal of Registration or for making the provisional Registration into a normal registration

- Not applying for Re-registration for confirming the modification of the object clause

- Violation of section 13(1)

(i) Income applied for the private religious purpose [Section 13(1)(a)]
(ii) Income applied for particular religious community or caste [Section 13(1)(b)]
(iii) Benefit to interested person [Section 13(1)(c)]

(iv) 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)]
- Shortfall in applying 85% of Income.

VARIOUS TYPES OF PENAL TAXATION OF NPOS

- NPOs shall be subject to penal taxation for non compliances which are summarised in the following categories:
- The income which is subject to tax due to specific non-compliances mentioned in section 115BBI shall be subject to tax @ 30%. (Inserted by the Finance Act, 2022 w.e.f. AY 2023-24)
- When benefits of Sections 11 and 12 are withdrawn for a specified reason, the income will be subject to tax as per section 13(10), read with section 164(2).
- When the registration is not renewed or the organisation fails to apply for renewal, the organization is subject to tax as a normal assessee, and income shall be computed under five heads of income as a normal assessee.
- Anonymous donation under section 115BBC received by charitable organizations is taxable at 30% without any deduction or set-off under any other head.

INCOMES SUBJECT TO TAX UNDER SECTION 11 5BBI (FROM AY 2023-24)

Hitherto, there was no specific section for taxing the certain income of a charitable institution at a specific prescribed rate. The Finance Act, 2022 inserted a new Section 115BBI to provide a special rate of tax for the specified incomes of trust. Earlier, these incomes were subject to tax under Section 164(2). However, after Finance Act, 2022, these incomes shall be subject to tax @ 30% as per the newly inserted Section 115BBI effective from the Assessment year 2023-24.

TEXT OF SECTION 11 5BBI SPECIFIED INCOME OF CERTAIN INSTITUTIONS.

(1) Where the total income of an assessee, being a person in receipt of income on behalf of any fund or institution referred to in sub-clause (iv) or any trust or institution referred to in

sub-clause (v) or any university or other educational institution referred to in sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (via), of clause (23C) of section 10 or any trust or institution referred to in section 11, includes any income by way of any specified income, not with standing anything contained in any other provision of this Act, the income-tax payable shall be the aggregate of-

(i) the amount of income-tax calculated at the rate of thirty per cent on the aggregate of such specified income; and

(ii) the amount of income-tax with which the assessee would have been chargeable had the total income of the assessee been reduced by the aggregate of specified income referred to in clause (i).

(2) Notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee under any provision of this Act in computing the specified income referred to in clause (i) of sub-section (1).

Explanation-*For the purposes of this section, "specified income" means-*

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; or b) deemed income referred to in Explanation 4 to the third proviso to clause (23C) of section 10, or sub-section (1B) or sub-section (3) of section 11; or

c) any income, which is not exempt under clause (23C) of section 10 on account of violation of the provisions of clause (b) of the third provisions of clause (23C) of section 10, or not to be excluded from the total income under the provisions of clause (d) of sub-section (1) of section 13; or

d) any income which is deemed to be income under the twenty-first proviso to clause (23C) of section 10 or which is not excluded from the total income under clause (c) of sub-section (1) of section 13; or

e) any income which is not excluded from the total income under clause (c) of sub-section (1) of section 11.

RATE OF TAX UNDER SECTION 115BBI

If the total income of any assessee being a trust referred under Section 11 or Section 10(23C), includes any income by way of any specified income, the income tax payable shall be the aggregate of:

a) the amount of income tax calculated at the rate of 30% on the aggregate of specified income; and

b) the amount of income tax the assessee would have been chargeable had the total income of the assessee would have been reduced by the aggregate of specified income referred to above.

It is important to note that, the tax rate shall be without the benefit of the basic exemption limit of Rs. 2.5 Lakhs. Also, before the insertion of Section 115BBI by the Finance Act, 2022, the specified incomes were subject to tax under Section 164(2). Therefore, most of the incomes were subject to tax with the benefit of an exemption limit of Rs. 2.5 Lakhs other than violations under Section 13(1)(c) and 13(1)(d).

No deduction of any expense or loss

No deduction in respect of any expenditure or allowance or set-off of any loss shall be allowed to the assessee under any provision of the Act in computing the specified income [Section 115BBI(2)].

WHICH INSTITUTIONS ARE TAXABLE UNDER SECTION 115BBI?

The following institutions shall be covered for payment of tax under this provision:

(a) Any other fund or institution established for charitable purposes [Section 10(23C)(iv)];

(b) Any trust (including any other legal obligation) or institution wholly for public religious purposes or public religious and charitable purposes [Section 10(23C)(v)];

(c) Any university or other educational institution existing solely for educational purposes (not for purposes of profit) [Section 10(23C)(vi)]; and

(d) 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 (not for purposes of profit) [Section 10(23C)(via)].

(e) Any trust or institution, as referred to in Section 11.

INCOMES TAXABLE UNDER SECTION 115BBI

The Explanation to section 115BBI(2) provides a list of specified incomes that shall be taxable at a special rate of 30% under Section 115BBI. The following incomes of specified trusts and institutions shall be taxable under Section 115BBI.

- **Shortfall in applying 85% of Income:** In order to be eligible for claiming exemption, it is essential that the income of the trust is applied to such objects. A charitable trust or institution will have to apply at least 85% of the income to charitable purposes. Suppose the income spent on charitable or religious purposes, during the previous year, falls short of 85% of the income derived during the year. In that case, such shortfall will be liable to tax, and such income is liable to be taxed under section 115BBI.

If the trust has complied with the following conditions, it will not be subject to penal tax:

(a) If an organization is not able to apply 85 per cent of its income in a particular year, then it can also accumulate the income in excess of 15 per cent of income. Such excess accumulation has to be used for religious or charitable purposes within the next 12 months or in the year of receipt of income under Explanation to section 11(1). Such accumulation is otherwise called deemed application.

(b) Application in Form No. 10 to be made specifying the purpose for accumulation of income for a period of 5 years. Period for which the organization is unable to apply income for that purpose due to court order/ injunction is to be excluded. The Finance Act 2023 has amended Section 11 to provide that Form 10 must be submitted at least two months before the due date of filing of income tax return specified in Section 139(1). Section 13(9) provides that to claim the benefit of accumulation for five years, Form 10 and ITR needs to be submitted before the due date. The Finance Act 2023 has amended Section 11(2) to prepone the date to file Form 10 by two months, however, no consequential amendment has been made in Section 13(9). So, in a way, it implies that there will be no penal consequences if Form 10 is filed up to the due date provided for filing an Income-tax return, i.e., there will be no withdrawal of exemption in respect of the accumulated amount.

- **Deemed income referred to in Explanation 4 to the third proviso to section 10(23C):** The Finance Act, 2022 inserted Explanation 4 to the third proviso to Section 10(23C) to provide that any income referred to in the Explanation 3 shall be deemed to be the income of the previous year in which the following takes place:

a) the income is applied for purposes other than wholly and exclusively to the objects for which the trust or institution under the first regime is established or ceases to be accumulated or set apart for application thereto, or

b) the income ceases to remain invested or deposited in any of the forms or modes specified in sub-section (5) of section 11, or

c) the income is not utilized for the purpose for which it is so accumulated or set apart during the period referred to in clause (a) of Explanation 3.

d) the income is credited or paid to any trust or institution registered under section 12AA or section 12AB or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via).

For the circumstances referred to in clause (c), the income shall be deemed to be the income of the previous year which is the last previous year of the period, for which the income is accumulated or set apart under sub-clause (a) of clause (iii) of the proposed Explanation 3, but not utilized for the purpose for which it is so accumulated or set apart.

- **Deemed income referred to in section 11(1B):** If an organization is not able to apply 85 per cent of its income in a particular year, then it can also accumulate income in excess of 15 per cent of income. Such excess accumulation has to be used for religious or charitable purposes within the next 12 months or in the year of receipt of income under Explanation to section 11(1). Such accumulation is otherwise called deemed application. Hence, NGOs can exercise the Option under clause (2) of the Explanation to sub-section (1) of section 11 by Filing Form 9A. The Finance Act 2023 has amended Section 11 to provide that Form 9A shall be filed at least two months prior to the due date specified under Section 139(1) for furnishing the return of income for the previous year.

If any income in respect of which an option is exercised under clause (2) of the Explanation to sub-section (1) is not applied to charitable or religious purposes in India during the period referred to in sub-clause (a) or, as the case may be, sub-clause (b), of the said clause, then, such income shall be deemed to be the income of the person in receipt thereof and it shall be subject to tax under section 115BBI.

- **Deemed income referred to in section 11(3):** If an organization is not able to apply 85 per cent of its income in a particular year, then it can exercise the option to accumulate the income in excess of 15 per cent of income for five years under section 11(2). The benefit of exemption, allowed to an assessee trust for accumulation of its income in excess of 15% is subject to certain conditions and will be forfeited if such conditions are not complied with by the assessee. The amount of exemption allowed will be deemed to be the income of the assessee-trust.

Accordingly, where any trust income accumulated in excess of 15% and in respect of which exemption is granted, the exemption will be forfeited if:

a) It is applied for purposes other than religious or charitable or ceases to be accumulated or set apart for application to religious or charitable purposes;

b) It ceases to remain invested in statutory form of investment specified under section 11(5);

c) It is not utilized for the purpose for which it is so accumulated within the allowed period of 5 years or in the year immediately following the expiry thereof;

d) It is credited or paid to any other trust or institution registered under section 12AA/12AB;

e) It is credited or paid to any other fund, institution, trust, hospital, university or other educational institution, or hospital or any other medical institution referred under section 10(23C)(iv), (v), (vi) and (via).

f) Income is applied for private religious purposes or for the benefit of a particular religious community or a particular interested person which does not endure for the benefit of public as a whole.

If the exemption is forfeited due to above circumstances, the amount accumulated shall deemed to be income of the previous year in which such default has occurred or at the end of the previous year or shall be taxed in the year in which the conditions of Section 11(2) are violated.

- **Violation of provision relating to permissible investments:** The following incomes shall be taxed under Section 115BBI, i.e., any income which is not:

  a) exempt under section 10(23C) on account of violation of clause (b) of the third proviso to section 10(23C); or

  b) excluded from total income under section 13(1)(d).

The income of trust for charitable or religious purposes or a charitable or religious institution to be invested in permissible modes of investments under section 11(5). This violation shall attract that portion of income to be taxed under Section 115BBI.

The Finance Act 2022 has amended Section 13(1)(d) with effect from the assessment year 2023-24 to provide that in case any funds of the charitable institution are invested or deposited in any impermissible modes, then income to the extent of such deposits or investments shall not be excluded from the total income of the institution. Thus, if an assessee makes an impermissible investment, the income equivalent to such investment will be subject to tax under section 13(1)(d). The part of income which is subject to tax as per the amended section 13(1)(d) shall be subject to tax @ 30% in terms of the provision of Section 115BBI.

[See also, the chapter on the Forfeiture - Violation regarding the investment of funds under section 13(1)(d)]

- **Income applied for the benefit of interested person:** The following income shall be subject to Section 115BBI, any income which is

  a) deemed to be income under the twenty-first proviso to section 10(23C);
  or

  b) not excluded from total income under section 13(1)(c).

If the income or part of income or

property of any trust or institution has been applied directly or indirectly for the benefit of any person referred to in Section 13(3), such income or part of income or property shall be deemed to be the income of such person of the previous year in which it is so applied.

Such income shall be subject to tax under Section 115BBI.

Section 13(1)(c) is attracted if the income of a voluntary organization is applied for the benefit of certain specified interested persons. The Finance Act, 2022 has amended Section 13(1)(c) to provide that only that part of income which has been applied in violation to the provisions of the said clause shall be liable to be included in total income. This part of income which is subject to tax as per the amended section 13(1)(c) shall be subject to tax @ 30% in terms of the provision of Section 115BBI.

In addition to this, part of the income shall also be subject to penalty under newly inserted Section 271AAE w.e.f. Assessment Year 2023-24. The Finance Act, 2022 has inserted a new section 271AAE which provides for penalty, if benefit is provided to specified person in violation of section 13(1)(c).

- **Application towards charitable purposes outside India:** Under section 11(1)(c), income applied on activities outside India is not eligible for exemption unless the following conditions are satisfied:

  a) The charitable organization happens to be a trust created before 1-4-1952 or it is engaged in promotion of international welfare in which India is interested,

  b) Central Board of Direct Taxes (CBDT) has by general or special order granted the exemption for carrying out such activities.

An organization can apply to the CBDT for permission to work outside India. The applications seeking approval u/s 11(1)(c) may be submitted in the office of Member (IT), Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, North Block, New Delhi.

It may be noted that if the income is disallowed then the impugned amount shall be taxed under Section 115BBI. Thus, if a trust applies its income outside India without approval/permission from CBDT, then such income shall not be eligible for exemption and shall be subject to tax under section 115BBI.

TAXATION OF NPOs U/S 13(10)

Not Fulfilling The Conditions of Registration

6

INTRODUCTION

Income derived from property held under trust or of an institution wholly for charitable/religious purposes is exempt if 85% of the income is spent on the objects of the trust during the year. As a matter of fact, charitable or religious institution are not subject to tax provided they follow all the conditions of registration as well as the compliance with regard to the application of income. Therefore, the tax liability is in the nature of a penalty against any violation of the provisions of the Act.

Income derived from property held under trust or an institution wholly for charitable/ religious purposes is exempt if 85% of the income is spent on the objects of the trust during the year. If the amount spent is less than 85% of the income, the shortfall is taxable.

It is to be noted that Sections 11 to 13 are a complete code governing the taxation of charitable and religious institutions. It provides various situations that result in non-compliance and the implication for such non-compliance. In the event of non-compliance, such incomes shall not be subject to application and/or the benefit of sections 11 and 12 will be withdrawn or the registration status will be lost for that particular year of non-compliance.

In this issue we shall discuss the provisions of section 13(10) which become applicable when an organization fails to comply with the conditions under section 11 with regard to application of income.

VARIOUS TYPES OF PENAL TAXA-TION OF NPOS

NPOs shall be subject to penal taxation for non-compliances which are summarized in the following categories:

- The income which is subject to tax due to specific non-compliances mentioned in section 115BBI shall be subject to tax @ 30%. (Inserted by the Finance Act, 2022 w.e.f. AY 2023-24)

- When benefits of Sections 11 and 12 are withdrawn for a specified reason, the income will be subject to tax as per section 13(10), read with section 164(2).

- When the registration is not renewed or the organization fails to apply for renewal, the organization is subject to tax as a normal assessee, and income shall be computed under five heads of income as a normal assessee.

Anonymous donation under section 115BBC received by charitable organizations is taxable at 30% without any deduction or set-off under any other head.

NON-COMPLIANCES SUBJECT TO SECTION 13(10) AND 13(11)

The Finance Act 2022 inserted Section 13(10) with effect from the assessment year 2023-24 to provide that in the specified situations, the income chargeable to tax shall be computed after allowing a deduction for expenditure incurred for the objects of the institution. Further, the newly inserted Section 13(11) provides that no deduction in respect of any expenditure or allowance or set-off of any loss shall be allowed to the assessee under any other provision of the Act.

It is to be noted that up to the assessment year 2022-23, these violations resulted in the withdrawal of benefits under sections 11 and 12 and the entire income of the organisation was subject to tax under section 164(2) of the Income-tax Act without any benefit of the application of income. However, after the insertion of Sections 13(10) and 13(11), such income will be subject to the provisions of Sections 13(10) & (11).

TEXT OF SECTION 13(10) AND 13(11)

(10) Where the provisions of sub-section (8) are applicable to any trust or institution or it violates the conditions specified under clause (b) or clause (ba) of sub-section (1) of section 12A, its income chargeable to tax shall be computed after allowing deduction for the expenditure (other than capital expenditure) incurred in India, for the objects of the trust or institution, subject to fulfilment of the following conditions, namely: -

(a) such expenditure is not from the corpus standing to the credit of the trust or institution as on the end of the financial year immediately preceding the previous year relevant to the assessment year for which income is being computed;

(b) such expenditure is not from any loan or borrowing;

(c) claim of depreciation is not in respect of an asset, acquisition of which has been claimed as application of income, in the same or any other previous year; and

(d) such expenditure is not in the form of any contribution or donation to any person.

Explanation-*For the purposes of determining the amount of expenditure under this sub-section, the provisions of sub-clause (ia) of clause (a) of section 40 and sub-sections (3) and (3A) of section 40A, shall, mutatis mutandis, apply as they apply in computing the income chargeable under the head "Profits and gains of business or profession".*

(11) For the purposes of computing income chargeable to tax under sub-section (10), no deduction in respect of any expenditure or allowance or set-off of any loss shall be allowed to the assessee under any other provision of this Act.

SITUATIONS ATTRACTING SECTION 13(10)

In the following situations, the income chargeable to tax shall be computed after allowing a deduction for expenditure incurred for the objects of the institution:

- **Commercial receipts in excess of 20%:**The seventh category NGOs under section 2(15) i.e., for advancement of any other object of general public utility, can have specified business activity upto 20% of gross receipt as amended by Finance Act, 2015. If the seventh category NGOs have incidental business activity in excess of 20% of gross receipt, then their charitable status will not be lost, but their income shall be computed as per newly inserted section 13(10) & 13(11).

- **Non-Obtaining and/or Non-furnishing of Audit Report:** Section 12A prescribes the conditions that a charitable institution must fulfil in order to be eligible for exemption under Sections 11 and 12. Among these essential conditions are, registration under Section 12AB, re-registration on modification of objects, maintenance of books of account, audit of accounts, and filing of the income tax return.

Thus, to avail the exemption under Section 11 and Section 12, it is mandatory for a trust to get its books of accounts audited. The books of account are required to be audited where the total income of the trust before exemption under section 11 and 12 exceeds the maximum amount not chargeable to tax.

After the Finance Act, 2020, it has become mandatory that the Audit Report should be obtained and also furnished one month prior to due date of filing the return under section 139(1). Hence, if the trust fails to obtain the audit report or fails to upload the Audit report one month prior to due date of filling the Return, the income shall be subject to tax on the income computed in the manner specified under sections 13(10) and 13(11).

- **Non-filing of Income-Tax Return:** The entities registered under section 12AB are required to file a return of income under section 139(4A) by virtue of section 12A(1) if the total income without giving effect to the provisions of sections 11 and 12 exceeds the maximum amount which is not chargeable to income-tax. The condition for filing of return of income has to be examined every year. In case a charitable institution does not file its return of income within the required time, it shall be subject to tax on the income computed as per newly inserted sections 13(10) and 13(11).

- **Non-maintenance of Books of Accounts:** Trust or institutions, having income exceeding the maximum amount not chargeable to tax, shall also be required to keep and maintain books of account and other documents in such form and manner and at such place, as may be provided by rules. (Requirement inserted by the Finance Act, 2022 w.e.f. A.Y. 2023-24).

It is to be noted that this condition to maintain books of accounts is in addition to the conditions requiring the trust or institutions to get registration, audit of the books of accounts and filing of return of income. Thus, if the trust fails to maintain books of accounts as prescribed, then also the income shall be subject to tax under sections 13(10) and 13(11).

HOW SHALL INCOME BE COMPUTED?

The income chargeable to tax shall be computed after allowing the deduction for the expenditure (other than capital expenditure) incurred in India for the objects of the trust or institution, subject to fulfilment of the following conditions, namely:

- Such expenditure is not from the corpus standing to the credit of such trust or institution as on the last day of the financial year immediately preceding the previous year relevant to the assessment year for which the income is being computed;

- Such expenditure is not from any loan or borrowing;

- Claim of depreciation is not in respect of an asset, acquisition of which has been claimed as an application of income in the same or any other previous year; and

- Such expenditure is not in the form of any contribution or donation to any person.

APPLICABILITY OF DISALLOW-ANCE PROVISIONS

The provisions of Section 40(a)(ia), Section 40A(3) and Section (3A) shall, mutatis mutandis, apply as they apply in computing the income chargeable under the head "Profits and gains of business or profession". Therefore, the disallowances shall be made for the cash payment of expenditure and non-deduction or non-payment of TDS on the sum payable to a resident. Further, no deduction of any expenditure or allowance or set-off of any loss shall be allowed to the assessee under any other provision of the Act.

EXEMPTION/ BENEFITS WHICH SHALL NOT BE AVAILABLE WHILE COMPUTING INCOME

It is to be noted that the following exemption/benefit shall not be available when income is computed under section 13(10) & 13(11):

(a) Capital expenses shall not be considered as the application of income

(b) Inter-charity donation shall not be considered as application

(c) No benefit of statutory accumulation of 15%

(d) No provision for applying for accumulation as available as per normal computation provision.

- **Surplus Income and Tax Rate :** The income computed under sections 13(10) and 13(11) shall be subject to tax under section 164(2).

DEPRECIATION

Under Section 11(6) of Income Tax Act

7

INTRODUCTION

The term 'depreciation' means a decrease or reduction in the value of an asset over a period of time due to wear and tear or obsolescence. In other words, depreciation is a systematic allocation of the cost of a capital asset over its useful life. Depreciation is a non-cash expenditure to protect an organization against erosion in the value of assets and is generally charged while the finalization of accounts to reflect a true and fair view of the financial result and the financial status of the organization.

Depreciation is available to charitable or religious organisations under section 11(1) read with section 11(6) of the Income-tax Act.

Unlike other commercial organisations, charitable organisations need to understand the difference between an asset created out of income (subject to application) and assets created from sources other than income.

Depreciation is claimed in compliance with section 11(6) of the Income-tax Act. This section was inserted by the Finance (No. 2) Act 2014 with effect from 1-4-2015 to disallow the double deduction. This section clearly states that depreciation shall not be allowed while computing income in respect of any asset, acquisition of which has been claimed as an application of income in the same or other previous year.

Before the amendment made by Finance Act, 2014, depreciation was claimed as a charge against income even for those assets which had already been claimed as an application at the time of purchase. It amounts to double deduction; however, such double deduction was permitted based on various judicial pronouncements.

In the case of CIT v. Karnataka Reddy Janasangha [2017] 80 taxmann.com 171/ 247 Taxman 9 , the Supreme Court of India declared that Section 11(6), which was introduced by Finance (No. 2) Act, 2014, and pertains to depreciation, will be applicable from the assessment year 2015-16 onwards. Therefore, the amendment has a prospective nature and cannot be applied retrospectively.

Charitable organizations are not bound to follow the depreciation rates prescribed under income tax laws. Hence, they can commercially determine their depreciation rates, considering the fact that Section 14 and Section 32 do not apply to them.

Depreciation which is claimed as application over and above 85% application requirement is academic in nature as it will not result in any additional corpus or fund for the organisation for replacement of asset.

All assets created out of sources other than income shall be eligible for depreciation, including assets created out of restricted grants or legal obligation not treated as income under section 2(24)(iia) or section 2(24)(xviii).

The Finance Act, 2022 has inserted a new explanation after section 11(7), as a result application will be allowed only on a cash basis, which raises the question of whether depreciation (being a non-cash expenditure) will be permissible henceforth. However, the said explanation shall not affect the admissibility of depreciation as application of income subject to the provisions of section 11(6).

ALLOWABILITY OF DEPRECIATION UNDER SECTION 11(6)

- Depreciation can be claimed in compliance with section 11(6) of the Income-tax Act. This section was inserted by the Finance (No. 2) Act, 2014 with effect from 1-4-2015 to disallow the double deduction of depreciation. This section clearly states that depreciation shall not be allowed against those assets which have been treated as application of income in earlier years.

- The text of section 11(6) with emphasis is reproduced as under: "(6) In this section where any income is required to be applied or accumulated or set apart for application, then, for such purposes the income shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset, acquisition of which has been claimed as an application of income under this section in the same or any other previous year."

- The explanatory note to the Finance (No. 2) Act, 2014 also clarified that depreciation shall not be allowed if acquisition of assets was claimed as application in the current earlier year. The relevant extract of explanatory note is as under: "It is proposed to insert sub-sections (6) and (7) in the said section so as to provide that- (i) where any income is required to be applied or accumulated or set apart for application, then, for such purposes the income shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset, acquisition of which has been claimed as an application of income under this section in any previous year, and"

- Prior to the amendment introduced by the Finance (No. 2) Act, 2014, depreciation was claimed as a charge against income even for those assets that had already been claimed as an application at the time of acquisition, resulting in a double deduction. However, such double deduction was allowed based on judicial precedents.

SECTION 11(6) CANNOT BE APPLIED RETROSPECTIVELY

The Supreme Court of India in the case of CIT v. Karnataka Reddy Janasangha [2017] 80 taxmann.com 171/247 Taxman 9 held that section 11(6) inserted by Finance (No. 2) Act, 2014 pertaining to depreciation would apply from assessment year 2015-16 onwards, in other words, the amendment is prospective in nature; it cannot be applied retrospectively. As a result, organisations who had claimed double deduction prior to the enactment of section 11(6) can sustain such a claim.

CAN A PART OF THE ASSET BE CLAIMED AS AN APPLICATION UNDER SECTION 11(6)

- Section 11 of the Income Tax Act restricts trusts to claim the application of income only to the extent of income available, unlike commercial organizations. For example, if the income is Rs. 100 then the application cannot be Rs. 120, unlike a commercial organisation where the profit and loss account can reflect losses. In case of a trust even if the application is Rs. 120 it will only imply that Rs. 20 was spent from sources other than income and shall remain as an unabsorbed expense to be set off against future income. This view also draws authority from the fact that there is a fundamental difference between:

  (a) Charge against income

  (b) Application of income

- Under the scheme of section 11, in order to arrive at the income available for application, all charges have to be deducted. For example, if the trust has incurred fundraising expenses, such expenses will first be deducted from the fund raised to determine the income subject to 85% application. Similarly, if any NGO has income from house property, then the expenses against such property will first be deducted from the property income to determine the income subject to 85% application. In other words, fundraising expenses or expenses against property are a charge against income and cannot be treated as applied toward charitable purposes.

- In light of the above, organizations can only claim applications to the extent of available income, including both revenue and capital applications. Any asset, in whole or in part, can only be claimed if income is available. If income is insufficient to cover the entire cost of the asset, only the portion financed from income should be recognized as an application of income under section 11(1)(a) in the Income and Expenditure Account. It is recommended that organizations segregate assets into two schedules: (i) assets acquired from income subject to application, and (ii) assets acquired from sources other than income. Depreciation can be claimed against assets acquired from sources other than income, which is permitted under section 11(6). Some assets may appear in both schedules.

RATE OF DEPRECIATION AND APPLICABILITY OF SECTION 32

The income of a charitable trust is not required to be computed in accordance with the provisions of the Act. It should be computed in accordance with the normal rules of accountancy in a commercial sense. Therefore, the heads of income under section 14 and the depreciation rates provided under the Income-tax laws should not necessarily apply to a charitable or religious organisation. In CIT v. Sheth Manilal Ranchhoddas Vishram Bhavan Trust [1993] 70 Taxman 228/[1992] 198 ITR 598 (Guj.), the court held that the amount of depreciation debited to the accounts of the charitable institution had to be deducted to arrive at the income available for application to charitable and religious purposes. It further observed that the income from the properties held under trust would have to be arrived at in the normal commercial manner without classification under the various heads set out in section 14. It held that the expression 'income' had to be understood in the popular or general sense and not in the sense in which the income was arrived at for the purpose of assessment to tax by application of some artificial provisions either giving or denying deduction and, therefore, there was no reason why depreciation should not be allowed as a deduction in order to determine the real income of the organisation.

- In the case of CIT v. Rao Bahadur Calavala Cunnan Chetty Charities [1982] 135 ITR 485, the Madras High Court held that the income from the properties held under trust would have to be arrived at in the normal commercial manner without classification under the various heads set out in section 14.

- In CIT v. Institute of Banking Personnel Selection (IBPS) [2003] 131 Taxman 386/ 264 ITR 110 (Bom.) the Court held that the provisions of section 32 were not relevant for charitable organisations. Therefore, the conditions specified in section 34 were also not applicable and the assessee was entitled to depreciation, which could be considered as legitimate in order to compute the real income of the assessee on commercial principles. Therefore, it is not necessary to strictly apply the provisions of section 32 or the rate of depreciation provided under the Act. However, there is nothing which prevents the organisation from applying the same rates or the provisions under the normal commercial principle in a realistic sense.

The Karnataka High Court in the case of Principal Commissioner of Income-Tax (Exemptions) v. Shushrutha Educational Trust [I.T.A. No. 862 of 2017, dated 21-8- 2018], held that the income of the trust is required to be computed under section 11 on commercial principles after providing for allowance for normal depreciation and deduction thereof from gross income of the trust.

DEPRECIATION BEYOND 85% IS ACADEMIC IN NATURE

In the case of ITO v. Krishi Upaj Mandi Samiti [2012] 24 taxmann.com 342/53 SOT 500 (Jp. - Trib.), it was held that the income which is required to be considered applied in excess of 85% receipts is to be ascertained on commercial principles and depreciation is to be allowed. In case without depreciation, the receipts applied are in excess of statutory percentage, then issue of allowability of depreciation is academic.

The relevant extract is as under:

"Hence in the case of trust the income

which is required to be considered applied in excess of 85% receipts is to be ascertained on commercial principles and depreciation is to be allowed. In case without depreciation, the receipts applied are in excess of statutory percentage then issue of allowability of depreciation is academic. In absence of details not filed before us, we are unable to see as in what case of Samiti and in which year, the issue of depreciation is academic."

DEPRECIATION ON ASSETS CREATED OUT OF LEGAL OBLIGATIONS AND RESTRICTED GRANTS

The law is unambiguous regarding the admissibility of depreciation as depreciation is not allowed against income in cases where acquisition is claimed as application of income. In other words, all assets created out of sources other than income subject to application shall be eligible for depreciation. For the sake of clarity, the assets which shall be entitled for depreciation are as under:

(a) Assets purchased out of the general fund, corpus fund and other free reserves of the trust.

(b) Assets purchased out of restricted grants explicitly received to purchase assets. It may be noted that such grant should not be covered under the definition of voluntary contribution under section 2(24)(iia) or a Government grant under section 2(24)(xviii).

(c) Assets created out of loan which has not been claimed as application either in the year of purchase or in the year of repayment of loan.

ALLOWABILITY OF DEPRECIATION WHERE THE COST OF ACQUISITION IS NIL

The Bombay High Court has confirmed in the case of CIT v. Institute of Banking Personnel Selection (IBPS) [2003] 264 ITR110/131 Taxman 386 that depreciation can be claimed on assets received as a contribution without any cost. The court relied on the decision in DIT (Exemption) v. Framjee Cawasjee Institute [2014] 49 taxmann.com 22/227 Taxman 266 (Bom.)(Mag.), which held that the Assessing Officer should allow depreciation on assets received on transfer when the assessee did not incur the cost of acquiring the assets.

It should be noted, however, that these cases relate to a period before the enactment of section 11(6). After insertion of section 11(6) though it is permissible to claim depreciation on asset which was created out of income, however in the absence of any cost of acquisition it seems that such assets will not be eligible for depreciation.

JUDICIAL PRECEDENCE ON THE ALLOWABILITY OF DOUBLE DEDUCTION BEFORE 01-04-2015

The Supreme Court of India in the case of CIT v. Rajasthan & Gujarati Charitable Foundation Poona [2018] 89 taxmann.com 127/253 Taxman 165/402 ITR 441 held that in case of assessee-charitable institution registered under section 12A, even though expenditure incurred for acquisition of capital assets was treated as application of income for charitable purposes under section 11(1)(a), yet depreciation would be allowed on assets so purchased (Position prior to 1-4-2015). The following cases were referred: CIT v. Institute of Banking Personnel Selection (IBPS) [2003] 131 Taxman 386 (Bom.) (para 1) and Lissie Medical Institutions v. CIT [2012] 24 taxmann.com 9/209 Taxman 19 (Mag.)/348 ITR 344 (Ker.).

CLAIM OF DEPRECIATION EVEN THOUGH APPLICATION IS ALLOWED ON CASH BASIS ONLY

- The Finance Act 2022 has inserted a new explanation after section 11(7), as a result, the application will be allowed only on a cash basis, which raises the question of whether depreciation (being a non-cash expenditure) will be permissible henceforth.
- The explanation is reproduced a under:

  "Explanation - For the purposes of this section, any sum payable by any trust or institution shall be considered as application of income in the previous year in which such sum is actually paid by it (irrespective of the previous year in which the liability to pay such sum was incurred by the trust or institution according to the method of accounting regularly employed by it):

  Provided that where during any previous year, any sum has been claimed to have been applied by the trust or institution, such sum shall not be allowed as application in any subsequent previous year."

- A plain reading of the above explanation suggests that it applies only to any expenditure which has become payable but has not been paid. Depreciation is a non-cash expenditure and is not payable to anybody. Therefore, the depreciation shall be considered an application subject to section 11(6) provisions even after the newly inserted explanation.

ROLE OF FUND ACCOUNTING AND GOVERNANCE

8

INTRODUCTION

Fund accounting can play a very important role in enhancing the effectiveness of the financial systems and decisions making.

Use of fund accounting is like identifying and diagnosing the disease precisely for the most appropriate medication.

Under fund accounting every rupee and every asset in the organisation could be defined according to its source, nature and availability. As a result, all the available resources can be segregated into various groups for their effective use or investments. For instance, the funds available under an endowment or corpus fund can be invested in high interest bearing long term securities.

On the contrary project funds can be invested in various securities on the basis of an age wise classification of requirements. For example, if funds are available for a 2 year project then 25% can be kept in FDRs for a tenure of more than 18 months. Another 25% can be kept for a tenure of 12-18 months. Similarly, the remaining amount can be kept in securities of less than 1 year.

Cash planning as well as investment planning will become easier if all the fund balances and their time-wise requirement is available with the management of the NPO.

Management of liquidity and investment is one area which requires greater attention on the part of the NPOs. In fact, the budgetary projections also should be prepared with the help of the fund-wise requirement and availability of funds.

MANAGEMENT & SAFEGUARD OF ASSETS

Under fund accounting, it is possible to segregate and reflect the asset on the basis of the various projects to which they belong. It is possible to distinguish between corpus, endowment and project assets. Fund accounting provides precise information to the management about the assets on the basis of the source, purpose and limitations attached to each of it. With the help of such informations, decision making with regard to management and safeguard of assets becomes far more easier.

CONTROL OVER INTER-PROJECT TRANSFERS AND RECOVERIES

Under conventional accounting, it is difficult to quantify inter-project loans and advances. There may be many projects which have negative cash balance as funds might have been used from some other projects. With the help of fund accounting the management of an NPO can formulate guidelines and regulate inter-project transfers.

Inter-project transfers are normally not permissible if the consent of the donor is not there. On the other hand, overspending in a project may also create problem to the management as the source of replenishment may not be available.

Fund accounting becomes very important for ensuring that all inter-project transactions are within the control and knowledge of the management and are also in consonance with the norms laid down in that regard.

STRATEGIC DECISION MAKING

Fund-wise segregation of the resources enables the management in various strategic decision making processes. The management is in a position to know various unrestricted internal and external resources available and accordingly it can plan the application of such resources in various project activities or sustainability initiative. A proper fund accounting system enhances the budgeting processes as the management has a more clearer picture of the existing resources as well as the future inflows. Therefore, budgeting processes could become more precise and credible if fund-wise information are available with the management.

A periodic ratio analysis of various funds can also provide useful information for strategic decision making.

RATIO ANALYSIS

9

INTRODUCTION

Ratio Analysis, hereinafter referred to as RA, is a comparative study between two variables in order to derive certain meaningful informations. For example, in a military store, if there are 2000 guns and 500 bullets then such figures do not make any sense independently except being statistical data. But if we say that the ratio between guns and bullets is 4:1 then certainly the information becomes very meaningful and may even require immediate action. In this example, the military personnel may realise that there is only one bullet available against four guns, which may result in further and immediate procurement of bullets.

From the above example, it can be seen that certain informations may not make too much of sense if read individually. But if we make a comparison between two informations or variables then suddenly we may get a very deep insight into the state of affairs with the help of the ratios.

RA compares 2 sets of informations and provides the relative strain of each other. The common features of RA are as under:

- A ratio is the relationship between two variables
- These variables should have logical relationship with each other
- Comparative calculations of financial figures are brought
- The ratios derived are interpreted. Such interpretation may or may not be on the basis of predetermined norms.

Ratios generally used in profit sector as under :

- Working Capital Turnover Ratio
- Current asset Turnover Ratio
- Inventory Turnover Ratio
- Average Holding Period Ratio
- Raw Material Inventory Turnover Ratio
- Work-in-process Inventory Turnover Ratio
- Finished-goods Inventory Turnover Ratio
- Receivables Turnover Ratio
- Average Collection Period Ratio

- Cash Turnover Ratio
- Cash Holding Period Ratio
- Payables Turnover Ratio (Times)
- Average Payment Period Ratio

Similarly, NPOs can also make meaningful analysis of its state of affairs through use of Ratio Analysis. Some of the important ratios are discussed herewith.

CORPUS FUND TO GENERAL FUND RATIO

A corpus fund to general fund ratio gives an idea about the proportion of perpetual long term funds in comparison to the unrestricted funds available. Suppose the ratio is 1:20, which means the corpus fund is `100 and the general fund is ` 2000. In such a case the NPO can consider increasing the corpus fund by transferring some fund from the general fund. On the contrary if the ratio is the other way round i.e. 20:1, it would imply that the NPO is accumulating and hoarding too much of funds with practically no resources available for its general activities.

It is desirable that a healthy balance is maintained between corpus fund and general fund, 1:1 may denote an active as well as relatively sustainable NPO.

CORPUS FUND TO RESTRICTED FUND RATIO

This ratio provides a comparison between the corpus fund and the restricted funds of the NPO. The balance sheet of an NPO may look very healthy due to large amount of restricted fund but it would not mean that the NPO is financially healthy or sustainable as the restricted funds do not belong to the NPO. With the help of this ratio an NPO can ascertain how healthy and sustainable it is in terms of finances.

The ratio should not be unduly lopsided on either side. A very high corpus would imply that the NPO is comparatively dormant and a very low corpus would denote insecurity about its future.

RESTRICTED FUND TO UNREST-RICTED FUND RATIO

Both restricted fund and unrestricted fund may be used for various activities but unrestricted fund are within the discretionary powers of the NPO. With the help of this ratio an NPO can know the quantum of discretionary funds available for designation of activities, of its own choice. When the unrestricted funds are seen in proportion to the restricted funds then it is easier to analyse the materiality and importance of such funds in relation to the overall activities.

Comparative existence of unrestricted funds show the ability of the NPO to mobilise funds from its own sources and to that extent it reflects upon its ability to sustain itself and its programme.

DESIGNATED FUND TO RESTRICTED FUND RATIO

Both designated fund and restricted fund have been set aside for specific purposes and therefore changes cannot be made in their application pattern. This ratio helps the NPO in analysing the quantum of funds it was able to generate and designate in comparison to the restricted funds. Greater quantum of designated funds reflects financial and social soundness of the NPO.

If there is a healthy ratio of designated funds it denotes the availability as well as the commitment of the NPO towards specific programme from its self generated funds.

CORPUS ASSET TO PROJECT ASSET RATIO

Corpus asset are the long term assets available with the NPO. Project asset are generally created from restricted fund and belong to the respective fund/donor. In a way project asset do not belong to the NPO and at the end of the project period they are either merged with corpus assets or disposed off as per the terms of the project agreement. This ratio provides an insight into the net worth and the financial strength of the NPO.

If the quantum of corpus asset is high then it implies that the NPO has greater ability to sustain in the long run. And if the quantum of project asset is higher then it implies that the NPO is able to handle large number of projects but its sustainability in the long run could be a matter of concern.

TOTAL INCOME TO EXTERNAL GRANTS/ DONATIONS RATIO

This is a very important ratio. Normally NPOs are largely dependent on external sources for their activities. NPOs also have certain income of their own, which could be through

- income generation activities
- interest earned from various unrestricted fund
- rent received
- membership fees
- miscellaneous sources, etc

The income from own sources reflect sustainable and long term attributes of the NPO. On the other hand external funding reflect the ability of the NPO to enter into meaningful partnership with other stakeholders, however it may not reflect attributes of long term sustainability and independence.

Through this ratio one can analyse the quantum of dependence of external funding. It would be very useful if this ratio is analysed for the past 4 to 5 years. Through such an analysis one can find whether the NPO is making successful efforts towards becoming financially independent in the long run.

FUND BALANCES TO INVESTMENT RATIO

It is very important to see that what proportion of the closing fund balances is invested in proper securities or is held in the bank. It may so happen that the funds are showing very high balances but they are supported by inferior or fictitious asset. Some of the instances are as under :

- A loan could have been given to some other NPOs/functionaries
- Programme and other advances might have been given to staff and other functionaries
- Immovable properties or dead investment might have been made
- This is one of the most important ratio because unless a fund remains invested properly, balances available are meaningless. An analysis of the quality of the asset available against each fund is possible through this ratio. Ideally the ratio should be 1:1 in terms of qualitative investments available against the fund balances.

ADMINISTRATIVE EXPENSE TO PROGRAMME EXPENSE RATIO

As the nomenclature suggests this ratio is important in order to know the cost of implementing the projects and programmes. Very high administrative expenses would denote that the funds available for programme are reduced. And very low administrative expenses may raise issues pertaining to the systems and quality of the programme. There is no benchmark on the percentage of administrative expenses and it also varies according to the nature of work.

All NPOs should make an annual declaration of the ratio of administrative expenses to programme expenses. It is also necessary that administrative expenses of the NPO and administrative expenditure pertaining to the programme are also distinguished.

GENDER EQUITY IN HUMAN RESOURCES RATIO

A healthy male female ratio right from the board to the grassroot level reflects the ability of the NPO in succeeding in mainstreaming and integrating women in all sphere of work.

A 1:1 gender ratio should be considered as ideal unless the specific traits of the activity or the function warrant otherwise.

EXECUTIVE TRAVEL VS. PROGRAMME STAFF TRAVEL RATIO

The work of NPOs being spread in remote places of the country requires huge amount of travel expenses. Therefore it is important to analyse the quality and relevance of such expenditure. The travel by senior management and the board is essentially administrative in nature, therefore it is desirable to distinguish it from the programme travel cost.

It is desirable that the ratio of programme travel is higher than the administrative nature travel.

HUMAN RESOURCE POLICY

10

INTRODUCTION

Policies are clear, simple statements of how an organisation intends to conduct its working be it services, actions or business. It guides the standard operating protocol of an organisation.

The Human Resource policy is one such document that broadly contains details on employing staff, managing employee performance, dealing with employee concerns and supporting staff in the organisation. It is a formal guide of principles or rules in the organisation that employees are expected to adhere to. It aims to describe organisation's practices, such as employment, compensation, benefits, leaves, hiring and termination procedures, and other pertinent information.

The Human Resource policy is essential for communicating an organisation's workplace policy and therefore it must be detailed, accurate and approved by the appropriate authority. The policy manual should also be accessible to all staff members and be accompanied by procedures on how the policy will be implemented. Generally, procedures describe how a policy will be put to action in an organisation. Broadly, each procedure should outline the following:

- Who will do what;
- What steps they need to take;
- Which forms of documents are to be used.

Policies and their accompanying procedures will vary between organisations because they reflect the values, approaches and commitment of a specific organisation and its culture.

OBJECTIVES OF HUMAN RESOURCE POLICY

Human Resource policy helps the organisation to establish robust structure and set basic rules that is used to manage the employees on a day to day basis. It encourages fair and consistent treatment of employees. The Broad objectives of the Human Resource policy are:

- To provide formal procedure on hiring, induction and termination of employees. It should contain the framework for managing staff, while allowing management to respond and adapt to individual situations.

To provide clear reporting structures that spell out who's in charge and how tasks are to be accomplished in the organisation. Every successful team has well-defined positions for its members. Everyone knows what he or she is to do; how to do it; and how their performance can impact those around them. The policy should provide a clarification and validation of the responsibilities.

- It has been seen that an employer is usually held accountable for the bad behaviors of his/her employee, especially when that bad behavior affects other employees, target groups or individuals. In such cases, the Human Resource policy should provide clear and specific behavioral standards in the form of rules for spotting and addressing violations of those standards.

Overall, Human Resource policy serves as a guide on decision-making guideline for the management. For the employees, it serves as a guide on how to conduct oneself in the organisation.

STEPS INVOLVED IN HUMAN RESOURCE POLICY DEVELOPMENT

Generally, the Human Resource policy development process includes the following steps:

- Need for the policy on Human Resource in the organisation should be established.

- The establishment of need should be followed by development of the draft policy. This will be done by a team of people who are assigned this job.

- Along with the policies a draft on the procedures should also be developed.

- Once the draft policy is ready, it should be critically reviewed by key members (usually by all those who will be using it).

- Next, the reviewed policy should be approved by the approving authority (usually the Board).

- The approved policy should then be formally implemented and the policy manual should be shared with the employees along with all necessary application formats such as leave format, travel requisition format, etc.

- After sometime the existing policy should to be review and updated, so that the policy is robust and relevant on any particular date. The interval for policy review shall be discerned by the Board in consultation with the management. In many cases, the interval is not fixed and the review can take place when a need is felt which has to be approved by the Board.

- Once the old policy has been reviewed and necessary changes have been incorporated, it should be appropriately conveyed to all.

RESPONSIBILITY OF DEVELOPIONG HUMAN RESOURCE POLICY

In large organisations, it is the responsibility of Human Resources department and in small organisations a small assigned committee/ team which develop the policy after taking into consideration the vision, mission and objectives of the organisation. The draft of the policy is shared with the management for feedback and after changes the same is approved by the Board. The key areas that should be covered in the Human Resource policy manual are:

- Scope of the policy
- Functions (roles and responsibilities)
- Standards of conduct
- Conflict of interest guidelines
- Confidentiality
- Privacy
- Complaint/ grievance resolution
- Employment practices
- Recruitment, selection, appointment practices
- Orientation and induction
- Probationary period
- Anti - discrimination / equal opportunity
- Discrimination and harassment
- Termination of employment
- Notice of resignation
- Discipline by suspension or dismissal
- Terminations
- Retirement
- Exit Interviews
- Leave
- Hours of work
- Annual leave
- Statutory holidays
- Special leave
- Maternity leave/ paternity leave
- Medical leave
- Compensation and employee administration
- Pay administration
- Job description
- Performance evaluations
- Travel and expenses
- Benefits
- Insurance and other benefits
- Pension
- Payroll
- Training and development
- Work environment
- Safe and healthy work environment

For a more detailed template on Human Resource Policy, refer to Annexure.

UPDATING THE HUMAN RESOURCE POLICY

One very crucial element of any policy is that its relevance remains intact in current time. Hence, developing the human resource policy is an on going process. The department/ committee/ team involved in formulating the human resource policy is also entrusted with the responsibility of reviewing, adding, deleting or revising the policy. This is to ensure that the policy remain current with the objective and with organisation needs. Further, the human resource department/ committee/ team help interpret policies, ensuring that they are applied fairly and equitably throughout the organisation. Key issues that must be ensured by the organisation's human resource department are:

- The policy manual is kept up-to-date; The policy manual continues to set out the procedure that must be followed in the operation of the system and procedures;
- Sufficient copies of the manual are available;
- Amendments to the policy manual are properly authorised and communicated to the concerned parties immediately.

Conclusion

There are different types of people in an organisation and they react differently to the need for policies and procedures based on those differences. For example, some people prefer there should be a written policy for everything, while others favor having no policies at all and would leave everything open to interpretation as situations arise. Neither of these extremes contributes to a work environment that is conducive to high productivity levels. The focus of an organisation is not just about meeting specific goals and objectives, but also about how one can achieve them.

Thus, policies and procedures are like the lighthouse which guides an organisation on its way to its destination i.e. achievement of the organisational goals/ objectives. Policies are the 'means' but not the 'end'.

It is important to note that human resource policy is an internal document of an organisation and is not a legal requirement. It takes some effort to develop and implement the Human Resource policy, but it brings definite long-term benefits as it will overall minimize the incidence ofdisputes or grievances within the organisation. The Human Resource policy does not have to be complex, but comprehensive and compliant with the organisations objectives and need.

Annexure 2 : Human Resource Policy Template

1. Definitions

This section outlines both legal and non-legal definitions for the purpose of providing clarity on the terms used in the policy.

2. Functions (Roles and Responsibilities)

Management-A summary description of the roles and responsibilities of core management of the organisation.

2.1 Staff - Staff may have different expectations, duties, terms and conditions of employment and accountabilities. Policies should indicate the roles and responsibilities for the following types of employees:

- Full-time staff
- Term appointments
- Part-time appointments
- Probationary Appointments
- Casual or Contractual employees

2.2 Board - The Board has a role to play regarding Human Resource Management of a organisation. That role should be outlined both in the Board policy as well as in the organisational human resource policy.

3. Standards of Conduct

3.1 Conflict of Interest Guidelines

- The extent of Conflict of Interest Guidelines is dependent on the type of organisation.
- Conflict of Interest Guidelines may differ for management, employees, Board members.

Guidelines might outline or indicate:

- Obligations
- Use of property
- Disclosure of information
- Feasibility of acceptance of hospitality or other benefits
- Soliciting or acceptance of economic benefit or preferential treatment

3.2 Confidentiality

- Employees may be required

to sign confidentiality agreements / statements for the purposes of information handling. If this is the case, the policy may indicate that a particular level of Security Clearance is required.

3.3 Privacy

- Employee files are to be kept confidential - the process to ensure confidentiality should be outlined.
- Privacy statements should include the process for employee access to and use of confidential and private information.

3.4 Complaint/ Grievance Resolution

- Complaint resolution process guidelines could include timeframes, responsibilities and possible mechanisms.
- Formal and informal complaint processes may be described.

4. Employment Practices

4.1 Recruitment, Selection, Appointment Practices

- Who is authorised to make selection and where approvals are required
- What competitive processes are to be followed?
- Procedures around conducting reference checks

4.2 Orientation and Induction

- Induction plan and schedule for new recruits
- Documents to be provided for orientation

4.3 Probationary Period

- Who all are eligible for probation
- Time frame for employee's probationary periods
- Performance evaluation process at the end of the probationary period

4.4 Anti-discrimination/ Equal Opportunity

- Guidelines for equality and fair practices in the organisation

4.5 Discrimination and Harassment

- Defining the acts to be covered under discrimination and harassment
- Procedure for handling such issues
- Consequences of indulging in such acts

5. Termination of Employment

5.1 Notice of Resignation

- To whom resignation is to be given
- Timeline for submitting resignation

5.2 Discipline by Suspension or Dismissal

- Procedures for Suspension in the incident of employee misconduct
- Processes for disciplinary action should be outlined

5.3 Terminations

- Processes and circumstances for layoff and termination may be outlined in the policy

5.4 Retirement

- Age for retirement
- Procedure to be followed for retiring employees.

5.5 Exit Interviews

- Exit interviews between management and employees are often a important feedback for the organisation. The process of conducting the interview may be outlined in the organisation policy.

6. Hours of Work/Leave

6.1 Hours of work

- Hours of work for staff / employees would include the normal work week and the work day schedule
- Any processes for time recording and management would be indicated in this section, as would any repercussions regarding attendance

- The definition of "Overtime", who it applies to, and the structure for compensation or payment options would be outlined in this section

6.2 Annual Leave

- Eligibility for annual leave will be specific to classification of employee and may be subject to a probationary period

- Include procedures for vacation accrual, scheduling, vacation pay and vacation carryover

6.3 Statutory Holidays

- Designated statutory holidays, statutory holiday entitlement and their application for employees

- Any recognition or accommodation of other religious or cultural holidays should be included

6.4 Special Leave

- Guidelines for other types of leave may be included

6.5 Maternity Leave/ Paternity Leave

- Eligibility of employees for Maternity and Paternity leave

- Procedure and time frame for Maternity and Paternity leave

6.6 Medical Leave

- Procedures for the sick leave for full and part time employees

7. Compensation and Employee Administration

7.1 Pay Administration

- Processing pay or pay administration procedures, including any pay deductions, pay frequency and salary increases would be outlined in this section

- This may include notes on maintenance of the pay system.

7.2 Job Descriptions

- Standardized job descriptions may be found within the policy itself

- Wherein the job descriptions are not included a policy may reflect how the descriptions will be developed and used by employers and employees

- In the case of Bands, job descriptions may be provided for all Band Officers / Councilors

7.3 Performance Evaluations

- Procedures outlining performance reviews may include timeframes (annual, bi-annual reviews), reports and evaluations, signing, and keeping of records

7.4 Travel and Expenses

- Provision for work related travel and expenses should be outlined

- Organisations and communities may refer to federal (Treasury Board) or provincial standard rates

8. Benefits

8.1 Insurance and other benefits

- Where insurance is provided to employees - this information would be provided

8.2 Pension

- Any possible employer contributions to pensions, as well as the terms of those contributions will be outlined in writing

8.3 Payroll deductions

- Type of deductions to be outlined

9. Training and Development

- Providing opportunities to the staff for capacity building, which may include internal on-the-job training, written instructions such as standard operating procedures, coaching, external training and courses for the development of the staff.

10. Work Environment

10.1 Safe and Healthy Work Environment

- To include any regulations with regard to the work place, including but not limited to:
- Occupational safety
- Workplace violence
- Drug or alcohol policies
- Smoking

BOARD's ROLE IN CRISIS MANAGEMENT

11

INTRODUCTION

In the complex and rapidly changing volatile landscape, organizations are exposed to unanticipated situations, disruptions like cancellation of FCRA, or recent pandemic hit in 2019 which changed the working and functioning of the sector worldwide. In such situations, every organization, either it's small or big, working in education, health or other sector, is bound to face crisis sooner or later. This puts a question on reputation, trustworthiness, resilience and sustainability of an organization. There is an urgent shift in mindset needed across the board to respond to crisis situations.

WHAT IS A CRISIS?

A crisis is any event or period that will lead to an unstable and dangerous situation impacting the organization's ability to meet its objective. Some crises can be foreseen, others are not. Some crises arise suddenly and are on a large scale, like natural disasters, computer ransomware, or public health outbreaks. Others are narrower in scope but equally sudden, for example, the unexpected illness or death of an organization's leader. These situations can make or break an organization. The cause and impact of crisis will depend on a range of variables including the nature of the organization's operation and its culture, governance and resiliency.

CRISIS MANAGEMENT: A GUIDE

Crisis management is a strategic discipline that enables an organization to adopt different mode of operations and governance in order to make decisions and timely implement and communicate it to ensure organization meets its objective. An organization should have determinants factors on the basis of which the organization can decide what is considered as crisis and risk and make plans accordingly. As risk management is a proactive step to identify, assess and take measures to mitigate risks of an organization. On the other hand, Crisis Management is more of a reactive step. It is the actual response to a crisis, addressing the incident in real time. Both are very different process and most of the non-governmental organizations adopts risk management strategy but not crisis management strategy. Crisis management should start long before the crisis hit. It should be an integral part of organization's resilience measures, and should be a central concentration for the board of every organization, no matter in which sector it deals with, either it's small or big.

PRE- CRISIS STAGE

This is the most crucial stage in dealing with crisis. This stage involves preparation as it is a vital tool for preventing damaging circumstances from becoming a crisis. Preparation demands both the management and the board to understand their respective responsibilities, from before the crisis hit to post crisis. Since the board's role is to strengthen governance and ensure organization meet its objective, thus taking pre-emptive steps to respond to crisis becomes crucial. This is the stage where board needs to ask what ifs. What if this happened or what if our mitigation plans fail. 'Are the board and senior management ready now for a totally unexpected crisis?', this should be asked at the board level at least once a year. The board needs to know its role in advance, not learn about it upon the first contact.

- **Crisis Management Policy:** Organization should develop a Crisis management policy which aims to strengthen its governance and resilience. The policy should explain how an organization thinks about and prepares for a crisis as a part of its strategic resilience framework. The policy should clearly articulate the definition of crisis, crisis management plan, and to minimize the negative impact of events on organization's reputation.

- **Crisis Management Team:** A crisis management team should be established within an organization as part of its resilience framework. This team should consist of senior leader of the organization, along with HR, Program and operations, communications and media, information management and support.

- **Formation of a Board Committee:** A Board committee should be formed which will do oversight function in dealing with crisis from PR, to check authenticity of sources, and examine the cost and time for further investigation. The board committee should meet on regular interval and discuss with the crisis management team and senior leadership regarding the revival of the crisis management plan and discuss the shared concerns with appropriate actions taken. The board should act as advisory board and consider the external stakeholders while taking decisions; as trust, reputation, culture are important elements of an organization.

- **Develop Crisis Management Plan:** It is the role of board to ask management to develop and document a formal Crisis Management Plan. Board's role is to review and give approval of the plan, engage in meaningful discussions with management while addressing vulnerabilities arising from various sources. The board needs to ensure that culture and reputation of the organization is intact, and there is communication strategy in place.

The plan should be robust and it should be periodically reviewed and updated with changing circumstances.

- **Test in form of exercises:** After developing crisis management plan, organizations need to test them in order to make sure they are fit for the purpose. There are different ways to do so and organization should select that exercise which fits its purpose. For instance, Scenario walk-throughs are best for inexperienced teams and untested plans; table-tops, simulations, workshops are few others. These exercises build muscle memory to respond to crisis by exposing to real scenarios, and develop strong familiarity and strategic planning to deal with unanticipated disruptions.

The board should conduct at least one board level crisis exercise annually. They should individually attend these exercises either as a participant or an observer. It will provide the board with first hand visibility into senior leadership's preparedness and they would be able to see if senior leadership is fit to execute their roles prescribed in the crisis plan. Outcomes should be documented in a post-exercise report and board should focus on implementation of lessons learned.

CRISIS - HIT

This is the most crucial stage in dealing with crisis. Board's role should not be limited to public facing one, but should play a significant role in providing critical oversight, long-term planning, and strategic support to management and engage with key stakeholders of an organization. Board should plan for such events and agree on the roles and responsibilities in advance, to avoid wastage of time. A strong and consistent communication between management and the board will help the organization in sailing through such situation. In low probability events, board must sometimes take steps management cannot, by taking reins from management and step into an remit, in an effort to reassess executive role, which usually is the last resort in crisis. Board should provide oversight on which committees to establish, how decisions would be made, and what external support would be called upon.

An organization can follow few steps in dealing with crisis i.e. Staying calm and conveying confidence, communicating clearly and quickly, appointing or assigning one credible spokesperson for consistent communication, gathering accurate facts, avoiding fake information, and learning from crisis.

POST-CRISIS STAGE

The board has a special role in helping the organization to return to a new normal by examining the cause of the crisis and identifying opportunities to change, in order to gain resilience. The board needs to deep dive and ask difficult questions, beyond its usual resilience and vulnerabilities, in order to develop strategic view point of the organization. The board should review crisis plans, processes and competencies of the organization in dealing with crisis. The board should take steps for the restoration process if the organization's reputation gets down. Organization should conduct self-assessment of crisis management teams, communication teams, other functional teams in order to broaden the learning. One of the important things is to learn from other organizations how they respond to and addresses a crisis, and to conduct regular reviews of case studies of organizations of development sector.

CONCLUSION

The board has a unique role to play in times of crisis when scrutiny is intense. Board needs to take preemptive steps and actively participate in overseeing and assuring crisis management in the way they do other risks and contingency plans. The corporate sector has crisis management and resilience building programs, but no such program exists in development sector. This shows a gap where we, as a sector, can think of investing and capacitating NPOs by doing research and conduct case studies, and collect best practices of NPOs who sailed through such disruptions, and build programs and workshops. In order to build resilience and future ready organizations, there is an urgent need for the development sector as a whole to give priority to crisis management.

TYPES OF RISKS IN NPOs

12

INTRODUCTION

Decades ago, Non- profit organizations operated in a less regulated environment compared to the present. Due to the ever-changing and volatile nature of the sector, NPOs are now exposed to a wide range of risks. Unfortunately, they often lack access to the necessary knowledge and tools to anticipate, manage, and mitigate these risks. Therefore, Risk management has become a necessity for NPOs, aiming to increase efficiency and minimize the negative effects of disturbances.

WHAT IS RISK?

Risk is any kind of uncertainty that can improve or reduce the ability of an organization to achieve its objectives. It involves the possibility of things not going as planned and can lead to negative consequences or losses. Essentially, risk is about facing uncertain situations where there is a chance of something bad happening. It arises from both external factors and vulnerabilities within the organization.

WHAT IS RISK MANAGEMENT?

Risk management is the systematic process of identifying, analyzing and responding to the risk. It includes maximizing the probability and consequences of positive events and minimizing the probability and consequences of events which can have an adverse effect on the objectives. Risk management ensures that the organization creates and implements an effective plan to prevent losses or reduce the impact, if a loss occurs.

WHY RISK MANAGEMENT IS IMPORTANT?

Risk can cause uncertainty in any organization and having a risk management plan is very important. Having an effective and operational risk management practice ensures an organization is committed to loss reduction or prevention. Some of the benefits of risk management are:

- Preventing or reducing legal liability and increasing the stability of operations.
- Increase stakeholder confidence in achieving desired outcomes.
- Take informed decisions about exploiting opportunities
- Encourage a high standard of accountability at all levels of

the organization

Support more effective decision making through better understanding of risk exposures

- Meet compliance and governance requirements

TYPES OF RISKS

There are various risks which are associated with the NPOs which affects the organization adversely either internally or externally. It is important to have a clear understanding of all risks which allows an organization to measure and prioritize them and take the appropriate actions to reduce losses. Some of the risks are mentioned below:

- **Legal Risk:** All NPOs should carefully analyze the legal risk involved in their activities and interaction with stakeholders. An NPO may face various kinds of legal risk which may range from suspension to dissolution to heavy financial penalties. An organization should carefully study the legal risk; it may face in the shape of liability towards external stakeholders due to non-compliance or non-performance of various organizational responsibilities. It should go through its key documents including the Trust deed, Memorandum of Association, Articles of Association, Contract documents, Policy document, etc. An organization should understand the national and international law pertaining to intellectual property, copyright, patent, trademark etc. It should ensure proper compliance in use of material / intangible assets belonging to the NPO as well as others.

- **Human Resource Risk:** An organization should carefully analyze the issues pertaining to human resources involved. It should ensure that all the staff is provided with a safe and fair environment to work, and all human resources are provided with insurance and social security support as far as possible. An organization should also ensure that all the termination and retirement policies are as per the law and transparent. It should verify the credentials and antecedents of all the human resources right from the board to the grassroots worker. It is advisable to take a self-declaration regarding the social, criminal and civil conduct of past.

- **Conflict of Interest Risk:** There should be a clearly defined policy to ensure that any conflict of interest is properly dealt with. The conflict of interest transaction is most dangerous for an NPO and may create legal threat to its basic existence itself. Therefore, conflict of interest issues are not only ethical issues but may have a serious legal risk attached to them.

All NPO should check the law of the land regarding the permissibility of various conflict of interest transactions. For instance, in India, any kind of benefit provided to any trustee or board member may result in cancellation of registration under the Income Tax Act. The Board of Directors of the trustees should declare such interests. The interested trustees and directors should not participate in the decision making and voting process for that particular resolution. An annual declaration of such interests should be placed in the annual general meeting.

- **Integrity and Corruption Risk:** All NPOs are managed by human beings where all kinds of persons exist. We may find people with very high values and ethics; on the other hand, there might be people who are prone to corruption and unethical practices. Therefore, all organization needs strong systems to negate the possibility of unethical practices. Strong systems can only be built and sustained if there is a mechanism of identifying the various risk pertaining to human integrity and corruption. An NPO may take remedial measures against various risks, once they are properly identified. In other words, an organization should identify the risk and establish tangible as well as subtle systems to negate any integrity loss or corruption. Some of the popular practices which go on to reduce the possibility of integrity loss or corruption are:

  - Joint authorization or joint signatory in processes.
  - Multiple controls by different people.
  - Use of banking channels for financial transactions.
  - Rotation of senior staff responsibility.
  - Rotation in the board and leadership.
  - Independence and effectiveness of Audit process etc.

- **Efficiency Risk:** An NPO may be good but still not good enough. Loss in efficiency in various functions is one of the most dangerous risks attached in an organization's functioning. The efficiency risk generally goes unnoticed because of the lack of comparable standards of performance. In intellectual and intangible work, it is very difficult to quantify the quality and efficiency of the output. If NPOs don't remain vigilant then organizational lethargies may set in. Some large organization conduct efficiency audits but it is more important to understand the larger principle of efficiency risk and look for organization specific solutions.

- **Skills and Expertise Risk:** An NPO may face the mismatch of skills and expertise required for the various human resources. All the system and infrastructure will be of no use, if appropriately qualified/skilled persons are not available with the NPO. The board of the NPO should analyze the adequacy of the existing skills & expertise and should also assess the risk attached in future regarding the loss of such skills & expertise due to staff turnover or changes in technology or external environment.

- **Communication and Articulation Risk:** An NPO should also analyze the risk related with the communication and articulation systems. For instance, in India, any dissemination of public information or current affairs on the website or through print media may result in cancellation of registration under the Foreign Contribution Regulation Act, 2010. Similarly, failure to disclose key information including conflict of interest also has considerable legal and other risk. Therefore, all NPOs should carefully study the various documents and reports they produce and analyze the risk, if any. Even the learning materials or the training modules should be carefully studied to ensure that they do not contain any objectionable or sensitive content.

- **Systems Risk:** An NPO should also analyze and understand the functioning of all the existing systems. There could be risk pertaining to failure or inadequacy or performance of system. For instance, due to change in technology the existing systems may have to be replaced, which may involve sudden financial expenditure. Integration and compatibility of various systems also is an area which needs to be carefully analyzed for plugging any loophole or risk in it. For instance, integration of financial data from field level could be an area of risk.

- **Governance & Leadership Risk:** The leadership and governance risk is another area which mostly goes unnoticed. An NPO may fall into the hands of a specific individual or a group of individuals, who may have conflict of interest attached to it. An independent risk analysis of the board and the leadership processes is necessary to ascertain the quality of governance in an NPO. Even the NPOs which have dynamic leaders may face a governance and leadership risk if they don't have a contingency plan for any unexpected event resulting in loss of key individuals. Further, undemocratic election processes may also pose considerable risk.

- **Values and Direction Risk:** Another important risk in the functioning of an NPO is the possibility of deviating from the original mission and fall in the level of ethics and values. The organization's board should carefully analyze the risk involved in various activities which may affect the values and direction of the organization. For instance, an NPO engaging itself in unrelated projects may lose sight of its own mission and become donor driven. Similarly, an NPO should also develop its organization culture and value through various practices. It should also study the various existing systems and processes and see the risk involved with regard to the values and mission.

Conclusion

An organization which implements risk management practices gains the ability to expand opportunities in acquiring funds from new donor agencies and upholding the faith and confidence of existing donors by ensuring their contributions are in safe hands. NPOs can achieve improved governance, enhanced preparedness to face adversity and better operational outcomes by effectively manage and mitigate risks. Therefore, risk management practices should be an integral part of an organization and efforts should be made in order to identify the varied types of risk an organization can face, following with the strategies to mitigate it; as wrong identification of risks may lead to unsuccessful implementation of risk management framework.

REGISTRATION PROCESS OF NPOs IN SOCIAL STOCK EXCHANGE

13

INTRODUCTION

In July 2019, during the announcement of the Union Budget FY19-20, India's Finance Minister Nirmala Sitharaman proposed a Social Stock Exchange (SSE) to help enterprises and voluntary organizations working for social welfare raise capital through various financial instruments.

WHAT IS SOCIAL STOCK EXCHANGE?

The SSE functions as a separate segment within the existing stock exchange and help social enterprises raise funds from the public through its mechanism. It is set up under the ambit of Securities Exchange Board of India (SEBI) and serve as a medium for enterprises to acquire visibility, seek finance for their social initiatives, and provide increased transparency about fund mobilization and utilization.

PHASE I: REGISTRATION PROCESS FOR NPOS

1. CHECK ELIGIBILITY CRITERIA:

The first and foremost step in the registration process is to check eligibility criteria of Social Enterprise as prescribed by SSE. SEBI will check the eligibility of enterprises in two forms i.e. first, they should fall in the category of Social enterprises as prescribed by SSE and secondly, these organizations need to meet the primacy of its Social intent. According to (ICDR) Issue of Capital and Disclosure Requirements Regulation 292F, SEBI;

- NPO must be registered in India as one of the below, and its registration certificate should be valid for next 12 months at the time of seeking registration with SEE.

  i. charitable trust registered under the public trust statute of the relevant state;
  ii. a charitable society registered under the Societies Registration Act, 1860;
  iii. a company incorporated under section 8 of the Companies Act, 2013;
  iv. a charitable trust registered under the Indian Trusts Act, 1882

- NPO must have Governing document (MoA & AoA/ Trust Deed/ Bye-Laws/Constitution); and disclose if it is owned and/or controlled by government or private.

- It must have valid IT PAN and registration certification under Section 12A / 12AA / 12AB in

Income Tax Act, 1961, and it should be valid for at least next 12 months. It should not have any pending tax demands or cases and there should be no litigations against directors and Key managerial personnel (KMPs).

- It should be in function for minimum 3 years and have the registration certification for the same to show its 3 years' track record.

- It should hold a valid 80G registration under Income Tax Act, 1961 to avail tax deduction benefit.

- Its annual spending must be at least Rs.50 lakhs and its funding must be at least Rs.10 lakhs in the past financial year.

  The registration of NPO on the NGO Darpan Portal is mandatory for registering on SSE, and they should have strong Controls and Risk Matrix in place, and Organizational chart clearly specifying roles and responsibilities. To further meet primacy of its social intent,

- According to ICDR 292, NPOs shall have at least 67% of focus area of its activities qualifying as eligible activities to the target population in either of the following:

  i. At least 67% of its revenue from past 3 years comes from providing eligible activities to members of the target population; or
  ii. At least 67% of expenditure from past 3 years has been incurred for providing eligible activities to members of the target population or beneficiaries; or
  iii. At least 67% of the past 3 years of the total customer base and/or total number of beneficiaries should be benefited by the eligible activities.

- NPOs shall engage in the list of eligible activities mentioned by SSE for demonstrating primacy of social intent, which should be in line with 17 focus areas compiled by Schedule 7, SDG Goals and NITI Aayog.

- NPO shall target underserved or less privileged population segments or regions recording lower performance in the development priorities of central or state governments.

Exclusions

There are few exclusions in this criteria laid down by SSE:

- Corporate foundations, political or religious organizations or activities, professional or trade associations, infrastructure and housing companies, except affordable housing, shall not be eligible to be identified as a Social Enterprise, and hence cannot register in SSE.
- If the NPO is dependent on the corporate for more than 50% of its funding, then it shall not be eligible to apply.

If the NPO fulfils the above mentioned criteria of Social Enterprise and any other requirements as may be specified and meet its social intent, then such entities are eligible to be registered with Social Stock Exchange.

2. PREPARATION OF DOCUMENTS:

Once NPO meets the eligibility criteria for registration, then it needs to prepare all such documents as prescribed by SEBI for Initial Disclosures. To get information on documents asked by SSE,

- Go to NSE India website www.nseindia.com.

  Search Social Stock Exchange, a Checklist-Registration will be appeared in the left side of the page below.

  If it does not appear, then type Checklist-Registration in the search tab and a dialogue box will appear showing two folders.

Click on the Checklist for Registration 30.06.2023 and a zip folder will be downloaded. This folder will contain a Pdf Document Checklist for registration, along with three annexures. Kindly download the document which details all requirements and instructions to become part of social stock exchange. NPOs need to fill this checklist and while submitting application to NSE/ BSE, along with the last 3 years audited financial Statements, you need to attach four annexures.

- **Annexure 1- Application Form:** This application form for registration of Social Enterprises on National Stock Exchange of India Limited needs to be filled and attach in prescribed form.
- **Annexure 2- Undertaking from NPO:** This undertaking will go on the letterhead of the NPO and NPO's authorized person will give declaration that all the listing

requirements prescribed by SEBI are fulfilled and needs to be submitted in prescribed form.

- **Annexure 3- Undertaking from Third Party:** One Social Auditor or Statutory auditor will give declaration that NPO has complied with the requirements as prescribed by SEBI and this declaration will be submitted on the letterhead of Social Auditor or Statutory Auditor.

- **Annexure 4- SSE Registration Agreement:** In the Checklist Registration dialogue box, you will find SSE Registration Agreement just below the Checklist zip folder. Kindly download the document which is an agreement that will be made between Stock Exchange and NPO, outlining the listed conditions.

  It is recommended to start the application process only when NPO has prepared all its documents. Failure to attach all the required documents may lead to unsuccessful registration or delay in the process.

3. SUBMISSION OF APPLICATION:

Once NPO is prepared with the documents and annexures as prescribed by SEBI, now it can begin its application process which is mentioned below.

- **Create NSE's Electronic Application Process ID:** In Page no. 2 of Checklist Registration document downloaded previously, a hyperlink will be provided. Click on the given link and it will direct to NSE's Electronic Application Processing System (NEAPS) dialogue box on NSE website. Kindly create your organization's Log in ID and Password.

- **Complete Compliance Requirements:** Once Log in ID and Password is generated, various tabs will appear on the display screen. Follow those tabs/ steps and complete the compliance requirements and questions as asked.

- **Submit Application:** Once all questions are asked, click on Submission button to submit your organization's application. Any question left to answer will lead to failure of submission.

- **Confirmation Email from SEBI:** Once all the legal formalities and the requirements are being complied and your form is submitted, SEBI will send the email confirming the submission of the application.

4. REVIEW PROCESS BY SSE:

Upon successful submission of the application, SSE will conduct review process and validate the application.

Due Diligence: SSE's team will communicate with your organization through Email. They will be in constant touch with you through email and telephonic calls to ask for any query, process or further information. SSE will conduct due diligence checks, evaluation and assessments in order to comply with the requirements prescribed by SEBI.

5. APPROVAL AND LISTING:

Approval from SEBI: Once review process is done, SSE will send you an approval email confirming your registration with SSE. It is recommended that NPOs register themselves in SSE to avail the benefit of fundraising.

SEBI has bifurcated whole process into three phases i.e. Registration, Listing and Fundraising. Upon successful registration, the organisation will become a part of SSE.

PHASE 2- LISTING:

Registration of an NPO does not mean it can now raise funds from market. The NPO needs to get listed as well, which may take time as per the SEBI guidelines. As of now, there is no such information of what additional requirements may be imposed by SSE to get organizations listed. Listing of NPO means to display your organization's name in the List visible to potential Impact Investors. When NPO will be listed successfully, they would be able to reach out and approach CSR, Corporates, HNIs, Donor for fundraising; and vice-versa.

Create Demat A/C: NPO is required to create its Demat A/C on NSE/ BSE as funds will be raised in only dematerialized form, and therefore opening demat account becomes necessity.

Compliance and Reporting

NPOs need to make continuous disclosure of their social impact to stock exchanges, irrespective of the choice they raise funds or not. It is mandatory for them to periodically report on their social and financial performance. They need to comply with all the applicable SEBI (LODR) Regulations and future circulars thereof.

- **Annual renewal of registration:** NPOs need to renew its SSE Registration annually.

Initial Disclosure to issue ZCZP: As per Regulation 292k (1) of ICDR, SEBI, if NPO wants to issue funds through Zero Coupon Zero Principal Bond, then it should ensure that there is additional disclosure on vision, target segment, Strategy, Governance, Management, Operations, Finance, Compliance, Credibility, Social Impact and Risks associated with it.

- **Annual Disclosure:** As per Regulation 91C of LODR (Listing Obligations and Disclosure Requirements), all NPOs which are either only registered in SSE or raised funds from SSE needs to make annual disclosure within 60 days from end of Financial Year. It includes and not limited to the disclosure on general aspects, governance, auditor reports, financial statements and program wise fund utilization.

- **Annual Impact Report (AIR):** As per Regulation 91E of LODR Regulations, SEBI, all NPOs which are either only registered in SSE or raised funds from SSE needs to provide duly audited Annual Impact Report (AIR) by Social Auditor to Social Stock Exchange within 90 days from the end of Financial Year. The report should contain qualitative and quantitative aspect of social impact generated by the organization, strategic intent and planning, its approach, target segment and impact score card.

  Statement of Utilization of funds: Listed NPOs also need to submit Statement of Utilization of funds to SSE within 45 days from the end of quarter.

  Listing shall impose additional annual reporting requirements which NPOs need to comply. In case of failure to comply with any of the provisions or guidelines, SEBI reserves the power to initiate enforcement actions such as issuance of administrative warning, imposing penalties under Chapter VIA of the SEBI Act, or action u/s 11 of the SEBI Act for debarment and/ or penalty.

PHASE 3: FUNDRAISING

After successful listing, NPO is eligible to raise funds on program basis from the market, and it can do so by issuing financial instruments. Investors will be treated as donors as per normal accounting principles and the instruments issued by Not-for-Profit Organizations are not available for trading in secondary market, whereas the instruments issued by For-Profit Organizations are available for trading in secondary market on respective platforms of the Stock Exchanges, on which they are listed. It is to be noted that there is no Lock-in or minimum period between registration of any NPO and raising of funds from the market. There are various types of financial instruments as prescribed by SSE for NPOs such as Zero Coupon Zero Principal Bond. When NGO gets listed in the stock Exchange, a window will be open for subscription of financial interests and minimum 75 % should be prescribed in order to raise funds for the program. ZCZP instrument project must be raised via the SSE, or some can be outside the SSE as well. The minimum size for issue of Zero Coupon Zero Principal Instruments shall be Rs.50 lakhs and minimum application size shall be Rs.10,000. Besides ZCZP bond, NPOs can also issueMutual Funds, Social Venture Fund (SVF), Development Impact Bonds, and other securities and units that may evolve.

Conclusion

Social Stock Exchange is a pioneering effort in India that provides a transparent and structured platform for impact investments. It streamlines funding mechanisms for NPOs and promote new funding instruments. The platform offers a unique opportunity for investors to contribute to meaningful social causes, backed by regular impact assessments and reporting. SSE will prove to be beneficial for NPOs as it will create an ecosystem in the country and act as an opportunity for NPOs to scale based on credibility, giving long term benefits in the coming future for social development sector.

FINANCIAL MANAGEMENT SERVICE FOUNDATION

FINANCIAL DUE DATES CALENDAR FOR 2024-25

Months	Particulars	Due Date	Form No.
Apr-24	Payment of ESI and PF Contribution cum filing of Return for the month of March 2024	15/Apr/2024	Electronic Challan
Apr-24	Payment of TDS deducted for the month of March 2024	30/Apr/2024	Challan No. 281
May-24	Payment of TDS deducted during the month of April 2024	7/May/2024	Challan No.281
May-24	Payment of ESI and PF Contribution cum filing of Return for the month of April 2024	15/May/2024	Electronic Challan
May-24	Filing of Statement of donations received during FY 2023-24 (Statement of particulars to be filed by reporting person under clause (viii) of sub-section (5) of section 80G)	31/May/2024	Form 10 BD
May-24	Filing of TDS Return for the Quarter: Jan to Mar 2024	31/May/2024	26Q and 24Q
Jun-24	Payment of TDS deducted during the month of May 2024	7/Jun/2024	Challan No. 281
Jun-24	Issue of Certificate for TDS on non-salary payment for the Quarter ending March 2024	15/Jun/2024	Form 16A
Jun-24	Issue of Certificate for TDS on Salary for the financial year 2023-24	15/Jun/2024	Form 16
Jun-24	Payment of Advance Income Tax by all assessee other than 44AD (upto 15% of Income Tax payable)	15/Jun/2024	Challan No. 280
Jun-24	Payment of ESI and PF Contribution cum filing of Return for the month of May 2024	15/Jun/2024	Electronic Challan
Jul-24	Payment of TDS deducted during the month of June 2024	7/Jul/2024	Challan No. 281
Jul-24	Payment of ESI and PF Contribution cum filing of Return for the month of June 2024	15/Jul/2024	Electronic Challan
Jul-24	Filing of Income Tax Return for FY 2023-24 by assessee other than company whose accounts are **not required to be audited** under any law	31/Jul/2024	Various ITR Forms *
Jul-24	Filing of TDS Return for the Quarter: Apr to Jun 2024	31/Jul/2024	26Q and 24Q
Aug-24	Payment of TDS deducted during the month of July 2024	7/Aug/2024	Challan No. 281
Aug-24	Issue of TDS Certificate for TDS on non-salary payments for Quarter: Apr to Jun 2024	15/Aug/2024	Form 16A
Aug-24	Payment of ESI and PF Contribution cum filing of Return for the month of July 2024	15/Aug/2024	Electronic Challan
Sep-24	Payment of TDS deducted during the month of August 2024	7/Sep/2024	Challan No. 281
Sep-24	Payment of Advance Income Tax by all assessee other than 44AD (upto 45% of Income Tax payable)	15/Sep/2024	Challan No. 280
Sep-24	Payment of ESI and PF Contribution cum filing of Return for the month of August 2024	15/Sep/2024	Electronic Challan
Sep-24	Every individual who holds DIN as on 31st March 2024 and who has not filed DIR 3 KYC form previously or there is a change in email id and mobile number (Applicable for Section 8 Companies)	30/Sep/2024	DIR-3 KYC
Sep-24	Every individual who has previously filed form DIR-3 KYC and there is no change in email id and mobile number **(Applicable for Section 8 Companies)**	30/Sep/2024	DIR-3 KYC Web
Sep-24	Audit Report in Form 10B for NGOs availing exemption under section 11	30/Sep/2024	Form 10B
Oct-24	Payment of TDS deducted during the month of September 2024	7/Oct/2024	Challan No. 281
Oct-24	Payment of ESI and PF Contribution cum filing of Return for the month of September 2024	15/Oct/2024	Electronic Challan
Oct-24	Filing of Income Tax Return for FY 2023-24 by Company and **other than Company** whose accounts are required to be audited under any law	31/Oct/2024	ITR-7
Oct-24	Filing of TDS Return for the Quarter: Jul to Sep 2024	31/Oct/2024	26Q and 24Q
Oct-24	Filing Financial Statement and other documents to Registrar for the F.Y. 2023-24 **[Applicable for Section 8 Companies]**	With in 30 days from the date of AGM	AOC-4
Nov-24	Filing Annual Return by a company to Registrar for the F.Y. 2023-24 **[Applicable for Section 8 Companies]**	With in 60 days from the date of AGM	MGT-7
Nov-24	Payment of TDS deducted during the month of October 2024	7/Nov/2024	Challan No. 281
Nov-24	Issue of TDS Certificate for TDS on non-salary payments for Quarter: Jul to Sep 2024	15/Nov/2024	Form 16A
Nov-24	Payment of ESI and PF Contribution cum filing of Return for the month of October 2024	15/Nov/2024	Electronic Challan
Dec-24	Payment of TDS deducted during the month of November 2024	7/Dec/2024	Challan No. 281
Dec-24	Payment of Advance Income Tax by all assessee other than 44AD (upto 75% of Income Tax payable)	15/Dec/2024	Challan No. 280
Dec-24	Payment of ESI and PF Contribution cum filing of Return for the month of November 2024	15/Dec/2024	Electronic Challan
Dec-24	Online Filing of Annual Return under FCRA in Form FC-4 for the financial year 2023-24	31/Dec/2024	Form FC-4
Dec-24	Annual uploading of audited FC Financial Statements (Balance Sheet, Receipts & Payments Account, and Income & Expenditure Account for the financial year 2023-24	31/Dec/2024	Organization's own web-site
Dec-24	Due date to file belated Income Tax return for FY 2023-24	31/Dec/2024	Various ITR Forms *
Dec-24	Due date to file revised Income Tax return for FY 2023-24	31/Dec/2024	Various ITR Forms *
Jan-25	Payment of TDS deducted during the month of December 2024	7/Jan/2025	Challan No. 281
Jan-25	Payment of ESI and PF Contribution cum filing of Return for the month of December 2024	15/Jan/2025	Electronic Challan
Jan-25	Filing of TDS Return for the Quarter: Oct to Dec 2024	31/Jan/2025	26Q and 24Q
Feb-25	Payment of TDS deducted during the month of January 2025	7/Feb/2025	Challan No. 281
Feb-25	Issue of TDS Certificate for TDS on non-salary payments for Quarter: Oct to Dec 2024	15/Feb/2025	Form 16A
Feb-25	Payment of ESI and PF Contribution cum filing of Return for the month of January 2025	15/Feb/2025	Electronic Challan
Mar-25	Payment of TDS deducted during the month of February 2025	7/Mar/2025	Challan No. 281
Mar-25	Payment of Advance Income Tax by All assessee covered under 44AD (upto 100% of Income Tax payable)	15/Mar/2025	Challan No. 280
Mar-25	Payment of Advance Income Tax by All assessee other than 44AD (upto 100% of Income Tax payable)	15/Mar/2025	Challan No. 280
Mar-25	Payment of ESI and PF Contribution cum filing of Return for the month of February 2025	15/Mar/2025	Electronic Challan
	* *Check the applicable ITR Forms*		

Celebrating 30 Years (1994 - 2024)

fmsf

Financial Management Service Foundation • Promoting Accountability

○ INNOVATION ○ COLLABORATION ○ IMPACT

FINANCIAL MANAGEMENT SERVICE FOUNDATION

"ACCOUNTABILITY HOUSE"- A-5, Sector-26, Noida-201301

Tel: 00-91-120-4773200 I Email: fmsf@fmsfindia.org

Website: www.fmsfindia.org I www.fcraforngos.org

www.incometaxforngos.org I www.legalissuesforngos.org

Download the App here:

GET IT ON Google Play

Download on the App Store

Connect us on :