Taxation of Equity Ownership Plans for *Employees* (RSUs, ESOPs, ESPP)

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Agenda

- TYPES OF EQUITY OWNERSHIP PLANS
- IMPORTANT TERMS
- TAXATION
- OBLIGATIONS OF EMPLOYEES
- TAX SAVINGS

BLACK MONEY ACT

- IMPORTANT DEFINITIONS
- PENALTY FOR NON DISCLOSURE

Types of Ownership Plans

- Restricted Stock Units (RSU)
  - Employee gets ownership of shares/cash equivalent without any payment in the future

- Employee Stock Option Plan (ESOP)
  - Employee is given an option to buy shares at a pre-determined price at a later date

- Employee Share Purchase Plan (ESPP)
  - Option given to employees to enrol for ESPP monthly payroll deductions (% of salary)
    - At end of offering/purchase period (usually 6 months), shares are allotted at a pre-determined discount (generally up to 15%) to market value.

Important Terms

Term	RSU	ESOP	ESPP
Grant Date	Date of agreement to give shares/ options to own shares at a later date		
Vesting Period	Waiting Period between Grant Date and Vesting Date Vesting criteria could be Time Based or Performance based This normally ranges over a period of time, such as 3 to 5 years (every year a set % vests)		This is the offering/purchase period which normally ranges for 6 months
Vesting Date	Date on which Employee becomes *entitled* to own the stated number of shares/receive cash equivalent of the shares	Date on which Employee becomes *entitled* to exercise the option to buy the stated number of shares, upon satisfaction of the vesting criteria	End of period of Payroll deductions
Exercise Period	Not Applicable Same as Vesting Period	Period during which Employee can exercise the right to buy shares by completing payment terms.	End of offering/Purchase period when the shares are purchased
Exercise Date	Not Applicable	Date of which the required payment is made by the employee as per the terms of offer and shares are alloted subsequently	Completion of Payroll deductions Period as determined in Terms of Offer

Taxation Related Important Terms

- Tax is levied at two stages:
  1. Stage 1 - At the time of Vesting/Exercise/Allotment
     - Taxed under the head salary (perquisites) as per the normal tax slab of the employee
  2. Stage 2 - At the time of selling the shares by Employee
     - Taxed under the head capital gains

- Fair Market Value or FMV means prevailing market price
  - In case of listed shares, FMV = listed share price
  - In case of the unlisted shares, FMV = As per the Valuation Certificate obtained from the merchant banker on the specified date (i.e. Exercise date or any earlier date not being more than 180 days prior to the date of exercise)

Stage 1: Taxation of RSUs

- Date on which Taxed: Vesting Date and *not* upon grant
- Value for Taxation: FMV of Shares allotted at vesting
- Taxed as: Perquisite
- Responsibility: Employer

Stage 1: Example for Taxation For RSU's

- On 01-01-2022, A is granted 100 shares in X Co.
- 25 shares vest to him after every completed year.
- FMV on date of First Vesting, i.e. 01-01-2023 is 20$ per share.
- He sells all these shares on 15-04-2023 @ 30$ per Share.
- The taxation will be as under:

Shares Offered	100	
Date of Grant	01/01/2022	
Date of First Vesting	01/01/2023	
Number of shares Vested	25	
FMV at time of Vesting	**20$**	
Stage 1 : Taxation at the time of Vesting (FY 2022-2023)		
Taxation Date	01/01/2023	
	Value	No of Shares
Perquisite to be taxed (25 shares*20$ per share)	500$	25
Tax @ 31.2% (as per slab rate)	156$	7.8 ~ 8 (Balance shares = 25-8 = 17)
Stage 2 : Taxation at the time of Sale of Shares		
Sale price (30$*17)	510$	
Less Cost price (20$*17)	340$	
Capital Gains	170$	

- What Happened to 8 Shares

Stage 1: Taxation of ESOPs

- Date on which Taxed: Exercise Date and *not* upon grant/Vesting
- Value for Taxation: FMV of shares allotted on the exercise date
  (Less) Amount paid by the Employee
- Taxed as: Perquisite
- Responsibility: Employer

Stage 1: Example for Taxation For ESOPs

- On 01-01-2022, A is granted 100 shares in X Co. @ 5 $ / Share which is the Exercise Price.
- 25 shares vest to him on every completed year, First Lot on 01-01-2023.
- Exercise Period is 3 months.
- FMV on date of Exercise i.e 31-03-2023 is 20$ per share.
- He sells these shares on 15-04-2023 @ 30$ per Share.
- The taxation will be as under:

Shares Offered	100		
Date of Grant	01/01/2022		
Date of Exercise	31/03/2023		
Number of shares Vested & Exercised	25		
Amount collected from Employee	5$ per share		
FMV at time of Vesting	**20$ per share**		**Perquisite = 15$ per share(20$ -5$)**
Stage 1 : Taxation at the time of Exercise			
Taxation Date	31/03/2023		
	Value	No of Shares	
Perquisite to be taxed (25shares*15$ per share)	**375$**	**25**	**FMV-Cost Recovered from employee**
Tax @ 31.2% (As per slab rate)	**117$**	**5.85 ~ 6**	**(Balance Shares = 25-6 =19)**

- Where are 6 shares?

Stage 2: Example on Taxation of ESOPS

Stage 2: Taxation at the time of sale	
Sale price (30$*19 shares)	570$
Less Cost price (20$*19)	380$
Capital Gains	190$

Stage 1: Taxation of ESPPs

- Date on which Taxed: Allotment Date (date on which the shares is purchased by the employee i.e. end of the offering/purchase period)

- Value for Taxation: Discount Offered
  (FMV of shares on the purchase date less amount actually paid by the employee through payroll deductions)

- Taxed as: Perquisite

- Responsibility: Employer

Stage 2: Taxation on Subsequent Sale of ESPP

- Same treatment for Stage 2 taxation in case of RSUs, ESOPs
- Date on which Taxed: Sale Date
- Value for Taxation: Sale Price – FMV considered for Perquisite.
- Responsibility: Employee

Taxation on Subsequent Sale of RSU's ESOPS

- Taxed as: **Capital Gains** (Long-term/ Short-term depending on the holding period of shares)

- Unlisted shares in India/Listed out of India, if sold within
  - < = 24 months of holding = STCG, taxable as per slab rates
  - > 24 months = LTCG, taxable @ 20% with indexation

- Responsibility: Employee

Obligations of Employees

- Dividends Credited, interest credited In the Brokerage account need to be declared as income
- Form No 67A to be mandatorily filed claim withholding tax on Dividends
- Capital Gain/Loss irrespective of the amount involved need to be declared in Income tax returns
- Schedule FA to mandatorily Include the Shares held as on 31^{st} March **and** shares sold during the Year
- Penalty for Non disclosure is Rs 10 lakhs-Is it Mandatory

Tax savings

If the Period of holding of Shares from date of Vesting/Exercise is Equal to or More than 24 months (i.e. Long Term)

- Tax saving U/s 54F is available if amount is invested in the acquisition of a New House Property……. Subject to conditions

- Indexation Benefits can also be claimed.

- 54EE is not available as No Bonds have been notified.

- In case of losses - Benefits of Set Off and carry Forward and Set off is also available for both Long Term and Short Term assets.

NOTICES BEING RECEIVED FOR DISCLOSURE OF FOREIGN ASSETS & INCOME

The common word being heard from everyone handling the notices is

RUPEES 10 LAKHS PENALTY

None of the assessments are closed and no one is given a notice asking to Pay Penalty of 10 lakhs should not be levied

BLACK MONEY (UNDISCLOSED FOREIGN INCOME AND ASSETS) AND IMPOSITION OF TAX ACT, 2015

Black Money Act came into force on 1st July 2015 and is applicable from Assessment year 2016-17.

An Act to make provisions to deal with the problem of the **Black money that is undisclosed foreign income and assets**, the **procedure** for dealing with such income and assets and **to provide for imposition of tax on any undisclosed foreign income and asset held outside India** and for matters connected therewith or incidental thereto.

Important Definitions

2(11) :

Undisclosed Asset located outside India" means an asset (including financial interest in any entity) **located outside India**, held by the assessee in his name or in respect of which he is a beneficial owner, and he has **no explanation** about the source of investment in such asset or the **explanation given by him is in the opinion of the Assessing Officer unsatisfactory**;

2(12)

Undisclosed foreign income and asset" means the total amount of **undisclosed income of an assessee from a source located outside India** and the value of an undisclosed asset located outside India, referred to in section 4, and computed in the manner laid down in section 5;

Section 41: Penalty in relation to undisclosed foreign income and asset

The Assessing Officer may direct that in a case where tax has been computed under section 10 in respect of undisclosed foreign income and asset, the assessee shall pay by way of penalty, in addition to tax, if any, payable by him, a **sum equal to three times the tax computed** under that section

Section 10 Assessment

(1) For the purposes of making an assessment or reassessment under this Act, the Assessing Officer may, on receipt of an information from an income-tax authority under the Income-tax Act or any other authority under any law for the time being in force or on coming of any information to his notice, serve on any person, a notice requiring him on a date to be specified to produce or cause to be produced such accounts or documents or evidence as the Assessing Officer may require for the purposes of this Act and may, from time to time, serve further notices requiring the production of such other accounts or documents or evidence as he may require.

(2) The Assessing Officer may make such inquiry, as he considers necessary, for the purpose of obtaining full information in respect of undisclosed foreign income and asset of any person for the relevant financial year or years.

(3) **The Assessing Officer, after considering such accounts, documents or evidence, as he has obtained under sub-section (*1*), and after taking into account any relevant material which he has gathered under sub-section (*2*) and any other evidence produced by the assessee, shall by an order in writing, assess [*or reassess*] the undisclosed foreign income and asset and determine the sum payable by the assessee.**

(4) If any person fails to comply with all the terms of the notice under sub-section (1), the Assessing Officer shall, after taking into account all the relevant material which he has gathered and after giving the assessee an opportunity of being heard, make the assessment **[***or reassessment***]** of undisclosed foreign income and asset to the best of his judgment and determine the sum payable by the assessee.

Section 42: Penalty for failure to furnish return in relation to foreign income and asset

If a person who is required to furnish his return under Income tax act and who at any time in the previous year:

a. held any asset (including financial interest in any entity) located outside India as a beneficial owner
b. was a beneficiary of any asset (including financial interest in any entity) located outside India; or
c. had any income from a source located outside India,

And fails to furnish such return before the end of the relevant assessment year, the Assessing Officer may direct that such person shall pay, by way of penalty, a **sum of ten lakh rupees.**

Provided that this section shall not apply in respect of an asset, being one or more bank accounts having an aggregate balance which does not exceed a value equivalent to five hundred thousand rupees at any time during the previous year.

return of income, an information or furnish inaccurate particulars about an asset (including financial interest in any entity) located outside India

If any person,

who has furnished the return of income for any previous year, fails to furnish **any information or furnishes inaccurate particulars** in such return relating to any asset (including financial interest in any entity) located outside India, held by him as a beneficial owner or otherwise, or in respect of which he was a beneficiary, or relating to any income from a source located outside India, at any time during such previous year, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum of **ten lakh rupees**.

Provided that this section shall not apply in respect of an asset, being one or more bank accounts having an aggregate balance which does not exceed a value equivalent to five hundred thousand rupees at any time during the previous year.

Section 5: Computation of undisclosed foreign income and asset

- Any income

a. which has been assessed to tax under Income tax Act or

b. which is assessable or has been assessed to tax under this act

shall be reduced from the value of undisclosed asset located outside India

The amount of deduction in case of an immovable property shall be the amount which bears to the value of the asset as on the first day of the financial year in which it comes to the notice of the Assessing Officer, the same proportion as the assessable or assessed foreign income bears to the total cost of the asset .

Illustration : A house property located outside India was acquired by an assessee in the previous year 2009-10 for fifty lakh rupees. Out of the investment of fifty lakh rupees, twenty lakh rupees was assessed to tax in the total income of the previous year 2009-10 and earlier years. Such undisclosed asset comes to the notice of the Assessing Officer in the year 2017-18. If the value of the asset in the year 2017-18 is one crore rupees, the amount chargeable to tax shall be A-B=C

Where,

A = Rs 1 Crore

B = Rs (100 * 20/50) lakhs = Rs 40 lakhs

C = Rs (100 – 40) lakhs = Rs 60 lakhs

“Q & A”

Thank You

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Comprehensive Analysis of Tax Exemption for NPO's & Latest amendments by Finance Act 2023

Hyderabad Branch of SIRC of ICAI

19th May 2023

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Latest Amendments by Finance Act, 2023 in relation to Non-Profit Organizations

Amendments in Budget 2023 relating to NPOs

S. No	Amendments	Section Reference Finance Act 2023	wef
1	**Treatment of Donation to other Trusts**	Section 10(23C) Third Proviso Explanation 2 (iii) Section 11(1) Explanation 4(iii)	1.4.2024
2	**Time limit to furnish Form 9A /10**	Section 10(23C) Third Proviso (c) of Explanation 3 Section 11(2)(c) Section 11(1) Explanation 1 (2)	1.4.2023
3	**Combining Provisional & Regular Registration in Some Cases**	Section 10(23C) First Proviso (iv)(A) Section 12A(1)(ac)(vi)(A) 80G(5)First Proviso (iv)(A)	1.10.2023

Amendments in Budget 2023 relating to NPOs

S. No	Amendments	Section reference	wef
4	**Trusts or Institutions not filing the application in certain cases**	Section 115 TD (3)(iii) Section 10(23C) First Proviso (i) or (ii) or (iii) Section 12A(1)(ac)(i) or (ii) or (iii)	1.4.2023
5	**Specified Violations u/s 12AB and 10(23C)**	Section 10(23C) Fifteenth Proviso Explanation 2(e) Section 12AB(4) Explanation 1(g)	
6	**Denial of Exemption where return of income is not furnished within time**	10(23C) twentieth Proviso, 12A(1)(ba)	1.4.2023

Amendments in Budget 2023 relating to NPOs

S. No	*Amendments*	*Section Reference*	*wef*
7	**Withdrawal of an important provision for those who have not obtained registration for past years**	Section 12A(2) Second, Third and Fourth Proviso omitted	1.4.2023
8	**Depositing Back of Corpus and**		1.4.2023
9	**Repayment of Loans or borrowings**	Section 80G (2) (a) (ii), (iiic) and (iiid)	1.4.2024
10	**Removal of Certain Funds from Section 80G**		

01.Treatment of Donation to other Trusts

Section 10(23C) Third Proviso Explanation 2 (iii)
Section 11(1) Explanation 4(iii)

01.Donations to Other Trusts

Finance Act 2023
w.e.f.1.4.2024
Asst Year: 2024-25

Introduction

- The income of the T/I under both regimes are exempt subject to the fulfilment of certain conditions:

Some of the conditions are as follows:

- at least 85% of income should be applied during the year.
- apply 85% of income **either themselves or by making donations** to the trusts with similar objectives
- If donated, donation should not be towards corpus.
- Under both the regimes, allowed to accumulate 15% of its income
- Accumulation more than 15%, file necessary forms, invest the funds and file the returns on time (Section 11(2))

01.Restrictions on Inter Charity Donation

Previous Amendment 1

- *Finance act 2002 w.e.f. 1.4.2003*
- *Section 11(2) Explanation*
- *Payment to other T/I treated as application of income.*
- *However, any payment out of accumulated income (not being payment in the year in which trust claiming exemption is going for dissolution process) shall not be treated as application of income*

Intention

- *Accumulation made more than 15% must be spent by the trust on its own activities and cannot be donated to another Trust.*

01.Restrictions on Inter charity

Previous Amendment 2

- *Corpus donation paid to another trust was allowed as application till FY 2016 17*

Finance Act 2017 w.e.f. 1.4.2018

- *Any amount paid or credited to any other trust as a corpus of the trust then it shall not be treated as application of income.*

01.Donations to Other Trusts

Finance Act 2023
w.e.f.1.4.2024
Asst Year: 2024-25

Reasons for Present Amendment

- T/I permitted 15% Accumulation
- Defeating 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%.

Amendment

- In order to ensure intended application toward charitable or religious purpose,
- 1st and 2nd regime institutions giving donations to institutions (both 1st and 2nd regime), only 85% will be allowed as application.

01.Inter Charity Donations

Finance Act 2023
w.e.f.1.4.2024
Asst Year: 2024-25

Impact

Donation to other Trusts were allowed 100% as application so far.

- From 1.4.2023 onwards only 85% will be considered as application.

Hardships

- To several donors who give to genuine smaller NPOs

Similar provision in FCRA

- Foreign Contribution (Regulation) Act already prohibits inter-charity donations, even both the organizations are registered under FCRA and having valid FCRA certificate by the FCRA 2020

01.Inter Charity Donations Allowability

Particulars		Existing provisions		Amendment Provisions
Voluntary Contribution (A)		100000		100000
Eligible Accumulation		15000		15000
Amount to be applied		85000		85000
Inter Charity Donations	50000		42500	
Programme Expenditure	40000	90000	40000	82500
Taxable Income		NIL		2500

Finance Act, 2023

Sections for Reference

01.Donations to Other Trusts

Finance Act 2023
w.e.f.1.4.2024
Asst Year: 2024-25

Insertion of New Clause

Regime 1

- Section 10(23C) 3rd Proviso Explanation 2 (iii) to provide that any
- Amount paid or credited other than 12th Proviso to

Regime 2

- Section 11(1) Explanation 4 (iii)
- Amount paid or credited other than 11(1) Explanation 2 to
  - Any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred in
  - 10(23C) (iv) or (v) or (vi) or (via) or
  - Any trust or institution registered u/s 12AB
- **Only 85%** of such amount paid or credited, **shall be treated as application.**

Section 10(23C) Third Proviso Explanation 2 (iii)
Section 11(1) Explanation 4(iii)

Finance Act 2023
w.e.f.1.4.2023
Asst Year: 2023-24

2.Time limit to furnish Form 9A /10

Section 10(23C) Third Proviso (c) of Explanation 3
Section 11(2)(c)
Section 11(1) Explanation 1 (2)

2.Time limit to file Form 9A / 10

Finance Act 2023
w.e.f.1.4.2023
Asst Year: 2023-24

Present Provision

- Every T/I registered mandatorily has to spent 85% of its income, if not accumulate the shortfall by filing the necessary forms.

- In case income is received late in the financial year the trust can exercise option under section 11(1) to use the income in the immediately following financial year by filing Form 9A or accumulate the unspent income u/s 11(2) for up to five years by filing Form 10.

- The due date for filing Form 9A /10 is the same as the due date of furnishing the return of income u/s 139(1) ie., 31st October.

Finance Act 2023
w.e.f.1.4.2023
Asst Year: 2023-24

2.Time limit to file Form 9A / 10

Amended Provision

- Due date for filing the Form9A/10, at least two months prior to the due date specified u/s 139(1)

Forms	Due Date
Filing of ITR	31^{st} October
Filing of Form 10B & 10 BB	30^{th} September
Filing of Form 9A /10	31^{st} August

Impact

- Accounts are to be finalized on or before 31^{st} August to arrive the shortage in spending.

Finance Act 2023
w.e.f.1.10.2023
Asst. Year: 2023-24

3.Combining Provisional & Regular Registration in Some Cases

Section 10(23C) First Proviso (iv)(A)
Section 12A(1)(ac)(vi)(A)
80G(5)First Proviso (iv)(A)

3.Combining Registration

- **Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 amended the provisions**

- Section 10(23C) First and Second Proviso, 12A(1)(ac) & 80G(5) first and second proviso

- New trusts or institutions under both regimes & 80G regime **need to apply for the provisional registration/approval** at least one month prior to the commencement of the previous year relevant to the assessment year from which the said registration/approval is sought.

- Such provisional registration/ approval shall be valid for a period of 3 years

3.Combining Registration

Amendment 2020

Provisional Registration

- New trusts or institutions under both regimes & 80G regime **need to apply for the provisional registration/approval** at least one month prior to the commencement of the previous year relevant to the assessment year from which the said registration is sought.
- Provisional registration valid for a period of 3 years

Regular Registration

- Provisionally registered T/I will again need to apply for regular registration **at least six months prior to expiry** of period of the provisional registration or **within six months** of the commencement of activities, **whichever is earlier**.
- Regular registration valid for a period of 5 years.

3.Combining Registration

Challenges in the Present Provisions

- It has also been brought to the notice that trusts and institutions under both the regimes are facing the **following difficulties:**

- a) Trusts or institutions **formed or incorporated during the previous year are not able to get the exemption** for that year in which they are formed or incorporated since they need to apply one month before the previous year for which exemption is sought.

- b) Besides trusts or institutions, where **activities have already commenced,** are required to apply for **two registrations** (1st instance provisional and 2nd Instance regular) simultaneously

3.Combining Registration

Finance Act 2023
w.e.f.1.10.2023
Asst Year: 2023-24

Amendments

- In order to ensure rationalization of the provisions, **it is proposed to allow for direct final registration/approval in such cases**.

To achieve this, following amendments done:

- The trusts and institutions under the first & second regime & 80G regime shall be allowed to **make application for the provisional approval only before the commencement of activities.**

- The organizations who has commenced activities can directly apply for regular registration.

Section 10(23C) First Proviso (iv)(A), Section 12A(1)(ac)(vi)(A)
80G(5)First Proviso (iv)(A)

Trust or Institutions Applying for Registration

Finance Act 2023
w.e.f.1.10.2023
Asst Year: 2023-24

Before the Commencement of Activities

Provisional Registration

Section 10(23C) First Proviso (iv)(A)
Section 12A(1)(ac)(vi)(A)
80G(5)First Proviso (iv)(A)

Already Commenced Activities

Regular Registration

Section 10(23C) First Proviso (iv)(B)
Section 12A(1)(ac)(vi)(B)
80G(5)First Proviso (iv)(B)

PCIT shall Examine the application

Section 10(23C) Second Proviso (ii)
Section 12AB(1)(b)
80G(5) Second Proviso (ii)

Satisfied about objects & Genuineness of the activities and compliance of other requirements provided in the law

No Automatic Registration

Grant / Reject Registration within 6 months

Finance Act 2023
w.e.f.1.4.2023
Asst Year: 2023-24

4. Not filing the application for renewal and 5. Specified Violations

Section 115 TD (3)(iii)
Section 10(23C) First Proviso (i) or (ii) or (iii)
Section 12A(1)(ac)(i) or (ii) or (iii)

4. Registration

- **Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 amended the provisions**
- Section 10(23C) First and Second Proviso & 12A(1)(ac)
- T/I has to apply for the provisional registration, valid for 3 years or till 6 months from the commencement of activities **whichever is earlier.**
- T/I already registered were required to apply for re-registration.
- The process of granting the provisional registration for the new trusts and re-registration for the trusts already registered is **automated and granted without verification.**

Challenges in the present system

- It has come to the notice that in some cases the form furnished by the trusts for provisional registration and for re-registration are **defective** and since the process of registration, provisional registration is automated, registration has been granted by the CPC.

4. Registration

Finance Act 2022

- At present the registration and the provisional registration of the trusts can be cancelled by the PCIT/CIT for **certain specified violations.**

Specified violation to include

Where application for registration/provisional registration

Not complete or contains false/incorrect information

Insertion of Clause(8)–expln.2-15th proviso - Sec10(23C)Clause(g)–explanation.

Sec12AB(4)Now PCIT/CIT can cancel the registration for the above violation

Finance Act 2022
w.e.f.1.4.2022

Specified Violation

Section 12AB (4) Explanation

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

Finance Act 2022
w.e.f.1.4.2022

Specified Violation

Section 12AB (4) Explanation

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.

6 Violations
PCIT power to cancel the registration

4a).Exit Tax for Incorrect Information

Finance Act 2023
w.e.f.1.4.2023
Asst Year: 2023-24

Introduction

- On Cancellation of Registration, T/I are subject to Exit Tax u/s 115TD.

New Amendment

- It is proposed that the exit tax under section **115TD will also be applicable** in **various situations** such as:

Situation 1

- Under explanation to section 12AB(4) there are six specified violations for which the registration can be cancelled.
- The Finance Bill 2023 has added **one more violation** i.e., providing **incorrect or false information** at the time of making application for registration.

7th Violation Added

4b).Exit Tax for Non Compliance

Finance Act 2023
w.e.f.1.4.2023
Asst Year: 2023-24

Situation 2

- If an organization fails to apply for renewal after five year and all those organization who did not apply for renewal under section 12AB by 30th November 2022.
- In other words even if **there is no direct violation** of the Act but once the organization ceases to be a 12AB registered organization it **will be deemed to be cancelled**

Section 115 TD (5)(i), 3(iii), Explanation (i)(c)
Section 10(23C) First Proviso (i) or (ii) or (iii)
Section 12A(1)(ac)(i) or (ii) or (iii)

Renewal Application Not Filed

4.Exit Tax

Implications

- Exit Tax is a draconian provision
- The Exit Tax is to tax on the market value of assets, it was proposed to do so when the Registration is cancelled.
- CBDT through a Circular No. 21/2016 cautioned the tax authorities that genuine organization are not to be harassed.

Provisional Registration taken and NOT going for Regular Registration

EASY ROUTE TO EXIT

From Exemption Regime

Allowed to Exit

Pay Tax at MMR on its

Accreted Income

TO STOP Easy Route to Exit

without paying tax on Accreted income

Voluntarily winding up its activities or Dissolve or may merge with any other Non Charitable Institution

Or May convert into a Non Charitable Organization

Windup without tax

Benefit conferred is not misused and to plug the Gap

Section 115TD, TE, TF (Finance act 2016)

Finance Act 2022, This Provision Applicable to First Regime also

Finance Act, 2023 Amendment 115TD (3)(iii) Fails to make an application, it is deemed to have been converted into any form NOT eligible for registration

Fail to apply for Renewal is considered as Specified Violation and registration cancelled and pay tax

115TD (5)(ii), the principal officer has to pay the tax within 14 days from the end of the previous year

115TD Explanation (i)(c) date of conversion shall also mean the last date for making an application for registration

5.Denial of Exemption where return of income is not furnished within time

6.Delayed filing of Return of income

Finance Act 2023
w.e.f.1.4.2023
Asst Year: 2023-24

Present Provision

- T/I registered under section
  - 12AB required to file a return of income under Section 139(4A),
  - 10(23C) required to file a return of income under Section 139(4C)
  - if the total income, exceeds the maximum amount not chargeable to tax.

Finance Act, 2022

- **Inserted sub-section (8A)** in Section 139 to enable filing an updated return.
- It provides that **any person may file an updated return** whether or not such **a person has already filed** the original, belated, or revised return for the relevant assessment year or not.
- To avail exemptions, it is necessary to file return.

6.Delayed filing of Return of income

Finance Act 2023
w.e.f.1.4.2023
Asst Year: 2023-24

Amendment

- Finance Bill 2023 has **specifically restricted the return filing** to section 139(1) and 139(4) which implies that the exemption under section 11 **shall be withdrawn if the updated return filed** under section 139(8A).

Impact

- Organizations cannot claim the benefit of exemption if they file an updated return of income.
- It is to be noted that filing of updated return shall be considered as a violation of condition under section 12A(1)(ba) and consequently section 13(10) and 13(11) shall be applicable.
- Section 13(10) and (11) provide for **taxation for specified violations** including the violations under section 12A(1)(ba).

07. Withdrawal of an important facility for Genuine NPOs who have not applied for registration

Section 12A(2) Second, Third and Fourth Proviso omitted

6.Withdrawal of an important benefit

Finance Act 2023
w.e.f.1.4.2023
Asst Year: 2024-25

Introduction

- T/I registered under section 12AB (earlier 12AA) will have exemptions for all the open assessment proceedings pending before AO.
- This privilege was provided under proviso two, three and four to section 12A(2).
- These provisos were inserted by Finance Act 2014 to protect organizations at the time of applying for 12A registration from tax demands for earlier years.
- It was a great enabling provision which encouraged organisation to come forward for section 12AB registration without any fear for tax demands for earlier years.

redundant

6.Withdrawal of a Huge Opportunities

Finance Act 2023
w.e.f.1.4.2023
Asst Year: 2024-25

Amendment

- It is proposed that the second, third and fourth provisos to sub section (2) of section 12A shall be omitted.

Impact

- T/I applying for registration now cannot claim exemptions for earlier years.
- The previous years receipts will be taxed and it will lead to many litigations.
- The department may tax the gross receipts without allowing the expenses made by Trust or Institutions.
- it was held that application for charitable purposes should be allowed as expenditure even under section 56 and 57 for organisation not registered under section 12AB
  - Delhi High Court ruling in the case the Delhi High Court in the case Dy. DIT (E) v. Petroleum Sports Promotion Board [2014] 44 taxmann.com 322/223 Taxman

8 and 9 .Depositing Back of Corpus and Repayment of Loans or borrowings

8.Application out of Corpus

Finance Act 2023
w.e.f.1.4.2023
Asst Year: 2023-24

Present Provision **(Finance Act 2021)**

- Any expenditure or application made out of the corpus fund **will not be allowed as application**.
- Such amount shall be allowed as application **in the year in which it is deposited back to corpus** to the extent of such deposit or investment.

Rationale behind not allowing set-off of deficit against current years income :

Application for charitable and religious purposes can be out of three sources :

(i) Current year's income

(ii) Accumulated & Unconditional own funds (Corpus of the organisation)

(iii) Borrowed funds

8.Application out of Corpus

Finance Act 2023
w.e.f.1.4.2023
Asst Year: 2023-24

Present Provision

- In any year if there is a deficit i.e. excess of expenditure over income, it would imply that the organisation has over spent out of **either borrowed funds or its corpus.**

- Such deficit, earlier, was allowed to be set-off against future income, but the Finance Act 2021 provided that effective from 1st April, 2021 such deficit cannot be set-off against future income.

- However, an organisation **will be permitted to replenish the source of such deficit** against income of future years i.e. (i) to repay the funds borrowed for such expenditure which created deficit, (ii) to create investments under section 11(5) to the extent of the deficit

8.Application out of Corpus

Finance Act 2023
w.e.f.1.4.2023
Asst Year: 2023-24

Amendment

- It is proposed that any application made out of corpus can be can be offset against future years income **for a period of five years** from the end of the year in which such corpus was applied for charitable purposes. It is further provided that this provision shall apply to all the application made from corpus after 1st April 2021, to the extent eligible.

Impact

- An organization cannot carry forward the deficit (application made out of corpus indefinitely), it has to create investments against such deficit within a period of five years.
- After the end of five years the right to create deposits against income shall stand forfeited.
- Further, if any deficit was there as on 31st March 2021 then the organization will not be allowed to claim it against any future year income w.e.f 01.04.2023.

8.Application out of Corpus

Impact

- If an organization has been sustaining its activity out of corpus fund up to 31st March 2021 and was not able to replenish its corpus on or before 31st March 2022 then such organization will erode its corpus to that extent. In that sense it is a unfair and arbitrary disallowance.
- Further, the five year limit for reclaiming the corpus may have very adverse impact on many institutions which have a long gestation period or are compelled to continue there activities from corpus for multiple years.
- This amendment defies the intent of the provision which is to help a charity to protect its corpus from erosion.

Repayment of Loan

- Application from loans/borrowing not considered
- Clause (ii) in expln 2 to 3rd proviso to Sec 10(23C)Clause (ii) in expln 4 to sec 11(1)
- Such amount treated as application in PY in which loan is repaid

8.Removal of Certain Funds from Section 80G

Finance Act 2023
w.e.f.1.4.2024
Asst Year: 2024-25

8.Section 80G (2)

- List of Funds and donation to them eligible for 50% /100%
- Removal of the Funds which are **in the person's Name**
- Section 80G (2) (a) (ii), (iiic) and (iiid)
- (ii) the Jawaharlal Nehru Memorial Fund referred to in the Deed of Declaration of Trust adopted by the National Committee at its meeting held on the 17th day of August, 1964; or
- (iiic) the Indira Gandhi Memorial Trust, the deed of declaration in respect whereof was registered at New Delhi on the 21st day of February, 1985; or
- (iiid) the Rajiv Gandhi Foundation, the deed of declaration in respect whereof was registered at New Delhi on the 21st day of June, 1991; or

Allowability of repayment of loan

- Similar restrictions introduced like Corpus donations
- Application from loan/borrowing made before 1.4.21
- Not allowed as application when repaid
- Amount repaid not treated as application Unless repaid within 5 yrs from the end of PY in which application made
- Application from loan should have satisfied the conditions
- Inserted as provisos below the respective provisions in Sec 11(1) and 3rdproviso to Sec 10(23C)w.e.f 1.4.2023, AY 2023-24

New Audit Report 10B/10BB

Existing

Audit Report in Form 10B / Form 10BB

Existing Provisions

- IT Rules 16CC/17B and Forms 10B/10BB

Rule 17B	Audit Report in the case of Charitable or Religious Trusts u/s 12A(b)	Form 10B
Rule 16CC	10(23C)	Form 10BB

Amendment, 2023

Audit Report in Form 10B / Form 10BB

Form 10B

Income Above 5 Crores

i. the total income of such trust or institution, without giving effect to the provisions of sections 11 and 12 of the Act, exceeds rupees five crores during the previous year; or

ii. such trust or institution has received any foreign contribution during the previous year; or

iii. such trust or institution has applied any part of its income outside India during the previous year;

Any Other Case

- Form 10BB

Audit Report in Form 10B / Form 10BB

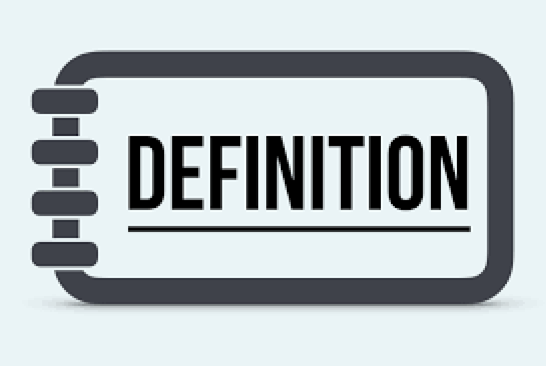
Income-tax (3rd Amendment) Rules, 2023

- IT Rules 16CC/17B and Forms 10B/10BB effective 01/04/2023
- CBDT Income Tax Notification 7/2023 dt. 21/02/2023

Rule	Section	Above 5 Cr	Any other Case
Rule 17B	12A(1)(b)(ii)	Form 10B	Form 10BB
Rule 16CC	10(23C) 10th Proviso (b)	Form 10B	Form 10BB

Comprehensive Analysis of Tax Exemption for NPO’s & Latest amendments


DEFINITION


DEFINITION

Definition


WHAT DOES
IT MEANS?


DEFINITION
FACTORY
FRAUD
MANAGEMENT
FUTURE
DATA

Section 2(15) defines "Charitable Purpose"

- Relief of the Poor
- Education
- Yoga (Finance Act 2015, w.e.f. 1.4.2016)
- Medical Relief
- Preservation of Environment/ Monuments (w.r.e.f. 1.4.2009)
- The Advancement of any other objects of GPU

EVOLUTION OF DEFINITION OF CHARITABLE PURPOSE

Finance Act	w.e.f	How it Evolved
		Section 4(3) of the IT act 1922 corresponds with Section 2(15)
1961		Section 2(15) at the time of enactment of the 1961 act: **Charitable purpose includes** ❖ relief of the poor, ❖ education, ❖ medical relief and ❖ the advancement of any other object of general public utility not involving the carrying on of any activity for profit".
1983	1.4.1984	Amendment to section 2(15) in 1983. "Not involving the carrying on of any activity for profit" **removed** and thus **pre 1962 position restored**

EVOLUTION OF DEFINITION OF CHARITABLE PURPOSE

Finance Act	*w.e.f*	*How it Evolved*
2008	1.4.2009	Provided that the advancement of any other object of general public utility ➢ shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or ➢ any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, ➢ irrespective of the nature of use or application, or retention, of the income from such activity;'.
2009	1.4.2009	❖ preservation of environment (including watersheds, forests and wildlife) and ❖ preservation of monuments or places or objects of artistic or historic interest

EVOLUTION OF DEFINITION OF CHARITABLE PURPOSE

Finance Act	*w.e.f*	*How it Evolved*
2010	1.4.2009	➢ Second Proviso Inserted ➢ "Provided further that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is **ten lakh rupees or less** in the previous year;"; ➢ Impact ➢ the last category of trust and NGOs will be allowed to have incidental business activity provided the total receipt from such activity does not exceed rupees ten lakh per annum.
2011	1.4.2012	in the second proviso, for the words "ten lakh rupees", the words "twenty-five lakh rupees" shall be substituted

Finance Act 2015
w.e.f.1.4.2016

Section 2(15) Proviso

The Advancement of any other object of general public utility shall not be a charitable purpose,

- If it involves any activity of **trade, commerce or business or**
- Any activity of rendering any **service in relation to any Trade / Commerce / Business,**
- **For a cess or fee or any other consideration,**
- Irrespective of the **nature of use or application or retention** of income from such activity

Unless:

- Such activity is undertaken in the course of actual carrying out of such GPU and
- aggregate receipts < 20% of gross receipts(*)

* Rs. 10 lakhs for A.Y.2009-10 to 2011-12 & Rs. 25 lakhs for A.Y.2012-13 to 2015-16

Section 2 (15): Example

Situation 1

- Total receipts of the trust is 200 Lakh by way of donations
- Receipts from Trade or commerce is 30 Lakh
- 20% of 200 Lakh is Rs. 40 Lakh and the commercial activity is lessor than Rs. 40 Lakh.
- Hence the Trust is eligible for Exemption

Situation 2

- Total receipts of the trust is 40 Lakh by way of donations
- Receipts from Trade or commerce is 10 Lakh
- 20% of 40 Lakh is Rs. 8 Lakh and the commercial activity is more than Rs. 8 Lakh.
- **Hence the Trust is NOT eligible for Exemption**

Implication if the Business Activity Exceeds Limit

- Finance Act, 2012, w.e.f. 1.4.2009
- Section 13(8)
- Nothing contained in section 11 or section 12 shall operate so as to exclude any income from the total income of the previous year of the person in receipt thereof
- if the provisions of the first proviso to clause (15) of section 2 become applicable in the case of such person in the said previous year."

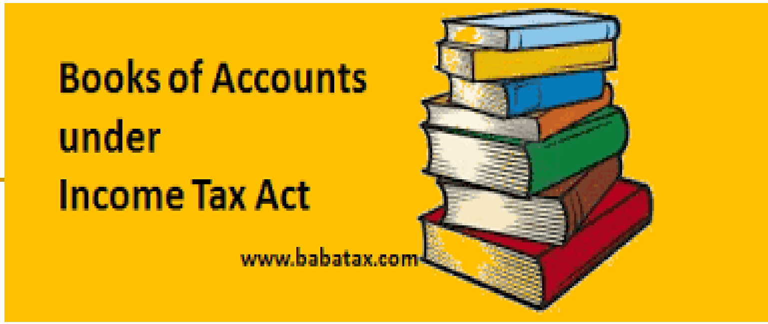
Cancellation : Crossing Threshold Limit

- CBDT circular No. 21 dated 27.05.2016 "merely on the basis of excess receipt from commercial activity beyond the cut-off (20% of total receipts during the years, as of now), exemption u/s 12AA would not be cancelled."
- The process for cancellation of registration to be initiated strictly to be in accordance with sec. 12AA(4).

Cur off exceeded in one year, tax on that year, Don't Cancel the Registration

Amendments in Finance Act, 2022

Mandatory Accounts for NPOs - new Rule



Maintenance of Books of Accounts

- *Section 12(b) provides that in case where the total income before giving effect to section 11&12 exceeds basic exemption limit the Trust must:*
  - *Maintain books of accounts & other documents as prescribed under Rule 17AA and*
  - *The accounts of the Trust are audited and audit report in Form 10B should be filed within the prescribed time limit.*
- *The amendment has casted an additional responsibilities on the Trust and the accountants to ensure that the prescribed books and documents are maintained as prescribed in Rule 17AA.*
- *Prior to said amendment no books or records were prescribed.*
- *Rule 17AA has been notified by the CBDT No. 94/2022 on 10th August 2022*

RULE 17AA – BOOKS OF ACCOUNTS

Books of accounts and other documents/records may be kept:

- *in written form or in electronic form or in digital form.*
- *They shall be kept and maintained for a period of 10 years from the end of relevant assessment year.*

(A) Books of accounts to be kept and maintained: -

i) Cash Book

ii) Ledger

iii) Journal

iv) Copies of bills/receipts issued by assessee (serially or machined numbered)

v) Original Bills issued to Person and receipts in respect of payments made by the person.

vi) Any other book that may be required to be maintained in order to give true and fair view

(Above records/documents is also required to be maintained for business undertaking referred to in subsection (4) or business carried by such trust /institution referred in section 10(23C) and 12A.)

RULE 17AA – OTHER DOCUMENTS

B) Other Documents

- *record of all the projects and institutions run by the person containing details of their name,address and objectives;*

records of Income:

- *voluntary contribution containing details of name of the donor, address, permanent account number (if available) and Aadhaar number (if available);*
- *income from property along with list of such properties*

records of application :

- *of income in India containing details of amount of application, name and address of the person to whom any credit or payment is made and the object for which such application is made*
- *amount credited or paid to any fund or institution or trust containing details of their name, address, permanent account number and the object for which such credit or payment is made.*

RULE 17AA – OTHER DOCUMENTS

- *application of income outside India containing details of amount of application, name and address of the person to whom any credit or payment is made and the object for which such application is made;*
- *deemed application of income referred in clause (2) of Explanation 1 – Section 11(1) of the Act containing details of the reason for availing such deemed application;*
- *income accumulated or set apart as per the provisions of the Explanation 3 to the third proviso to section 10(23C) or section 11(2) of the Act which has not been applied or deemed to be applied containing details of the purpose for which such income has been accumulated;*
- *money invested or deposited in the forms and modes specified in section 11(5) and modes other than section 11(5) of the Act;*
- *Details of accumulation / its utilization etc.*

RULE 17AA – OTHER DOCUMENTS

record of voluntary contribution made with a specific direction that they shall form part of the corpus, in respect of,—

- *the contribution received during the previous year containing details of name of the donor, address, permanent account number (if available) and Aadhaar number (if available);*
- *application out of such voluntary contribution referred to in item (I) containing details of amount of application, name and address of the person to whom any credit or payment is made and the object for which such application is made;*
- *amount credited or paid towards corpus to any other trust containing details of their name, address, permanent account number and the object for which such credit or payment is made;*
- *money invested or deposited in the forms and modes specified in section 11(5) and modes other than section 11(5) of the Act;*
- *application out of such voluntary contribution, received during any previous year preceding the previous year, containing details of the amount of application, name and address of the person to whom any credit or payment is made and the object for which such application is made*

RULE 17AA – OTHER DOCUMENTS

Records of Loan and borrowings:-

- *For Receipt of Loan*
  - *Details of Lender(Name ,Address, Pan/Aadhar)*
- *For Application of Loan*
  - *Application out of such loan (Name, Address to whome the payment is made)*
- *Repayment of such Loan*

Records of Properties Held by the Assessee:-

- *immovable properties containing details of,*

  (i) nature, address of the properties, cost of acquisition of the asset, registration documents of the asset;

  (ii) transfer of such properties, the net consideration utilised in acquiring the new capital asset;

  (iii) movable properties including details of the nature and cost of acquisition of the asset

RULE 17AA – OTHER DOCUMENTS

Record of specified persons under section 13(c)

- *containing details of their name, address, permanent account number and Aadhaar number(if available);*
- *transactions undertaken by the fund or institution or trust or any university or other educational institution or any hospital or other medical institution with specified persons as referred to in sub-section (3) of section 13 of the Act containing*
  - *details of date and amount of such transaction,*
  - *nature of the transaction and documents to the effect that such transaction is, directly or indirectly, not for the benefit of such specified person;*

Allowing certain expenditure in case of denial of exemption

Allowing certain expenditure

Finance Act 2022
w.e.f.1.4.2023
Asst Year: 2023-24

Current Provisions:

- There are **various conditions prescribed for availing exemption** of trusts under the income tax act. There is a need for clear provisions in the Act listing out **how income is to be computed in case of non-compliance**. Hence, it is proposed to provide for the same so that there is no dispute and the law is applied consistently. Different provisions mandate denial of exemption to the trusts or institutions under both the regimes. Some of the provisions under which exemption is not available for its violation are as follows:
- (a) Having commercial receipts in excess of 20% of the annual receipts in violation of the provisions of proviso to section 2(15);
- (b) Not getting the books of account audited;
- (c) Not filing the return of income presently specifically provided under the second regime only;

Allowing certain expenditure

Finance Act 2022
w.e.f.1.4.2023
Asst Year: 2023-24

- There is presently **lack of clarity on computation of taxable income** in case of non availability of exemption in these cases.
- For example, if the exemption is denied to the trust or institution for the late submission of the audit report, its entire receipts may be subjected to taxation and no deduction for any application may be allowed.

Proposed changes as per finance bill:

- To bring clarity in the computation of the income chargeable to tax in : –
- Section 13(10) inserted, when conditions mentioned in 12A(1)(ba)(b) violated
- 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 :-

Allowing certain expenditure

- (i) 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;
- (ii) such expenditure is not from any loan or borrowing;
- (iii) 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
- (iv) such expenditure is not in the form of any contribution or donation to any person.
- (b) It is also proposed to insert an Explanation to sub-section (10) to section 13 of the Act to provide that 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”.

Allowing certain expenditure

- (c) It is also proposed to insert sub-section (11) to section 13 of the Act to provide that 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 the Act.

Penalty for passing on unreasonable benefits to trustee or specified persons under section 271AAE

Unreasonable benefits to Trustee

Finance Act 2022
w.e.f.1.4.2023
Asst Year: 2023-24

- Section 271AAE
- Under section 13 of the Act, trusts or institution are required not to pass on any unreasonable benefit to the trustee or any other specified person.
- In order to discourage such misuse of the funds of the trust or institution by specified persons, it is proposed to insert a new section 271AAE in the Act to provide for penalty on trusts or institution **under both the regimes** which is equal to amount of income applied by such trust or institution for the benefit of specified person where the violation is noticed for the first time during any previous year and twice the amount of such income where the violation is notice again in any subsequent year.

Section 10(23C) Twelfth Proviso (a)
Section 12A(1)(b)(i)

No exemption if a person as referred to in section 13(3) receives gifts from trust [Section 56(2)(x)]

Section 13(3) Benefits

Background

- *Section 56(2)(x) deals with deeming provisions when a person receives gifts or acquires an immovable property or specified moveable assets without consideration or for inadequate consideration.*
- *Clauses (VI) and (VII) of proviso to Section 56(2)(x) provide that the deemed income shall not arise under section 56(2)(x) if any sum of money or any property is received:*
- *From any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in Section 10(23C); or*
- *From or by any trust or institution registered under section 12A/12AA/12AB.*

Section 13(3) Benefits

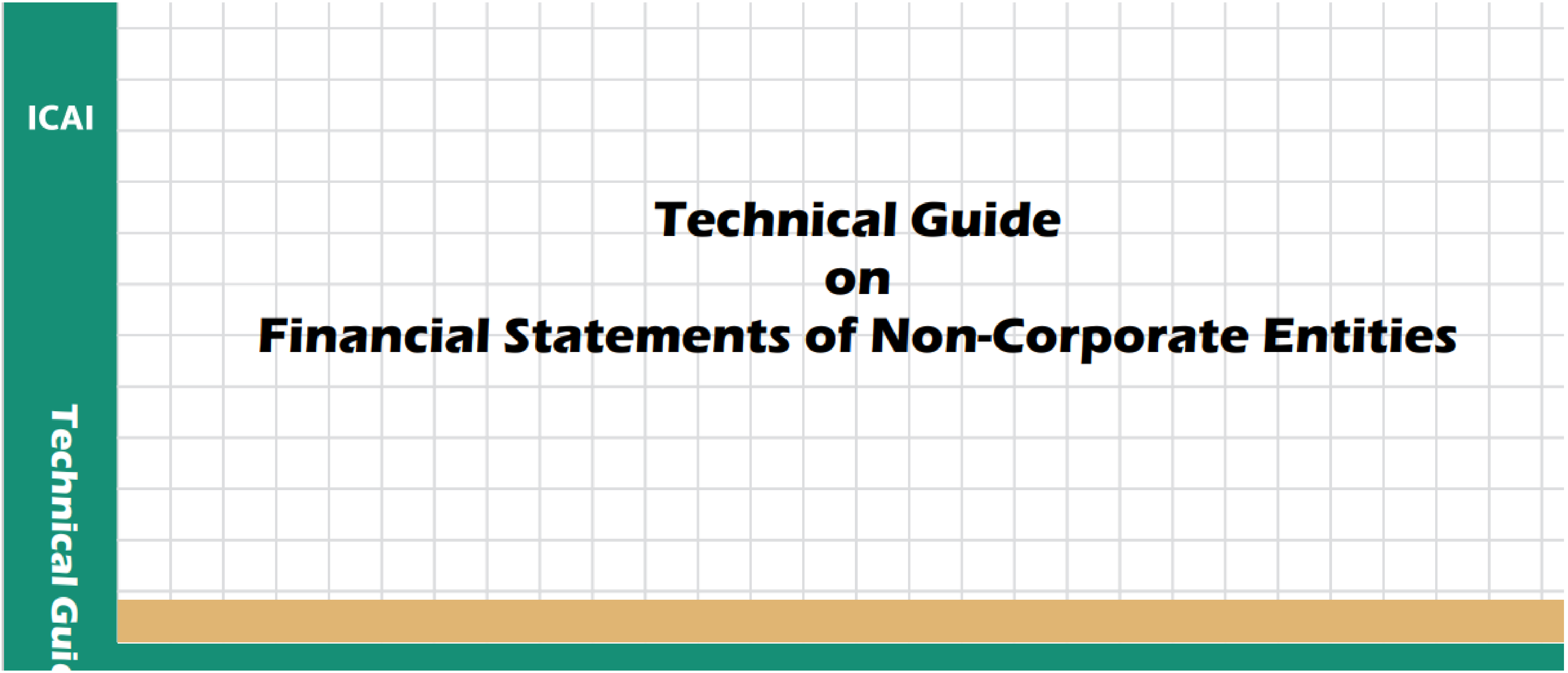
- *The Finance Act 2022 has inserted a second proviso to section 56(2)(x) to provide that, the clauses (VI) and (VII) of the **first proviso shall not apply** if any sum of money or property has been received by any person referred to in section 13(3).*
- ***Section 13 of the Act denies the benefit of exemption** to a charitable or religious trust or institution if any part of its income or property is used or applied for the benefit of interested persons.*
- ***Even if only a small portion** of the income is used or applied for the benefit of an interested person, the entire income of the trust is denied exemption.*


Thank
you!!

Financial Statements for Non-Corporate Entities

CA. Nitta Ravi Kishore

B.Com., FCA., ACMA., DISA.,


ICAI

Technical Guide on Financial Statements of Non-Corporate Entities

Technical Gui

First Edition	:	June 2022
Committee/Department	:	Accounting Standards Board

Exposure Draft
Guidance Note on
Financial Statements of
Non-Corporate Entities
(Comments to be received by March 8, 2023)

The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi

Effective Date

This Guidance Note shall be effective immediately from the date of its issuance.

The Technical Guide on Financial Statements of Non-Corporate Entities shall be superseded by this Guidance Note.

General Purpose Financial Statements

General Purpose Financial Statements prepared in accordance with the Accounting Standards provide relevant and reliable information which enables the users of financial statements to make informed economic decisions about the entity.

Need for Formats

For effective implementation of

Accounting Standards

Objective of Guidance Note

Standardise the formats of financial statements

enhance the quality and comprehensiveness of the financial reporting

Who prescribed the formats

Accounting Standards Board (ASB)

Scope

All non-corporate entities

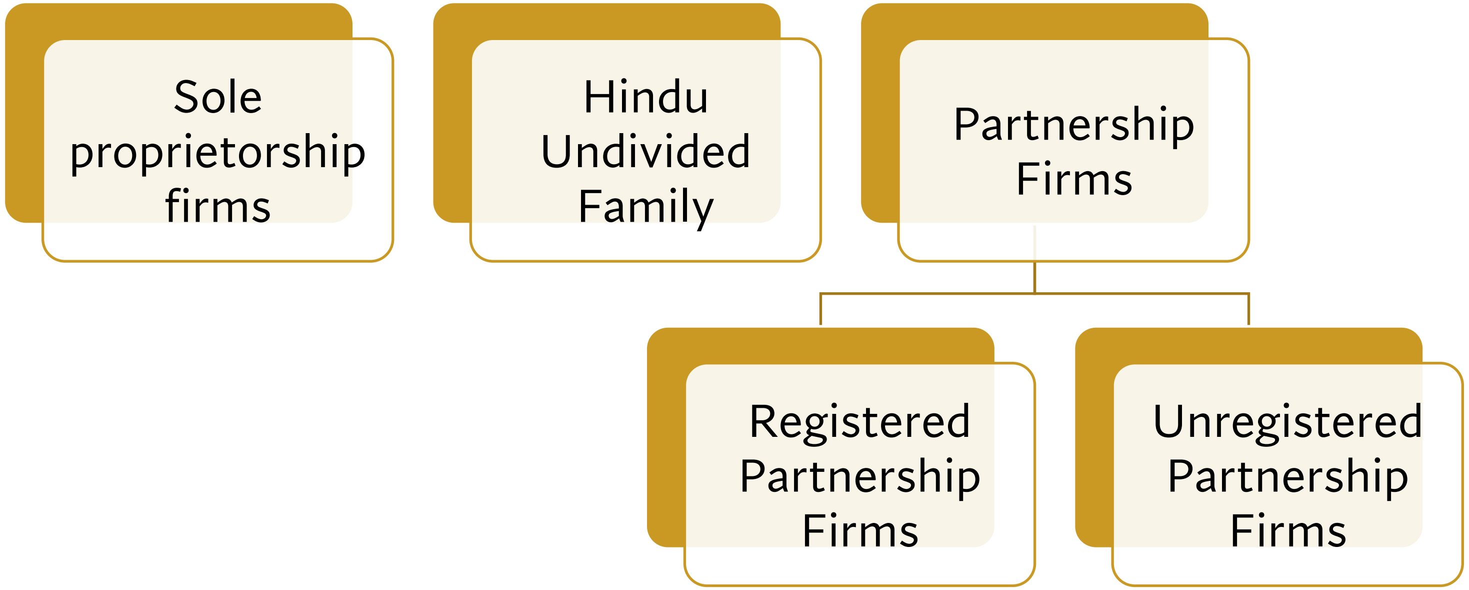
Except

Where relevant law/regulation/ authority has prescribed any other specific formats

Formats Prescribed

Trusts under Maharashtra Public Trust Rules, 1951	Guidance has been specifically given by ICAI
	• Educational Institutions • Political Parties

Non-Corporate Entities – A wide spectrum of entities



Non-Corporate Entities – A wide spectrum of entities

Association of Persons

- Partnership firms not covered above
- Body of Individuals
- Resident welfare Association

Society registered under any law for the time being in force

Trust (private or public) registered or unregistered under any law for the time being in force

Non-Corporate Entities – A wide spectrum of entities

Statutory Corporations, Autonomous bodies and Authorities

Any form of organisation that is engaged fully or partially in any Business or Professional activities unless their activities are fully charitable in nature.

LLPs

Incorporated under LLP Act, 2008

Corporate form of entity

Financial reporting of an entity should be

- Comparable
- Transparent
- Complete
- Unbiased

Accounting Standards

Wholesome principles of accounting

Standardised language of business

Communicate high quality information in FS

Accounting Standards based on principles of

- Transparency
- Consistency
- Comparability
- Reliability

Accounting standards

Set of principles

Which entities follow

While preparing the FS

Accounting Standards provide a standardized way of describing the entity's

FINANCIAL POSITION

&

FINANCIAL PERFORMANCE

Users of financial information

Corporate Entities	Non Corporate Entities
Shareholders	Potential investors
Regulators	Employees
Potential investors	Lenders
Lenders	Suppliers
Creditors	Other trade creditors
Other Stake holders	Customers

Formats for Financial Statements

Corporate Entities	Non-Corporate Entities
Schedule III Companies Act, 2013	?

Applicability of Accounting Standards

Apply

Any entity engaged in commercial, industrial or business activities

Not Apply

No part of the activity is commercial, industrial or business in nature.

What if:
Very small proportion of the activities are commercial, industrial or business in nature

Accounting Standards would apply to all its activities

Including those, which are not commercial, industrial or business in nature

Types of Accounting Standards

Indian Accounting Standards (Ind AS) for specified class of companies

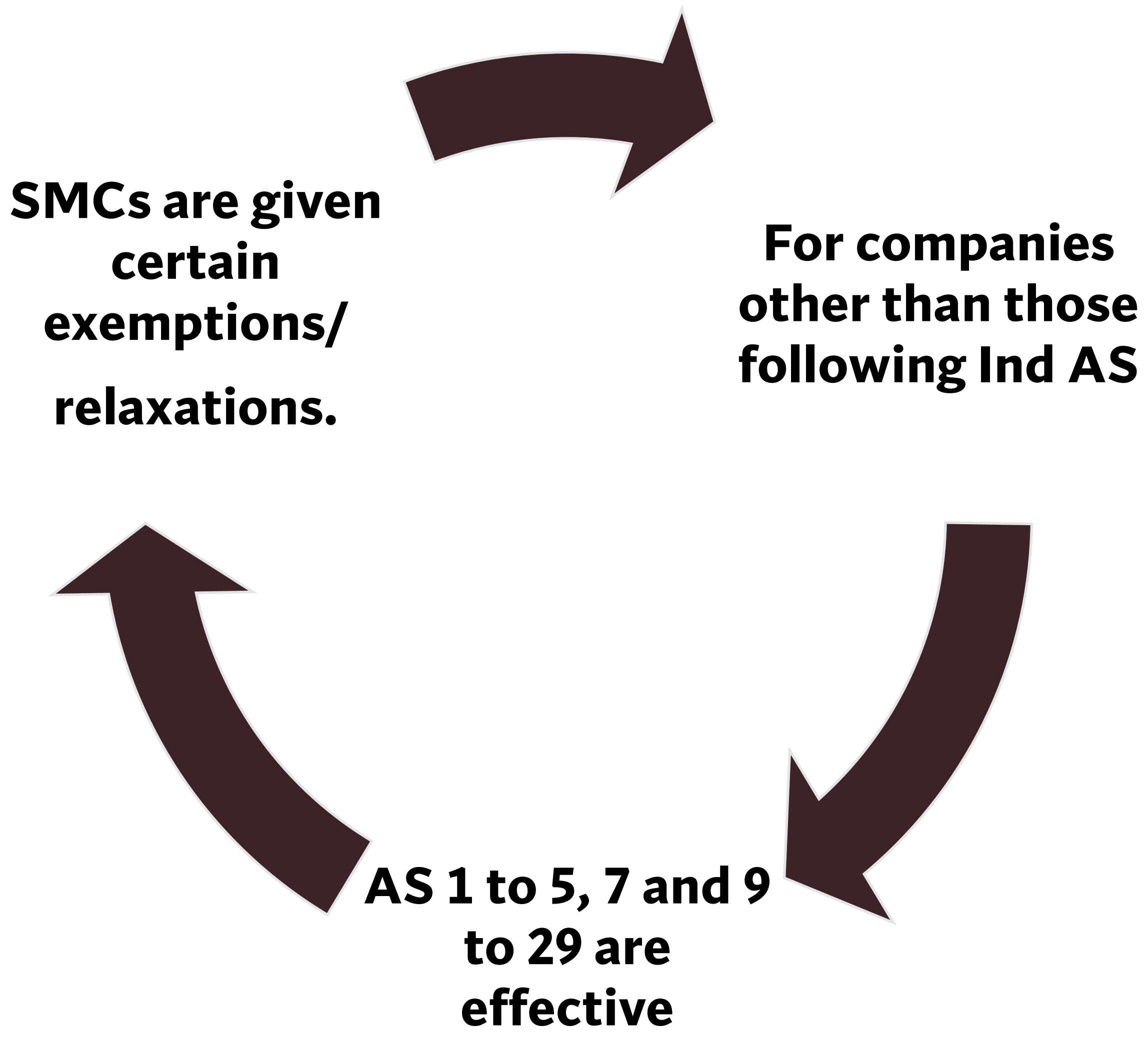
Accounting Standards (AS) notified under Companies (Accounting Standards) Rules, 2021, for companies other than those following Ind AS

Accounting Standards (AS) prescribed by ICAI for entities other than companies.

Indian Accounting Standards (Ind AS) for Companies

- Listed companies
- NBFCs
- Unlisted companies (NW >/= Rs. 250 Crores)
- Unlisted NBFCs (NW >/= Rs. 250 Crores)
- Holding/subsidiaries/joint ventures/associates of such companies

Accounting Standards (AS) notified under Companies (Accounting Standards) Rules, 2021



Accounting Standards (AS) prescribed by ICAI for entities other than companies

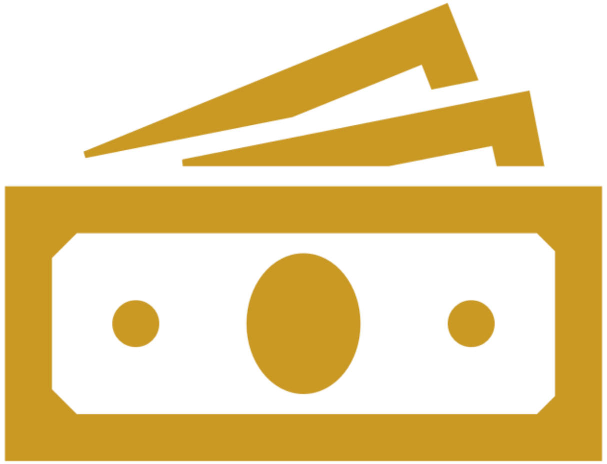
Scheme for applicability of Accounting Standards (AS)

Issued by ICAI

To non-company entities

Scheme for applicability of Accounting Standards (AS) comes into effect from

Accounting periods commencing on or after April 1, 2020



Criteria for classification of non-company entities

1

Level I Entities

2

Level II Entities

3

Level III Entities

4

Level IV Entities

Level I Entities

Securities are listed or are in the process of listing on any stock exchange, whether in India or outside India

Banks (including co-operative banks), financial institutions or entities carrying on insurance business.

Turnover (excluding other income) exceeds rupees **two-fifty crore** in the immediately preceding accounting year.

Borrowings (including public deposits) in excess of rupees **fifty crore** at any time during the immediately preceding accounting year

Holding and subsidiary entities of any one of the above.

Level II Entities

- Turnover (excluding other income) > fifty crore but </= two-fifty crore in the immediately preceding accounting year.
- Borrowings (including public deposits) > ten crore but </= fifty crore at any time during the immediately preceding accounting year
- Holding and subsidiary entities of any one of the above.

Level III Entities

Turnover (excluding other income) > ten crore but </= rupees fifty crore in the immediately preceding accounting year

Borrowings (including public deposits) > two crore but </= ten crore at any time during the immediately preceding accounting year

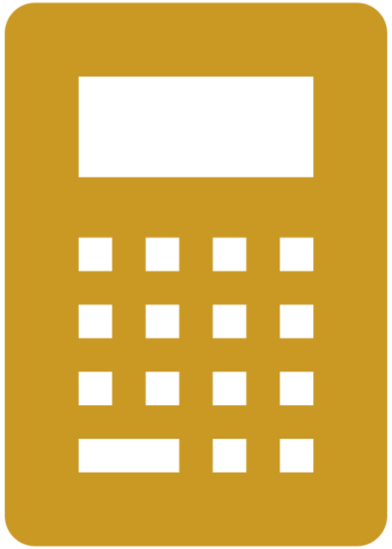
Holding and subsidiary entities of any one of the above

Level IV Entities

Non-company entities which are not covered under Level I, Level II and Level III are considered as Level IV entities

Applicability of the Accounting Standards to Level 1 Non- company entities.

Comply in full all the Accounting Standards



AS	Level II Entities	Level III Entities	Level IV Entities
AS 1	Applicable	Applicable	Applicable
AS 2	Applicable	Applicable	Applicable
AS 3	Not Applicable	Not Applicable	Not Applicable
AS 4	Applicable	Applicable	Applicable
AS 5	Applicable	Applicable	Applicable
AS 7	Applicable	Applicable	Applicable
AS 9	Applicable	Applicable	Applicable
AS 10	Applicable	Applicable with disclosures exemption	Applicable with disclosures exemption
AS 11	Applicable	Applicable with disclosures exemption	Applicable with disclosures exemption
AS 12	Applicable	Applicable	Applicable
AS 13	Applicable	Applicable	Applicable with disclosures exemption
AS 14	Applicable	Applicable	Not Applicable
AS 15	Applicable with exemptions	Applicable with exemptions	Applicable with exemptions
AS 16	Applicable	Applicable	Applicable
AS 17	Not Applicable	Not Applicable	Not Applicable
AS 18	Applicable	Not Applicable	Not Applicable
AS 19	Applicable with disclosures exemption	Applicable with disclosures exemption	Applicable with disclosures exemption
AS 20	Not Applicable	Not Applicable	Not Applicable
AS 21	Not Applicable	Not Applicable	Not Applicable
AS 22	Applicable	Applicable	Applicable only for current tax related provisions
AS 23	Not Applicable	Not Applicable	Not Applicable
AS 24	Applicable	Not Applicable	Not Applicable
AS 25	Not Applicable	Not Applicable	Not Applicable
AS 26	Applicable	Applicable	Applicable with disclosures exemption
AS 27	Not Applicable	Not Applicable	Not Applicable

Preface to the Statements of Accounting Standards

The Accounting Standards will be mandatory from the respective date(s) mentioned in the Accounting Standard(s)

Duty of the members of the Institute to examine whether the Accounting Standard is complied with in the presentation of financial statements covered by their audit

In the event of any deviation from the Accounting Standard, it will be their duty to make adequate disclosures in their audit reports so that the users of financial statements may be aware of such deviation.

Preface to the Statements of Accounting Standards

Ensuring compliance with the Accounting Standards while preparing the financial statements is the responsibility of the management of the enterprise

Statutes governing certain enterprises require of the enterprises that the financial statements should be prepared in compliance with the Accounting Standards

Preface to the Statements of Accounting Standards

Financial Statements cannot be described as complying with the Accounting Standards unless they comply with all the requirements of each applicable Standard

Accounting Standards (AS): Disclosures Checklist

Revised October, 2022

The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)

New Delhi

Audit of Financial Statements of Non-Corporate Entities

Auditor shall conduct the audit and issue the Auditors' Report in accordance with the Standards on Auditing issued by the ICAI

Tax Audit

Auditor should issue a report taking into consideration the

"Guidance Note on Tax Audit under Section 44AB of the Income-tax Act, 1961”

issued by the ICAI

Page 39 of GN on Tax Audit

10. Form of Financial Statements

10.1 In case of certain category of assesses eg company, society, charitable trusts etc. respective law governing the assessee prescribe form in which financial statements should be prepared and presented. In such a case, relevant provisions of law should be complied with for preparation and presentation of the financial statements. It should be noted that the responsibility for maintenance of books and records and that for preparation of financial statements is that of the assessee.

10.2 In case of certain assesses, law does not prescribe any specific format or requirements for preparation and presentation of financial statements. In such a case, the Accounting Standards Board of ICAI has issued guidelines for Form and related preparation and presentation guidelines. These are contained in ICAI Publication titled 'Technical Guide on Financial Statements of Non-Corporate Entities'. Tax auditors may consider inviting attention of assesses towards guidelines appearing in the said publication.

What Are Financial Statements?

- A balance sheet
- A statement of profit and loss
- A cash flow statement and
- Those notes and other statements and explanatory material that are an integral part of the financial statements.

GENERAL INSTRUCTIONS

- The financial statements should give true and fair view of
- The state of affairs of the entity
- Comply with the applicable Accounting Standards and
- Shall be in the form as provided hereafter.

These formats shall apply for preparation of Balance Sheet and Statement of Profit and Loss of a non-corporate entity.

Where compliance with the requirements of the relevant statute including Accounting Standards as applicable to the Non-Corporate entity require any change in treatment or disclosure including addition, amendment, substitution or deletion in the head or sub-head or any changes, inter se, in the financial statements or statements forming part thereof, the same shall be made and the formats shall be modified accordingly.

This Guidance Note uses terminology that is suitable considering the nature and business of non-corporate entities in general.

However, certain noncorporate entities may need to amend the descriptions used for particular line items in the formats of financial statements and for the financial statements themselves, e.g., Association of Persons may need to use terminology “members’ funds” instead of “owners’ funds”.

The disclosure requirements specified in the formats are in addition to and not in substitution of the disclosure requirements specified in the Accounting Standards issued by the Institute of Chartered Accountants of India. Additional disclosures specified in the Accounting Standards shall be made in the notes to accounts or by way of additional statement unless required to be disclosed on the face of the Financial Statements.

Similarly, all other disclosures as required by the relevant statute shall be made in the notes to accounts in addition to the requirements set out in these formats

Notes to accounts shall contain information in addition to that presented in the Financial Statements and shall provide where required (a) narrative descriptions or disaggregations of items recognised in those statements; and (b) information about items that do not qualify for recognition in those statements

Each item on the face of the Balance Sheet and Statement of Profit and Loss shall be cross-referenced to any related information in the notes to accounts. In preparing the Financial Statements including the notes to accounts, a balance shall be maintained between providing excessive detail that may not assist users of financial statements and not providing important information as a result of too much aggregation

Rounding off

Total Income	Rounding off
(a) less than one hundred crore rupees	To the nearest hundreds, thousands, lakhs or millions, or decimals thereof.
(b) one hundred crore rupees or more	To the nearest lakhs, millions or crores, or decimals thereof.

Once a unit of measurement is used, it should be used uniformly in the Financial Statements.

Except in the case of the first Financial Statements prepared by the Non-Corporate entity (after its incorporation) the corresponding amounts (comparatives) for the immediately preceding reporting period for all items shown in the Financial Statements including notes shall also be given.

For the purpose of this format, the terms used herein shall be as per the applicable Accounting Standards.

ıe Non-Corporate Entity ….............
of Profit and Loss for the year ended ………………………

(Amount in Rs.)

Particulars	**Note**	**31 March 20XX**	**31 March 20XX**
Revenue from operations	19	-	-
Other Income	20	-	-
Total Income (I+II)		-	-
Expenses:			
Cost of goods sold	21	-	-
Employee benefits expense	22	-	-
Finance costs	23	-	-
Depreciation and amortization expense	24	-	-
Other expenses	25	-	-
Total expenses		**-**	**-**
Profit/(loss) before exceptional and extraordinary items and tax (III-IV)		-	-
Exceptional items (specify nature & provide note/delete if none)		-	-
Profit/(loss) before extraordinary items and tax (V-VI)		-	-
Extraordinary Items (specify nature & provide note/delete if none)		-	-
Profit before tax (VII-VIII)		-	-
Tax expense:			
Current tax		-	-
Excess/ Short provision of tax relating to earlier years			
Deferred tax charge/ (benefit)	6	-	-
		-	-
Profit/(Loss) for the period from continuing operations (IX-X)		-	-
Profit/(loss) from discontinuing operations		-	-
Tax expense of discontinuing operations		-	-
Profit/(loss) from discontinuing operations (after tax) (XII-XIII)		-	-
Profit/(Loss) for the year (XI+XIV)		-	-
The accompanying notes are an integral part of the financial statements			