



# Amendments in Charitable Trusts : Finance Bill 2023

Speaker : Talluri Rajendra Prasad (RP)

Date: 29<sup>th</sup> March 2023

# Agenda

- **Part A: Taxation of Trusts / Institutions – Basics**
- **Part B: Amendments made vide the Fin Bill, 2023**
- **Part C: Amendments made vide the Fin Acts, 2022**
- **Part D: Amendments made vide the Fin Acts, 2021**

# Agenda

## **Part A: Taxation of Trusts / Institutions – Basics**



## **Part A: Taxation of Trusts / Institutions – Basics**

Provisions of Sec 11 to Sec 13

Provisions of Sec 10(23C)

Requirements specified U/S 80-G

## Part A: Taxation of Trusts / Institutions – Basics: Overview of Sections

Section	Particulars
Sec 2(15)	Definition of Charitable purpose
Sec 10(23C)	Incomes received by any person on behalf of certain institutions not taxable
Sec 11	Income from property held for charitable or religious purposes
Sec 12	Income of trusts or institutions from contributions
Sec 12A	Conditions for applicability of sections 11 and 12
Sec 12AA	Procedure for registration
Sec 12AB	Procedure for fresh registration
Sec 13	Section 11 not to apply in certain cases
80G(5)	Conditions for claiming recognition U/S 80G
Sec 115BBI	Certain Incomes of trusts taxed at MMR in certain cases
Sec 115TD	Tax on accreted income
Sec 115TE	Interest payable for non-payment of tax
Sec 115TF	When a trust or institution is deemed to be assessee in default
Sec 271AAE	Penalty w.r.t Benefits to related persons

## Part A: Taxation of Trusts / Institutions – Basics: Over view of Rules and Forms

Rule	Particulars	Related Form
11AA	Requirement for approval of institution of fund 80G(5)	10A, 10AB, 10AD
16CC	Form of report of audit prescribed under tenth proviso to section 10(23C) [Institutions / Funds / Trusts / Educational Institutions / Hospitals, etc]	Form 10B and Form 10BB
17	Exercise of option, etc., under section 11 [Notice of accumulation, etc.]	9A, 10
17A	Application for registration of charitable or religious trusts etc	10A, 10AB, 10AC
17B	Audit report in the case of charitable or religious trusts, etc.	Form 10B and Form 10BB
17C	Forms or modes of investment or deposits by a charitable or religious trust or institution	-
17CB	Method of valuation for the purposes of Section 115TD(2)	-
18AAA	Prescribed authority for approval of a University or any educational institution of national eminence for the purpose of section 80G.	-
18AAAA	Prescribed authority for the purpose of receiving separate accounts from trusts or funds or institutions for providing relief to the victims of earthquake in Gujarat.	-
18AAAAA	Guidelines for specifying an association or institution for the purposes of notification under clause (c) of sub-section (2) of section 80G. <b>[Games and Sports related]</b>	

## Part A: Taxation of Trusts / Institutions – Basics

**Sec 2(15): Charitable purpose** includes relief of the poor, education, yoga, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility:

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

**(i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and**

**(ii) the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year.**

## Part A: Taxation of Trusts / Institutions – Basics

**Incomes exempt from tax if the conditions of Sec 11 to 13 are complied with:**

**Sec 11(1)(a): Income derived from property held under trust** wholly for charitable and religious purposes to the extent to which such income **is applied for such purposes in India.** [It is provided that minimum 85% of income shall be applied in the current year. i.e 15% can be applied for future years;]

**Sec 11(1)(c):** Income derived from property held under trust created after 1st April 1952 to promote International Welfare in which India is interested to the extent of such income applied for such purposes outside India.

Sec 11(1)(d): Voluntary contribution received as Corpus [**Need to be invested in Sec 11(5) modes of investments**]



## Part A: Taxation of Trusts / Institutions – Basics

# Application of income

Application of Income is wider in scope than that of Expenditure:

What constitutes Application? [Provisions of Sec 40a(ia), Sec 40A(3) and Sec 40A(3A) shall be applicable for Sec 11(1)(a) and Sec 11(1)(b)] [Sec 11(1)(b) is not relevant now]

- (1) Donations to charitable / religious trusts or institutions registered under section 12AA and institutions referred to in section 10(23C) out of current year incomes [Other than by way of corpus donations];
- (2) Payment of taxes.
- (3) Application of income can be for revenue or capital expenditure (However, depreciation is not allowed once capex is claimed as expenditure)

**Relaxations w.r.t Application of income? Yes, available**

## Part A: Taxation of Trusts / Institutions – Basics

# Sec 11(1A): Manner of computation of capital gains

Capital gains shall be computed in the normal manner and it shall be reduced by the following amounts.

If the trust is utilizing the capital asset wholly for religious or charitable purposes, then

**If the whole net consideration is used for purchasing a new asset:-** Then entire capital gains are deemed to have been applied for charitable/ religious purposes.

**If only part of the net consideration is used for purchasing a new asset:-** Then the incremental cost of the asset acquired over the old asset which is sold or transferred shall be deemed to have been applied for charitable / religious purposes.

## **Part A: Taxation of Trusts / Institutions – Basics**

# **Sec 11(2): Conditions for accumulation of income in excess of 15%**

The trust can accumulate in excess of 15% by giving a declaration in writing specifying the time period for which the same is intended to be accumulated. [Period of accumulation shall not exceed 5 years]. They shall be deposited in forms of investment specified U/S 11(5).

The trust is barred from donating to another trust / institution out of 'accumulated income'. However, the same can be done at the time of dissolution of the trust as per 2<sup>nd</sup> proviso to Sec 11(3A).

## **Part A: Taxation of Trusts / Institutions – Basics**

# **Sec 11(3): Manner of taxation where there are failures in application etc.,**

It provides for taxing in the hands of the trusts in the cases, where incomes are not applied for the purposes of the trust or incomes are accumulated but not applied or accumulated sums are not invested in securities specified U/S 11(5), etc.,

## Part A: Taxation of Trusts / Institutions – Basics

# Sec 11(4) and (4A): Business undertaking

Property held under trust includes “Any Business Undertaking so held under Trust.” Where a claim is made that the income from such undertaking shall not be included in the total income of the assessee as the same is held under trust, the AO has the power to determine the income of the undertaking. Where the AO determines the income on a higher side vis-à-vis the income as per the books of account, then such excess income shall be taxable. [Excess shall not be treated as have been applied for charitable / religious purposes.] [\[Sec 11\(4\)\]](#)

Sec 11(1)/(2)/(3)/(3A) shall not be applicable in relation to Business Income of any trust or institution unless such business is incidental to the attainment of the objectives of the trust and separate books of account are maintained. [i.e The aforesaid provisions exempting the income of a trust will not be applicable if the business is not incidental to the objectives of the trust. Further, the aforesaid provisions exempting the income of a trust shall not be applicable where no separate books of account are maintained.] [\[Sec 11\(4A\)\]](#)

## **Part A: Taxation of Trusts / Institutions – Basics**

# **Sec 11(5) : Modes of investments**

Accumulated moneys shall be invested in the forms or modes specified U/S 11(5).

## Part A: Taxation of Trusts / Institutions – Basics

# Sec 12 : Incomes of trusts

**Sec 12(1):** Any voluntary contributions received by a trust shall be treated as income and hence the trust needs to apply 85% of such income. However, corpus donations shall not be treated as income for the purpose of this section and hence donations received with a specific direction shall be ignored for the purpose of calculating 85% limit.

**Sec 12(2):** The trusts cannot apply its income towards the prohibited category of persons. However, a small relaxation is provided U/S 13(6) read with Sec 12(2), whereby it is provided that where an educational institution / hospital provides any facility or benefit to the prohibited category of persons at free of cost or at concessional rate, then to the extent of misapplication, it will be treated as income. Hence, the trust needs to pay tax at MMR [Maximum Marginal Rate] on the misapplied portion and on the balance it need not pay tax assuming that all other conditions of this chapter are complied with.

## **Part A: Taxation of Trusts / Institutions – Basics**

### **Sec 12A : Conditions for applicability of Sec 11 and 12**

Return within time;

Maintenance of books;

Audit Report;

Application to the AO within the specified time; [Application is to be made even when there are changes in the objects of the trust which do not conform to the conditions of (original) registration]



## **Part A: Taxation of Trusts / Institutions – Basics**

### **Sec 12AB : New procedure for registration**

Refer Amendments made by the Fin Act, 2021 and Fin Act, 2022

## Part A: Taxation of Trusts / Institutions – Basics

### Sec 13 : Exemption is not available in certain cases [Some are detailed below]

**Case # 1:** In the case of trust created for private religious purposes to the extent the **income is applied not for the benefit of public.**

**Case # 2:** In the case of a trust formed for charitable purposes, **if it is created for the benefit of any particular religious community or caste.** [i.e Exemption is not available to the whole of income of such trust, if the trust is created for the benefit of particular religious community / caste. However, where a trust is created for the benefit of SC/ST/BC/Women/Children, it shall be qualified for exemption U/S 11 and U/S 12 in the usual manner.]

**Case # 3:** In the case of a trust formed for charitable or religious purposes, if any part of income or any property of the trust is applied directly or indirectly **for the benefit of specified persons...**

**Case # 4:** Where the trust / institution invests otherwise than in the specified investments mentioned in Sec 11(5).



**Part B: Direct Tax Proposals made by Finance Bill, 2023  
relating to Charitable Trusts**

# Rationalization of provisions relating to Charitable Trusts

Application from Corpus, Loan and Borrowings : Conditions to be satisfied [Sec 10(23C) and Sec 12AA and Sec 12AB] [W.E.F AY2023-24]: [These amendments are applicable for both the types of trusts / institutions covered U/S 10(23C)(iv)/(v)/(vi)/(iva) and U/S 12AA or 12AB.]

**#1: Where application from Corpus / Loan / Borrowing is already claimed as 'Application of income prior to 01.04.2021', then re-depositing back into corpus / repayment of the loan or borrowing shall not be treated as application of income:**

As per the amendments made by the Fin Act, 2021, **application from Corpus** shall not be treated as application of income. However, **when it is invested or deposited back**, into one or more of the forms or modes specified in sub-section (5) of section 11 of the Act maintained specifically for such corpus, **from the income of the previous year**, such amount shall be allowed as application in the previous year in which it is deposited back to corpus to the extent of such deposit or investment. Likewise, **application from Loan / Borrowing** shall not be treated as Application of income. **However, when loan or borrowing is repaid from the income of the previous year**, such repayment shall be allowed as application in the previous year in which it is repaid to the extent of such repayment.

The Finance Bill, 2023 proposed amendments to restrict the double deduction by providing that where the application from Corpus / Loan / Borrowing is already claimed as application of income, then re-depositing back into corpus / repayment of the loan / borrowing shall not be treated as application of income.

## **Rationalization of provisions relating to Charitable Trusts**

**Application from Corpus, Loan and Borrowings : Conditions to be satisfied [Sec 10(23C) and Sec 12AA and Sec 12AB] [W.E.F AY2023-24]: [These amendments are applicable for both the types of trusts / institutions covered U/S 10(23C)(iv)/(v)/(vi)/(iva) and U/S 12AA or 12AB.]**

**# 2: 'Time limit of 5 years from the year of application of income' for the purposes of redepositing back into corpus / repayment of loan or borrowing:**

The Finance Bill, 2023 proposed amendments to provide that if the trust or institution invests or deposits back the amount in to corpus or repays the loan within 5 years of application from the corpus or loan, then such investment/depositing back in to corpus or repayment of loan will be allowed as application for charitable or religious purposes.

# Rationalization of provisions relating to Charitable Trusts

Application from Corpus, Loan and Borrowings : Conditions to be satisfied [Sec 10(23C) and Sec 12AA and Sec 12AB] [W.E.F AY2023-24]: [These amendments are applicable for both the types of trusts / institutions covered U/S 10(23C)(iv)/(v)/(vi)/(iva) and U/S 12AA or 12AB.]

# 3: Various other conditions to be satisfied for the purpose of claiming the application from Corpus / Loan / Borrowing at the time of redeposit into corpus / repayment of loan or borrowings: [Do not donate in the form of corpus donation; Comply with the TDS provisions, if any; Comply with Sec 40A(3)/(3A); Carry forward and set off of excess application is not allowed; Allowed on cash basis (i.e Accrual mode disallowed, eg: Year end provisions not allowed); No application towards prohibited category of persons & Income should not enure any benefit to the prohibited category of persons; Application of income should be in India except with the approval of the Board]

- (a) Such application **should not be in the form of corpus donation** to another trust;
- (b) TDS, if applicable, should be deducted on such application;
- (c) To comply with Sec 40A(3) / (3A) [i.e Donations in excess of Rs 10,000 should not be in cash mode];
- (d) Carry forward and set off of excess application is not allowed;
- (e) Application is allowed in the year in which it is actually paid;
- (f) Application should not directly or indirectly benefit any person referred to in sub-section (1) of section 13 of the Act & and the income of the trust or institution should not enure any benefit to such person;
- (g) Application should be in India except with the approval of the Board

## **Rationalization of provisions relating to Charitable Trusts**

**Treatment of Donations to Other Trusts: [W.E.F AY2024-25]: [These amendments are applicable for both the types of trusts / institutions covered U/S 10(23C)(iv)/(v)/(vi)/(iva) and U/S 12AA or 12AB.]**

**Eligible donations to another trust / institution shall be treated as application only to the extent of 85%:**

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 to another trust shall be treated as application. [Say, if a trust made eligible donation of Rs 100 to another trust, then Rs 85 alone will be treated as application towards charitable / religious purposes.]

[Eligible Donation = Donations to other trusts having similar objectives; Donations by one trust to another trust should not be a corpus donation in the hands of the receiving trust, etc,]

## **Rationalization of provisions relating to Charitable Trusts**

**Omission of redundant provisions related to roll back of exemption: [W.E.F 1<sup>st</sup> April 2023]: [These amendments are applicable for the trusts / institutions covered U/S 12AA or 12AB only.]**

**As the trusts and institutions under 12AA/12AB are required to apply for provisional registration before the commencement of their activities, the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> Provisos to Sec 12A(2) dealing with Roll Back of exemption have been omitted.**

Sec 12A(2) of the Act provides that where an application for registration under section 12AB of the Act has been made, the exemption shall be available with respect to the assessment year relevant to the financial year in which the application is made and subsequent assessment years.

Second proviso to sub-section (2) of section 12A of the Act provides that where registration has been granted to the trust or institution under section 12AA or section 12AB of the Act, then, the provisions of sections 11 and 12 of the Act shall apply in respect of any income derived from property held under trust of any assessment year preceding the aforesaid assessment year, for which assessment proceedings are pending before the Assessing Officer as on the date of such registration if the objects and activities of such trust or institution remain the same for such preceding assessment year.



## **Rationalization of provisions relating to Charitable Trusts**

**Omission of redundant provisions related to roll back of exemption: [W.E.F 1<sup>st</sup> April 2023]: [These amendments are applicable for the trusts / institutions covered U/S 12AA or 12AB only.]**

**As the trusts and institutions under 12AA/12AB are required to apply for provisional registration before the commencement of their activities, the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> Provisos to Sec 12A(2) dealing with Roll Back of exemption have been omitted.**

Fourth proviso to sub-section (2) of section 12A of the Act provides that provisions contained in the second and third proviso to sub-section (2) of section 12A of the Act shall not apply in case of any trust or institution which was refused registration or the registration granted to it was cancelled at any time under section 12AA of the Act or section 12AB of the Act.

Second, third and fourth proviso to sub-section (2) of section 12A of the Act discussed above have become redundant after the amendment of section 12A of the Act by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020. Now the trusts and institutions are required to apply for provisional registration before the commencement of their activities and therefore there is no need of roll back provisions provided in second and third proviso to sub-section (2) of section 12A of the Act. With a view to rationalize the provisions, it is proposed to omit the second, third and fourth proviso to sub-section (2) of section 12A of the Act.

# Rationalization of provisions relating to Charitable Trusts

Combining provisional and regular registration in some cases: [W.E.F 1<sup>st</sup> Oct 2023]: [These amendments are applicable for both the types of trusts / institutions covered U/S 10(23C)(iv)/(v)/(vi)/(iva) and U/S 12AA or 12AB.] [These are also applicable to the trusts notified / approved U/S 80G(5)]

**Provisional 'approval / registration' is prescribed 'before commencement of activities'; In the cases of trusts / institutions which have commenced their commercial activities, regular approval is prescribed.**

The trusts and institutions are facing the following difficulties:

- 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.
- Besides trusts or institutions, where activities have already commenced, are required to apply for two registrations (provisional and regular) simultaneously.

**In order to ensure rationalization of the provisions, it is proposed to allow for direct final registration/approval in such cases. The trusts and institutions shall be allowed to make application for the provisional approval / registration only before the commencement of activities.**

**The trusts and institutions, which have already commenced their activities, shall make application for a regular approval. Such application shall be examined by the Principal Commissioner or Commissioner. Where the Principal Commissioner or Commissioner is satisfied about the objects and genuineness of the activities and compliance of other requirements provided in law, registration or approval in such cases shall be granted for 5 years. The Principal Commissioner or the Commissioner shall pass and order granting or rejecting such applications within 6 months calculated from the end of the month in which such application was received.**

## Rationalization of provisions relating to Charitable Trusts

Scope of specified Violations got extended: [W.E.F 1<sup>st</sup> Apr 2023]: [These amendments are applicable for both the types of trusts / institutions covered U/S 10(23C)(iv)/(v)/(vi)/(iva) and U/S 12AA or 12AB.]

**Where the application for 'approval / registration' (final / provisional) is not complete / contained false or incorrect information, the same shall be treated as 'Specified Violation'.**

In order to rationalize the provisions, it is proposed to insert clause (g) in Explanation 2 to the fifteenth proviso of clause (23C) of section 10 of the Act to provide that the "specified violation" shall also include the case **where the application referred to in the first proviso is not complete or it contains false or incorrect information.**

Similarly, it is proposed to insert clause (g) in Explanation to sub-section (4) of section 12AB of the Act to provide that **"specified violation"** shall also include the case where the application referred to in clause (ac) of subsection (1) of section 12A of the Act is not complete or it contains false or incorrect information.

## Rationalization of provisions relating to Charitable Trusts

Scope of the provisions of accreted income got extended (i.e Scope of Sec 115TD, TE, TF): [W.E.F AY 2023-24]: [These amendments are applicable for both the types of trusts / institutions covered U/S 10(23C)(iv)/(v)/(vi)/(iva) and U/S 12AA or 12AB.]

Where the trust fails to make application for converting the 'provisional registration / approval' into 'final registration / approval' or fails to make application for re-registration / re-approval within the time limits provided in Sec 12A or 10(23C), then also the provisions of Chapter XII-EB (i.e Sec 115TD / TE / TF) shall be applicable. Upon violation of these, it shall be deemed to have been converted into any form not eligible for registration or approval in the previous year in which such period expires. [Suppose a trust fails to apply for re-registration, then the accreted income provisions are triggered in the 5<sup>th</sup> year. The Trust and the Trustee need to pay the taxes on accreted income within 14 days from the end of the 5<sup>th</sup> year.]

It is also proposed to insert sub-clause (c) in clause (i) to the Explanation to section 115TD of the Act to provide that **date of conversion (i.e converting into non-charitable form by a trust)** shall also mean the last date for making an application for registration under sub-clause (i) or sub-clause (ii) or sub-clause (iii) of clause (ac) of sub-section (1) of section 12A or for making an application for approval under clause (i) or clause (ii) or clause (iii) of the first proviso to clause (23C) of section 10, as the case may be, in a case referred to in clause (iii) of sub-section (3) of section 115TD of the Act.

It is further proposed to amend clause (ii) of sub-section (5) of section 115TD of the Act to provide that principal officer or the trustee of the specified person, as the case may be, and the specified person shall also be liable to pay the tax on accreted income to the credit of the Central Government within fourteen days from the end of the previous year in a case referred to in clause (iii) of sub-section (3) of section 115TD of the Act;

## **Rationalization of provisions relating to Charitable Trusts**

Return to be filed in accordance with Sec 139(4C) within the time limits of Sec 139(1) or Sec 139(4) to claim the beneficial provisions of Sec 11, 12 or Sec 10(23C)(iv)/(v)/(vi)/(va): [W.E.F AY 2023-24]: [These amendments are applicable for both the types of trusts / institutions covered U/S 10(23C)(iv)/(v)/(vi)/(iva) and U/S 12AA or 12AB.]

**The Trusts / Institutions need to file the returns in accordance with Sec 139(4C) within the due date given in Sec 139(1) / (4) in order to claim the benefit of Sec 11,12 or Sec 10(23C)(iv)/(v)/(vi)/(via).**

Thus, the trusts cannot claim the benefit of Sec 11 / 12 or Sec 10(23C)(iv)/(v)/(vi)/(via) when they file updated returns as per Sec 139(8a).

# **Rationalization of provisions relating to Charitable Trusts**

**Removal of name based funds from the list of Sec 80G: [W.E.F AY 2024-25]:**

**Sub Clauses (ii) / (iiic) and (iiid) of Sec 80G(2) are omitted.**

**Thus, where any person makes donations to the following funds, he (i.e the donor) cannot claim 80G benefit.**

**Sec 80G(2)(ii): The Jawaharlal Nehru Memorial Fund**

**Sec 80G(2)(iiic): The Indira Gandhi Memorial Trust**

**Sec 80G(2)(iiid): The Rajiv Gandhi Foundation**



## **Part C: Amendments made by the Fin Act, 2022**

# Amendments made vide the Fin Act, 2022

## Background of the amendments

There is **no uniformity** w.r.t institutions covered U/S 10(23C) model and Sec 11 model. The amendments are aimed at bringing **consistency in the provisions of these two exemptions** and clarity on taxation in certain circumstances.



# Amendments made vide the Fin Act, 2022

**'Principal CIT or CIT' is substituted for 'prescribed authority' in Sec 10(23C)(iv),(v),(vi) and (via) w.e.f 01.04.2022**

## **Procedural amendment**

**Note: Sec 10(23C)(iv)** deals with 'Any other fund or institution established **for charitable purposes** which may be approved by the prescribed authority, having regard to the objects of the fund or institution and its **importance throughout India or throughout any State or States**'.

**Sec 10(23C)(v)** deals with '**Any trust** (including any other legal obligation) or institution wholly **for public religious purposes or wholly for public religious and charitable purposes**, which may be approved by the prescribed authority, having regard to the manner in which the affairs of the trust or institution are administered and supervised for ensuring that the income accruing thereto is properly applied for the objects thereof'.

## Amendments made vide the Fin Act, 2022

**Sec 10(23C)(vi) deals with 'Any university or other educational institution existing solely for educational purposes and not for purposes of profit, other than those mentioned in sub-clause (iiiab) or sub-clause (iiid) and which may be approved by the'**~~prescribed authority~~**PCIT / CIT.** {Clause (iiiab) covers any university or other educational institution existing solely for educational purposes and not for purposes of profit, and which is wholly or substantially financed by the Government; (Refer Rule 2BBB also)); Clause (iiid) covers any university or other educational institution existing solely for educational purposes and not for purposes of profit if the aggregate annual receipts of such university or educational institution do not exceed Rs 5 Crores.

**Sec 10(23C)(via) deals with 'any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit, other than those mentioned in sub-clause (iiiac) or sub-clause (iiiae) and which may be approved by the'**~~prescribed authority~~**PCIT / CIT.** {Clause (iiiac) covers any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit, and which is wholly or substantially financed by the Government; Clause (iiiae) covers any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit, if the aggregate annual receipts of such hospital or institution do not exceed Rs 5 Crores.} [Refer Rule 2BC]

## Amendments made vide the Fin Act, 2022

'Insertion of Explanations 1A and 1B in the 3<sup>rd</sup> Proviso to Sec 10(23C)' w.r.e.f 01.04.2021 to provide that voluntary contributions / donations received by temples, churches, etc, for renovation / repairs may be treated as Corpus donations at the option of these trusts. If the specified conditions are violated, they shall be taxed as income for the year of violation:

*[Thus, uniform amendments are introduced for Sec 10(23C)(v) category as well as Sec 11 category]*

**Explanation 1A.—For the purposes of this proviso, where the property held under a trust or institution referred to in clause (v) includes any temple, mosque, gurdwara, church or other place notified under clause (b) of sub-section (2) of section 80G, any sum received by such trust or institution as a voluntary contribution for the purpose of renovation or repair of such temple, mosque, gurdwara, church or other place, may, at its option, be treated by such trust or institution as forming part of the corpus of that trust or institution, subject to the condition that the trust or institution,—**

# Amendments made vide the Fin Act, 2022

---

**(a) applies such corpus only for the purpose for which the voluntary contribution was made;**

**(b) does not apply such corpus for making contribution or donation to any person;**

**(c) maintains such corpus as separately identifiable; and**

**(d) invests or deposits such corpus in the forms and modes specified under sub-section (5) of section 11.**

**Explanation 1B.—For the purposes of Explanation 1A, where any trust or institution referred to in sub-clause (v) has treated any sum received by it as forming part of the corpus, and subsequently any of the conditions specified in clause (a) or clause (b) or clause (c) or clause (d) of the said Explanation is violated, such sum shall be deemed to be the income of such trust or institution of the previous year during which the violation takes place.";**

## Amendments made vide the Fin Act, 2022

“Insertion of Explanations 3, 4 and 5 in Sec 10(23C)” w.e.f 01.04.2023 to provide that Sec 10(23C)(iv)/(v)/(vi)/(via) category trusts / institutions can also accumulate income for a period of 5 years; they can spend in India with the permission of the AO for other objects (other than those for which the amounts are accumulated); donations to other trusts of Sec 11 or Sec 10(23C) barred; violation of the conditions result in taxation for the last of the period for which it was accumulated, etc,: *[Thus, uniform provisions are applicable for Sec 10(23C)(iv)/(v)/(vi)/(via) category as well as Sec 11 category]*

***Explanation 3.—For the purposes of determining the amount of application under this proviso, where eighty-five per cent. of the income referred to in clause (a) of this proviso is not applied wholly and exclusively to the objects for which the 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) is established, during the previous year but is accumulated or set apart, either in whole or in part, for application to such objects, such income so accumulated or set apart shall not be included in the total income of the previous year of the person in receipt of the income, if the following conditions are complied with, namely:—***

## Amendments made vide the Fin Act, 2022

-----  
*(a) such person furnishes a statement in such form and manner, as may be prescribed, to the Assessing Officer stating the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed five years;*

*(b) the money so accumulated or set apart is invested or deposited in the forms or modes specified in sub-section (5) of section 11; and*

*(c) the statement referred to in clause (a) is furnished on or before the due date specified under sub-section (1) of section 139 for furnishing the return of income for the previous year:*

*Provided that in computing the period of five years referred to in clause (a), the period during which the income could not be applied for the purpose for which it is so accumulated or set apart, due to an order or injunction of any court, shall be excluded.*

## Amendments made vide the Fin Act, 2022

**Explanation 4.—Any income referred to in Explanation 3, which,—**

**(a) is applied for purposes other than wholly and exclusively to the objects for which the 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) is established or ceases to be accumulated or set apart for application thereto; or**

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

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

**(d) 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),**

**shall be deemed to be the income of such person of the previous year—**

**(i) in which it is so applied or ceases to be so accumulated or set apart under clause (a); or**

**(ii) in which it ceases to remain so invested or deposited under clause (b); or**

**(iii) being the last previous year of the period, for which the income is accumulated or set apart under clause (a) of Explanation 3, but not utilised for the purpose for which it is so accumulated or set apart under clause (c); or**

**(iv) in which it is credited or paid to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution under clause (d).**

## Amendments made vide the Fin Act, 2022

***Explanation 5.—Notwithstanding anything contained in Explanation 4, where due to circumstances beyond the control of the person in receipt of the income, any income invested or deposited in accordance with the provisions of clause (b) of Explanation 3 cannot be applied for the purpose for which it was accumulated or set apart, the Assessing Officer may, on an application made to him in this behalf, allow such person to apply such income for such other purpose in India as is specified in the application by that person and as is in conformity with the objects for which the 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) is established; and thereupon the provisions of Explanation 4 shall apply as if the purpose specified by that person in the application under this Explanation were a purpose specified in the notice given to the Assessing Officer under clause (a) of Explanation 3:***

***Provided that the Assessing Officer shall not allow application of such income by way of payment or credit made for the purposes referred to in clause (d) of Explanation 4:***



## Amendments made vide the Fin Act, 2022

**“Substitution of 10<sup>th</sup> proviso to Sec 10(23C) w.e.f 01.04.2023 to provide that maintenance of books, getting them audited is a requirement for claiming exemption [Thus, uniform provisions are applicable for Sec 10(23C)(iv)/(v)/(vi)/(via) category as well as Sec 11 category]**

*Provided also that where the total income, of the 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), without giving effect to the provisions of the said sub-clauses, exceeds the maximum amount which is not chargeable to tax in any previous year, such trust or institution or any university or other educational institution or any hospital or other medical institution shall get its accounts audited in respect of that year by an accountant as defined in the Explanation below sub-section (2) of 95[section 288 before the specified date referred to in section 44AB and furnish by that date], the report of such audit in the prescribed form<sup>96</sup> duly signed and verified by such accountant and setting forth such particulars as may be prescribed:*

***“Provided also that where the total income of the 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), without giving effect to the provisions of the said sub-clauses, exceeds the maximum amount which is not chargeable to tax in any previous year, such fund or institution or trust or any university or other educational institution or any hospital or other medical institution shall,—***

***(a)keep and maintain books of account and other documents in such form and manner and at such place, as may be prescribed; and***

***(b)get its accounts audited in respect of that year by an accountant as defined in the Explanation below sub-section (2) of section 288 before the specified date referred to in section 44AB and furnish by that date, the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed:”;***

## Amendments made vide the Fin Act, 2022

**“Substitution of 15<sup>th</sup> proviso to Sec 10(23C) w.e.f 01.04.2022 to provide that PCIT / CIT can call for information and cancel the approval granted (suo motu basis / info from AO / case selected based on risk management strategy of the Board) [Thus, uniform provisions are applicable for Sec 10(23C)(iv)/(v)/(vi)/(via) category as well as Sec 11 category]**

~~Provided also that where the 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) does not apply its income during the year of receipt and accumulates it, any payment or credit out of such accumulation to any trust or institution registered under section 12AA 6[or section 12AB] or 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) shall not be treated as application of income to the objects for which such fund or trust or institution or university or educational institution or hospital or other medical institution, as the case may be, is established:~~

***“Provided also that where the fund or institution referred to in sub-clause (iv) or 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) is approved or provisionally approved under the said clause 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,***

## Amendments made vide the Fin Act, 2022

*the Principal Commissioner or Commissioner, shall,—*

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

*(ii) pass an order in writing cancelling the approval of such fund or institution or trust or any university or other educational institution or any hospital or other medical institution, on or before the specified date, 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 violation has taken place;*

*(iii) pass an order in writing refusing to cancel the approval of such fund or institution or trust or any university or other educational institution or any hospital or other medical institution, on or before the specified date, 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 fund or institution or trust or any university or other educational institution or any hospital or other medical institution.*

# Amendments made vide the Fin Act, 2022

**Explanation 1.**—For the purposes of this proviso, "specified date" shall mean the day on which the 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) expires.

**Explanation 2.**—For the purposes of this proviso, the following shall mean "specified violation",—

(a) Where any income of the fund or institution or trust or any university or other educational institution or any hospital or other medical institution has been applied other than for the objects for which it is established; or

(b) The fund or institution or trust or any university or other educational institution or any hospital or other medical 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 it in respect of the business which is incidental to the attainment of its objectives; or

(c) Any activity of the fund or institution or trust or any university or other educational institution or any hospital or other medical institution,—

(A) is not genuine; or

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

(d) the fund or institution or trust or any university or other educational institution or any hospital or other medical institution has not complied with the requirement of any other law for the time being in force, 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.

**Explanation 3.**—For the purposes of clause (b) of this proviso, where the Assessing Officer has intimated the Central Government or the prescribed authority under the first proviso of sub-section (3) of section 143 about the contravention of the provisions of sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of this clause by any fund or institution or trust or university or other educational institution or any hospital or other medical institution in respect of an assessment year, and the approval granted to such fund or institution or trust or university or other educational institution or any hospital or other medical institution has not been withdrawn, or the notification issued in its case has not been rescinded, on or before the 31st day of March, 2022, such intimation shall be deemed to be a reference received by the Principal Commissioner or Commissioner as on the 1st day of April, 2022, and the provisions of clause (b) of the second proviso to sub-section (3) of section 143 shall apply accordingly for such assessment year:'

# Amendments made vide the Fin Act, 2022

**“Substitution of 19<sup>th</sup> proviso to Sec 10(23C) w.e.f 01.04.2022 to provide that exemption under other sections [Except 10(1)] cannot be claimed once covered U/s 10(23C); Likewise, if the trust is notified U/S 10(46), then the approval / provisional approval under Sec 10(23C) shall be in-operative. [Thus, uniform provisions are applicable for Sec 10(23C)(iv)/(v)/(vi)/(via) category as well as Sec 11 category]**

*Provided also that the income of a trust or institution referred to in sub-clause (iv) or sub-clause (v) shall be included in its total income of the previous year if the provisions of the first proviso to clause (15) of section 2 become applicable to such trust or institution in the said previous year, whether or not any approval granted or notification issued in respect of such trust or institution has been withdrawn or rescinded:*

***“Provided also that where the fund or institution referred to in sub-clause (iv) or the 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) has been approved by the Principal Commissioner or Commissioner, and the approval is in force for any previous year, then, nothing contained in any other provision of this section, other than clause (1) thereof, shall operate to exclude any income received on behalf of such fund or institution or trust or university or other educational institution or hospital or other medical institution, as the case may be, from the total income of the person in receipt thereof for that previous year.***

***Explanation.—Where, on or after the 1st day of April, 2022 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) is notified under clause (46) of section 10, the approval or provisional approval granted to such fund or institution or trust or university or other educational institution or hospital or other medical institution shall become inoperative from the date of notification of such fund or institution or trust or university or other educational institution or hospital or other medical institution, as the case may be, under clause (46) of the said section:”;***

## Amendments made vide the Fin Act, 2022

“Insertion of 20<sup>th</sup>, 21<sup>st</sup> and 22<sup>nd</sup> provisos to Sec 10(23C)” w.e.f 01.04.2023 to provide that return is mandatory; application towards specified category of persons shall be treated as income; income is taxed after allowing revenue expenditure incurred for the objects [after applying Sec 40a(ia); Sec 40A(3 and 3A)] in the cases where there is a delay in filing return / non-filing of return or books not maintained or not audited or operation of 18<sup>th</sup> proviso etc *[Thus, uniform provisions are applicable for Sec 10(23C)(iv)/(v)/(vi)/(via) category as well as Sec 11 category]*

*‘Provided also that the 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) shall furnish the return of income for the previous year in accordance with the provisions of sub-section (4C) of section 139, within the time allowed under that section:*

*Provided also that where the income or part of income or property of 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), has been applied directly or indirectly for the benefit of any person referred to in sub-section (3) of section 13, such income or part of income or property shall, after taking into account the provisions of sub-sections (2), (4) and (6) of the said section, be deemed to be the income of such fund or institution or trust or university or other educational institution or hospital or other medical institution of the previous year in which it is so applied:*

# Amendments made vide the Fin Act, 2022

*Provided also that where 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) violates the conditions of the tenth proviso or twentieth proviso, or where the provisions of the eighteenth proviso are applicable, 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 fund or institution or trust or university or other educational institution or hospital or other medical institution, subject to fulfilment of the following conditions, namely:—*

*(a) such expenditure is not from the corpus standing to the credit of the fund or institution or trust or university or other educational institution or hospital or other medical institution as on the end of the financial year immediately preceding the previous year relevant to the assessment year for which the 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 proviso, 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":*

*Provided also that for the purposes of computing income chargeable to tax under the twenty-second proviso, 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:'.*

## Amendments made vide the Fin Act, 2022

**“Insertion of Explanation to Sec 10(23C)” w.e.f 01.04.2022 to provide that application of income is allowed on payment basis [Thus, uniform provisions are applicable for Sec 10(23C)(iv)/(v)/(vi)/(via) category as well as Sec 11 category]**

***Explanation 3.—For the purposes of this clause, any sum payable by 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) shall be considered as application of income during 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 fund or institution or trust or any university or other educational institution or any hospital or other medical 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 fund or institution or trust or any university or other educational institution or any hospital or other medical institution, such sum shall not be allowed as application in any subsequent previous year;”***



## Amendments made vide the Fin Act, 2022

“Insertion of Explanation 3A and 3B to Sec 11(1)” w.e.f 01.04.2021 to provide that that voluntary contributions / donations received by temples, churches, etc, for renovation / repairs may be treated as Corpus donations at the option of these trusts. If the specified conditions are violated, they shall be taxed as income for the year of violation: *[Thus, uniform provisions are applicable for Sec 10(23C)(iv)/(v)/(vi)/(via) category as well as Sec 11 category]*

***Explanation 3A.—For the purposes of this sub-section, where the property held under a trust or institution includes any temple, mosque, gurdwara, church or other place notified under clause (b) of sub-section (2) of section 80G, any sum received by such trust or institution as voluntary contribution for the purpose of renovation or repair of such temple, mosque, gurdwara, church or other place, may, at its option, be treated by such trust or institution as forming part of the corpus of the trust or the institution, subject to the condition that the trust or the institution,—***

***(a) applies such corpus only for the purpose for which the voluntary contribution was made;***

***(b) does not apply such corpus for making contribution or donation to any person;***

***(c) maintains such corpus as separately identifiable; and***

***(d) invests or deposits such corpus in the forms and modes specified under sub-section (5) of section 11.***

***Explanation 3B.—For the purposes of Explanation 3A, where any trust or institution has treated any sum received by it as forming part of the corpus, and subsequently any of the conditions specified in clause (a) or clause (b) or clause (c) or clause (d) of the said Explanation is violated, such sum shall be deemed to be the income of such trust or institution of the previous year during which the violation takes place.;***

# Amendments made vide the Fin Act, 2022

**“Amendment of Sec 11(3)” w.e.f 01.04.2023 to provide new period in which the income is taxable in the case of violation of different conditions by a trust. [Say, earlier, if the accumulated income is not spent by 5 years, then it is taxable for 6<sup>th</sup> year; Now it is taxable in the last year of accumulation i.e 5<sup>th</sup> Year] [Thus, uniform provisions are applicable for Sec 10(23C)(iv)/(v)/(vi)/(via) category as well as Sec 11 category]**

**Any income referred to in sub-section (2) which—**

**(a) is applied to purposes other than charitable or religious purposes as aforesaid or ceases to be accumulated or set apart for application thereto, or**

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

**(c) is not utilised for the purpose for which it is so accumulated or set apart during the period referred to in clause (a) of that sub-section ~~or in the year immediately following the expiry thereof,~~**

**(d) is credited or paid to any trust or institution registered under section 12AA 99[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) of clause (23C) of section 10,**

~~shall be deemed to be the income of such person of the previous year in which it is so applied or ceases to be so accumulated or set apart or ceases to remain so invested or deposited or 99b[credited or paid or], as the case may be, of the previous year immediately following the expiry of the period aforesaid~~

**shall be deemed to be the income of such person of the previous year,—**

**(i) in which it is so applied or ceases to be so accumulated or set apart under clause (a); or**

**(ii) in which it ceases to remain so invested or deposited under clause (b); or**

**(iii) being the last previous year of the period, for which the income is accumulated or set apart but not utilised for the purpose for which it is so accumulated or set apart under clause (c); or**

**(iv) in which it is credited or paid to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution under clause (d)**

## Amendments made vide the Fin Act, 2022

“Insertion of Explanation after Sec 11(7)” w.e.f 01.04.2022 to provide that application of income is allowed on payment basis [Thus, uniform provisions are applicable for Sec 10(23C)(iv)/(v)/(vi)/(via) category as well as Sec 11 category]

*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.”.*

## Amendments made vide the Fin Act, 2022

**“Substitution of Sec 12A(1)(b) w.e.f 01.04.2023 to provide that maintenance of books, getting them audited is a requirement for claiming exemption [Thus, uniform provisions are applicable for Sec 10(23C)(iv)/(v)/(vi)/(via) category as well as Sec 11 category]**

*where the total income of the trust or institution as computed under this Act without giving effect to [the provisions of section 11 and section 12 exceeds the maximum amount which is not chargeable to income-tax in any previous year], the accounts of the trust or institution for that year have been audited by an accountant as defined in the Explanation below sub-section (2) of section 288 [before the specified date referred to in section 44AB and the person in receipt of the income furnishes by that date] the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed;*

**“(b) where the total income of the trust or institution as computed under this Act without giving effect to the provisions of sections 11 and 12 exceeds the maximum amount which is not chargeable to income-tax in any previous year,—**

**(i) the books of account and other documents have been kept and maintained in such form and manner and at such place, as may be prescribed; and**

**(ii) the accounts of the trust or institution for that year have been audited by an accountant defined in the Explanation below sub-section (2) of section 288 before the specified date referred to in section 44AB and the person in receipt of the income furnishes by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars, as may be prescribed;”**

# Amendments made vide the Fin Act, 2022

**“Substitution of 15<sup>th</sup> proviso to Sec 12AB(4) and (5) w.e.f 01.04.2022 to provide that PCIT / CIT can call for information and cancel the approval granted (suo motu basis / info from AO / case selected based on risk management strategy of the Board) [Thus, uniform provisions are applicable for Sec 10(23C)(iv)/(v)/(vi)/(via) category as well as Sec 11 category]**

~~“(4) Where registration of a trust or an institution has been granted under clause (a) or clause (b) of sub-section (1) and subsequently, the Principal Commissioner or Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution after affording a reasonable opportunity of being heard.~~

~~(5) Without prejudice to the provisions of sub-section (4), where registration of a trust or an institution has been granted under clause (a) or clause (b) of sub-section (1) and subsequently, it is noticed that—~~

~~(a) ————— the activities of the trust or the institution are being carried out in a manner that the provisions of sections 11 and 12 do not apply to exclude either whole or any part of the income of such trust or institution due to operation of sub-section (1) of section 13; or~~

~~(b) ————— 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, then, the Principal Commissioner or the Commissioner may, by an order in writing, after affording a reasonable opportunity of being heard, cancel the registration of such trust or institution.”~~

# Amendments made vide the Fin Act, 2022

**(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 ensure 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.

## Amendments made vide the Fin Act, 2022

(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).**'

# Amendments made vide the Fin Act, 2022

**“Amendment of Sec 13(1), Insertion of Sec 13(10) and 13(11) ” w.e.f 01.04.2023 to provide income is taxed after allowing revenue expenditure incurred for the objects [after applying Sec 40a(ia); Sec 40A(3 and 3A)] in the cases where there is a delay in filing return / non filing of return or books not maintained or not audited etc [Thus, uniform provisions are applicable for Sec 10(23C)(iv)/(v)/(vi)/(via) category as well as Sec 11 category]**

***(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.'***



# Amendments made vide the Fin Act, 2022

“Amendment of Sec 13(1), Insertion of Sec 13(10) and 13(11) ” w.e.f 01.04.2023 to provide income is taxed after allowing revenue expenditure incurred for the objects [after applying Sec 40a(ia); Sec 40A(3 and 3A)] in the cases where there is a delay in filing return / non filing of return or books not maintained or not audited etc *[Thus, uniform provisions are applicable for Sec 10(23C)(iv)/(v)/(vi)/(via) category as well as Sec 11 category]*

**13. (1) Nothing contained in section 11 86[or section 12] shall operate so as to exclude from the total income of the previous year of the person in receipt thereof—**

*(c) in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof—*

*(i) if such trust or institution has been created or established after the commencement of this Act and under the terms of the trust or the rules governing the institution, any part of such income enures, or*

*(ii) if any part of such income or any property of the trust or the institution (whenever created or established) is during the previous year used or applied, directly or indirectly for the benefit of any person referred to in sub-section (3) , **such part of income as referred to in sub-clauses (i) and (ii) [Fin Act, 2022]***

---

***(d) in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof, if for any period during the previous year—***

--

***(iii) any shares in a company, other than—***

-

***(B) shares prescribed as a form or mode of investment under clause (xii) of sub-section (5) of section 11, are held by the trust or institution after the 30th day of November, 1983 [to the extent of such deposits or investments referred to in sub-clauses (i), (ii) and (iii)]:] [Fin Act, 2022]***

## Amendments made vide the Fin Act, 2022

*“Amendment of Sec 56(2)(x), w.e.f 01.04.2023 to provide sum of money / property received by specified category of persons from trusts under Sec 11 category or Sec 10(23C) category shall be treated as income. [Thus, uniform provisions are applicable for Sec 10(23C)(iv)/(v)/(vi)/(via) category as well as Sec 11 category]*

*Insertion of 2<sup>nd</sup> proviso to Sec 56(2)(x): Provided further that clauses (VI) and (VII) of the first proviso shall not apply where any sum of money or any property has been received by any person referred to in sub-section (3) of section 13.*

## Amendments made vide the Fin Act, 2022

Insertion of Sec 115BBI w.e.f 1<sup>st</sup> April 2023 to provide the manner of taxation [Specified income shall be taxable at 30%][Thus, uniform provisions are applicable for Sec 10(23C)(iv)/(v)/(vi)/(via) category as well as Sec 11 category]

**115BBI. 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, notwithstanding 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).**

# Amendments made vide the Fin Act, 2022

Insertion of Sec 115BBI w.e.f 1<sup>st</sup> April 2023 to provide the manner of taxation [Specified income shall be taxable at 30%][Thus, uniform provisions are applicable for Sec 10(23C)(iv)/(v)/(vi)/(via) category as well as Sec 11 category]

*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 [Defaults w.r.t accumulated of income]*

*(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 proviso 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 [i.e investment in other than specified modes of Sec 11(5)]*

*(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 [i.e Amount spent towards prohibited category or specified category of persons]*

*(e) any income which is not excluded from the total income under clause (c) of sub-section (1) of section 11. [i.e Income applied outside India in contravention of Sec 11(1)(c)]*

## Amendments made vide the Fin Act, 2022

Amendment of Sec 115TD, 115TE, 115TF w.e.f 1<sup>st</sup> April 2023 to provide these provisions are also applicable for Sec 10(23C) institutions apart from Sec 11 institutions. *[Thus, uniform provisions are applicable for Sec 10(23C)(iv)/(v)/(vi)/(via) category as well as Sec 11 category]*

## Amendments made vide the Fin Act, 2022

Insertion of Sec 271AAE w.e.f 1<sup>st</sup> April 2023 to provide that where the amounts are spent towards prohibited category of persons 100% of the amount spent shall be the penalty in the first year and it shall be 200% in any subsequent year *[Thus, uniform provisions are applicable for Sec 10(23C)(iv)/(v)/(vi)/(via) category as well as Sec 11 category]*

***271AAE. Benefits to related persons.— Without prejudice to any other provision of this Chapter, if during any proceedings under this Act, it is found that a person, being 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 has violated the provisions of the twenty-first proviso to clause (23C) of section 10, or clause (c) of sub-section (1) of section 13, as the case may be, the Assessing Officer may direct that such person shall pay by way of penalty—***

***(a) a sum equal to the aggregate amount of income applied, directly or indirectly, by such person, for the benefit of any person referred to in sub-section (3) of section 13, where the violation is noticed for the first time during any previous year; and***

***(b) a sum equal to two hundred per cent. of the aggregate amount of income of such person applied, directly or indirectly, by that person, for the benefit of any person referred to in sub-section (3) of section 13, where violation is noticed again in any subsequent previous year."***



## **Part D: Amendments made vide the Fin Act, 2021**

## Amendments made vide the Fin Act, 2021

**Upper cap of Rs 5 Crores for Universities and Hospitals etc., [Sec 10(23C)(iiiad) and (iii ae):**

**The amended version looks as under:**

**Any university or other educational institution existing solely for educational purposes and not for purposes of profit if the aggregate receipts of such university or educational institution do not exceed the amount of annual receipts as may be prescribed *annual receipts of the person from such university or universities or educational institution or educational institutions do not exceed Rs 5 Crores. [Sec 10(23C)(iiiad)]***



## Amendments made vide the Fin Act, 2021

### Upper cap of Rs 5 Crores for Universities and Hospitals etc,. [Sec 10(23C)(iiiad) and (iiiiae):

The amended version looks as under:

Any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit, if the aggregate annual receipts of such hospital or institution do not exceed the amount of annual receipts as may be prescribed *annual receipts of the person from such hospital or hospitals or institution or institutions do not exceed Rs 5 Crores. [Sec 10(23C)(iiiiae)]*

## Amendments made vide the Fin Act, 2021

### Overall cap of Rs 5 Crores [Receipts from Hospitals and Educational Institutions]

Explanation below Sec 10(23C)(iii)ae reads as under.

For the purposes of sub-clauses (iii)ad) and (iii)ae), it is hereby clarified that if the person **has receipts from university or universities or educational institution or institutions** as referred to in sub-clause

(iii)ad), **as well as** from hospital or hospitals or institution or institutions as referred to in sub-clause (iii)ae), **the exemptions** under these clauses **shall not apply, if the aggregate** of annual receipts of the person from such university or universities or educational institution or institutions or hospital or hospitals or institution or institutions, **exceed five crore rupees.**

# Amendments made vide the Fin Act, 2021

## Time Limits for Application for approval : [1st Provisos below Sec 10(23C)(via)]

Provided that the **exemption** to the fund or trust or institution or university or other educational institution or hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via), under the respective sub-clauses, **shall not be available** to it **unless such fund** or trust or institution or university or other educational institution or hospital or other medical institution **makes an application** in the prescribed form and manner to the Principal Commissioner or Commissioner, **for grant of approval,— and the said fund or trust or institution or university or other educational institution or hospital or other medical institution is approved under the second proviso**

**Category # 1: Approved under the provisions of Fin Act, 2020** : Where such fund or trust or institution or university or other educational institution or hospital or other medical institution is approved under the second proviso [as it stood immediately before its amendment by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020], **within three months from the 1st day of April, 2021; [i.e On or before 30<sup>th</sup> June 2021; This is extended to 31<sup>st</sup> Aug 2021 by Circular 12/2021]**

# Amendments made vide the Fin Act, 2021

## Time Limits for Application for approval : [1st and 2<sup>nd</sup> Provisos below Sec 10(23C)(via)]

**Category # 2: Approved under the provisions of Fin Act, 2021 and it is due to expire:** where such fund or trust or institution or university or other educational institution or hospital or other medical institution is approved and the period of such approval is due to expire, **at least six months prior to expiry of the said period.**

**Category # 3: Provisionally Approved :** where such fund or trust or institution or university or other educational institution or hospital or other medical institution has been provisionally approved, **at least six months prior to expiry of the period of the provisional approval or within six months of commencement of its activities, whichever is earlier.**

## Amendments made vide the Fin Act, 2021

**Time Limits for Application for approval : [1st and 2<sup>nd</sup> Provisos below Sec 10(23C)(via)]**

**Category # 4: Any other case: In any other case, at least one month prior to the commencement of the previous year relevant to the assessment year from which the said approval is sought.**

# Amendments made vide the Fin Act, 2021

**Time Limits of Approval: [2<sup>nd</sup> Proviso below Sec 10(23C)(via) read with 8<sup>th</sup> and 9<sup>th</sup> proviso]:** Provided further that the Principal Commissioner or Commissioner, on receipt of an application made under the first proviso, shall,—

Where the application is made under clause (i) of the said proviso, pass an order in writing granting approval to it for a period of five years; [i.e Covers Category 1 cases] [i.e Approved under the provisions of Fin Act, 2020] [Decision to be taken within 3 months from the end of the month in which application for approval was received]

Where the application is made under clause (ii) or clause (iii) of the said proviso,—

- pass an order in writing granting approval to it for a period of five years; [i.e covers category 2 and 3 cases] [Category # 2: Approved under the provisions of Fin Act, 2021 and it is due to expire; Category # 3: Provisionally Approved ]
- If he is not so satisfied, pass an order in writing rejecting such application and also cancelling its approval after affording it a reasonable opportunity of being heard.

[Decision to be taken within 6 months from the end of the month in which application for approval was received]

Where the application is made under clause (iv) of the said proviso, pass an order in writing granting approval to it provisionally for a period of three years from the assessment year from which the registration is sought, and send a copy of such order to the fund or trust or institution or university or other educational institution or hospital or other medical institution. [Category # 4: Any other case i.e Trusts applying for the first time] [Decision to be taken within 1 month from the end of the month in which application for approval was received] [Pending applications as of 1<sup>st</sup> April 2021 shall be deemed to fall under this category]

# Amendments made vide the Fin Act, 2021

**Enquiry in Category 2 and 3 cases: [2<sup>nd</sup> Provisos below Sec 10(23C)(via)]: [Category # 2: Approved under the provisions of Fin Act, 2021 and it is due to expire; Category # 3: Provisionally Approved]**

**Where the application is made under clause (ii) or clause (iii) of the said proviso,—**

**Call for such documents or information from it or make such inquiries as he thinks necessary in order to satisfy himself about—**

- **A. The genuineness of activities of such fund or trust or institution or university or other educational institution or hospital or other medical institution; and**
- **B. The compliance of such requirements of any other law for the time being in force by it as are material for the purpose of achieving its objects;**

## Amendments made vide the Fin Act, 2021

**Voluntary contributions with specific direction shall not be treated as income only if invested in Sec 11(5) modes: [Explanation 1 below 3<sup>rd</sup> Proviso of Sec 10(23C)]**

**For the removal of doubts, it is hereby clarified that for the purposes of this proviso, the income of the funds or trust or institution or any university or other educational institution or any hospital or other medical institution, shall not include income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of such fund or trust or institution or any university or other educational institution or any hospital or other medical institution *subject to the condition that such voluntary contributions are invested or deposited in one or more of the forms or modes specified in sub-section (5) of section 11 maintained specifically for such corpus.***



## Amendments made vide the Fin Act, 2021

Spending from Corpus shall not be treated as 'Application of income' [Explanation 2 to 3<sup>rd</sup> Proviso of Sec 10(23C)]

Application for charitable or religious purposes from the corpus as referred to in Explanation 1, shall not be treated as application of income for charitable or religious purposes.

Provided that the amount not so treated as application or part thereof, shall be treated as application for charitable or religious purposes in the previous year in which the amount, or part thereof, is invested or deposited back, into one or more of the forms or modes specified in sub-section (5) of section 11 maintained specifically for such corpus, from the income of that year and to the extent of such investment or deposit.

## Amendments made vide the Fin Act, 2021

Spending from Loans / Borrowings shall not be treated as 'Application of income'  
[Explanation 2 to 3<sup>rd</sup> Proviso of Sec 10(23C)]

**Application for charitable or religious purposes, from any loan or borrowing, shall not be treated as application of income for charitable or religious purposes:**

**Provided that the amount not so treated as application or part thereof, shall be treated as application for charitable or religious purposes in the previous year in which the loan or borrowing, or part thereof, is repaid from the income of that year and to the extent of such repayment.**

## **Amendments made vide the Fin Act, 2021**

### **Excess of earlier years shall not be treated for calculating current year application**

**It is clarified that the calculation of income required to be applied or accumulated during the previous year shall be made without any set off or deduction or allowance of any excess application of any of the year preceding to the previous year;**



Talluri Rajendra Prasad, fondly known as RP in his professional & personal circles and the founder member of the firm TRP & CO, is a member of Institute of Chartered Accountants of India and Institute of Cost & Works Accountants of India. He has 17+ years of post-qualification experience in both direct and indirect tax laws.

He is one of the most distinguished faculties for Direct Tax Laws and Indirect Tax Laws. He contributed several articles on Taxation in leading journals which included magazines of ICAI, Taxmann publications, Student news letters, journals of IFA (International Fiscal Association). He is a visiting faculty at ICAI and ICWAI, Hyderabad, Vijayawada, Bangalore.

He has addressed 180+ seminars at South India Forums on direct and indirect tax laws covering the aspects like GAAR, POEM, TP Provisions, PE, GST Audit, GST Annual Returns, GST impact on Health Care Industry, etc.,

He is a regular trainer for Income Tax officers, Assistant and Deputy Commissioners of IT Department, GST Department and C&AG Department, Practicing Chartered Accountants.

In his previous assignments, he has worked as a Financial Controller for the World's Largest Tobacco Trading Company. He was also instrumental in implementing Zero Based Budget (ZBB) created on Activity Based Concept in Microsoft which was incidentally rated as the "ICON Budget". The subtlety of the budgets drawn has been immensely admired and adopted within the company.

He is currently practicing the profession through the firm TRP & CO. in Hyderabad. His areas of practice included representation before the CIT-A, ITAT, CESTAT, Settlement Commission on the tax matters involving direct tax laws and GST.

He can be reached at 'rpdynamic@gmail.com' or askrpsir@gmail.com and on +91-98495-79413 / 9963 250 500.

**Rajendra Prasad Talluri (RP),**  
**B.Com; CA; Grad CWA,**  
**[rpdynamic@gmail.com](mailto:rpdynamic@gmail.com), +91-98495-79413.**

**TRP & CO**



# Thank You

**Rajendra Prasad Talluri (RP), TRP & CO**  
B.Com; CA; Grad CWA,  
[rpdynamic@gmail.com](mailto:rpdynamic@gmail.com), +91-98495-79413.