

# EY Tax Alert

**CBDT provides procedural reliefs and clarifications applicable to charitable institutions**

## Executive summary

This Tax Alert summarizes Circular No. 6/2023 dated 24 March 2023 (Circular) issued by the Central Board of Direct Taxes<sup>1</sup> (CBDT), for extending certain due dates applicable to charitable trusts and other eligible institutions<sup>2</sup> (charitable Institutions) and various other aspects affecting compliance arising out of certain amendments made by the Finance Act 2023 (FA 2023). The key highlights from the Circular are as follows:

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FA 2023 has, with effect from tax year 2022-23, amended the scope of exit tax by including cases of default by existing charitable institutions in migrating to new regime of registration process introduced in 2021 or charitable institutions with provisional registration that have failed to apply for final registration. Under exit tax levy, a taxpayer is liable to pay tax at maximum marginal rate on the accreted income, being excess of fair value of assets over the amount of liabilities.

Prior to the amendment, the CBDT had, from time-to-time, extended the due date of compliance of registration/renewal. For migration of an existing trust to new regime, the last extended due date was 25 November 2022 and for final registration of provisionally registered trust, it was 30 September 2022. In order to mitigate hardships caused to charitable institutions that failed to migrate to new regime or those that have failed to apply for final registration or provisional registration by the due dates, the Circular grants extended time for compliance up to 30 September 2023. Once such belated application made within such extended time made is accepted and registration is granted, provision of exit tax levy shall not apply.

<sup>1</sup> Apex body of direct tax administration in India

<sup>2</sup> Entities which have obtained approval/registration under Section 10(23C), Section 12AB and Section 80G of Income Tax Act, 1961



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Consistent with the extension also provided to a charitable institution which is approved under the Income Tax Laws (ITL) as an entity, donation to which will qualify for deduction in the hands of donors, the due date for furnishing statement of donation in Form 10BD by such charitable institutions and donation certificate in Form 10BE for receipt of donation during the financial year (FY) 2022-23 is extended to 30 June 2023.

Further, the Finance Act 2023 prepones the date of furnishing statement of accumulation in Form 10 and deemed application in Form 9A to at least two months prior to the due date of furnishing return of income. In deference to the concerns raised that such statements are linked to finalization of total income which may be done around the due date of filing tax return, the Circular clarifies that the charitable institutions shall not be denied exemption as long as the statement of accumulation/deemed application of income is furnished on or before the due date of furnishing return of income.

## Background

Income of any charitable trusts and other eligible institutions (charitable institutions) is exempt from taxation under the ITL, subject to the fulfilment of the conditions provided therein. The exemption to these charitable institutions is available under two regimes<sup>3</sup>.

In addition to registration of charitable institutions under the two regimes above, these institutions may also to register under another provision of the ITL<sup>4</sup> to enable donors to avail benefit of deduction of the donation amount in computing total income of the donor. Charitable institutions which are so registered have to furnish statement of donation in Form No 10BD and certificate of donation in Form no 10BE withing the specified time.

ITL provisions relating to charitable institutions have witnessed many amendments in the recent past which are summarized below to the relevant extent.

### 1. Revamping registration requirements:

In order to avail exemption of income, charitable institutions are required to register themselves under the ITL as per prescribed procedure. Vide Finance Act 2020, the registration provisions for charitable institutions were revamped. Under the new regime of registration, previously registered entities were also to migrate their registration under the new regime of registration in addition to other categories. Period of registration at any time is not to exceed five years. The new regime of registration requires charitable institutions to file application electronically for registration or renewal within the specified time limit. The CBDT had notified the procedures and different forms for the same<sup>5</sup>. Originally, application under the new regime was to be made on or before 30 June 2021, but the date was extended from time to time by the CBDT,

vide its circulars (refer below) till 25 November 2022. The table captures relevant forms and time limits applicable to illustrative specified categories of charitable institutions:

Sr. No.	Category for registration	Relevant Form	Time limit for making an application
1.	Fresh/first time registrations	Form 10A	At least one month prior to commencement of previous year relevant to assessment year (AY) from which registration is sought
2.	Migration from registration under old regime to new regime of registration	Form 10A	Within a period of three months from 1 April 2021 i.e., on or before 30 June 2021, which was extended to 31 March 2022 <sup>6</sup> and further extended to 25 November 2022 <sup>7</sup>
3.	Conversion of provisional registration which was granted for three years to final registration	Form 10AB	Earlier of: ➤ At least six months prior to expiry of provisional registration; or ➤ Within six months of commencement of charitable activity  By virtue of Circular No. 8/2022 dated 31 March 2022, CBDT extended in general the due date for furnishing Form 10AB where applicable till 30 September 2022 <sup>8</sup>

<sup>3</sup> Section 11 and Section 10(23C) of the ITL

<sup>4</sup> Section 80G (5)

<sup>5</sup> Refer EY Alert - "CBDT notifies new rules, forms and procedure under the revamped registration provisions for charitable and research institutions" dated 5 April 2021

<sup>6</sup> Refer EY Tax Alert "CBDT further extends due dates for different compliances under Income Tax Laws (ITL) and payment of disputed

tax (without additional cost) under Vivad se Vishwas Act" dated 31 August 2021

<sup>7</sup> Vide Circular no. 22/2022 dated 1 November 2022

<sup>8</sup> Refer EY Tax Alert "CBDT grants extension for filing application for charity registration by charitable trusts/institutions in certain cases" dated 1 April 2022

## 2. Provisions relating to provisional registration:

Prior to amendment made in FA 2023 with effect from 1 October 2023, in case of fresh or first-time registration of charitable institutions for provisional registration, registration application is required to be at least one month prior to commencement of tax year from which registration is sought. However, the provisions also state that the provisional approval/registration granted shall be applicable from the tax year in which the application for such registration is made.

## 3. Exit tax levy and its extension to default in registration:

The ITL contains provision of exit tax levy<sup>9</sup> under certain specified circumstances. The consequences for trigger of exit tax provisions are that the taxpayer will be liable to pay tax at maximum marginal rate on the accreted income within a period of 14 days from the specified date. Accreted income is excess of fair market value of assets over the amount of liabilities on the specified date. One of the specified circumstances triggering exit tax levy is case of conversion of charitable institution into a form not eligible for registration or renewal in the previous year.

FA 2023, with effect from tax year 2022-23, amended the scope of exit tax by including circumstances of failure to apply for registration or renewal within the period specified<sup>10</sup>. The amendment was made to ensure that the benefit availed by the charitable institutions over years is not misused and to plug - in the gap that allowed charitable institutions to convert into a non-charitable institution with no tax consequence.

Literal reading of the amended provision suggests that the amendment would apply to defaults committed by charitable institutions in tax year 2022-23 prior to the amendment.

## 4. Provisions dealing with accumulation of income:

Charitable Institutions are liable to apply 85% of the income for charitable purposes in the year of receipt of income to avail full exemption. If, however, a charitable institution is unable to apply its income to the extent of 85%, the ITL provides for a facility to accumulate or set apart its income for future application for such purposes by filing the prescribed forms with the tax authority within the prescribed time. Form 9A is required to be filed if the charitable Institution accumulates the income to be applied in the next financial year or in the year of receipt of income (deemed application of income). Further, Form 10 is required to be filed if the charitable institution accumulates the income to be applied in the subsequent five years (accumulation of income).

While these statements of accumulation were to be furnished by due date of filing of tax return, FA 2023 prepones the date to at least two months prior to the due date of furnishing return of income.

## 5. Amendment in audit report Form 10B and 10BB:

Vide Notification No. 7 of 2023 dated 21 February 2023<sup>11</sup>, the audit report form has been revamped. Form 10B, which is fairly detailed, is applicable to charitable institutions where: (a) Total income exceeds INR50mn during the tax year or (b) Is in receipt of foreign contribution; or (c) Has applied any income outside India during the tax year. Form 10BB, which is relatively less complex, applies to charitable institutions not covered above.

Both the forms require the auditor to bifurcate certain payments or application in electronic modes and non-electronic modes. Definition of "electronic modes" referred to in the notes to the form, provides for a list of electronic modes such as credit card, debit card, net banking etc. However, it does not include payments by account payee cheque or draft drawn on a bank or use of electronic system through a bank account.

With a view to address concerns arising out of the amendments made by FA 2023 and the above notification, on the representations of stakeholders, the CBDT has issued the Circular to clarify amended provisions and other issues.

<sup>9</sup> Section 115TD

<sup>10</sup> Section 12A(1)(ac)(i)/(ii)/(iii), clause (i),(ii),(iii) of first proviso to Section 10(23C)

<sup>11</sup> Refer EY tax alert "CBDT overhauls format of audit report applicable to charitable institutions" dated 24 February 2023

# Circular

## 1. Permitting extended due date to streamline past registration defaults to avoid trigger of exit tax as extended by FA 2023

In order to mitigate hardships caused to charitable institutions that failed to migrate to the new regime by 25 November 2022 (Category A) or those that have failed to apply for final registration or provisional registration by 30 September 2022 (Category B), the Circular grants extended time for compliance up to 30 September 2023. Once such belated application made within such extended time made is accepted and registration is granted, provision of exit tax levy will not apply.

Benefit of extended date of 30 September 2023 shall also apply to the following situations:

Situation covered	Status of application as on date of circular	Circular clarification
Where charitable institution has made an application for Category B above, after the extended due date of 30 September 2022	Tax authority has not passed order accepting or rejecting registration application before the issuance of the Circular	Such application will be treated as valid application
Application has been made by the charitable institution (For B above) after the extended due date	Tax authority rejected application by an order before the issuance of the Circular solely on the ground application was furnished after due date	The charitable institution may furnish fresh application up to 30 September 2023
Charitable institution who missed the deadline for category A above, and subsequently was seeking fresh provisional registration	-	To surrender earlier application for provisional registration Can make new application for registration/approval within the extended timeline i.e., up to 30 September 2023

## 2. Extension of due date for furnishing of statement of donation and donation certificate

Consistent with extension also provided to a charitable institution which is approved under the ITL as an entity, donation to which will qualify for deduction in the hands of donors, the due date for furnishing statement of donation in Form 10BD by such charitable institutions and donation certificate in Form 10BE for receipt of donation during FY 2022-23 is extended to 30 June 2023.

## 3. Clarification bringing consistency in applicability of provisional registration

In order to bring consistency, the Circular clarifies that the charitable institutions seeking provisional approval/registration, such approval/registration shall be effective for a period of three years from the tax year in which application is made (subject to seeking final registration as per the timelines provided).

## 4. Clarification relaxing date of furnishing statement of accumulation/deemed application by due date of filing return of income (ROI)

Considering that statement of accumulation in Form 10 and deemed application in Form 9A can be furnished only on finalization of computation of income at the time of filling of ROI and that the amendment preponing due date of filing these statements two months prior to filing of ROI may cause difficulty, the Circular clarifies that the charitable institutions shall not be denied exemption as long as the statement of accumulation/deemed application of income is furnished on or before the due date of furnishing ROI.

## 5. Clarification on scope of electronic mode in audit report

In addition to different electronic modes referred to in audit report form 10B/BB, the Circular clarifies that even account payee cheque, account payee bank draft and use of electronic clearing system through a bank account is considered as electronic modes for reporting purposes.

## Comments

The Circular issued for providing relaxation in compliance requirements and clarifying scope thereof is welcome.

Amendment by FA 2023 which expanded the scope of exit tax levy to defaults in registration by charitable institutions, may have retroactive effect in the sense that defaults committed in tax year 2022-23 even prior to the amendment may have been covered with harsh consequences. The Circular, by permitting extended time limit for making good the defaults by 30 September 2023, has provided a sigh of relief to charitable institutions.

As exit tax levy triggers even in cases where there is a single day delay in compliance relating to registration etc., or default is bonafide, it is preferable that the government excludes such defaults of administrative nature from exit tax levy which can have significant and serious consequences and instead may be made liable to penalty with defense for reasonable cause. Charitable institutions which are involved in a noble cause and supplement and share the government's functions and duties, may not be made liable to such stricter consequences.

Insofar as the clarification relates to the applicability of provisions for provisional registration/approval of charitable institutions, there is an ambiguity in the Circular on the exact scope coverage of clarification.

Circulars are binding on the department even if they are contrary to the law. However, some doubt is created on this proposition by the Supreme Court in the case of Assistant Commissioner of Income Tax (Exemptions) v. Ahmedabad Urban Development Authority [TS-814-SC-2022] and, hence, taxpayers may exercise caution while placing reliance solely on this Circular in their defense.

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