

## Summary of Recommendations

Audit recommends that:

- *The ITD may consider granting registration to educational Trusts/ Institutions under Section 12AA on the condition that, separate accounts have to be maintained for educational and non-educational activities and educational activities are to be dealt with as per the provisions of Section 10(23C). Further, the CBDT may consider the option of getting a separate ITR filed by the Assessee Trusts/ Institutions for educational activities and non-educational activities.*

*(Paragraph 5.1.1)*

- *The purpose of having two sets of overlapping Sections, especially with respect to educational and medical purposes, one under 'not for profit category' (which involves higher restrictions) under Section 10(23C) and another 'the charitable category' (with fewer restrictions) under Section 11 is not clear to Audit. Logically, most entities with a choice would not opt for the restriction, not for profit category. In general, the stipulations under various sub-Sections of Section 10(23C), requiring that institutions exist solely for philanthropic purposes and not for the purposes of profit, are more onerous than those under Section 11, which merely restrict accumulation of annual income beyond 15 per cent and have no specific "not for profit" purpose; however, the provisions for exemption of income under both categories are virtually identical.*

*Department of Revenue may consider reviewing these stipulations in the Act under various categories in the light of clear Governmental policy determination in terms of which charitable objectives merit exemption of income with a requirement of "solely philanthropic purposes and not for the purpose of profit" and which charitable objectives merit income exemption without such a requirement.*

*(Paragraph 5.1.1)*

- *The ITD may issue a Standard Operating Procedure/instructions/ guidelines for examining the valuation aspects of transactions with related parties and devise a clear mechanism to justify the 'reasonableness' and 'adequacy' of the transactions held with the related party of the trust so that the Assessing Officer may satisfy himself as to the reasonableness and adequacy of the transactions during the Assessment proceedings; and levy tax on amount of Income or property utilized for the benefit of the related parties in excess of the amount assessed as reasonable and adequate.*

*(Paragraph 5.1.2.1)*

- *CBDT needs to consider bringing an amendment or issuing binding clarification as to whether donations to trusts, including in-house/corporate trusts, out of CSR expenditure by specified companies covered by Section 135 of the Companies Act, 2013 is eligible for deduction under section 80G or not. Such an amendment or binding clarification is necessary to ensure that the provisions are interpreted uniformly by the Assessing Officers across all assessment charges and also to minimize the possibility of litigation.*

*(Paragraph 5.1.2.3)*

- *The ITD may consider bringing in new provisions in the Act, so as to ensure that specific purpose donation, if not utilized for the specified purpose (like mere transferring such donation later on to other organizations etc.) should attract denial of exemptions and be treated as income in the year in which it is detected.*

*(Paragraph 5.1.2.4)*

- *The ITD may issue suitable instructions/clarifications to deal with consistent treatment of administrative and establishment expenses for the purpose of application of income.*

*(Paragraph 5.1.2.6)*

- *The ITD may consider bringing in a new provision in the Act to stipulate that voluntary contributions received from other Trusts/Institutions out of current year's income shall not be eligible for the permissible accumulation at the rate of 15 per cent in the hands of such recipient trust or institution.*

*(Paragraph 5.1.2.7)*

- *The ITD may consider bringing in a new provision in the Act for taxing any long pending liability received in the guise of loan as voluntary contribution on cessation of liability, similar to provisions of Section 41(1) of the Act.*

*(Paragraph 5.1.2.8)*

- *The ITD may evolve a suitable mechanism by issuing a Standard Operating Procedure for Assessing Officers for carrying out physical inspection of the activities of the trust in cases where there had been consistent and increased accumulation to ensure that trusts are allowed accumulations consistently only in exceptional cases.*

*(Paragraph 5.1.2.9)*

- *The ITD may stipulate specific parameters (apart from the donor's name and address) such as PAN etc., which must be disclosed by assessee to establish the identity of donors. Further, disclosure of PAN of the donor should be made mandatory above a threshold limit of donation to be decided by the ITD. ITD may also consider introducing a new Schedule in the ITR to capture the donors'*

*details in order to strengthen the assessment procedure to mitigate the risk of money laundering and prevent leakage of revenue.*

*(Paragraph 5.1.2.10)*

- *The ITD may ensure that the timeline prescribed in the Act for granting approval to the Trusts/Institutions may be adhered to by the CIT(E).*

*(Paragraph 5.2.2)*

- *The ITD may ensure that due procedure is followed by the CIT(E) while granting registration/approval to the Trusts/Institutions.*

*(Paragraph 5.2.4)*

- *The ITD may ensure that field enquiry about the existence and genuineness of the activities of the Trust/Institution may be conducted and a report thereof with necessary documentation may be kept on record while granting registration.*

*(Paragraph 5.2.5)*

- *The ITD may review the cases for taking remedial action where exemptions were granted to the assesseees, where there was no dissolution clause in the trust deed, or the dissolution clause is not in conformity with the stipulated provisions. Further, the ITD also need to evolve a system to ensure that no registration is granted to exempt entities in the absence of an appropriate dissolution clause.*

*(Paragraph 5.2.6)*

- *The ITD may take steps to strengthen the IT system so that input of data should commensurate with the selection criteria for proper identification of cases to be scrutinised.*

*The ITD should consider expanding the data elements captured in ITR 7, if need be, restricted based on a gross income or exempted income threshold to be determined by the ITD. This will enable capturing of relevant data enabling a better and more risk-based approach to CASS selection without inconveniencing smaller trusts/entities.*

*(Paragraph 5.3.1)*

- *The ITD may*
  - (a) consolidate registration data of all the Trusts/ Institutions registered under Section 12AA/80G/10(23C) of the Act digitally and match it with the data filled in ITRs to verify genuineness of registration while processing of ITRs through CPC; and*

*(b) suitably modify the second proviso to Section 12A(2) to enable the AO to re-open such cases where assessee has claimed irregular exemption under Section 11 or 12 without having a valid registration.*

*(Paragraph 5.3.2)*

- *The ITD may capture data/information relating to contributor/donor in Form ITR-7 as has been done in respect of Section 80G (5) to bring transparency and accountability for the funds contributed/donated.*

*(Paragraph 5.3.5)*

- *The ITD may consider modifying Form 10B incorporating:*

*(a) details of receipt under different heads and income derived from property wholly held by trust.*

*(b) detailed information on receipt of corpus donations, its utilisation and claim of expenditure from corpus donation*

*(c) detailed information on the claim of deemed application of income availed in a previous year which has to be reduced from the amount of application of income in the year of actual receipt*

*(d) the details of utilisation out of past accumulation in the return of income is certified by the Auditor.*

*to enable the Assessing Officer to verify the correctness of the claim made by the assessee.*

*(Paragraph 5.3.6.1, 5.3.6.2, 5.3.6.3 and 7.1.11)*

- *The ITD may strengthen its assessment procedure for Trusts/Institutions to ensure correct computation of income and its application, and avoidance of double benefit to the trusts as per the existing provisions of the Act.*

*(Paragraphs 6.2.1, 6.2.2, 6.5.1 and 6.5.2)*

- *The ITD may strengthen its assessment procedure for Trusts/Institutions to ensure that no exemption is granted when income or property of the trust is utilised for the benefit of persons having substantial interest.*

*(Paragraph 6.4)*

- *The ITD may ensure that the CPC-ITR System automatically levies penalty for delay in filing of return at the time of processing of ITRs itself.*

*(Paragraph 6.9)*

- *The ITD may allocate separate codes to different classification of activities of Trusts/Institutions, linking them with Section 11 and sub-Sections of 10(23C) of the Act, for identification of Government and private entities, for better*

*monitoring, improved vigilance in regard to private charitable entities and effective evaluation of risk for scrutiny selection.*

*ITD's Computer Aided Scrutiny Selection (CASS) may be refined to reflect the lower risk for Government entities and reduce the probability of selection for scrutiny, other things being equal. This is important because ITD resources for scrutiny are limited and should be better deployed to higher risk cases in private sector.*

*(Paragraph 7.1.1)*

- *The ITD may issue instructions to bring the cases approved under Section 10(23C) and 80G(5) of the Act under the purview of internal audit of the Department.*

*(Paragraph 7.1.4)*

- *The ITD may*
  - (a) capture data in the CPC-ITR/ITBA system, to ascertain the nature and activity of the concerned trusts through granular business codes and other means; and*
  - (b) enhance the quantum of surveys being undertaken in respect of private educational Trusts/Institutions, particularly the high value exemption cases, so as to ensure more effective monitoring and minimize the possibility of ineligible claims, as desired by the PAC.*

*(Paragraph 7.1.5)*

- *The ITD may examine wherein, in any assessment year the Department denied exemption to a Trust/Institution considering the activities as non-charitable, the earlier years' assessments may be re-opened to ensure that undue benefit was not taken by such Trusts/Institutions.*

*(Paragraph 7.1.6)*

- *The ITD may consider issuing Standard Operating Procedure/Guidelines ensuring the genuineness of the activities of Trusts/Institutions before grant of registration/ accord of approval.*

*(Paragraph 7.1.8)*

- *The ITD may consider certification of research activity of a Trust/Institution by specialised authority at the time of granting approval under Section 35(1)(ii) in line with Section 35(2AA) and 35(2AB).*

*(Paragraph 7.1.9)*

- *The ITD may devise a monitoring mechanism (in addition to scrutiny assessment) to ensure that the entities which are availing the benefits under*

*Sections 10(23C), 11, 12, 13, 80G(5) of the IT Act, are working towards achieving the objectives for which they are formed.*

*(Paragraph 7.1.10)*

- *The ITD system may be suitably modified to maintain a schedule of year-wise accumulation and utilisation by automatic capture of data so that any unspent amount after specified period may be taxed accordingly.*

*(Paragraph 7.1.11)*

- *Form 10BB may be modified so as to monitor amounts accumulated by the Trusts/Institutions registered under Section 10(23C) (iv to via). Further, ITD may consider specific declaration to be made by the assessee similar to Form 10, as per which statement to be furnished to the AO/prescribed authority under Section 11(2), intimating the purpose/ period of accumulation, by Trusts/Institutions registered under Section 10(23C) (iv to via), opting for accumulation of income for future application. Further, CPC-ITR/ITBA system may also be suitably modified to maintain a schedule of year-wise accumulation and utilisation by automatic capture of data so that any unspent amount after specified period may be taxed accordingly.*

*(Paragraph 7.1.12)*

- *The ITD may*
  - (a) evolve an automated IT-based mechanism to cross-verify the foreign receipt available with MHA, with that in the ITR. The ITD may also consider bringing in new provisions in the Act, so as to treat foreign contribution received, utilized, donated or invested by Trusts/Institutions in violation of the FCRA Act 2010 as income not to be exempt under Section 11 and 10(23C).*
  - (b) put checks and validation in place in the ITD systems to restrict the user to provide inconsistent information/data within same/different Forms while filing ITR.*
  - (c) explore the feasibility of utilisation of relevant information/data available with the other Government Department/body which may plug-in leakage of revenue to the exchequer while processing ITRs in an automated environment.*

*(Paragraph 7.1.13)*