

EY Tax Alert

CBDT overhauls format of audit report applicable to charitable institutions

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Executive summary

This Tax Alert summarizes Notification No. 7/2023 dated 21 February 2023 (Notification) issued by the Central Board of Direct Taxes¹ (CBDT), which substitutes the existing rules² under the Income Tax Laws (ITL). These rules prescribe the revised audit reports³ for reporting by charitable institutions and are effective from 1 April 2023.

Charitable institutions fulfilling the following criteria are required to furnish audit report in Form 10B: (i.) Having total income in excess of INR 5 Cr. before applying the exemption provisions; or (ii.) Having received foreign contribution; or (iii.) Having applied any part of their income outside India. The scope of the revised form has been substantially expanded, including introducing new reporting requirements.

Charitable institutions not covered by the above criteria are required to furnish audit report in Form 10BB which has limited disclosures as compared to Form 10B.

¹ Apex body of direct tax administration in India

² Rules 16CC and 17B of the Income Tax Rules, 1962

³ Forms 10B and 10BB

Background

- ▶ Under the ITL, charitable trusts or registered institutions⁴ are required to furnish audit report in the prescribed format one month prior to the furnishing of tax return i.e., by 30 September. The audit report is to be issued by a chartered accountant.
- ▶ The recent manifold amendments in taxation provisions related to charitable institutions necessitated suitable update of the reporting framework i.e., the tax return form and the audit report.
- ▶ Accordingly, the CBDT has amended the rules and prescribed the revised audit report forms vide the Notification.

Notification

▶ Effective date

The rules² amending the audit report are effective from 1 April 2023. Therefore, these are likely to apply to issuance of any audit report on or after 1 April 2023 in respect of any of the past years, including tax year 2022-23.

▶ Criteria for adoption of Forms 10B and 10BB

Before Notification		After Notification	
Form 10B	Form 10BB	Form 10B	Form 10BB
Charitable institutions registered under S. 12AB	Charitable institutions registered under different clauses of S.10(23C) ⁵	Charitable institutions registered under S.12AB or different clauses of S.10(23C) fulfilling the following criteria: <ul style="list-style-type: none"> ○ Total income before giving effect to exemption provisions exceeds INR50m during financial year; or ○ Having received any foreign contribution during the financial year; or ○ Having applied any part of its income outside India during the financial year 	Charitable institutions registered under S.12AB or different clauses of S.10(23C) and not covered by the specified criteria in the earlier column

▶ Key changes in reporting obligations in annexure to the audit report (Form 10B)

As in the case of Form 3CD, in the context of tax audit report under S.44AB, the annexure to the audit report (Form 10B/10BB) is a statement of particulars requiring clause-wise details on various reporting requirements. The Notification substantially expanded the scope of the particulars and the information to be furnished in the annexure⁶.

⁴ Either under Section (S.)10(23C) or S.12AB of the Income Tax Act, 1961 (ITA)

⁵ Sub-clauses (iv), (v), (vi) or (via) of S.10(23C)

⁶ Annexure, along with schedules, runs into 15 pages

Summary of the key changes are as under:

A. New reporting requirements introduced

○ **Registration details**

It captures details of date of registration/provisional registration with unique registration number (URN), authority granting registration and date from which the registration/provisional registration is effective.

○ **Management details**

- This requires details of author/founder/settlor/trustees/members of society/members of governing council/ director(s)/ shareholders holding 5% or more of shareholding/office bearer at any time during the previous year, including name, address, relation, percentage shareholding, unique identification number and changes if any.
- If any of the above specified persons is not an individual, details of natural persons who are beneficial owners (5% or more) of such person at any time during the previous year.
- The above details, by and large, are similar to requirements in the tax return in ITR-7 applicable to charitable institutions.

○ **Objects of the charitable institutions**

- It provides for identifying the charitable purpose(s)⁷ under which the charitable institution may be covered.
- It also requires reporting of details about any modification in the objects, which do not conform to the conditions of registration. The information includes details such as date of modification, date of application for re-registration and status of such application (pending/granted/cancelled).

○ **Commencement of activities**

- In case of charitable institutions having provisional registration, details of commencement of activities during the tax year (if any) with date thereof.

- Information about date of application for re-registration together with status of such application (pending/granted/cancelled).

○ **Advancement of general public utility (GPU)**

- GPU is a residuary charitable purpose under the ITL and exemption thereof is subject to fulfillment of the following cumulative conditions:
 - It involves the carrying on of activities in the nature of trade, commerce or business or rendering any services in relation thereto for a cess or a fee or any other consideration.
 - Such activity is undertaken in the course of actual carrying out of GPU and aggregate receipts from such activity during the year do not exceed 20% of the total receipts of the charitable institution.
- Annexure captures details in respect of the conditions specified above.

○ **Business undertaking⁸ and business incidental⁹ to objects**

- Where the charitable institution has any business undertaking or business incidental to the objects, details such as nature of business undertaking, business code, maintenance of separate books of accounts are to be disclosed.
- Further, in case of business undertaking, amount of income from business undertaking is to be included or excluded from total income to be disclosed.

○ **Tax deducted at source (TDS) on receipts**

- This requires disclosure of details of receipts on which tax is deducted at source under specified provisions¹⁰ of the ITA.
- Apart from name/TAN¹¹ of the deductor, disclosure includes the category of receipts to be

⁷ Religious, relief of poor, education, medical relief etc., as specified in S.2(15) of the ITA

⁸ Refer S.11(4) of the ITA

⁹ Refer S.11(4A) of the ITA

¹⁰ S.194C / S.194H / S.194J / S.194Q of ITA

¹¹ Tax Deduction/Collection Account Number

bifurcated as: (i.) In the nature of trade, commerce or business. (ii.) Activity of rendering any service in relation to any trade, commerce or business. (iii.) Others (nature to be specified).

non-obtaining of audit report or non-furnishing of tax return within due date.

- The reporting requirement herein is pursuant to the amendment and is consistent with reporting prescribed under ITR-7.

o **Voluntary contributions**

- This requires break-up of donation received, broadly as under:
 - Total sum of donations reported in Form 10BD¹² furnished by charitable institutions.
 - Donation not reported in Form 10BD or could not be reported due to non-availability of identification of donor or donations in kind or anonymous donations or any other voluntary contribution.
- Total foreign contribution received during the tax year, including break-up into corpus and non-corpus and application therefrom.
- Details about voluntary contribution forming part of corpus, along the lines of Schedule J of ITR-7, including information about opening balance, receipt, application, invested or deposited back into corpus, invested in specified modes.

o **Details of income taxable under S.115BBI**

- Finance Act, 2022 introduced a new provision to tax certain specified income at a flat rate of 30% without any deduction in respect of expenditure or allowance or set-off of any loss.
- The reporting requirement herein is pursuant to the amendment and is consistent with reporting prescribed under ITR-7.

o **Special computation provision [S.13(10)]**

- Finance Act, 2022 introduced a new provision for computation of income in circumstances, including breach of certain provisions, such as non-maintenance of books of account,

o **Specified violations**

- The ITL provides for cancellation of registration under certain specified violations by charitable institutions.
- The reporting requires disclosure of violations, if any, by charitable institution such as application of income for other than objects, application of income for benefit of religious community or caste, activity is not genuine or is not carried out in accordance with any or all conditions of registration, non-compliance of any other law.

o **Miscellaneous**

- Disclosure is also required for breach of specified provisions of the ITL, such as acceptance or repayment of any loan or deposit or specified sum exceeding prescribed limit other than by banking modes, default in TDS/tax collected at source (TCS) compliances.

B. Expanding scope of existing reporting requirements

o **Application of voluntary contribution**

- The reporting requirements herein are largely similar to those prescribed in ITR-7. This includes object-wise details of donation to other persons, break-up of application into revenue or capital, amount to be disallowed.
- Additionally, in relation to contribution/donation to other person, disclosure requires break-up of payment made in electronic and other than electronic modes.
- Further, where application results in payment in excess of INR5m, name and permanent account number (PAN) of payee, amount of application, mode of application (electronic or otherwise) and TDS details to be

¹² Statement of particulars to be filed by reporting person under S.80G(5)(viii) and S.35(1A)(i)

disclosed. Additionally, similar details are to be disclosed in respect of application of income out of sources such as corpus, borrowed funds, accumulated income, which do not qualify as application.

► **Key changes in reporting obligations in annexure to the audit report (Form 10BB)**

The reporting under revised Form 10BB, though more elaborate as compared to earlier form, is not as exhaustive and detailed as revised Form 10B. Requirements such as details of registration, objects of the trust, advancement of GPU, business undertaking and business incidental to objects are not included.

Comments

The revised audit report, particularly Form 10B, is more elaborate and requires exhaustive disclosure and reporting. One of the circumstances leading to such expanse of revision appears to be the report of the Comptroller and Auditor General (CAG), dated August 2022, on performance audit on exemption granted to charitable institutions for year ended March 2021. The report carries observations on the inadequacies of the audit report in capturing information such as relating to details of receipt of income under different heads, claim of exemption for corpus donation not certified by auditor, claim of deemed application.

The Notification is effective from 1 April 2023 and is likely to apply to any audit report issued on or after 1 April 2023.

The revised reporting requirements are manifold both in their scope and detail. Compiling the information may be a mammoth exercise for charitable institutions, more so as the revised form has been prescribed at the end of the year and the existing software may not be aligned to capture it. Further, it may also be an onerous task for the auditors to verify most of the particulars furnished, more so as the revised report requires the auditor to certify particulars as “true and correct”.

While some of the reporting requirements are in line with disclosures in ITR-7, many others are to be reported by way of additional particulars.

The reporting requirement of specified violations will provide handy information to the tax authorities for initiating proceedings for cancellation of registration. This may have potential scope for trigger of exit tax levy under the ITL. Additionally, disclosure related to status of application for modification or re-registration may highlight delays, if any, in the registration process, which may also trigger exit tax levy as per the proposal of Finance Bill, 2023.

The reporting requirement as to whether activity undertaken is in the nature of trade, commerce or business or whether such activity is business incidental to the attainment of objects, involves a complex fact-finding exercise and application of principles laid down by the Supreme Court in its recent rulings in Ahmedabad Urban Development Authority¹³ and New Noble Educational Society¹⁴.

Fortunately, charitable institutions fulfilling the following criteria have been spared from the detailed and exhaustive reporting requirement: (i.) Having total income up to INR 5 Cr before applying the exemption provision. (ii.) Not having any receipt of foreign contribution. (iii.) Not applying any part of their income outside India.

¹³ [TS-814-SC-2022]

¹⁴ [TS-809-SC-2022]

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