

EY Tax Alert

CBDT provides certain relaxations to charitable institutions for reporting details about Significant Donors and their relatives/concerns in audit report

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Executive summary

This Tax Alert summarizes a recent Circular No. 17/2023 dated 9 October 2023 (Circular) issued by the Central Board of Direct Taxes¹ (CBDT) wherein the CBDT provides relaxation to charitable institutions in providing details of Significant Donors and its relatives/concern in audit report for tax year 2022-23. The CBDT provides that for the purposes of reporting in audit report, any person who has given donation of more than INR0.05m during the tax year may be considered as Significant Donor and past years donation may not be reckoned for the purposes of such reporting. Also, details of relatives/Concerns² of such Significant Donor may be reported 'if available'.

¹ Apex body of direct tax administration in India.

² As per ITR, an entity in which specified related parties have substantial control are considered as 'Concern' of such specified related party.

Background

The entities carrying on activities for charitable purposes (hereinafter referred as charitable institutions) are exempt³ from income-tax under the Income Tax Laws⁴ (ITL) subject to satisfaction of specified conditions. Amongst others, the charitable institutions are required to furnish audit report⁵ on or before 30 September of subsequent tax year (extended to 31 October 2023 for tax year 2022-23) and tax return⁶ on or before 31 October of subsequent tax year (extended to 30 November 2023 for tax year 2022-23)⁷.

Earlier this year, the CBDT vide Notification No. 7/2023 dated 21 February 2023⁸ had replaced the old form of audit report with two new forms and substantially enhanced the reporting requirement including information and details of related parties.

The ITL⁹, *inter alia*, provides that income of the charitable institutions applied for the benefit of specified related parties shall not be exempt. One of the specified related parties¹⁰ means any person who has made donation during the period from inception of charitable institution up to the end of the relevant tax year of an amount aggregating to INR0.05m (hereinafter referred as Significant Donor). Further, any relative of Significant Donor or a Concern in which such Significant Donor has substantial interest shall also be considered as specified related parties¹¹ under the ITL. Other categories of specified related parties *inter alia* includes settlor or trustees or manager of charitable institutions and their relatives/Concerns. In respect of Significant Donor or its relative, the new audit report requires extensive details such as name, address, PAN, Aadhaar Number.

Various representations were made to the CBDT for facing genuine difficulties in reporting the details of Significant Donor and its relatives and Concerns which may involve past year/s record compilation. To address these difficulties, the CBDT in deference to general powers conferred under ITL, has provided certain relaxation in reporting requirement in the audit report to be furnished by charitable institutions for tax year 2022-23.

CBDT Circular

The CBDT Circular clarifies that for the purpose of filing the audit report by the charitable institution for tax year 2022-23:

1. The details of Significant Donor may be given with respect to those persons whose total contribution during the tax year 2022-23 exceeds INR0.05m.
2. Details of relatives of Significant Donor referred above may be provided if available.
3. Details of concerns in which Significant Donor has substantial interest may be provided if available.

Comments

The relaxations provided by the CBDT is a welcome move given extensive information and details sought in the new audit report. Presently, the CBDT has provided relaxation to the charitable institutions in reporting details of Significant Donors and its relatives/Concerns. Incidentally, the relaxation coincides with similar reporting requirement in the tax return which requires reporting of Significant Donors basis donation received during the tax year.

The relaxation provided in the Circular is, however, limited in following terms:

- The Circular does not provide any relief for the purposes of computation of income of the charitable institutions and is limited to reporting obligation. Therefore, in case where the charitable institution has granted any benefit directly or indirectly to any person who has made donation of INR0.05m in earlier years and thereby, became related person, then so much of the income of the charitable institution shall be liable to tax in addition to certain other adverse consequences under the ITL even though, technically such person may not qualify for reporting under audit report.

³ S. 10(23C) or s. 11 of ITL.

⁴ Income Tax Act, 1961 read with Income Tax Rules, 1962.

⁵ Audit Report is to be filed in Form No. 10B (if total income without giving effect to exemption under ITL exceeds INR50m) or in Form No. 10BB (in any other case).

⁶ ITR-7.

⁷ Refer EY Flash News dated 20 September 2023 titled - "CBDT extends time limit for registered charitable institutions for filing audit report and tax return for tax year 2022-23"

⁸ Refer EY Tax Alert dated 24 February 2023 titled as "CBDT overhauls format of audit report applicable to charitable institutions".

⁹ Refer s. 13(1)(c) of ITL.

¹⁰ Refer s. 13(3)(b) of ITL.

¹¹ Refer s. 13(1)(d) and (e) of ITL.

- The relaxation is limited to reporting information of Significant Donor. If the taxpayer is otherwise covered under any other category of specified related party (such as settlor, trustee, etc.), then complete reporting of such category of specified related party shall be required. No relaxation is granted for such other categories.
- The language used in the Circular seems to be ambiguous. The Circular may give an impression that details of donors who have made donation of INR0.05m in the current year alone be reported. There is no obligation on the charitable institution to report Significant Donors already identified basis past records even if such information is available with the charitable institution.

However, better view seems to be that having regard to spirit of the reporting obligation as also difficulty sought to be addressed information about such Significant Donors be reported if such information is in possession of the charitable institution. Further, use of expression 'if available' appears to suggest that a reasonable attempt shall be made by the charitable institutions to collate the information for the purposes of reporting.

- Relaxation appears to be one-time for tax year 2022-23 in view of short time available to charitable institution since introduction of the new audit report forms.

It is settled legal position that circular issued by the CBDT pursuant to the general authority under ITL for procedural compliances is binding on the tax authority.

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