

TYPES OF REGISTRATION/APPROVAL FOR NGOs UNDER INCOME TAX



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CONTENTS

1.	INTRODUCTION	01
2.	EDUCATIONAL INSTITUTION WHOLLY OR SUBSTANTIALLY FINANCED BY GOVERNMENT	01
3.	MEDICAL INSTITUTION WHOLLY OR SUBSTANTIALLY FINANCED BY GOVERNMENT	01
4.	EDUCATIONAL INSTITUTION WITH UPTO RS. 1 CRORE ANNUAL RECEIPTS	02
5.	MEDICAL INSTITUTION WITH UPTO RS. 1 CRORE ANNUAL RECEIPTS	03
6.	CHARITABLE INSTITUTION OF NATIONAL / STATE IMPORTANCE	03
7.	RELIGIOUS INSTITUTION FOR PUBLIC RELIGIOUS PURPOSE OR FOR RELIGIOUS CUM CHARITABLE PURPOSES	04
8.	EDUCATIONAL INSTITUTION WITH RECEIPTS ABOVE RS. 1 CRORE	04
9.	MEDICAL INSTITUTION WITH RECEIPTS ABOVE RS. 1 CRORE	05
ANNEXURE 1	COMPARATIVE CHART OF SEC. 11 VS. SEC. 10(23C)(IV), (V), (VI) & (VIA)	06

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INTRODUCTION

1.1.1 Under the Income Tax Act 1961, there are various types of sections under which a charitable or religious organisation can claim exemptions from tax liability. Normally most of the charitable or religious institutions get themselves registered under section 12AA to claim tax benefits under section 11 of the Income Tax Act. However, there are various other sections under which the charitable or religious institutions can also avail tax benefits. In this issue, the various sections and provisions u/s 10(23C) of the Income Tax Act which are available to charitable or religious institutions have been discussed.

EDUCATIONAL INSTITUTION WHOLLY OR SUBSTANTIALLY FINANCED BY GOVERNMENT

1.2.1 Income received by a person on behalf of an educational institution wholly or substantially financed by Government is totally exempt from Income Tax under section 10(23C)(iiiab). Such institutions are not required to apply for registration or approval before any authority. It may be noted that under Rule 2BBB the term “substantially financed by Government” would mean grant from Government in excess of 50% of total receipts including voluntary contribution.

1.2.2 Such institutions are not subject to audit under Form 10B or Form 10BB as required by other charitable institutions.

1.2.3 Such institutions are not subject to 85% utilisation or any other conditions of section 11 which is applicable for various other charitable institutions.

1.2.4 Such institutions are required to file Income Tax Return in the Form ITR-7 under section 139(4C)(e).

MEDICAL INSTITUTION WHOLLY OR SUBSTANTIALLY FINANCED BY GOVERNMENT

1.3.1 Income received by a person on behalf of a medical institution wholly or substantially

financed by Government is totally exempt from Income Tax under section 10(23C)(iiiac). Such institutions are not required to apply for registration or approval before any authority. It may be noted that under Rule 2BBB, the term “substantially financed by Government” would mean grant from Government in excess of 50% of total receipts including voluntary contribution.

- 1.3.2** Such institutions are not subject to audit under Form 10B or Form 10BB as is required by other charitable institutions.
- 1.3.3** Such institutions are not subject to 85% utilisation or any other conditions of section 11, which is applicable to various other charitable institutions.
- 1.3.4** Such institutions are required to file Income Tax Return in the Form ITR-7 under section 139(4C)(e).

EDUCATIONAL INSTITUTION WITH UPTO RS. 1 CRORE ANNUAL RECEIPTS

- 1.4.1** Income received by a person on behalf of an educational institution with less than 1 crore annual receipts is totally exempt from Income Tax under section 10(23C)(iiid). Such institutions are not required to apply for registration or approval before any authority. It may be noted that the annual receipts will be calculated for each educational institution run by a society. For example, if a society runs three schools and in each school the total receipt is less than Rs.1 crore, then the society can claim tax benefit under section 10(23C)(iiid) for all the three schools.
- 1.4.2** Such institutions are not subject to audit under Form 10B or Form 10BB as is required by other charitable institutions.
- 1.4.3** Such institutions are not subject to 85% utilisation or any other conditions of section 11, which is applicable, various other charitable institutions.
- 1.4.4** Such institutions are required to file Income Tax Return in the Form ITR-7 under section 139(4C)(e).

MEDICAL INSTITUTION WITH UPTO 1 CRORE ANNUAL RECEIPTS

- 1.5.1** Income received by a person on behalf of an medical institution with less than 1 crore annual receipts is totally exempt from Income Tax under section 10(23C)(iii)(a). Such institutions are not required to apply for registration or approval before any authority. It may be noted that the annual receipts will be calculated for each educational institution run by a society. For example, if a society runs three hospitals and in each hospital the total receipt is less than 1 crore, then the society can claim tax benefit under section 10(23C)(iii)(a) for all the three hospitals.
- 1.5.2** Such institutions are not subject to audit under Form 10B or Form 10BB as is required by other charitable institutions.
- 1.5.3** Such institutions are not subject to 85% utilization or any other conditions of section 11 which is applicable to various other charitable institutions.
- 1.5.4** Such institutions are required to file Income Tax Return in the Form ITR-7 under section 139(4C)(e).

CHARITABLE INSTITUTION OF NATIONAL / STATE IMPORTANCE

- 1.6.1** Income received by a person on behalf of a charitable institution of importance throughout India or throughout any state or states is totally exempt from Income Tax under section 10(23C)(iv). Such institutions are required to apply for approval before the Commissioner of Income Tax (Exemption) notified by CBDT in this regard in Form 56.
- 1.6.2** Such institutions are subject to audit under Form 10BB. Such institutions are also subject to 85% utilisation or many other conditions of section 11 which is applicable various other charitable institutions. A comparative chart of the provisions applicable to such institutions with those availing benefit under section 11 is provided in **Annexure 1**.
- 1.6.3** Such institutions are required to file Income Tax Return in the Form ITR-7 under section 139(4C)(e).

RELIGIOUS INSTITUTION FOR PUBLIC RELIGIOUS PURPOSEE OR FOR RELIGIOUS CUM CHARITABLE PURPOSES

- 1.7.1** Income received by a person on behalf of a religious institution for public religious purposes or public religious cum charitable purposes is totally exempt from Income Tax under section 10(23C)(v). Such institutions are required to apply for approval before the Commissioner of Income Tax (Exemption) notified by CBDT in this regard in Form 56.
- 1.7.2** Such institutions are subject to audit under Form 10BB. Such institutions are also subject to 85% utilisation or many other conditions of section 11 which is applicable to various other charitable institutions. A comparative chart of the provisions applicable to such institutions with those availing benefit under section 11 is provided in **Annexure 1**.
- 1.7.3** Such institutions are required to file Income Tax Return in the Form ITR-7 under section 139(4C)(e).

EDUCATIONAL INSTITUTION WITH RECEIPTS ABOVE RS. 1 CRORE

- 1.8.1** Income received by a person on behalf of a solely educational institution with annual receipt above Rs. 1 crore is totally exempt from Income Tax under section 10(23C)(vi). Such institutions are required to apply for approval before the Commissioner of Income Tax (Exemption) notified by CBDT in this regard in Form 56D.
- 1.8.2** Such institutions are subject to audit under Form 10BB. Such institutions are also subject to 85% utilisation or many other conditions of section 11 which is applicable various other charitable institutions. A comparative chart of the provisions applicable to such institutions with those availing benefit under section 11 is provided in Annexure 1.
- 1.8.3** Such institutions are required to file Income Tax Return in the Form ITR-7 under section 139(4C)(e).

MEDICAL INSTITUTION**WITH RECEIPTS ABOVE 1 CRORE**

- 1.9.1** Income received by a person on behalf of a solely medical institution with annual receipt above Rs. 1 crore is totally exempt from Income Tax under section 10(23C)(via). Such institutions are required to apply for approval before the Commissioner of Income Tax (Exemption) notified by CBDT in this regard in Form 56D.
- 1.9.2** Such institutions are subject to audit under Form 10BB. Such institutions are also subject to 85% utilisation or many other conditions of section 11 which is applicable various other charitable institutions. A comparative chart of the provisions applicable to such institutions with those availing benefit under section 11 is provided in **Annexure 1**.
- 1.9.3** Such institutions are required to file Income Tax Return in the Form ITR-7 under section 139(4C)(e).

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Annexure 1

SEC. 11 VS. SEC. 10(23C)(iv), (v), (vi) & (via)

Notes :

- 1) For university/educational institution/hospitals falling under section 10(23) (iiiab), 10(23) (iiiac), 10(23) (iiiad) & 10(23) (iiiae) : There is neither any requirement of any approval to be taken nor there is any operational formalities to be complied with except the submission of Income Tax Return.
- 2) We have, therefore, compared the applicable operational framework as applicable for claiming the benefit of SEC. 11 VS. SEC. 10(23C)(iv), (v), (vi) & (via).

Broader issue	Basis of Difference	Section 12AA	Section 10(23C)(iv), (v), (vi) & (via)
Registration	a) When is Application required to be made?	Required to be made by all NGOs which wishes to take the benefit under this section.	The approval is required for educational institutions/hospital/funds, etc. which falls under 10(23C)(iv) 10(23C)(v) 10(23C)(vi) 10(23C)(via) i.e. having aggregate receipt of more than Rs.1.00 Crore or any fund/institution established for charitable purpose or any trust/institution wholly for public religious purpose or wholly for public religious charitable purposes.
	b) Form for the above application	Form 10A	For 10(23C)(iv) & 10(23C)(v) – Form 56 For 10(23C)(vi) & 10(23C)(via)– Form 56D
	c) Time limit for filing of application	No time limit. However, in view of S.12AA(2), exemption be available from the immediately following AY to FY in which appl. is made.	On/before 30th Sept. of the relevant Assessment Year

Broader issue	Basis of Difference	Section 12AA	Section 10(23C)(iv), (v), (vi) & (via)
	d) Time limit for approval	Within 6 months from the end of the month in which application is received [s.12AA(2)]	Within 12 months from the end of the month in which application was received
	e) Time period for exemption	Lifetime	Lifetime Circular No. 7/2010 [F.No. 197/21/2010-ITA-I] Dated 27-10-2010
	f) Exemption shall be effective from	The relevant assessment year immediately following the financial year in which the application is made	The year in which it is granted and thereafter.
	g) Approval Authority	CIT (Exemptions)	CIT (Exemptions) As per notification number SO675(E) dt 5th March,2015
	h) Application for registration/ approval	Lies to Appellate Tribunal	Lies to Appellate Tribunal
	i) Cancellation of registration/ approval	a) the activities of the trust or institution are not genuine, or;	Same
		b) the activities are not being carried out in accordance with the objects of the trust or institution.	Same
		c) Operation of applicability of Sec. 13(1) which provides that activity of the trust being carried out in such manner that :	
		i) its income does not ensure for the benefit of general public;	The exemptions for that particular year shall not be forfeited but the CIT shall have the power to withdraw the approval in the light of acting beyond stated objects.
		ii) it is for the benefit of any particular religious community or caste	The exemptions for that particular year shall not be forfeited but the CIT shall have the power to withdraw the approval in the light of acting beyond stated objects.

Broader issue	Basis of Difference	Section 12AA	Section 10(23C)(iv), (v), (vi) & (via)
		iii) any income or property of the trust is applied for the benefit of specified persons like author of trust, trustees, etc.; or iv) its funds are invested in prohibited modes	The exemptions for that particular year shall not be forfeited but the CIT shall have the power to withdraw the approval in the light of acting beyond stated objects Same
Income	A) Nature of income B) Treatment of Corpus Donation C) Anonymous Donation	Income from trust property including income from voluntary contributions W.e.f. 01/04/1989 Corpus Donation is a part of income excluded from the computation of total income u/s. 11(1)(d) of the Income Tax Act, 1961. The amount received towards anonymous donation would taxable @ 30% (+ surcharge+education cess) [u/s. 115BBC(3)].	If the fund/institution has not applied its income in accordance with the provision contained in Clause a of 3rd proviso i.e. if it fails to apply 85% of the income and has not opted for the accumulation for 5 years as provided in the act. All Income, no condition that income has to be from trust property. No exemption Same
Application of Income	A) Calculation of application of income	1) Amount applied - Revenue Expenses - Capital Expenses 2) Depreciation will not be considered as application of income w.e.f. 01/04/2015 (AY 2015-16) if the asset has been claimed as application of income	Same Same

Broader issue	Basis of Difference	Section 12AA	Section 10(23C)(iv), (v), (vi) & (via)
	B) Disallowances	<p>Non-deduction of TDS or deducted but not paid by due date of furnishing return</p> <p>if payment is made in cash Exceeding Rs.10,000/-</p>	Same
		<p>30% payment disallowed but shall be allowed when TDS is paid (w.e.f Asst.Year 2019-20) Applies to capital expenses as well</p> <p>100% of the application disallowed [w.e.f. AY 2019-20] Permanent disallowance Applies for capital expenses as well</p>	Same
		Inter-Charity Donation	Same
Minimum Spending & Statutory Accumulation	Minimum Spending Statutory Accumulation	<p>85% of the Income</p> <p>15% of the Income</p>	<p>85%</p> <p>15%</p>
Deemed Application	Option – If spending is less than 85%	To spend in subsequent year and in the year in which received	Not Available
Accumulation	Accumulation	5 years	Yes
Form for exercising Option &	Form for applying Deemed Application	Form 9A to be submitted within the due date	Not Applicable

Broader issue	Basis of Difference	Section 12AA	Section 10(23C)(iv), (v), (vi) & (via)
Accumulation	Accumulation for 5 years	i) Form 10 to be submitted within the due date & return has also to be filed within due date ii) Out of the accumulated amount the fund cannot be transferred to another NGO.	i) The present act does not provide the process of applying for accumulation as well as the condition for submitting the same and filing the return within the due date.
Audit	Requirement	<ul style="list-style-type: none"> If total income exceeds the maximum amount which is not chargeable to tax without giving effect to the provisions of Section 11 and 12, shall get its account audited. 	ii) Out of the accumulated amount, the fund cannot be transferred to another NGO. <ul style="list-style-type: none"> If total income exceeds the maximum amount which is not chargeable to tax without giving effect to the provisions of Section 10, shall get its account audited.
Submission Income Return	Format	<ul style="list-style-type: none"> Audit Report :Form 10B (Rule 17B) [S. 12A(1)(B)] 	<ul style="list-style-type: none"> Audit Report:Form 10BB (Rule 16CC)
	Requirement	<ul style="list-style-type: none"> Section 139(4A) : If total income exceeds the of maximum amount which is not chargeable to tax Tax without giving effect to the provisions of Section 11 and 12, it is mandatory to file the return of Income. 	<ul style="list-style-type: none"> Section 139(4C) : If total income exceeds the maximum amount which is not chargeable of Section 10, it is mandatory to file the return of Income.
	Income Tax Return	<ul style="list-style-type: none"> Income Tax Return : ITR 7 	<ul style="list-style-type: none"> Income Tax Return : ITR 7
	Due date u/s. 139(4C)	<ul style="list-style-type: none"> Due date of Filing Return is as per section 139(1), i.e. 30th September of the Assessment Year 	<ul style="list-style-type: none"> Due date of Filing Return is as per section 139(1) ,ie. 30th September of the Assessment Year
Restriction on business like activities		i) Incidental business activities is allowed for all categories of NGOs, except the last category i.e. Advancement for General Public Utility, provided separate set of books of accounts are maintained.	i) Incidental business activities is allowed in all the cases provided separate set of books of accounts are maintained.

Broader issue	Basis of Difference	Section 12AA	Section 10(23C)(iv), (v), (vi) & (via)
		<p>ii) Business restrictions as provided in Sec. 2(15) is applicable to the last category NGOs.</p>	<p>ii) Similar restriction is applicable for the funds/institutions falling under 10(23C) (iv) & 10(23C)(v). No such restriction applies to Education & Health Institutions falling under 10(23C) (vi) & 10(23C)(via).</p>
Withdrawal of Exemption		<p>Exemption shall be withdrawn if :-</p> <ul style="list-style-type: none"> i) Its income does not ensure for the benefit of general public ii) It is for the benefit of any particular religious community or caste iii) Any income or property of the trust is applied for benefit of specified persons like author of trust, trustees, etc.; (pl. refer sec.13(2) for the situations providing deemed application for the benefit of the specified person.) iv) Its funds are invested in prohibited modes. 	<p>There is no provision for withdrawal of provision on year to year basis. There are provisions for withdrawing the approval under the specified situations.</p>

