

# BOOKS & RECORDS UNDER INCOME TAX

◆ Legal Series Vol. XVIII ◆ Issue 11

For private circulation only

## LEGAL REQUIREMENT REGARDING BOOKS OF ACCOUNTS AND OTHER RECORDS



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## OVERVIEW

- 1.01** It may be noted that up to the Finance Act, 2022, there was no specific requirement to maintain books of account by trusts and institutions. Although, certain provisions made it an inherent requirement to maintain the books of account by the charitable institutions.
- 1.02** The Finance Act, 2022 has introduced additional requirements to maintain books of account by the trusts and institutions under section 12A(1)(b)(i) with effect from the assessment year 2023-24.
- 1.03** The CBDT has notified Rule 17AA *vide* Notification No. 94/2022 dated 10-08-2022, which prescribes the books and other documents to be kept and maintained by entities approved under Section 10(23C) or registered under Section 12AB.
- 1.04** After the enactment of section 12A(1)(b)(i) and Rule 17AA, charitable organisations have been subjected to extensive requirements for maintenance of books of account and allied records.
- 1.05** Prior to the insertion of explicit provision by the Finance Act 2022, there was no specific requirement to maintain books of account by trusts and institutions. However, there were several provisions which made it an inherent requirement to maintain the books of account for charitable trusts and institutions.

## REQUIREMENT OF AUDIT IMPLIED

### BOOKS OF ACCOUNT

- 2.01** One of the conditions for availing exemptions under section 11 and section 12 is auditing the organisation's accounts under section 12A(1)(b)(ii). As per the prevailing provisions, the audit report must be obtained

and furnished at least one month before submitting the income tax return.

- 2.02** The monetary limit for compulsory audit under section 12A(1)(b)(ii) is currently Rs. 4,00,000. The accounts of the trust should be audited if the total income of the trust or institution as computed under the Income-tax Act, without giving effect to the provisions of section 11 and section 12 exceeds the maximum amount that is not chargeable to income tax in any previous year. Since charitable institutions that have receipts above Rs. 4,00,000 are mandatorily required to get accounts audited, in a way, it is an essential requirement for them to maintain books of account that need to be audited by a chartered accountant.
- 2.03** In the audit report in Form 10B/10BB, the auditor has to certify that he has examined the balance sheet and the Profit and loss account of the trust or institution, which are in agreement with the books of account maintained by the said trust or institution.

## **BOOKS OF ACCOUNT FOR INCIDENTAL BUSINESS ACTIVITY**

- 3.01** Income from a business carried on by a trust shall be treated as income from 'property held under trust.' Such business income shall be eligible for exemption under Section 11 if it is incidental to the attainment of objectives of the trust and separate books of account are maintained by the trust in respect of such business.
- 3.02** The Hon'ble High Court of Madras, in the case of *DIT v. Willington Charitable Trust* [2010] 195 Taxman 232 held that maintenance of separate books of account is mandatory and a condition precedent for the assessee to seek

exemption under section 11. The court observed that in so far as the compliance of the maintenance of separate books of account required under section 11(4A) is concerned, a reading of the above-said provisions would make it clear that it is mandatory and a condition precedent for the assessee to maintain the same while seeking exemption.

## **SUBMISSION OF ACCOUNTS AT THE TIME OF REGISTRATION**

- 4.01** Application for registration/approval under the new scheme of registration/approval effective from 01-04-2021 for charitable and religious entities seeking registration/approval under section 12AB/10(23C)/80G/35 is to be filed in Form 10A/Form 10AB.
- 4.02** The rules provide the list of documents to be furnished while making the application in Form 10A or 10AB. One of the prescribed attachments is that where the applicant has been in existence during any year or years prior to the financial year in which the application for registration is made, self-certified copies of the annual accounts of the applicant relating to such prior year or years (not being more than three years immediately preceding the year in which the said application is made) for which such accounts have been made up.

## **REQUIREMENT OF BOOKS OF ACCOUNT UNDER SECTION 80G**

- 5.01** Deduction under section 80G is allowed when a person donates to a fund or institution specified in the provision itself or is notified by the tax

authorities for deduction under the said section. The income-tax authority notifies a fund or institution only when it fulfils the conditions as specified under section 80G(5). One of the prescribed conditions is that such a fund or institution should maintain regular books of account.

## INSERTION OF EXPLICIT PROVISION BY THE FINANCE ACT 2022

**6.01** The Finance Act, 2022 amended Section 12A(1)(b), imposing an explicit requirement to maintain books of account by charitable institutions. A similar requirement of maintenance of books of accounts is introduced for the institutions approved under Section 10(23C) pursuant to the *tenth proviso* to Section 10(23C).

**6.02** The relevant text of Section 12A(1)(b) is reproduced as under:

*“(b) where the total income of the trust or institution as computed under this Act without giving effect to the provisions of sections 11 and 12 exceeds the maximum amount which is not chargeable to income-tax in any previous year,—*

*(i) the books of account and other documents have been kept and maintained in such form and manner and at such place, as may be prescribed; and*

**6.03** The relevant text of the *Tenth* proviso to section 10(23C) is reproduced as under:

*“Provided also that where the total income of the fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via), without giving*

*effect to the provisions of the said sub-clauses, exceeds the maximum amount which is not chargeable to tax in any previous year, such fund or institution or trust or any university or other educational institution or any hospital or other medical institution shall,—*

*(a) keep and maintain books of account and other documents in such form and manner and at such place, as may be prescribed; and*

- 6.04** ***Condition of the requirement to maintain books of account:*** The Finance Act, 2022 amended Section 12A(1)(b) to provide that where the total income of the trust or institution without giving effect to an exemption under sections 11 and 12, exceeds the maximum amount which is not chargeable to tax, such trust or institution shall keep and maintain books of account and other documents in such form and manner and at such place, as may be prescribed. This amendment is effective from the assessment year 2023-24.
- 6.05** ***Applicable if total income exceeds Rs. 4,00,000:*** This provision regarding maintenance of prescribed books of account and other documents is applicable only if the total income of the charitable institution as computed under the Act without giving effect to the provisions of sections 11 and 12 exceeds the maximum amount, which is not chargeable to income tax in the previous year. It is thus, not applicable to institutions whose total income (ignoring sections 11 and 12) is less than or equal to Rs. 4,00,000.

## MEANING OF BOOKS OF ACCOUNT

- 7.01** The term ‘books of account’ has been defined in section 2(12A) as under:

*“books or books of account” includes ledgers, day-books, cash books, account-books and other books, whether kept in the written form or*

*in electronic form or in digital form or as print-outs of data stored in such electronic form or in digital form or in a floppy, disc, tape or any other form of electromagnetic data storage device;*

**7.02** Thus, as per the definition under section 2(12A), the books of account include the following:

- (a) Ledgers
- (b) Day-books
- (c) Cash books
- (d) Account books
- (e) Other books

## **LIST OF BOOKS & DOCUMENTS UNDER RULE 17AA**

**8.01** The CBDT has notified Rule 17AA *vide* Notification No. 94/2022 dated 10-08-2022, which prescribes the books and other documents to be kept and maintained by entities approved under Section 10(23C) or registered under Section 12AB. Here is a list of the books and documents to be maintained by the trust or institution:

- (a) Books of account;
- (b) Record of contributions received;
- (c) Records of application of income;
- (d) Records of donations made;
- (e) Records of money invested or deposited;

- (f) Records of income accumulated;
- (g) Records of loans and borrowings;
- (h) Records of properties;
- (i) Records of specified persons;
- (j) Records of income and projects; and
- (k) Any other documents containing any other relevant information.

**8.02** *Books of accounts to be maintained by a trust or institution:* A trust or institution shall maintain the following books of account:

- (a) Cash book;
- (b) Ledger;
- (c) Journal;
- (d) Copies of bills issued by the trust or institution (machine numbered or otherwise serially numbered);
- (e) Copies or counterfoils of receipts issued by the trust or institution (machine numbered or otherwise serially numbered);
- (f) Original bills issued to the trust or institution and receipts in respect of payments made; and
- (g) Any other book that may be required to give a true and fair view of the state of the affairs of the trust or institution and explain the transactions effected.

**8.03** These books of account shall also be maintained for business undertaking under Section 11(4) and other business carried on by the trust or institution.

## RECORDS OF CONTRIBUTIONS AND DONATIONS

**9.01** *Type of contributions:* A trust or institution registered under Section 12AB or approved under Section 10(23C) shall maintain the records of the following contributions:

- (a) Voluntary contributions;
- (b) Voluntary contributions made with a specific direction that they shall form part of the corpus;
- (c) Contribution received (in the current year or past years) for renovation or repair of the temple, mosque, gurdwara, church, or other place notified under Section 80G(2)(b), that is being treated as corpus during the current year.

**9.02** *Which records of contributions shall be maintained?:* A trust or institution shall maintain the following records separately of each contribution as referred to above:

- (a) Name of the donor;
- (b) Address;
- (c) Permanent account number (if available); and
- (d) Aadhaar number (if available).

## RECORDS OF APPLICATION OR UTILISATION

**10.01** *Types of application of income:* A trust or institution registered under Section 12AB or approved under Section 10(23C) shall maintain the records of the following application of income:

- (a) Application of income in India;
- (b) Application of income outside India;

- (c) Deemed application of income due to non-receipt of income or for any other reason;
- (d) Application out of the accumulated income
- (e) Application out of income deemed to be applied in preceding years;
- (f) Application out of corpus contribution;
- (g) Application out of contribution received (in the current year or past years) for renovation or repair of the temple, mosque, gurdwara, church, or other notified places, which is being treated as corpus during the current year;

**10.02** *Which records of application of income shall be maintained?:* A trust or institution shall maintain the following records separately of each application of income as referred to above:

- (a) Details of the amount of application;
- (b) Name and address of the person to whom any credit or payment is made;
- (c) Object for which such application is made.

**10.03** *Additional records to be maintained:* In the following cases, the additional records shall also be maintained:

- (i) *Application out of accumulated funds*

In the case of the application out of the accumulated funds, the following records shall also be maintained:

- (a) Year of accumulation;
- (b) Application out of income accumulated during the previous year;
- (c) Application out of income accumulated during any preceding previous year.

(ii) *Deemed application*

In the case of the deemed application, the following records shall also be maintained:

- (a) Reasons for deemed application;
- (b) Year of deemed application;

## RECORDS OF DONATIONS GIVEN TO OTHER INSTITUTION

**11.01** *Types of donations:* A trust or institution shall maintain the records of the amount paid or credited to another trust or institution registered under Section 12AB or approved under Section 10(23C) from the following:

- (a) Out of the voluntary contribution;
- (b) Out of the corpus contribution received during the previous year (if credited or paid towards the corpus);
- (c) Out of the corpus contribution received during any of the preceding previous year (if credited or paid towards the corpus);
- (d) Out of the corpus contribution received during the previous year for renovation or repair of the temple, mosque, gurdwara, church, or other notified places (if credited or paid towards the corpus);
- (e) Out of the corpus contribution received during any of the preceding previous year for renovation or repair of the temple, mosque, gurdwara, church, or other notified places (if credited or paid towards the corpus).

**11.02** *Which records of donation shall be maintained?:* A trust or institution shall maintain the following records separately of each amount paid or credited as referred to above:

- (a) Name;
- (b) Address;
- (c) Permanent account number; and
- (d) Object for which such credit or payment is made.

## RECORDS OF INVESTMENT

**12.01** *Which income should be invested in the specified mode?:* Section 11(5) specifies the permissible mode in which the income of a trust or institution registered under Section 12AB or approved under Section 10(23C) can be invested or deposited. A trust or institution is required to maintain the records of investments or deposits made out of the following incomes or contributions:

- (a) Current year income;
- (b) Accumulated income;
- (c) Corpus donation;
- (d) Corpus contribution received for renovation or repair of the temple, mosque, gurdwara, church, or other notified places.

**12.02** *Which records of donation shall be maintained?:* A trust or institution shall maintain the following records separately of each income as referred to above invested or deposited in permissible modes specified in Section 11(5):

- (a) Money received during the previous year and invested or deposited in permissible modes;

- (b) Money received during the previous year and invested or deposited in other than the permissible modes;
- (c) Money received during any previous year preceding the previous year and invested or deposited in permissible modes;
- (d) Money received during any previous year preceding the previous year and invested or deposited in other than the permissible modes;
- (e) Money invested or deposited back into corpus donation, which was applied during any preceding previous year and not claimed as application.

## **RECORDS OF INCOME ACCUMULATED BY A TRUST OR INSTITUTION**

- 13.01** Where a trust or institution registered under Section 12AB or approved under Section 10(23C) is not able to apply 85% of its income in a particular year, it can accumulate the shortfall to be used for religious or charitable purposes within the next 5 years. This accumulation is allowed if the assessing officer is informed about the purpose of the accumulation and the period for which the income is being accumulated.
- 13.02** The trust or institution shall maintain the records containing details of the purpose for which such income has been accumulated.

## **RECORDS OF LOANS AND BORROWINGS TAKEN BY A TRUST OR INSTITUTION**

- 14.01** Where a trust or institution registered under Section 12AB or approved under Section 10(23C) takes loans or borrowings, it shall maintain the following records:

**14.02 *Details of loan and borrowings:*** The records to be maintained for loans and borrowings shall contain the following:

- (a) Amount of loan or borrowing;
- (b) Date of loan or borrowing;
- (c) Amount of repayment;
- (d) Date of repayment;
- (e) Name of the lender;
- (f) Address of lender;
- (g) Permanent Account Number of the lender; and
- (h) Aadhaar number (if available) of the lender.

Records shall also be maintained for the repayment of loan or borrowing during the previous year, which was applied during any preceding previous year but not claimed as an application.

**14.03 *Application out of loans and borrowings:*** The records to be maintained for application out of the loan or borrowing shall contain the following:

- (a) Amount of application;
- (b) Name of the person to whom any credit or payment is made;
- (c) Address of the person to whom any credit or payment is made; and
- (d) Object for which such application is made.

**14.04 *Application out of loans of preceding years:*** The records to be maintained for application out of the loan or borrowing received during any previous year preceding the previous year shall contain the following:

- (a) Amount of application;
- (b) Name of the person to whom any credit or payment is made; and
- (c) Address of the person to whom any credit or payment is made.

## RECORDS OF PROPERTIES OF A TRUST OR INSTITUTION

**15.01** A trust or institution registered under Section 12AB or approved under Section 10(23C) shall maintain the following records of properties held by it:

**15.02** *Records of immovable properties:* The trust or institution shall maintain the records of immovable properties containing the following details:

- (a) Nature of the properties;
- (b) Address;
- (c) Cost of acquisition;
- (d) Registration documents;
- (e) Transfer of such properties;
- (f) Net consideration utilised in acquiring the new capital asset.

**15.03** *Records of movable properties:* The trust or institution shall maintain the records of movable properties, including details of the nature and cost of acquisition of the asset.

## RECORDS OF SPECIFIED PERSONS OF A TRUST OR INSTITUTION

**16.01** Section 13 prescribes certain circumstances in which the exemption under Section 11/12 or Section 10(23C) is withdrawn. One of such circumstance is the application of income for the benefit of the interested person prescribed under Section 13(3). A trust or institution shall maintain the following records of such specified persons:

**16.02** *Details of specified person:* The trust or institution shall maintain the records of specified persons containing the following details:

- (a) Name;
- (b) Address;
- (c) Permanent Account Number; and
- (d) Aadhaar number (if available).

**16.03** *Details of transaction with specified person:* The trust or institution shall maintain the records of transactions with specified persons containing the following details:

- (a) Date of the transaction;
- (b) Amount of transaction;
- (c) Nature of the transaction; and
- (d) Documents to the effect that such transaction is, directly or indirectly, not for the benefit of such specified person.

## RECORDS OF INCOME AND PROJECTS

**17.01** A trust or institution registered under Section 12AB or approved under Section 10(23C) shall maintain the following records of income earned by it during the previous year:

**17.02** *Record of income:* The trust or institution shall maintain the records of income containing the following details:

- (a) Income from property held under trust along with a list of such properties;
- (b) Income of trust or institution other than the voluntary contribution.

**17.03** *Records of projects and institutions:* A trust or institution shall maintain the records of all the projects and institutions run by it containing the following details:

- (a) Name;
- (b) Address; and
- (c) Objectives.

### **MANNER OF KEEPING BOOKS OF ACCOUNT**

**18.01** The books of account and other documents may be kept in the following forms:

- (a) Written;
- (b) Electronic form;
- (c) Digital form;
- (d) Print-outs of data stored in electronic or digital form; or
- (e) Any other form of electromagnetic data storage device.

### **PLACE OF KEEPING BOOKS OF ACCOUNT**

**19.01** The books of account and other documents shall be kept and maintained by the trust or institution at its registered office.

**19.02** Such books of account and other documents may be kept at such other place in India as the management may decide if the following conditions are satisfied:

- (a) A resolution is passed for such purposes;

- (b) An intimation is given to the jurisdictional Assessing Officer in writing within 7 days;
- (c) In such intimation, the full address of that other place is mentioned; and
- (d) The intimation is duly signed and verified by the person who is authorised to verify the return of income under Section 140.

## PERIOD FOR WHICH BOOKS ARE TO BE MAINTAINED

**20.01** The books of account and other documents shall be kept and maintained for a period of 10 years from the end of the relevant assessment year.

**20.02** However, where the assessment of any assessment year has been reopened under Section 147 within the period specified in Section 149, such books of account and other documents (kept and maintained at the time of reopening of the assessment) shall continue to be so kept and maintained till the assessment has become final.

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