

# 80G ISSUES

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## 34 CLARIFICATIONS ON FORM 10BD



**Standards & Norms**

Resource support on NGO Governance, Accounting and Regulations



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## 34 CLARIFICATIONS ON FORM 10BD

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## BACKGROUND TO THE FAQs

**1.01** The new reporting requirement covers only clause (viii) and clause (ix) of sub-section (5) of section 80G or under sub-section (1A) of section of section 35. In other words many other charitable institutions notified under section 80G are not required to file Form 10BD. From a donor point of view only those 80G donations will be reflected against the PAN which were provided to organisations covered as mentioned above.

**1.02** The Form 10BD requires uploading of donation on the basis of;

- (i) Identification document other than PAN
- (ii) Donation in kind
- (iii) Cash donation

For those donations which are uploaded with some other identification number such as Aadhar, Voter ID etc., the donation will not get reflected against the donor PAN.

**1.03** Moreover the donee organisation has to mention the section under which donation is eligible for exemption. The certificate of donation generated and downloaded from the system has to be furnished by the organisation to the Donor, though the provision for issuing manual certificate is also there but the process and circumstances under which manual certificate will be issued is not clear.

**1.04** The Form 10BD requires reporting of donations such as Contribution in Kind which are not eligible under section 80G.

**1.05** CBDT needs to bring clarity about the reporting requirements which include both eligible and non eligible donations. In the mean while it is recommended that the following procedures should be followed:

- NGOs should report all donation for which either PAN or any other identification detail is available.

- Donations without identification detail but with proper name and address, ideally, should also be reported. However, it is understood that the Form 10BD requires Identification of Number of a donor as mandatory field. It may be noted that to claim 80G benefit and to establish that a donation is not anonymous it is not necessary to provide any identification number. In the case of *Hans Raj Samarak Society v. Asstt. DIT* [2011] 16 taxmann.com 103/133 ITD 530 (Delhi - Trib.), it was held that the assessee was not required to maintain anything more than the name and address of the donor as it prescribed in section 115BBC(3).
- NGOs should not include cash donation exceeding Rs 2000 and donation in kind.

### 34 CLARIFICATIONS ON FORM 10BD

**Q1.** *Whether the statement of donation is to be filed by all organisations notified or approved under section 80G?*

**Ans.:** The reporting requirements are applicable only to those organisations which are covered under section 80G(5)(vii) or under clause (i) to sub-section (1A) of section 35 of the Income Tax Act, 1961. Therefore, all organisations where approval under section 80G has been granted by order in Form 10AC and Form 10AD shall be covered under this reporting requirement. It may be noted that there are other institutions which are directly notified under section 80G and are not subject to any approval from the CIT or appropriate authority; such organisations are not subject to any such reporting requirement.

**Q2.** *Whether the statement of donation is to be filed for the entire donations received by the organization or only for those donations which are eligible under section 80G(2)(a)(iv) read with section 80G(vi)?*

**Ans.:** In our opinion the statement of donation should include only those donations which are covered under the scope of section 80G. An NGO receives donations of various kind and from various sources including –

- Foreign Source
- In kind donations
- Anonymous donation
- Donation in cash each exceeding Rs. 2000, and,
- Petty donations upto Rs. 2000 in cash (where the donor doesn't want 80G benefit and organization has only the name and address of the donor and not the PAN).

It may be noted that the new requirement of filing the statement of donation for claim of 80G benefit is inserted as part of section 80G(5) i.e., the organisations approved by CIT and not to all other notified organisations/funds. Therefore, the intent of the amendment seems to cover only such donation which are eligible for 80G benefit under section 80G(2)(a)(iv) read with section 80(G)(vi).

In the light of the above, there is no need of uploading the details of following donations, which are not eligible for 80G benefit and are not covered under 80G:

- Donation received from Foreign Source (where the donor is not an Income Tax assessee)
- Donation received in Kind
- Donation received in cash exceeding Rs. 2000/-
- Anonymous Donations

However, the Form No. 10BD contains a column regarding **donation in kind** as one of the mode of receiving donations even though donation in kind are not eligible for 80G benefit. This requirement in the form is in contradiction to the provisions of section 80G. This issue should be settled by CBDT.

**Q3. When donations are received in cash for amount above Rs. 2000/- whether the benefit upto Rs.2000/- under section 80G is available?**

**Ans.** It may be noted that 80G benefit is not available for cash donations above Rs. 2000/-, in other words, small donors making donations upto Rs. 2000/- can also

avail the benefit under section 80G. However, if a donor makes cash donation in excess of Rs. 2000/-, then no 80G benefit shall be available.

**Q4. Will 80G benefit be available If donations of Rs.1000/- is received from a donor in every month?**

**Ans.** In our opinion, if a donor donates more than Rs. 2000/- in cash in a particular year, then 80G benefit will not be available for the entire amount received during the year.

**Q5. Whether donation received in pursuance of approval under section 80G(2)(b) are required to be reported in statement of donation?**

**Ans.** It may be noted that under section 80G(2)(b) certain religious or other institutions of historic, archaeological or artistic importance are notified to receive donations wherein the donor gets tax benefit under section 80G. The current requirement of filing Form 10BD does not cover such institutions.

**Q6. Whether petty donations below Rs. 2000/- are to be included in Form 10BD at the option of the NGO?**

**Ans.** All donations, where the PAN/ Aadhar Number or any other identification such as Passport, Voter ID, Driving License etc. of the donor is available, are required to be reported under Form 10BD.

**Q7. What shall be the Pre- Acknowledgement Number at the time of filling up donors details in Form 10BD?**

**Ans.** At the time of submitting Form 10BD for the first time, the Pre- Acknowledgement Number is not required to be filled in as it is generated through portal. It is required to be quoted on the receipt issued to donor after uploading Form 10BD. Pre-

Acknowledgement Number is also required to be mentioned at the time of submitting revised statement.

**Q8. *Whether recurring donations or multiple tranches of grant should be clubbed under single entry or upload the data for multiple receipts?***

**Ans.** Yes, all the donations received during the year from a particular donor should be clubbed together and reported as a single entry at the end of the year.

However, it may be noted that the donations received from the same may have to be segregated in terms of the purpose for which they are received i.e., Corpus, Specific or any other.

The donations should also be segregated in terms of the mode in which they are received i.e., cash, bank, in kind or any other.

**Q9. *Will the Donation Portal Data be mapped with the Income Tax Return under Voluntary Contributions.***

**Ans.** The voluntary contribution reported under ITR-7 are consolidated contributions received during the year. Under Form 10BD only those donations are covered which are specifically applicable to charitable institutions approved by the Commissioner of Income Tax. Therefore, there is a likelihood of mismatch between the voluntary contribution reported under ITR-7 and Form 10BD. If necessary, a reconciliation will be required to be furnished.

**Q10. *In case where PAN/AADHAR CARD of the donor is not available, can the NGO opt for not including these names in the statement of donation?***

**Ans.** In our opinion, PAN/ Aadhar Number or any other identification such as Passport, Voter ID, Driving License etc. is necessary for uploading of the donor details. In

cases where PAN/Aadhar Card is not available then such details cannot be uploaded as the identification of donor seems to be an mandatory field. However, any material mismatch between the donations received and donations reported under Form 10BD will create an onus on the NGO to establish that such donation are not anonymous under section 115BBC. Therefore, to avoid any material mismatch, an NGO should report all the donation where any of the specified identification number of the donor is available.

Donations without identification detail but with proper name and address, ideally, should also be reported. However, it is understood that the Form 10BD requires Identification of Number of a donor as mandatory field. It may be noted that to claim 80G benefit and to establish that a donation is not anonymous it is not necessary to provide any identification number. In the case of *Hans Raj Samarak Society v. Asstt. DIT* [2011] 16 taxmann.com 103/133 ITD 530 (Delhi - Trib.), it was held that the assessee was not required to maintain anything more than the name and address of the donor as it prescribed in section 115BBC(3).

**Q11. Can an organisation file multiple Form 10BD?**

**Ans.** Under the Income Tax Rules there is no specific provision barring multiple filing of Form 10BD. Moreover The notes below the online form 10BD makes it clear that Form 10BD is allowed to be filed multiple times for the same financial year. Hence in our opinion an organisation can file multiple form 10BD.

**Q12. Whether multiple Form 10BD form can be submitted only if the donation list exceeds 25000 in number?**

**Ans.** NGO in normal circumstances should file additional Form 10BD if the number of donor exceed 25000. However, the law allows filing of multiple forms even if the number of donors does not exceed 25000.



**Q13. *Whether an NGO can furnish multiple Form 10BD forms based on its convenience (say for each region in case of NGO having operation throughout India)?***

**Ans.** A normal circumstances a consolidated Form 10BD should be filed. However, an NGO can file multiple forms keeping in view the nature of the organisation and practical needs.

**Q14. *Whether the same NGO can submit 2nd Form 10BD if some donors are not included inadvertently?***

**Ans.** The NGOs should file additional Form 10BD in case of any such eventuality.

**Q15. *When and How Form 10BD can be rectified?***

**Ans.** As per Rule 18(7) the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, shall lay down the procedure to submit correction statement for rectification or to add/delete or update the information furnished. However the procedures are yet to be specified.

**Q16. *If no donation is received, whether Nil return to be submitted?***

**Ans.** The current Form 10BD does not seem to be allowing filing of Nil returns.

**Q17. *What is the status of donation received through Fund raising portal?***

**Ans.** When donations are received from fund raising portals then the following procedure should be adopted:

- If the detail of donors with PAN or any other identification is provided by the portal then the data should be uploaded specifying specific donor details.
- If the detail of donors with PAN is not provided by the portal then the data should be uploaded specifying PAN and details of the portal. In other words the legal holder of the portal should be treated as the donor. It may be noted

the portal may make donation in representative capacity or individual capacity. The donee organisation has to treat the legal transfer based on the information available.

- When funds are received for different purposes from the same donor then purpose wise classification should be made in the manner discussed above.

**Q18. *How to report if consolidated cheque received on behalf of various person.***

**Ans.** When a consolidated cheque is received then:

- If the detail of back donors with PAN or any other identification is available then the data should be uploaded specifying specific donor details.
- If the detail of the back donors with PAN or any other identification is not provided by the donor then the data should be uploaded specifying PAN and detail of the bank account holder from where the cheque was issued. In other words

In other words the donor can transfer the donations in representative capacity if the detail of the back donors is available, otherwise the transferor shall be treated as the donor.

Further, the value of the donation or the aggregated value of all the donations shall be proportionately attributed to all the persons, in a case where the donation is recorded in the name of more than one person, and where no proportion is specified by the donors, attribute equally to all the donors.

**Q19. *Whether certificate of donation is to be prepared manually or should be downloaded from the portal itself?***

**Ans.** We understand the certificate of donation should be downloaded from the portal after submission of statement of donation. (Please refer Rule-18AB). However, a confusion is created as in Form No. 10BD Part B Note (5) which states as under:

***“The generation of Pre-Acknowledgement Numbers for manual issue of Form 10BE is available from F.Y 2022-23. If you are filing Form 10BD for F.Y 2021-22 you may leave the field ‘Pre-Acknowledgement Number’ blank in the CSV file uploaded”.***

For the FY 2021-22 there is no mechanism for generating manual Form 10BE, therefore, it is expected that FY 2022-23 some clarity will be provided by CBDT. Currently though there is a mention for manual issue of Form No. 10BE, however, it seems the certificate in Form 10BE will be system generated and not manual.

**Q20.** *Companies who are categorised as foreign sources, having PAN, and have given grants under CSR do require donation receipt and would claim tax benefit. How should we ensure its reconciliation, as this would be considered as income from foreign source in Income Tax returns?*

**Ans.** Donations received from all companies registered in India should be reported in Form 10BD even if it is treated as foreign contribution for FCRA purposes.

**Q21.** *Whether CSR grant, on which TDS has been deducted, shall be subject to statement of donation?*

**Ans.** If the NGO has treated the CSR receipt as specified grant or donation then such grant or donation should be reported in Form 10BD irrespective of the TDS treatment by the donor. However, if the CSR funds are received under a commercial contract then they are not required to be reported.

**Q22.** *Certain CSR companies have opted for the lower tax regime due to which no more claim deductions/exemptions apply and hence they do not claim deduction of donations,*

***if any paid u/s. 80G from FY 2019 20 onwards. Whether in such cases NGO need to submit details of such CSR companies in Form 10BD or they can exclude after taking a written confirmation from the concerned CSR companies?***

**Ans.** Statutory reporting cannot be optional at the discretion of either donor or the donee. In our opinion irrespective of tax treatment NGOs should report all donations and grants received under CSR in Form 10BD. A donation should not be reported in 10BD only if the donor does not provide PAN and other detail. In such cases the organisation will be under the risk of being questioned for receiving anonymous donation in the light of the failure to report in Form 10BD.

**Q23.** ***Donations received for programs, where we do not have any agreement with the Donor except for a mail conversation mentioning the program/purpose. Should this be classified under Others or Specific Grant?***

**Ans.** If the mail conversation provides clear direction regarding the use of funds, then they should be classified as specific grants.

**Q24.** ***Online donations received for a purpose - what should be the classification?***

**Ans.** Such donations should be classified as specific grants.

**Q25.** ***Donation received from an individual with particular direction for utilization and no agreement is prepared - what should be the classification?***

**Ans.** Such donations should be classified as specific grants, provided such direction is in writing.

**Q26.** ***What is the reporting requirement for anonymous donation ?***

**Ans.** Anonymous donations are not required to be reported under Form 10BD. However, anonymous donation can be exempt or taxable based on the quantum of donation and also the nature of the organisation. Anonymous donation upto 5% of total

income are not subject to tax. Further, anonymous donation received by a partly charitable and partly religious organisation is also totally exempt from tax.

**Q27. *Can an Indian donor request to exclude its name from Form 10BD?***

**Ans.** No, statutory reporting cannot be optional at the discretion of either donor or the donee. If the NGO possesses the PAN and other details it has to upload the informations in Form 10BD. Otherwise also it is not advisable to exclude material amounts from Form 10BD in the light of the provisions of 115BBC regarding anonymous donation which may result needless clarificatory processes before the Assessing Officer.

**Q28. *Can an Indian Corporate CSR Donor request to exclude its name from Form 10BD?***

**Ans.** No, statutory reporting cannot be optional at the discretion of either donor or the donee, as discussed above.

**Q29. *Can a Government agency or a public sector corporate request to exclude its name from Form 10BD?***

**Ans.** No, statutory reporting cannot be optional at the discretion of either donor or the donee, as discussed above. However, certain government agencies may not have PAN number or may not be Income Tax assessee, in such circumstances their name may be excluded.

**Q30. *What is the reporting requirement when one 80G registered NGO gives inter charity donation to another 80G registered NGO?***

**Ans.** An NGO registered under section 12AB cannot claim the benefits of section 80G even if it donates to other 80G registered organisation, because such NGOs are exempt from Income Tax under section 11. However, Form 10BD is a factual reporting requirement and in our opinion the recipient NGO should report all donations received in Form 10BD including donations/grant from 80G registered organisation.

The 80G registered NGOs who provide donation to other 80G registered NGOs may need 80G benefit if the benefits of section 11 are denied for some reason during the assessment or they do not claim benefits of section 11.

**Q31. *Is Form 10BE (Certificate of Donation) is required to be served/sent to the donors?***

**Ans:** Once an organisation uploads Form No. 10BD (Statement of Donation) it can download Form No. 10BE (Certificate of Donation) from the income tax portal. This Certificate of Donation is generated individually for each donor. This Form 10BE (Certificate of Donation) is required to be sent to the respective donor either by email or any other mode. The Form No. 10BE shall be deemed to have been furnished only when this is sent to respective donors.

This is to be noted that requirement is to furnish Form 10BE on or before 31st May. Hence we understand that Form No. 10BD (Statement of Donation) should be furnished much in advance so that, there is time to generate Form No. 10BE (Certificate of Donation) and furnish the same to respective donor.

**Q32. *What should be the classification for online donations received for a purpose - ?***

**Ans:** The classification should be based on the purpose specified as per online portal. However, for corpus donation a written direction would be necessary and therefore, such donations should be treated as voluntary contribution.

**Q33. *What should be the classification for donations received from individuals with directions over mail but without any formal agreement ?***

**Ans:** The classification should be based on the purpose specified as per formal mail i.e., it could be treated as specific grant or voluntary contribution as the case may be. However, it should be noted such specific grant should not be treated as a legal obligation which are not treated as income for the purposes of computation under section 11.

**Q34. Should donations be filed based on accrual basis or receipt basis ?**

**Ans:** The donation should be reported on receipt basis, however, cheque deposited but not cleared within 31st March may be reported. It is pertinent to note that section 11(1) of Income Tax Act uses the word receipt with regard to computation of income.

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