

INTER CHARITY GRANT AFTER FINANCE ACT 2023

◆ Legal Series Vol. XVI ◆ Issue 5

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APPLICATION RESTRICTED TO 85% OF TOTAL GRANT



Standards & Norms

Resource support on NGO Governance, Accounting and Regulations



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INTRODUCTION AND OVERVIEW

- 1.01** Inter-charity donation is permissible as application of income but it is to be ensured that inter-charity donation is given for the objects for which the donor trust is created. In other words, the donor and donee should share similar objects.
- 1.02** Inter-charity donation is treated at par with direct application for the purposes of sections 11(1)(a) and 10(23C).
- 1.03** The Finance Act 2023 has made a very important amendment with regard to inter charity grant. With effect from assessment year 2024-25 **only 85%** of the eligible donations made by a trust or institution registered under Section 12AB to another trust or institution registered under Section 12AB or approved under Section 10(23C), will be considered as the application of income.
- 1.04** The inter-charity donations with a specific direction that it shall form part of the corpus of the donee shall not be treated as an application of income for charitable or religious purposes.
- 1.05** Corpus donation given by a section 12AA/12AB registered institution to a section 12AA/12AB registered NGO as well as to a section 10(23C) approved institution will not be treated as an application of income.
- 1.06** Corpus donation given by a section 10(23C) approved institution to a section 12AA/12AB registered trust as well as to a section 10(23C) approved institution will not be treated as an application of income.
- 1.07** Once funds have been accumulated under section 11(2), they can only be utilized for charitable purposes directly by the organization in question, and cannot be transferred between organizations. However, if a charitable organization is

dissolved, inter-charity donations from the accumulated funds under section 11(2) will be allowed.

- 1.08** While inter-charity donations should ideally be given to a trust with similar objectives, it is important to apply such conditions liberally, as an organization is allowed to participate in any incidental charitable activity, even if it is not explicitly mentioned in its objectives.
- 1.09** The funds given as inter-charity donation shall be treated as utilised in the books of the donor even if they might not have been applied for charitable purposes by the donee organisation in the year of receipt. However, the donee organisation must apply them for charitable purpose only; CBDT Instruction No. 1582, dated 19-10-1984 may be referred.
- 1.10** **However,** Inter charity donation to a trust with different objective shall not be treated as valid application. The ITAT Allahabad in the case of *Nazareth Hospital Society v. Deputy Commissioner of Income-Tax (Exemption) Lucknow Uttar Pradesh* 2021 (2) TMI 739 held that inter charity donation to an organisation which is engaged in some other type of activities is not permissible. It was necessary that both the trust should share similar objects and should have common activities

DIRECT APPLICATIONS AND INTER CHARITY DONATIONS

- 2.01** In today's landscape of growing corporate involvement in the charitable sector, several innovative NGO models are emerging. One such model is the Mother NGO or Facilitating NGO, which does not implement programs directly but instead generates resources and funding for smaller, downstream NGOs.

- 2.02** The concept of a Mother NGO refers to a type of non-profit organization that serves as a hub or central organization that coordinates and supports the work of smaller or community-based NGOs. By supporting smaller NGOs, Mother NGOs can help build the capacity of local organizations and amplify their impact.
- 2.03** A charitable and religious trust is subject to tax in accordance with the provisions of Section 11 to Section 13. A trust deriving income from a property held under trust for charitable or religious purposes is not included in its total income if such income is applied for charitable purposes in India. The income of trusts and institutions is exempt under Section 11/12, provided a minimum of 85% of the income is utilised during the year for charitable or religious purposes. These trusts and institutions can accumulate 15% of their income annually.
- 2.04** The mandatory 85% utilisation can be done by the trust or institution itself or by donating to trusts with similar objectives. Donations to other trusts or institutions should not be towards corpus to ensure that the donee trust or institutions apply the donations. The inter-charity donation is treated at par with direct application for the purposes of Sections 11(1)(a).

AMENDMENT BY THE FINANCE ACT 2023

- 3.01** The Finance Act 2023 inserted clause (iii) in *Explanation 4 to Section 11(1)* w.e.f. 01-04-2024 as under:

“(iii) any amount credited or paid, other than the amount referred to in Explanation 2, to any fund or trust or institution 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) of clause (23C) of section 10, as the case may be, or other trust or institution registered under section 12AB, as the case may be,

shall be treated as application for charitable or religious purposes only to the extent of eighty-five per cent of such amount credited or paid.”;

- 3.02** After the amendment by the Finance Act 2023, only 85% of the eligible donations made by a trust or institution registered under Section 12AB to another trust or institution registered under Section 12AB or approved under Section 10(23C) shall be treated as the application. This amendment will take effect from 01-04-2024 and will accordingly apply in relation to the assessment year 2024-25 and subsequent assessment years.

PURPOSE OF AMENDMENT

- 4.01** The objective of the amendment is to ensure the minimum level of application of 85% at each layer of inter-charity donation rather than taxing the disallowance amount of 15%. The Memorandum explaining the provisions in the Finance Bill, 2023 provides the rationale of the change as under :

“3.2 Instances have come to the notice that certain trusts or institutions are trying to defeat the intention of the legislature by forming multiple trusts and accumulating 15% at each layer. By forming multiple trusts and accumulating 15% at each stage, the effective application towards the charitable or religious activities is reduced significantly to a lesser percentage compared to the mandatory requirement of 85%.

3.3 In order to ensure intended application toward charitable or religious purpose, it is proposed that only 85% of the eligible donations made by a trust or institution under the first or the second regime to another trust under the first or second regime shall be treated as application only to the extent of 85% of such donation.”

There will be no tax implications under both law i.e., pre-amended and post amendment. This amendment is intended to curb the 15% accumulation claimed by the donor as well as donee organisation.

CATEGORIES OF INTER CHARITY DONATIONS

5.01 The inter-charity donations can be classified for tax purposes into the following categories:

- (a) Inter-charity donations out of income not towards the corpus
- (b) Inter-charity donations out of income towards the corpus
- (c) Inter-charity donations from accumulated funds under section 11(2)
- (d) Inter-charity donations from accumulated funds that are not under section 11(2)
- (e) Inter-charity donations from accumulated funds under section 11(2) in the case of dissolution.

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