

DELAYED FILING OF FORM 9A & 10 FOR ACCUMULATION UNDER INCOME TAX



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CONTENTS

1.	SUMMARY	01
2.	WHAT IS ACCUMULATION INCOME	01
3.	FORMALITIES AND COMPLIANCES FOR VARIOUS ACCUMULATIONS	02
4.	CBDT CIRCULAR FOR CONDONATION OF DELAY	05
5.	CONDONATION OF DELAY FOR ASSESSMENT YEAR PRIOR TO 2016-17	05
ANNEXURE 1	CBDT CIRCULAR CONDONATION OF DELAY FOR FORM NO. 10 AND FORM NO. 9A UNDER SECTION 119(2)(B)	07

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SUMMARY

- 1.1.1** Under section 11 of the Income Tax Act 1961 a charitable or religious organisation is required to apply 85% of its income for charitable/religious purposes. If the organisation fails to apply 85% during the previous year then it can either carry forward the income to the next year and apply such deficit in the next year. On the other hand, the organisation can also accumulate the income for next five years following the provisions of the Act and Rules thereof.
- 1.1.2** Under the prevailing rules, Form 9A is required to be filed if the organisation fails to apply 85% and accumulates the deficit to be applied in the next financial year or in the year of receipt of income. Further, Form 10 is required to be filed if the organisation fails to apply 85% and accumulates the deficit to be applied in the next five years.
- 1.1.3** With effect from 1st April 2016 there has been a radical change which threatens to tax the entire income of the organisation if there is a delay in filing of Form 9A and Form 10. Under section 11(2)(c) read with Rule 17 any accumulation made under Form 10 or Form 9A shall not be allowed if the respective form is not filed within the due date of filing of return under section 139(1). In this issue we shall discuss the law pertaining to filing of Form 9A and Form 10.
- 1.1.4** CBDT Vide its Circular No. 7 / 2018 F.No.197/55/2018-ITA-I dated 20th December 2018 has authorised the Commissioner of Income Tax to condone the delay in filing of Form 9A and Form 10 under section 119(2)(b) only for Assessment Year 2016-17. The copy of the circular is provided in **Annexure 1**.

WHAT IS ACCUMULATION INCOME

- 1.2.1** All organisations registered under section 12AA are required to apply at least 85% of their income for charitable/religious purposes every year. If the organisations is unable to apply 85% of its income, then such surplus can be accumulated to be applied in future.

1.2.2 There are three types of accumulations possible,

- first, an organisation can accumulate 15 per cent of its income indefinitely i.e. it will not be required to apply such income within any specified time-frame.
- Second, if an organisation is not able to apply 85 per cent of its income in a particular year, then it can also accumulate the income in excess of 15 percent of income. Such excess accumulation has to be used for religious or charitable purposes within the next 12 months or in the year of receipt of income under explanation to section 11(1). Such accumulation is otherwise called deemed application. For example, if the income of the organisations was Rs. 10 lakh and the actual utilisation was Rs. 5 lakh. Then the organisation can indefinitely accumulate Rs. 1.5 lakh (i.e. 15 percent) and has to accumulate Rs. 3.5 lakh for next 12 months filing Form 9A. The accumulation for 1 year is normally done when the income is received towards the end of the year and utilisation is not feasible. An accumulation under this provision is also possible if the income is not available for utilisation, e.g the Bank Accounts are attached by authorities etc.
- Third, if an organisation is not able to apply 85 per cent of its income in a particular year, then it can also accumulate in excess of 15 percent of income; such excess accumulation has to be used for religious or charitable purposes within the next 5 years. For example, if the income of the organisation was Rs. 10 lakh and the actual utilisation was Rs. 5 lakh. Then the organisation can indefinitely accumulate Rs. 1.5 lakh (i.e. 15 percent) and has to accumulate Rs. 3.5 lakh to be utilized next five years by filing Form 10.

FORMALITIES AND COMPLIANCES FOR VARIOUS ACCUMULATIONS

- 1.3.1 *Accumulation upto 15% of income*** : No formalities or compliances are required for accumulating 15 per cent of income every year.

1.3.2 Deemed Application in next 12 months or year of receipt under Explan. to Section 11(1) : Online Application in Form 9A should be filed within due date under section 139(1), w.e.f. Assessment Year 2016-17.

1.3.3 Accumulation for 5 years under Explan. to Section 11(2) : The following formalities are required to be complied:

- (a) Online Application in Form No. 10 along with the Income Tax Return within the time provided under section 139(1), w.e.f. Assessment Year 2016-17, Form 10 needs to be filed within the due date and at the same time income tax return has also to be furnished within the due date.
- (b) Accumulation possible only for 5 years (plus one year grace period for attracting of section 11(3)(c) within which the income has to be utilised for specified purposes.
- (c) The purposes for which the income has been accumulated have to be specified in Form No. 10.
- (d) All accumulated income is required to be invested in the form of investment prescribed in section 11(5).
- (e) Once the income is accumulated, it can only be utilised for specific purposes and inter-charity donation will not be possible.
- (vi) Form No. 10 should be accompanied by a board resolution regarding the accumulation and the specific objects for which the income is accumulated. The details of investments and copies of annual accounts should be enclosed with it.
- (vii) The Delhi High Court in *CIT v. Hotel & Restaurant Association* [2003] 261 ITR 190, held that, even if specific objects are not specified, the accumulation will still be valid as a charity cannot go beyond the overall objectives which are charitable in nature. Again the same position was reiterated in *Bharat Kalyan Pratisthan v. DIT (Exemption)* [2007] 211 CTR (Delhi) 354/160 Taxman 216 (Delhi).
- (viii) The specific objects mentioned in Form No. 10 can be modified during the course of the 5 year period of accumulation, in the following circumstances :
 - (a) The organisation has to satisfy the Assessing Officer that the non-

- application of the impugned income was beyond the control of the organisation.
- (b) The amount not so utilised shall be applied for such other charitable purposes in India which are in conformity with the objects of the organisation.
 - (c) The organisation shall apply to the Assessing Officer and Assessing Officer shall permit the application of income in the aforesaid manner.
 - (d) However, by virtue of the amendment in the Finance Act, 2002, the powers of the Assessing Officer have been curtailed to the extent that he cannot allow the organisation to contribute such income to any other charitable organisation. However, inter-charity donation will be permissible in case of dissolution of a charitable or religious organisation in the year of its dissolution.
- (xiii) The accumulated income will become taxable in the immediately following year in the following circumstances :
- (a) income is applied to purposes other than charitable or religious purposes as aforesaid or ceases to be accumulated or set apart for application thereto, or
 - (b) it ceases to remain invested or deposited in any of the forms or modes specified in section 11(5), or
 - (c) it is not utilised for the purpose for which it is so accumulated or set apart within the period of 5 years or in the immediately succeeding year. Therefore, effectively the organisation has 6 years to utilise the accumulated funds, or
 - (d) it is credited or paid to any trust or institution registered under section 12AA or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution.
 - (e) Form 10 is not filed within the due date of filing of return under section 139(1) with effect from 1st April 2016 i.e. Assessment Year 2016-17.

- (xiv) The income which becomes taxable as mentioned above will not be entitled to the 15 per cent accumulation as is available to the normal income of charitable organisations.
- (xv) Violation related with section 11(5), i.e., investment in non-specified securities, should always be read with section 13(1)(d) because for violation of section 11(2) only the contravened portion of the income will be taxed but for violation under section 13(1)(d), the entire exemptions may be lost though judicial precedence of the contrary is also available.
- (ix) The 5 year period of accumulation cannot be extended except in case of a Court injunction.

CBDT CIRCULAR FOR CONDONATION OF DELAY

- 1.4.1** CBDT Vide its Circular No. 7/2018 F.No.197/55/2018-ITA-I dated 20th December 2018 authorizing the Commissioner of Income Tax to condone the delay in filing of Form 9A and Form 10 under section 119(2)(b) only for Assessment Year 2016-17. The copy of the circular is provided in **Annexure 1**. It may be noted that an application has to be made to the Commissioner of Income Tax (Exemptions) under section 119(2)(b) with the reasons for such non filing or delayed filing of Form 9A or Form 10. It may also be noted the power to condone delay has been granted to the CIT(E) only for the Assessment Year 2016-17, for all subsequent Assessment Year such power are not available with the CIT(E).

CONDONATION OF DELAY FOR ASSESSMENT YEAR PRIOR TO 2016-17

- 1.5.1** It is also noteworthy to mention that prior to the assessment year 2016-17, the CIT had the power to condone the delay in filing of Form No. 10 by virtue of Circular No. 273, dated 3-6-1980. However, due to the amendment in

section 11(2)(c) w.e.f 01.04.2016 this circular became ineffective. Further, the CBDT Circular No. 7/2018 F.No.197/55/2018-ITA-I dated 20th December 2018 supersedes all previous circulars.

- 1.5.2** However, the courts have held that (for any assessment year prior to 2016-17) the Form 10 needs to be filed before the assessment is completed. The Gujarat High Court in the case *CIT v. Mayur Foundation* [2005] 194 CTR (Guj.) 197/ 274 ITR 562 (Guj.) had held that Form No. 10 can be filed anytime during the assessment proceedings. The assessment would not be said to have completed even if an appeal is pending before the Tribunal. In the light of the aforesaid, the Form 10 for any assessment year prior to 2016-17 can be filed before the Assessing Officer any time before the assessment is complete.
- 1.5.3** For assessment years after 2016-17 there is no empowerment to the CIT(E) by CBDT for condonation of delay. However, an organisation can apply directly to CBDT under section 119 for condonation of delay and in exceptional circumstances CBDT may allow relief though there is no direct provision for relief after AY 2016-17.

**CBDT CIRCULAR CONDONATION OF DELAY FOR
FORM NO. 10 AND FORM NO. 9A UNDER SECTION 119(2)(B)**

Circular No. 7 / 2018

**F.No.197/55/2018-ITA-I
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes**

North Block, New Delhi
20th December, 2018

Sub: Condonation of delay under section 119(2)(b) of the Income-tax Act, 1961 in filing of Form no. 10 and Form No. 9A for AY 2016-17

1. Under the provisions of section 11 of the Income-tax Act, 1961 (hereafter Act') the primary condition for grant of exemption to trust or institution in respect of income derived from property held under such trust is that the income derived from property held under trust should be applied for the charitable purposes in India. Where such income cannot be applied during the previous year, it has to be accumulated and applied for such purposes in accordance with various conditions provided in the section.
2. The Finance Act, 2015 amended section 11 and section 13 of the Act with effect from 01.04.2016 (A.Y. 2016-17). Consequently, Income-tax Rules, 1962 (hereafter 'Rules') were also amended vide the Income-tax (1st Amendment) Rules, 2016. As per the amended provisions of the Act read with rule 17 of the Rules, while 15% of the income can be accumulated indefinitely by the trust or institution, 85% of income can only be accumulated for a period not exceeding 5 years subject to the conditions, inter alia, that such person submits the prescribed Form No. 10 electronically to the Assessing Officer within the due date specified under section 139(1) of the Act.
3. Further, where the income from the property held under trust and applied to charitable or religious purposes falls short of 85% of the income derived during the previous year for the reason that the income has not been received during that year or any

- other reason, then on exercise of the option by submitting in Form No.9A electronically by the trust/institution on or before the due date of furnishing the return of income, such income shall be deemed to have been applied for charitable or religious purpose.
4. Representations have been received by the Board/ field authorities stating that the Form No. 9A and Form No.10 could not be filed in the specified time for AY 2016-17, which was the first year of e-filing of these forms. It has been requested that the delay in filing of Form No. 9A and Form No. 10 for AY 2016-17 may be condoned under section 119(2) (b) of the Act.
 5. Accordingly, in supersession of earlier Circular/Instruction issued in this regard, with a view to expedite the disposal of applications filed by trusts for condoning the delay and in exercise of the powers conferred under section 119(2)(b) of the Act, the Central Board of Direct Taxes hereby authorizes the Commissioners of Income-tax, to admit belated applications in Form No. 9A and Form No.10 in respect of AY 2016-17 where such Form No. 9A and Form No.10 are filed after the expiry of the time allowed under the relevant provisions of the Act.
 6. The Commissioners will, while entertaining such belated applications in Form No. 9A and Form No.10, satisfy themselves that the assessee was prevented by reasonable cause from filing of applications in Form No. 9A and Form No.10 within the stipulated time. Further, in respect of Form No. 10 the Commissioners shall also satisfy themselves that the amount accumulated or set apart has been invested or deposited in any one or more of the forms or modes specified in sub- section (5) of section 11 of the Act.

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Under Secretary to the Government of India

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