

# E-NEWSLETTER

## CHARITABLE ACTIVITIES – ONE PURPOSE, DIFFERENT DEFINITIONS

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As per the Cambridge English Dictionary, charity/charitable means “giving money, food, or help free to those who are in need because they are ill, poor or have no home.” Almost similar meaning has been stated in Oxford English Dictionary, according to which charity means “the aim of giving money, food, help etc..to people who are in need.” So, its clear and evident that the **activities carried out with the sole motive of advancement of welfare**, in whatever nature it may be, **to the society at large without the motive of earning profits** can be considered as charitable in nature.

So, though the word “**charitable activities**” carries almost the same meaning with a common purpose of carryig out welfare activities with non-profit motive, as mentioned above **but the same have been defined differently under various statutory acts in force**. So, in this newsletter, we have compiled the definition of charitable activities from all the relevant acts which usually have an impact on the charitable organizations.

### DEFINITION UNDER VARIOUS STATUTORY ACTS IN FORCE

#### DEFINITION OF CHARITABLE ACTIVITIES AS PER INCOME TAX ACT, 1961

Section 2(15) of the Income Tax Act, 1961, defines “Charitable Purpose.” Accordingly, charitable purpose includes:

- a) Education
- b) Relief to Poor
- c) Medical Relief
- d) Preservation of monuments or places or objects of artistic or historic interests (**w.e.f 01.04.2009**)
- e) Advancement of any other general public Utility”
- f) Yoga (**w.e.f. 01.04.2016**)

However, advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce and business, unless:

- 1) Such activity is undertaken in the course of actual carrying out of such **advancement of any other object** of general public utility; and
- 2) **The aggregate receipts from such activity** or activities during the previous year, **do not exceed twenty percent** of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year.

#### DEFINITION AS PER COMPANIES ACT, 2013

Section 8 Company established under the Companies Act is similar to a Charitable Trust or a Society and pertains to be established with the object of:

- a) **Promoting of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any other such object.**
- b) intends to apply its profits, if any, or other income in promoting its objects and;
- c) intends to prohibit the payment of any dividend to its members.

Thus, in our view, although under both the Acts the definition remains an inclusive one and is not a very exhaustive definition, unlike income tax act, the companies act seems to provide a broader definition, and not specific to certain nature of activities.

However, for the definition of charitable activities for the purposes of CSR to be carried out under the Comapnies Act is yet different and quite exhaustive from what is defined under the Section 8 of the Act.

# DEFINITION UNDER VARIOUS STATUTORY ACTS

## IN FORCE



### DEFINITION OF CHARITABLE ACTIVITIES FOR THE PURPOSES OF CORPORATE SOCIAL RESPONSIBILITY (CSR) UNDER THE COMPANIES ACT, 2013

As per Schedule VII read with Section 135 of the Companies Act, the following activities may be included by the companies in their CSR Policies Activities relating to:

**(i) Eradicating hunger, poverty and malnutrition**, [“promoting health care including preventive health care”] **and sanitation** [including contribution to the Swachh Bharat Kosh set-up by the Central Government for the promotion of sanitation] and making available safe drinking water.

**(ii) promoting education**, including special education and employment enhancing vocation skills especially among children, women, elderly and the differently abled and livelihood enhancement projects.

**(iii) promoting gender equality, empowering women**, setting up **homes and hostels for women and orphans; setting up old age homes, day care centres** and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups.

**(iv) ensuring environmental sustainability, ecological balance**, protection of flora and fauna, animal welfare, agroforestry, **conservation of natural resources** and maintaining quality of soil, air and water <sup>4</sup>[including contribution to the Clean Ganga Fund set-up by the Central Government for rejuvenation of river Ganga].

**(v) protection of national heritage, art and culture** including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional art and handicrafts;

(vi) measures for the **benefit of armed forces veterans, war widows** and their dependents;

**(vii) training to promote rural sports**, nationally recognised sports, paralympic sports and olympic sports

**(viii) contribution to the prime minister's national relief fund** or Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund) or any other fund set up by the central govt. for socio economic development and relief and welfare of the schedule caste, tribes, other backward classes, minorities and women;

**(ix) Contribution to incubators funded by Central Government or State Government** or any agency or Public Sector Undertaking of Central Government or State Government, and **contributions to public funded Universities**, Indian Institute of Technology (IITs), National Laboratories and Autonomous Bodies (established under the auspices of Indian Council of Agricultural Research (ICAR), Indian Council of Medical Research (ICMR), Council of Scientific and Industrial Research (CSIR), Department of Atomic Energy (DAE), Defence Research and Development Organisation (DRDO), Department of Biotechnology (DBT), Department of Science and Technology (DST), Ministry of Electronics and Information Technology engaged in conducting research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGs).]

**(x) rural development projects**

**(xi) slum area development.**

**(xii) disaster management, including relief, rehabilitation and reconstruction activities.**

In our view the definition of charitable activities for the purposes of CSR as mentioned above seems to be a very exhaustive one, unlike as per Income Tax Act which is though inclusive but seems to be more specific and confined.

# DEFINITION UNDER VARIOUS STATUTORY ACTS



## IN FORCE

### DEFINITION OF CHARITABLE ACTIVITIES UNDER GST

The provisions related to taxation of activities of charitable institutions and religious trusts under GST have been borrowed and carried over from the erstwhile service tax provisions. However, all services provided by such entities are not exempt. Only the specified services as provided in the notification issued by the Central Board of Indirect Taxes and Customs (CBIC) enjoys GST Exemptions.

As per Clause 2(r) of the Notification No. 12/2017 – Central Tax (Rate) issued by CBIC, the charitable activities means activities relating to:

- i) Public health by way of:
  - A) Care or counselling of
    - I) Terminally ill persons or person with severe physical or mental disability
    - II) Persons afflicted with HIV or AIDS
    - III) Persons addicted to a dependence-forming substance such as narcotic drugs or alcohol or
  - B) Public awareness of preventive health, family planning or prevention of HIV infection;
- ii) Advancement of religion, spirituality or yoga;
- iii) Advancement of educational programs or skill development relating to:
  - (A) abandoned, orphaned or homeless children
  - (B) physically or mentally abused and traumatized persons
  - (C) prisoners or
  - (D) persons over the age of 65 years residing in rural area
- iv) preservation of environment including watersheds, forests and wildlife

In our view the definition of charitable activities under GST, as compared to Income Tax Act, has been made more specific and confined to cover only limited activities.

So, from the above definitions, it can be understood that though **in a broader sense, charitable activities holds the same meaning** but in order **to comply with the relevant act under which the organization is registered and to enjoy the exemptions available** under the said Act, **the activities so carried out need to conform to the definition** as provided in that particular Act. Thus, **the nature of activities should be pre-decided at the time of setting up an organization** itself in order to be compliant with the necessary regulations from the initial stages of formation.