E-NEWSLETTER

WHATS NEW IN 2021 FOR CHARITABLE ORGANIZATIONS

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The Budget 2021 brought in some sweeping changes for charitable organizations. In the budget, a major relief in the form of tax exemption has been given to small and medium size educational institutions and hospitals. Also with some logical changes made in the Act, various disputes and judgements given by statutory authorities at various levels have now been settled, thus giving more clarity to the charitable organizations on those issues. In this newsletter, Team NGOenabler have covered all the aspects of some major amendments that shall have an impact on NGOs.

1. RELIEF TO EDUCATIONAL INSTITUTIONS & HOSPITALS COVERED U/S 10(23C)

THRESHOLD LIMIT INCREASED TO RS. 5 CRORES

Presently, those universities or educational institutions and hospitals existing solely for the educational and philanthropic purposes respectively and not for the purposes of profit, was given a blanket exemption u/s 10(23C)(iiiad) and 10(23C)(iiiae) respectively, if the gross annual receipts of such university or institution or hospital was upto Rs. 1 crores. Thus no specific registration was required to claim tax exemption.

With Budget, 2021, such limit now stands increased to Rs. 5 Crores.

LIMIT OF ANNUAL RECEIPTS TO NOW COVER THE WHOLE ORGANIZATION AND NOT INDIVIDUAL INSTITUTIONS

As per the existing provisons, the limit of Rs. 1 Crore was for each institution under an organization as it was mentioned **"aggregate annual receipts of such university or educational institution or hospital".** The same was also interpreted as such by various courts in their judgement.

However, as per the amended provisons, the limit of Rs. 5 Crore shall apply to the organization as a whole irrespective of the number of institutions being run under its banner because in the new law the words "such limit shall be applicable to the assessee with respect to **the aggregate receipts from university or universities or educational institution or institutions as well as from hospital or hospitals"** have been used. Thus, with the amendment in Budget 2021, not only more clarity on the interpretation of gross annual receipts has been brought and all disputes on the issue stands settled.

2. RENEWAL OF REGISTRATIONS U/S 12AB & 80G(5)

As you all are aware, due to the pandemic, Section 12AB and 80G(5) which would have come into effect from 01.06.2020 (as was announced in Budget 2020), shall now be in force from 01.04.2021. Thus, all organizations registered under erstwhile Sections 12A/12AA or 10(23C)and enjoying income tax exemption shall now have to renew their registration in order to continue enjoying the benefits.

With the new Section coming into force, the erstwhile section 12AA shall become inoperative and with that the perpetual validity of the registration shall stand withdrawn. All the organizations shall now have to renew their registration u/s 12AB and 80G in every 5 years.

DUAL EXEMPTION BENEFIT SHALL CEASE

The organizations registered u/s 12AA and also claiming exemption under clauses of Section 10 such as 10(23C) or 10(46) shall now be allowed to enjoy either of the both. Section 12AA shall be cease to be in effect post 01.06.2020. However, if the organizations intend to continue the benefit of Section 10, they have been granted extension without any further application of renewal. But if they want their 12AA registration to be operative in future or want to get themselves registered u/s 12AB, they need to apply afresh, post which their registrations u/s 10 of the Act shall become inoperative.

3. CONDITIONAL EXEMPTION TO CORPUS DONATIONS AND RESTRICTIONS ON UTILIZATION

As per the existing provisions, corpus donations received by an organization is exempt by virtue of Section 11(1)(d), without any specific condition as such. With the amendment in the Budget 2021, a condition has been now attached to such claim of exemption. The corpus donation shall now be exempt only when such donations shall be kept invested or deposited in one or more forms maintained specifically for such corpus, and as laid down in Section 11(5) of the Act **(For details on mode of investments refer our Newsletter 30).**

The Ministry of Finance went a step further on putting restrictions on corpus donation by providing that any amount utilized out of such corpus shall not be considered as an application of income for charitable or religious purposes. It was noticed that many organizations were claiming exemption at the time of receipt of corpus donation which was in line with Section 11(1)(d) but they were also considering the amount spent from such donations to be an application towards the income, which actually ended up in double benefit for the same amount. With the aforesaid restriction in place, it is evident that if the organization utilizes the funds related to corpus towards any expenditure, it shall not be allowed as an application of income.

However, it has also been specified in the Budget that when such applied amount shall be invested or deposited back as corpus, such amount shall be allowed as an application in the previous year in which it was so invested or deposited back. This implies in the year of application of such corpus funds, the expense shall not be considered within the 85% application while preparing computation of income. It shall be considered as an application only when the corpus amount shall be reinstated by depositing back the amount in the modes or forms laid down in the Act, only to the extent of such deposit.

Practical Implication of the provisions related to corpus donation as proposed in Budget 2021 is given below:

CASE 1 – Where the corpus donations received by the organization has been duly kept invested in the specified modes

Particulars	FY 2020-2021	FY 2021-2022	FY 2022-2023
Total Income of the Organization - (a)	50,00,000	1,00,00,000	2,00,00,000
Corpus Donation included above and exempt u/s 11(1)(d) – (b)	10,00,000	20,00,000	40,00,000
Income available for Application – (c) = (a-b)	40,00,000	80,00,000	1,60,00,000
85% amount to be applied for charitable or religious purposes	34,00,000	68,00,000	1,36,00,000
Amount actually applied for charitable or religious purposes during the year	38,00,000	75,00,000	1,50,00,000
Amount not exceeding 15% accumulated u/s 11(1)(a)	2,00,000	5,00,000	10,00,000

CASE 2 – Where the corpus donations amounting to Rs. 5,00,000 was initially invested but then utilized towards regular charitable expenditure of the organization in FY 2020-2021and was re-deposited in the modes specified only in the year 2022-2023

Particulars	FY 2020-2021	FY 2021-2022	FY 2022-2023
Total Income of the Organization - (a)	50,00,000	1,00,00,000	2,00,00,000
Corpus Donation included above and exempt u/s 11(1)(d) – (b)	10,00,000	20,00,000	40,00,000
Income available for Application – (c) = (a-b)	40,00,000	80,00,000	1,60,00,000
85% amount to be applied for charitable or religious purposes	34,00,000	68,00,000	1,36,00,000
Amount actually applied for charitable or religious purposes during the year Less: Amount utilized from corpus donation Add: Amount re-deposited in FY 2022-2023	33,00,000 (38,00,000-5,00,000)	75,00,000	1,55,00,000 (1,50,00,000+5,00,000)
Amount not exceeding 15% accumulated u/s 11(1)(a)	6,00,000	5,00,000	5,00,000
Shortfall in application	1,00,000	NA	NA
Amount for which option exercised as per Explanation 2 to Section 11(1) or amount set apart u/s 11(2) for specified purposes – **whichever suits the best**	4,75,000	NA	NA

P.S. If the corpus fund is utilized towards purchase or constrution of land and building, it shall remain exempted by virtue of amended provisions as investment in immovable property has been specified as one of the modes of investments u/s 11(5) of the Income Tax Act.

4. RESTRICTIONS ON AMOUNT SPENT FROM LOANS AND BORROWINGS

In another major step **to stop availing of double deduction** by the charitable organizations, the organizations which were spending the loan or the borrowings amount to cover the mandatory 85% application, shall now not be allowed to do so. It was noticed that certain organizations used to include the money spent from advances as an application and again at the time of repayment of advance, such amount was considered to be an application, which amounted to double benefit, whether intended or not.

Due to lack of clarity, many organizations were taking undue advantage by interpreting the law as per their convenience. So, now specifically it shall be incorporated in law that any amount spent from such borrowings shall not be considered as an application. **In fact, only in the year of repayment of such borrowings, the application shall be allowed to the extent of repayment done.**

5. CARRY FORWARD OF EXCESS APPLICATION NOT ALLOWED

With this amendment, the set off or deduction or allowance of any excess application in any of the year preceding the previous year, shall not be allowed, to be adjusted in the next year. Most of the charitable organizations might not be aware of this possibility and not taking its benefit but various courts including the Apex Court have ruled that the such organizations are eligible to the carry forward the excess amount applied in previous year and it should be allowed within the mandatory 85% application of the subsequent year. It was a very **welcome judgment by the Honorable Supreme Court in** the case of **Subros Educational Society**.

But once again, with this amendment such rulings and interpretation has been finally put to rest. So, now an organization that have actually spent more than 85% or even more than the current year's total income in a particular year, the excess application shall not be allowed to be carried forward and considered as one of the components in the next year's mandatory 85% application.

6. REDUCTION IN TIME LIMIT FOR FILING REVISED OR BELATED RETURNS

In order to increase the compliance within the timelines prescribed in the Act, the time limit for filing revised returns or belated returns has been further reduced. Post the amendment, the same has to be done 3 months before the end of the assessment year or completion of the assessment whichever is earlier. This implies the compliance window for **filing the revised or belated returns** shall be kept open only **up to 31st December** of the relevant year.

7. RELIEF TO ORGANIZATIONS FROM RE-OPENING OF ASSESSMENT PROCEEDINGS

The provisions for re-opening of assessment proceedings u/s 148 of the Income Tax Act have been rationalized by reducing the possibility of such re-opening of cases by the assessing officer from previous 6 years to 3 years except in cases of serious tax evasions, where the amount of concealment involved is more than Rs. 50 Lacs per year. Such amendment comes as a relief from the unnecessary harrasment by the tax authorities to genuine organizations by opening 6 years accounts and they need not worry for re-opening of cases beyond 3 years.

8. FACELESS TRIBUNAL PROCEEDINGS TO BE IN PLACE

With this amendment, it is evident that the government is focused and committed in bringing **greater efficiency, transparency and accountability** in the assessment procedures. Now, apart from the faceless assessment and faceless appeal, even the proceedings before the Income Tax Appellate Tribunal shall be faceless, with dynamic jurisdiction. This have come as a great relief to the taxpayers and will enable them to present their case with ease before the concerned authority.

9. EMPLOYEE CONTRIBUTION TO BE DEPOSITED WITHIN THE TIME PRESCRIBED

With the amendment, any delay in deposit of employee contribution by the employer shall not be allowed by the Income Tax Department while computing the total income and tax payable by the employer. Now, you must be thinking that how does it impact NGOs as they are tax exempted. I would like to clarify that even for charitable organizations, such payments might be added to the total income of the assessee, thus increasing the mandatory 85% amount, they need to apply during the year.

10. HIGHER RATES OF TDS FOR NON-FILERS OF RETURN

Section 206AB is proposed to be inserted vide Budget 2021, wherein higer rates of TDS has been prescribed for non-filersof income tax returns. It was found that many persons who are liable to substantial amount of TDS deduction, does not file income tax return. In order to ensure compliance by such persons, the government has further tightened the norms and provided for increased rate of TDS.

The rate specified for such non-filers is:

a) Twice the rate specified in the relevant section; or
b) Twice the rate in force; or
c) Five percent, whichever is higher.

DEFINITION OF SPECIFIED PERSON

The specified person i.e. the non-filer has been defined specifically in the provisions of the Section. Such person should not have file the return of income for previous 2 years and the time limit for filing the same has also expired. Moreover, the aggregate amount of TDS and TCS deducted in case of such person is more than Rs. 50,000 in each of the previous year.

OUR VIEWS ON THE ABOVE AMENDMENTS

a) Regarding the increase of the threshold limit for blanket exemption u/s 10(23C)(iiiad) and 10(23C)(iiiae), we are of the view that this is a welcome amendment for small and medium educational and medical organizations as it will reduce the compliance burden of such institutions working for the betterment and welfare of the society as a whole.

b) As far as renewal of registrations is concerned, it seems that the process of renewal of registrations u/s 12A and 80G shall begin from April 1, 2021 but still no clarity was provided on the new forms and when they shall be made available on the income tax portal. Moreover, we are of the view that at the time of renewal, the onus of proving the genuineness of activities and proper compliances shall now be upon the trustees/members/directors of such charitable organizations.

c) Towards the conditional exemption of corpus and restrictions on its utilization, we are of the view that the intention of the legislation was same even previous to the amendment that the corpus should be kept separately invested and should not be utilized but it seems that now it shall be specifically incorporated in the relevant Section 11(1)(d).

d) We too completely agree with the view of the Finance Ministry related to spending from loans and borrowings. Such amendment is technically correct because of course there was dual benefit being claimed by many organizations. In fact, as an advisory to the clients, we never suggested claiming the repayment of borrowed amount as an application, where the amount already spent from such borrowings have been claimed so.

e) In order to avoid deducting TDS at higher rates, we are of the view that apart from the copy of PAN card, the organizations shall now have to ask for the copy of income tax return filed or at least take a declaration of confirmation of such returns filed from their major contractors whose TDS crossed the threshold limit of Rs. 50,000 in the previous 2 years to ensure, whether the TDS shall be deducted as specified in the relevant section or at a higher rate under the new provisions.