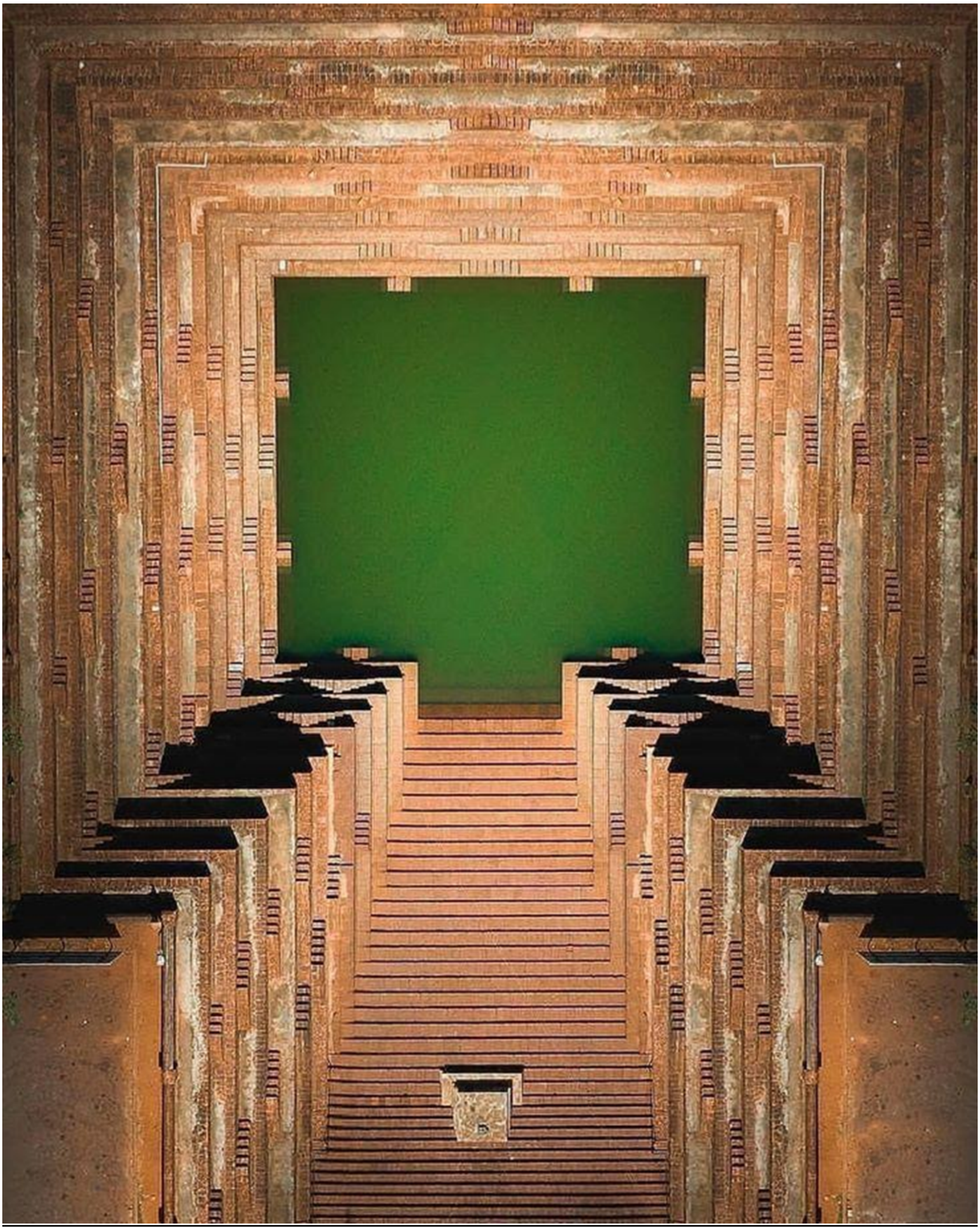
Tax and Registration aspects of Charitable Institutions



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September 2023

Preface

Income Tax Act has undergone through a sea change so far as Charitable Trusts are concerned. Enormous reporting requirements to cancellation of Registrations is the new norm.

This note explains what are the **new requirements**, **how they should be dealt with** and **consequences of non-compliance**. This note does not cover the applicability of Tax Deducted at Source and GST aspects.

This communication is intended to provide a **general guide** to the subject matter and should not be regarded as a basis for taking or not taking any decisions on specific matters. In such instances, separate advice should be taken. It goes without saying that the content of this Note as it stands today may undergo a change since laws change too frequently.

Unless otherwise indicated, the reference to the words “the Act” used is to the Income-tax Act, 1961 and the sections of the same Act. The words “trusts/institutions” mean Charitable or Religious Trusts.

Mumbai, India
4th September 2023

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GENERAL

1. Charitable Trust- A brief introduction:

Act of charity involves a voluntary help either in money or in kind. Non-Governmental Organizations (NGOs) and non-profit entities constantly work on charitable activities by raising funds from all over the world by forming a registered institution or trust under the laws in their specific countries.

Efforts of such institutions play a significant role in promoting economic development and the social welfare objectives of the Government. Their outreach and more localised approach help to identify the needy and lend a supporting hand. For this reason, Indian government provides various tax incentives and exemptions to charitable institutions (referred herein as "trust/s") as they carry education, medical relief and many other activities that serve those in need and without adequate means.

Public trust is a form of organization that is formed with a strong motive of charity to public. Charitable trust can be formed by various means and is governed by various Acts or legislation. Under Article 19(1)(c) of the Constitution of India 'Charities and charitable institutions, charitable and religious endowments' are under the **Concurrent list of the Seventh Schedule of the Indian Constitution**. Here, both the centre and the state are allowed to legislate on Public Charitable Trusts. Public trusts set up in India are categorized into charitable and religious trusts and are governed by the 'Charitable and Religious Trusts Act, 1920', 'The Religious Endowments Act, 1863', The Charitable Endowments Act, 1890 and are additionally regulated by the specific state legislations such as the Maharashtra Public Trusts Act, 1950 or the Gujarat Public Trusts Act, 1950 and so on.

A public charitable trust organization can be formed by registering it as a trust by executing **a trust deed** or as a society under the Registrar of Societies. Also, a private non-profit company can be formed under Section 8 of The Companies Act, 2013 (an erstwhile section 25 Company under the Companies Act, 1956).

> *Section 2(15) of the ITA defines charitable purpose to include relief of the poor, education, yoga, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and an advancement of any other object of general public utility.*

If any activity or service being in the nature of trade, commerce or business for a cess/fee, not undertaken during the course of advancement of general public utility and the aggregate receipts from such activity/service exceeds 20% of the total receipts of the trust in the previous year, then such trust will not be considered to have been set up for charitable purpose and can lose the benefits under the Act.

Recently, tax issues of charitable and religious trusts have attained significant importance due to the changes in the provisions of the Income Tax Law, compliance and reporting of its activities to the Charity Commissioner's Office and Income Tax Department.

2. Registration under the ITA

I. The Principal Commissioner or Commissioner of Income Tax (PCIT/CIT) is given an authority to grant registration for the trusts or institutions applying for registrations – [Section 12AB].

II. The above authority on receipt of an application shall act as under:

Sr. No.	Category of Trust or Institution	Duty of Principal Commissioner or Commissioner	Time Period to pass an order
(a)	Application u/s 12A (1) (ac) (i) – Trust/institution registered u/s section 12A or u/s 12AA	To pass an order in writing registering the trust or an institution for a period of five years	*Three Months**
(b)	*Application u/s 12A(1) (ac) sub-clause:* (ii) Trust/institution registered u/s 12AB and the period of the said registration is due to expire. (iii) Trust/institution has been provisionally registered u/s 12AB. (iv) Registration of the trust or institution has become inoperative due to the first proviso to section 11(7) (v) The trust or institution has adopted or undertaken modifications of the objects which do not conform to the conditions of registration.	To call for such documents or information from the trust or an institution or make such inquiries as he thinks necessary in order to satisfy himself about— (A) the genuineness of the activities of the trust or an institution; and (B) the compliance of such requirements of any other law for the time being in force by the trust or an institution as are material for the purpose of achieving its objects; And after satisfying himself about the objects of the trust or an institution and the genuineness of its activities under item (A) and compliance of the requirements under item (B), of sub-clause (i), — (A) pass an order in writing registering the trust or an institution for a period of five years; or (B) if he is not so satisfied, pass an order in writing rejecting such application and also cancelling its registration after affording a reasonable opportunity of being heard;	*Six Months**

Sr. No.	Category of Trust or Institution	Duty of Principal Commissioner or Commissioner	Time Period to pass an order
(c)	Where the application is made u/s 12A (vi) i.e., in any other case, if trust/institution applies for the first time.	To pass an order in writing provisionally registering the trust or an institution for a period of three years from the assessment year from which the registration is sought.	*One Month* *
** Months from the end of the month in which the Application was received.*			

After undertaking the above process, the PCIT/CIT shall send a copy of such order to the trust/institution. [Section 12AB (1)]

III. **Applications made under erstwhile section:** It is provided that all applications, pending before the PCIT/CIT on 1st April, 2021 on which no order has been passed under section 12AA (1) (b) shall be deemed to be applications made under sub-clause (vi) of clause (ac) of sub-section (1) of section 12A on that date. [Section 12AB (2)]. In other words, application made under earlier provisions will (where order is not passed) automatically shift to take the form of an application under the new section.

IV. **Cancellation of registration:** Where registration of a trust or an institution category stated at sr. no. (a), (b), (c) in table above, has been granted and subsequently, the PCIT/CIT is satisfied that the activities of such trust or an institution are **not genuine or are not being carried out in accordance with the objects of the trust or an institution,** as the case may be, he shall pass an order in writing cancelling the registration. Of course, such trust or institution shall be afforded a reasonable opportunity of being heard before decision is taken. [Section 12AB (4)].

V. Further, where a trust/institution of the category stated at sr. no. (a), (b), (c) in table above, registration has been granted, the PCIT/CIT may, by an order in writing, cancel the registration of such trust or institution in the following circumstances. Where subsequently, it is noticed that:

(a) its activities are being carried out in a manner that the provisions of sections 11 and 12 of the ITA granting exemption do not apply to exclude either whole or any part of the income of such trust or institution because of breach of section 13(1) of the ITA; or

(b) the trust or an institution has not complied with the requirement of any other law for the time being in force as are material for the purpose of achieving its objects and the order, direction or decree, etc. holding that such non-compliance has occurred, has either not been disputed or has attained finality.

Cancellation order of the registration shall be passed before expiry of 6 months calculated from the end of the quarter in which the first notice is issued only after affording a reasonable opportunity of being heard to such a trust/institution *[Section 12AB (5)]*.

VI. **No exemption allowed:** Section 13(1) of the ITA, broadly, provides that exemption contained in section 11 or section 12 shall **NOT** operate so as to exclude from the total income of the previous year in the following circumstances:

(a) any part of the income from the property held under a trust for private religious purposes which does not ensure for the benefit of the public;

(b) in the case of a charitable trust/institution created or established after March 31st, 1961 any income thereof if it is created or established for the benefit of any religious' community or caste;

(c) in the case of a trust or a charitable or religious institution, any income thereof is meant directly or indirectly for the benefit of any person not at arm's length as defined in section 13(3);

(d) any funds are invested or deposited otherwise than in any one or more of the forms or modes specified in section 11(5).

VII. **Time limit for receipt of new registration certificate**: The new procedure of granting provisional registration is with an intention to simplify and facilitate the registration process for new and existing charitable trusts/institutions, the extract from the Hon'ble Finance Minister's budget speech is as under,

> *'In order to simplify the compliance for the new and existing charity institutions, I propose to make the process of registration completely electronic under which a* ***unique registration number (URN)*** *shall be issued to all new and existing charity institutions. Further, to facilitate the registration of the new charity institution which is yet to start their charitable activities, I propose to allow them provisional registration for three years*

VIII. Time limit to grant registration are summarized hereunder:

Case	Particulars	Time limit for filing application	Time limit for disposal of application	Validity for	Registration effective from
A	Already registered Charitable trust/institution	Within 3 months of coming into force (i.e., up to 30 June 2021)	Within 3 months from end of month in which application filed	5 years (from 1st April 2021)	AY from which approval was earlier granted
B	Registered under section 12AB/ 10(23C)/ 80G is due to expire	At least 6 months before expiry	Within 6 months from end of month in which application is filed	5 years	AY immediately following the FY in which application is made
C	Where provisional registration granted	At least 6 months before expiry or within 6 months of commencement of activities, whichever is earlier	Within 6 months from end of month in which application is filed	5 years	AY from which it was provisionally approved
D	Fresh/ New application	One month prior to the commencement of FY from which approval/ registration is sought	Within 1 month from end of month in which application is filed	Provisionally for 3 years	AY immediately following the FY in which application is made

3. Statement of donation: Form 10BD

Sections 80G(5)(viii)/(ix) and section 35(1A) requires furnishing of statement of donation [Form 10BD] received and issue of donation certificates [Form 10BE] to the donors for claiming deduction from the gross total income for each financial year.

Finance Act 2021 has amended section 80G of the ITA and inserted a new provision in the section under which every trust/institution (approved u/s 80G) is required to furnish the statement of particulars of donation in respect of each financial year beginning from F.Y. 2021-22. Form 10BD is also required to be furnished by research institutions, colleges, universities or other institutions under clause (i) to section 35(1A) of the ITA.

I. Procedure and time limit for filing form 10BD:

Form No. 10BD shall be verified by the person who is authorised to verify the return of income under section 140 of the Act with digital signature (DSC) or EVC. Electronic Verification Code (EVC) can be generated by using internet banking of the trust.

Due date for filing Form 10BD/issuance of Form 10BE: 31st May of the next Financial Year

For eg: For FY 2022-23, Form 10BD and Form 10BE have to filed and issued by 31st May, 2023

i. E-Filing of Form 10BD:

- **To whom does it apply**: Assessee trust registered under section 80G / 35(1) of the Act
- **What is required:** E-file Form 10BD
- **What is the content:** Donations received during the previous year 2022-23
- **Timeline for Filing:** on or before 31st May 2023

- **Mandatory or Optional:** Mandatory
- **E-Verification:** DSC or EVC via OTP by a Trustee / Principal Officer
- **View Form:**
  https://incometaxindia.gov.in/Forms/Income-Tax%20Rules/103520000000080975.pdf

ii. Information required for the Form 10BD:

a) PAN of the Donor

b) Name of the Donor

c) Address of the Donor

d) Nature of donation (corpus, specific Grant, others)

e) Mode of Receipt (cash, kind, cheque, online transfer)

II. Issue of Certificates to the Donors: Form 10BE

The reporting person is required to furnish a certificate of donation (as referred to in clause (ix) of sub-section (5) of section 80G or in clause (ii) to sub- section (1A) to section 35), to the donor in Form No. 10 BE specifying the amount of donation received during the financial year from such donor, beginning with the financial year 2021-2022. The certificate of donation in Form 10BE is required to be generated and downloaded from the income tax portal to be implemented by the Pr. DGIT/DGIT (Systems).

i. Contents of Form 10BE

This form shall contain:

DONEE INFORMATION:

a) Name, PAN, address of the donee

b) Registration numbers allotted for section 80G or 35(1) of the Act

c) Date of approval u/s 80G or 35(1) of the Act

DONOR INFORMATION:

a) Name, Address of the Donor

b) Amount of donation received, Type

c) Financial year in which donation is received

d) Section under which such donation is eligible for deduction

ii. Consequences of Non-filing of Form 10BD / Issuance of Form 10BE:

Nature of penalty	Section	Amount
Fee for default relating to statement or certificate – For Form 10BD and Form 10BE	234G	Rs. 200 per day of default
Penalty for failure to furnish statements	271K	The Assessing Officer may direct that a sum of Rs. 10,000 up to Rs. 1,00,000

From the donor perspective, it is not just sufficient to obtain a donation receipt, but it is very much imperative to obtain a certificate of donation in Form 10BE after the end of the financial year. This is where the role of entities receiving the donations will be crucial as a certificate of donation has to be issued to all the donors in order to claim the deduction.

4. Books of accounts and other documents with recent amendments:

Finance Act, 2022 has amended section 12A (1)(b) of the Act to provide that w.e.f AY 2023-24 the trust/ institutions claiming exemption u/s 11 and 12 shall keep and maintain books of accounts and other documents ("books/documents") as prescribed under the Income Tax Rules.

Prior to the amendment introduced by the Finance Act, 2022, there was no specific provision under the Act providing for the books of accounts to be maintained by such trusts or institutions.

> *The Central Board of Direct Taxes (CBDT) issued* ***Notification No. 94/2022 dated 10.08.2022*** *in G.S.R. 622(E) through Income-tax (24th Amendment) Rules, 2022 amended the Income-tax Rules, 1962 to notify* ***new Rule 17AA*** *prescribing books of accounts and a very comprehensive list of other documents to be kept and maintained as per section 12A(1)(b)(i) or under clause (a) of tenth proviso to section 10(23C) by a Trust or an NGO registered under section 12AB or any university or other educational institution or any hospital or other medical institution approved under section 10(23C) of the Income-tax Act, 1961 ('Act').*

Further details regarding Rule 17AA along with the requirements under the Local Charity Law are attached in the Annexure A to this Primer.

5. Audit under the Maharashtra Public Trust Act,1950

We have covered the specific provisions related to the Maharashtra Public Trust Act, 1950 **(MTPA)**. Section 33 of MTPA makes it mandatory for all registered public trusts to get such accounts audited. However, the MTPA has exempted public trusts having gross annual income (gross) below Rs 3,000 from audits. The audit is required to be done within 6 months from the end of the previous year i.e., by 30th September. *For eg: For FY 2022-23: Due date will be 30th September, 2023.*

Annual Income threshold	Auditor's Qualifications
More than Rs. 3,000	Chartered Accountant
Equal to or less than Rs. 3,000	Chartered Accountant or a person authorized by the State Government u/s 33(2) of MHPA

a. It shall be the duty of **every auditor** auditing the accounts of a public trust under section 33 of MTPA to prepare a **balance sheet and income and expenditure account** and to forward a copy of the same along with a **copy of his report** to the trustees, and to the Deputy or Assistant Charity Commissioner of the region or sub-region or to the Charity Commissioner, if the Charity Commissioner requires him to do so.

b. It shall be the duty of the **trustees** of a public trust to file a copy of the balance sheet and income and expenditure account forwarded by the auditor before the Deputy or Assistant Charity

Commissioner of the region or sub-region or to the Charity Commissioner, if the Charity Commissioner requires him to do so.

c. The auditor shall forward a copy of Balance Sheet, Income & Expenditure Account with his Audit Report (collectively referred as Audited Financials) under **(Rule-21)** of Maharashtra Public Trust Rules, 1951 to the Deputy or Assistant Charity Commissioner within 15 days from the date of the audit. *Online accounts filing acknowledgement (trust accounts verification form) is to be filed with the office of the Charity Commissioner signed by the trustees signing the Financials, with auditor's signature and stamp. Presently, the financials are required to be e-filed on the website of the Maharashtra Charity Commissioner. https://charity.maharashtra.gov.in/en-us/*

In case if the trust has received corpus donations then the auditor has to issue a certificate in this regard and this certificate is to be attached along with Audited Financials.

d. The auditor shall in his report specify all cases of irregular, illegal or improper expenditure, or failure or omission to recover moneys or other property belonging to the public trust or of loss or waste of money or other property thereof and state whether such expenditure, failure, omission, loss or waste was caused in consequence of breach of trust, or misapplication or any other misconduct on the part of the trustees, or any other person.

Audit Report for Charity Commissioner: This Audit Report is in a Q&A format having 20 points which the auditor is required to respond to. This report relates to the various compliances under MPTA.

1)	*Whether accounts are maintained regularly and in accordance with the provisions of the Act and the rules;*
2)	*Whether receipts and disbursements are properly and correctly shown in the accounts;*
3)	*Whether the cash balance and vouchers in the custody of the manager or trustee on the date of audit were in agreement with the accounts;*
4)	*Whether all books, deeds, accounts, vouchers or other documents or records required by the auditor were produced before him;*
5)	*Whether a register of movable and immovable properties is properly maintained, the changes therein are communicated from time to time 'to the regional office, and the defects and inaccuracies mentioned in the previous audit report have been duly complied with;*
6)	*Whether the manager or trustee or any other person required by the auditor to appear before him did so and furnished the necessary information required by him;*
7)	*Whether any property or funds of the Trust were applied for any object or purpose other than the object or purpose of the Trust;*
8)	*The amounts of outstanding's for more than one year and the amounts written off, if any;*
9)	*Whether tenders were invited for repairs or construction involving expenditure exceeding Rs.5000/-;*
10)	*Whether any money of the public trust has been invested contrary to the provisions of Section 35;*
11)	*Alienations, if any, of the immovable property contrary to the provisions of Section 36 which have come to the notice of the auditor;*
12)	*All cases of irregular, illegal or improper expenditure, or failure or 'omission to recover monies or other property belonging to the public trust or of loss or waste of money or other property thereof, and whether such expenditure, failure, omission, loss or waste was caused in consequence of breach of trust of misapplication or any other misconduct on the part of the trustees or any other person while in the management of the trust;*
13)	*Whether the budget has been filed in the form provided by rule 16A;*
14)	*Whether the maximum and minimum number of the trustees is maintained;*
15)	*Whether the meetings are held regularly as provided in such instrument;*
16)	*Whether the minute books of the proceedings of the meeting is maintained;*
17)	*Whether any of the trustees has any interest in the investment of the trust;*
18)	*Whether any of the trustees is a debtor or creditor of the trust;*
19)	*Whether the irregularities pointed out by the auditors in the accounts of the previous year have been duly complied with by the trustees during the period of audit;*
20)	*Any special matter which the auditor may think fit or necessary to bring to the notice of the Deputy or Assistant Charity Commissioner.*

6. Audit under the Income Tax Act,1961

I. HISTORY:

Applicability to file audit report

As per Clause (b) of sub-section (1) of section 12A of the Income Tax Act, a trust/institution was required to get its accounts audited from accountant (Chartered Accountant u/s 288 of the ITA) if the "total income" of the trust/institution exceeds the maximum amount which is not chargeable to Income Tax (i.e. Rs 2,50,000). (The total income for this purpose being computed under this Act without giving effect to the provisions of sections 11 and 12 of the ITA)

Form 10B is prescribed for audits & regulates the charitable & religious trusts under rule 17B of the Income Tax Rule, 1962.

Due Date: one month prior to the due date for filing the return of income u/s 139 being 31st October, 2023 (30th September, 2023).

Applicability to file audit report – Form 10BB

- The educational institutions claiming an exemption under section 10 of the Income Tax Act, 1961 will be required to obtain Form 10BB from the tax auditor and submit to the Income Tax Department on before the due date:
- Form 10BB regulates trusts/institutions under rule 16CC of the Income Tax Rule, 1962.

Due Date: one month prior to the due date for filing the return of income u/s 139 being 31st October, 2023 (30th September, 2023).

I. Recent amendments applicable w.e.f 1st April, 2023

Rule 16CC and Rule 17B of Income Tax Rules,1962 vide Income Tax Notification 7/2023 substitute the earlier rules as follows:

Rule 16CC: Form of report of audit prescribed under tenth proviso to section 10(23C) – The report of audit of the accounts of a fund or institution or trust or any university or other educational institution or any hospital or other medical institution which is required to be furnished under clause (b) of the tenth proviso to clause (23C) of section 10 shall be in -

(a) Form No. 10B where -

(i) the total income of such fund or institution or trust or university or other educational institution or hospital or other medical institution, without giving effect to the provisions of the sub-clauses (iv), (v), (vi) and (via) of the said clause, exceeds rupees five crores during the previous year; or

(ii) such fund or institution or trust or university or other educational institution or hospital or other medical institution has received any foreign contribution during the previous year; or

(iii) such fund or institution or trust or university or other educational institution or hospital or other medical institution has applied any part of its income outside India during the previous year;

(b) Form No. 10BB in other cases.

Rule 17B: Audit report in the case of charitable or religious trusts, etc.-

The report of audit of the accounts of a trust or institution which is required to be furnished under sub-clause (ii) of clause (b) of sub-section (1) of section 12A, shall be in,-

(a) Form No. 10B where

(i) the total income of such trust or institution, without giving effect to the provisions of sections 11 and 12 of the Act, exceeds rupees five crores during the previous year; or

(ii) such trust or institution has received any foreign contribution during the previous year; or

(iii) such trust or institution has applied any part of its income outside India during the previous year;

(b) Form No. 10BB in other cases

Apart from the above-mentioned amendments in the Income Tax Rules Form 10B and Form 10BB is also amended vide notification 7/2023. As per the amendment more disclosures will have to be given by a chartered accountant in the Form 10B and Form 10BB subsequently increasing the reporting responsibility of an auditor of the trust. Similar changes are brought in ITR 7 – Tax Return for public trust with immense reporting and disclosure requirement for AY 2023-24 and onwards.

II. Summary of Form 10BB and Form 10B Applicability

Applicable criteria for Audit under the Income Tax	10th proviso to section 10(23C)	Section 12A
the total income of such trust or institution, without giving effect to the provisions of sections 11 and 12 of the Act, exceeds rupees **five crores** during the previous year	NA	**Form 10B**
the total income of such fund or institution or trust or university or other educational institution or hospital or other medical institution, without giving effect to the provisions of the sub-clauses (iv), (v), (vi) and (via) of the said clause, **exceeds rupees five crores** during the previous year	**Form 10B**	**NA**
such trust or institution has received any foreign contribution during the previous year	**Form 10B**	**Form 10B**
such trust or institution has applied any part of its income outside India during the previous year	**Form 10B**	**Form 10B**
When all the above criteria do not apply	**Form 10BB**	**Form 10BB**

Consequences on not filing income tax return or audit report are:

(i) Trust/Institution will not get exemption under section 11 and 12 for the year until it files Income tax return and audit report

(ii) Penalty of Rs.100 per day, may be imposed on failure of filing of ITR *[272A(2)(e)]*

7. Responsibility of auditor under Trust Act and Income Tax Act

The principal aim of this audit is to enable the assessing officer to satisfy himself about the genuineness of the claim for exemption u/s 11 and also whether the institution has complied with all the requirements prescribed by the statute. The accountant shall satisfy himself about compliance with the provisions of the Act by the institution in respect of maintenance of proper books of accounts, information and returns from branches and other relevant records. The accountant has to examine the balance sheet and the profit and loss and give an opinion whether they exhibit a true and fair view.

8. Method of computation

Income of trust/ institution is computed u/s 11,12 and 13 of the ITA.

I. Nature of Incomes

Section	Nature of Income	Extent of Exemption
11(1)(a)	Income derived from property held under trust wholly for charitable or religious purposes	➢ To the extent income is applied to such charitable or religious purposes in India. Whereas such income is accumulated or set apart for such application, to the extent of 15% of the income from such property.
11(1)(c)	Income derived from property held under trust for a charitable purpose, which tends to promote international welfare in which India is interested	➢ To the extent income is applied to such charitable or religious purposes outside India. ➢ Exemption is available only if the Board has directed such exemption.
11(1)(d)	Income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution.	➢ 100% exemption.

In computing 15% of the income which may be accumulated or set apart, any such voluntary contributions as are referred to in Section 12 shall be deemed to be part of the income.

From the balance 85% of the gross receipts:

i) Income Applied for Charitable purposes in India: [S. 11(1)]

- Purchase of capital asset
- Repayment of loan for purchase of capital asset
- Revenue Expenditure
- Donation to trust registered u/s 12AA or u/s 10(23C) except when such donation is given with a specific direction that it shall form part of corpus of the recipient trust.

Only 85% of the eligible donation made by one Trust other than corpus donation to another trust with similar objectives and registered u/s 10(23C) or u/s 12AA/12AB of the Act as application of income in the hands of donor trust. (w.e.f A.Y. 2024-25)

II. Income not exempt

Section	Nature of income not exempt
13(1)(a)	Income of private religious trust not used for public benefit.
13(1)(b)	Income of charitable trust created for benefit for particular religious community.
13(1)(c)	Income/ property of charitable or religious trust applied for direct or indirect benefit of person referred in 13(3)
13(1)(d)	Any income, is taxable if If any funds are invested other than in 11(5) Any funds invested earlier than 1983 remain invested thereafter Shares and company are held after 1983.
11(4A)	Income from business which is not incidental to the attainment of the objectives of the trust, or in respect of which separate books of accounts have not been maintained.
12(2)	Value of medial/ education services provided to specified persons by trust running hospital and educational institution shall be income of trust and will be chargeable in the year in which services are provided and chargeable to tax, despite section 11(1)

With effect from AY 2024-2025:

- the donation is given with a specific direction that it shall form part of corpus of the recipient trust then, the amount which can be considered as application will continue to remain as NIL;
- where donation is not given with such a specific direction that it shall form part of corpus of the recipient trust, the amount which can be considered as application is 85% of the amount of such donation.

III. Income deemed to be applied for charitable purpose in India:

In case whole or part of income is not received during that year in which it is derived will be exempt if -

a. Income is applied for charitable purpose in India in the year of receipt or in the immediate succeeding year &

b. Assessee submits a declaration to the Assessing Officer atleast two months prior to the due date of filling of return u/s 139 (1) that such income shall be applied for such purpose in the year of receipt or succeeding year. [Form 9A – Section 11(1) - Rule 17(1) of the Income Tax Rules, 1961]

IV. Income not applied for charitable/religious purpose in India - Accumulated for specific purpose in India:

A) Assessee gives notice to Assessing officer specifying purpose and period (cannot exceed 5 years) of accumulation before assessment is complete.

B) Accumulated amount is deposited /invested in specified form

- Assessee submits a declaration to the Assessing Officer atleast two months prior to the due date of filling of return u/s 139 (1) that such income shall be applied for such purpose in the year of receipt or succeeding year.
- *The trust is required to attach the Board Resolution passed during the meeting of the trustees determining the amount accumulated and purpose for spending in next 5 years.*
- The trust is required to invest the accumulated amount in modes of investments specified u/s 11(5) of the ITA failing which the accumulation will not be granted.

  [Form 10 – Section 11(2) - Rule 17(2) of the Income Tax Rules, 1961]

V. Withdrawal of Exemption – Section 13(3) of the ITA:

Particulars	Impact on Income in the Year of Withdrawal
Applied for purpose other than the purpose for which it is accumulated or set apart.	Income of previous year in which so applied.
Ceases to be invested in the forms specified u/s 11(5).	Income of previous year in which it so ceases.
If not utilised till 5 years or immediately succeeding year.	Income of previous year immediately following expiry of 5th year.
Donated to trust registered u/s 12AA or 10(23C) towards the corpus fund of the recipient trust.	Income of previous year in which income is so donated.

Taxable in case income is not applied for charitable/religious purpose in India and is also not accumulated for specific purpose in India.

VI. Taxability of donation received towards Corpus Fund/Loan/Borrowing of the trust [Section 11(1)(d)]

Voluntary contribution made with a specific direction that it shall form part of Corpus shall not be included in the Total income of the Trust or Institution subject to the condition that such voluntary contributions are invested or deposited in one or more of the forms or modes specified in sub-section (5) of section 11 of the Act maintained specifically for such corpus.
(Explanation 1 to the third proviso to clause (23C) of section 10 / clause (d) of sub section (1) of section 11 of the Act)

Further to restrict the practice of claiming utilisation of corpus towards threshold limit of 85% in case of application for charitable or religious purposes, an Explanation to section 11(1) of the ITA 1961 was added which reads as follows:

> *For the purposes of determining the amount of application under clause (a) or (b) of third proviso of section 10(23C) and application for charitable or religious purposes from the corpus as referred to in clause (d) of this sub-section, shall not be treated as application of income for charitable or religious purposes:*
>
> *Provided that the amount not so treated as application, or part thereof, shall be treated as application for charitable or religious purposes in the previous year in which the amount, or part thereof, is invested or deposited back, into one or more of the forms or modes specified in sub-section (5) maintained specifically for such corpus, from the income of that year and to the extent of such investment or deposit;"* [Finance Act, 2021]

A recent amendment has been brought to the Explanation 4 to section 11(1) in Budget 2023. , As per the amendment in order to claim the benefit of application in the subsequent year as mentioned above, the investment with respect to the corpus fund is required to be restored back or amount of loan or borrowing is required to be repaid within a period of five years from the end of the previous year in which the application was made originally from the said corpus or loan or borrowing as the case may be.

In order to claim the benefit of an application in the subsequent year as mentioned above, the investment with respect to the corpus fund is required to be restored back or amount of loan or borrowing is required to be repaid within a period of five years from the end of the previous year in which the application was made originally from the said corpus or loan or borrowing as the case may be. So, a time limit of five years is added for investing or depositing back the amount of corpus which was earlier utilised for other charitable purpose and thus which was not treated as an application of Income of the charitable trust. [Finance Act, 2023 – w.e.f 1st April, 2023]

VI. Section 10(23C) of the Act - A specific exemption available to certain Government and non-government universities and educational institutions.

Income received by any university or educational institution existing solely for educational purposes and not for purposes of profit, and which is wholly or substantially financed by the Government is fully exempt from tax u/s10(23C) (iiiab).

Section 10(23C) (iiiad) provides that the income earned by such university or educational institution existing solely for educational purposes and not for the purposes of profit shall be exempt from tax if the aggregate annual receipts of such university or educational institution do not exceed Rs. 5 crores.

Here it is important to note that the term “annual receipts” has not been defined under the ITA. Keeping in mind the intention of the provisions, annual receipts should mean receipts from the various fees and charges collected by the institution, including donations received.

A separate approval from prescribed authority to claim exemption shall be necessary for educational institutions having receipts exceeding Rs. 5 crores being governed u/s 10(23C) (vi) which are other than those mentioned in sub-clause (iii ab) or sub-clause (iii ad).

VII. Summary of Taxation of Public Trust

Source of Income	Section	Tax Rates
Voluntary Contributions (being corpus donations)	11(1)(d)	Exempt
Income not applied / accumulated to the extent > 15%	11(1)(a)	AOP Rate
Income received on 31st March carried forward to next year for utilization but not utilized in that next year - [Explanation 2(b) to Section 11(1)(d)]	11(1B)	AOP Rate
Income accumulated u/s 11(2) is not invested / utilized / donated to another trust	11(3)	AOP Rate
Excess Business Income as assessed by the AO	11(4)	AOP Rate

Income derived u/s	13(1)(a), 13(1)(b)	AOP Rate
Income derived u/s - Specified Persons	13(1)(c),13 (1)(d)	MMR
Anonymous Donations	115BBC	30%

The tax rates have been defined below

9. Special Rate of tax and Exit Tax

I. Special Rate of tax

To the extent that the income of the trust is not covered by an exemption, the income will be taxed in a manner similar to an Association of Persons (AOP). Hence, for an income of up to Rs.2,50,000 there will be no need to pay tax. However, the AOP tax-rates will be applicable only for income which is not covered by the exemption offered under the Act to charitable trusts.

The trust may violate any of the conditions relevant to which it was granted registration under the Act. In such circumstances, the income of the trust which has forfeited the exemption will be taxable at the maximum marginal rate (MMR). The provisions relating to taxability of trusts are summarised in the following table:

<table>
<tr><th>S. No.</th><th>Circumstances</th><th>Tax Rate</th></tr>
<tr><td>1</td><td>Trust which cannot claim exemption</td><td>The income is taxed using the following slab-rate:

Income Tax:
<table><tr><th>Taxable income</th><th>%</th></tr><tr><td>Upto Rs. 2,50,000</td><td>Nil</td></tr><tr><td>Above Rs. 2,50,000 to Rs. 5,00,000</td><td>5</td></tr><tr><td>Above Rs. 5,00,001 to Rs. 10,00,000</td><td>20</td></tr><tr><td>Above Rs. 10,00,000</td><td>30</td></tr></table>
Surcharge:
<table><tr><th>Taxable income</th><th>%</th></tr><tr><td>Upto Rs. 50 lakhs</td><td>Nil</td></tr><tr><td>Above Rs. 50 lakhs to Rs. 1 crore</td><td>10</td></tr><tr><td>Above Rs. 1 crore to Rs. 2 crores</td><td>15</td></tr><tr><td>Above Rs. 2 crores to Rs. 5 crores</td><td>25</td></tr><tr><td>Above Rs. 5 crores</td><td>37</td></tr></table>
Cess: 4% of (Income Tax + Surcharge)</td></tr>
<tr><td>2</td><td>The trust has forfeited its status as a charitable trust on account of violating the conditions prescribed by the Act</td><td>The trust should pay tax on the maximum marginal rate. i.e 42.744%. (income tax + surcharge + cess) The rate is applicable only on that component of the income which can be attributed to forfeiture of the charitable status. For the remaining portion of the income, the</td></tr>
</table>

S. No.	Circumstances	Tax Rate
		AOP tax-rates (mentioned in the part 1 above) should be used.
3	The trust has converted itself into a non-charitable trust	The maximum marginal rate of 42.744% should be applied on Accreted Income. Accreted Income = aggregate fair market value of total assets LESS total liabilities. This tax will be in addition to the regular Income Tax paid by the trust.

II. Exit Tax – [Section 115TD]

Trust or an institution carrying on charitable activity may voluntarily wind up its activities and dissolve or may also merge with any other charitable or non-charitable institution, or it may convert into a non-charitable organization.

III. Circumstances under which Exit Tax is levied

1) Trust is converted into any form which is not eligible for grant of registration under section 12AB. Trust or an institution shall be deemed to have been converted into any form not eligible for registration under section 12AB if:-

i) The registration granted to it under section 12AA has been cancelled or

ii) Trust has adopted or undertaken modification of its objects which do not conform to the conditions of registration and it: has not applied for fresh registration under section 12AB in the said previous year. has filed application for fresh registration under section 12AA but the said application has been rejected.

2) Trust is merged with an entity which is not having similar objects and not registered u/s 12AB.

3) Trust failed to transfer upon dissolution all its assets to any other trust or institution registered under section 12AA or approved u/s 10(23C) within a period of twelve months from the end of the month in which the dissolution takes place.

The trust/institution is levied with an income tax on its Accreted Income at the rate of Maximum Marginal Rate (42.744%) known as the Accreted Tax

Accreted Income	
	Aggregate Value of the total assets as on the specified date
Less:	Total liability of such trust
The Assets and Liabilities shall be computed as per the prescribed method of valuation under Rule 17CB of the Income Tax Rules, 1962	

In case the principal offer or trustee of the trust/institution fails to pay the whole or any part of the accreted tax within the time specified u/s 115TD (5), he shall be liable to pay simple interest at the rate of 1% for every month or part thereof on the amount of such tax for the period beginning immediately after the last date on which such tax was payable and ending with the date on which the tax is actually paid. [Section 115TE]

10. New Provisions for cancellation of registration w.e.f 1st April, 2023

Provisional registration/ revalidation of Regular registration can be cancelled by the officer for certain "Specified violations" where application referred in first proviso of clause (23C) of Sec 10 or application referred to in clause (ac) of subsection (1) of section 12A of the Act is not complete or it contains false or incorrect information.

I. Grounds for cancellation of exemption certificates are:

- If the income is not applied for benefit of public [Section 13(1)(a)].
- If income is applied for the benefit of any particular religious' community or caste [Section 13(1)(b)].
- If applied for the benefit of persons specified u/s 13(3) [Section 13(1)(c)].
- If the funds are applied in modes other than those specified u/s 11(5)
- Violation of Any other laws.

II. Registration can be refused for violation of other laws:

- At the time of initial registration.
- At any point of time after registration if such violation is noted
- Violation of the laws is undisputed or attained finality.
- Reasonable opportunity of being heard is provided.

Where any assessment proceeding for any prior assessment year is pending before the Assessing Officer as on the date of the registration, the provisions of section 11 and 12 were applicable for such assessment year for which the assessment proceeding is pending provided the objects and activities of such trust or institution remain the same for such assessment year.

The Assessing Officer was not allowed to take any action under section 147 for any prior assessment year only for non-registration of such trust or institution. It was further provided that the aforesaid benefits shall not apply where registration was refused or registration granted was cancelled at any time under section 12AA or section 12AB.

These provisions were originally inserted by the Finance (No.2) Act, 2014 with the noble objective for removing hardship that would have caused due to non-application of registration for the period prior to the year of registration. The trust would have ended up in paying tax due to absence of registration even though it might have been eligible for exemption otherwise. However, these provisions have now been omitted on the ground that they have become redundant after the amendment of section 12A by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020.

11. Penalties under the Income Tax Act, 1961 – w.e.f 1st April, 2023

I. Penalty for passing on unreasonable benefits to trustee or specified persons

a) U/s 13 of the ITA trusts or institution under the second regime are required not to pass on any unreasonable benefit to the trustee or any other specified person. In order to discourage such misuse of the funds of the trust or institution by specified persons, penalty is levied u/s 271AAE of the ITA, which is equal to amount of income applied by such trust or institution for the benefit of specified person where the violation is noticed for the first time during any previous year and twice the amount of such income where the violation is notice again in any subsequent year.

The proposed section seeks to operate without prejudice to any other provision of chapter XXI. Thus, if any penalty is leviable under any of the other provisions of this chapter, in addition to the proposed penalty, that penalty would also be applicable.

b) If during any proceeding under the Act, it is found that a person, being any trust or institution under the first or the second regime, has violated the provisions of twenty-first proviso to clause (23C) of section 10 (proposed to be inserted by the Finance Bill and discussed in subsequent paragraphs) or clause (c) of sub-section (1) of section 13, as the case may be, the Assessing Officer may direct that such person shall pay by way of penalty,

i) a sum equal to the aggregate amount of income applied, directly or indirectly, by such person, for the benefit of any person referred to in sub-section (3) of section 13 where the violation is noticed for the first time during any previous year; and

ii) a sum equal to two hundred percent of the aggregate amount of income of such person applied, directly or indirectly, by such person, for the benefit of any person referred to in sub-section (3) of section 13, where violation is noticed again in any subsequent previous year.

Section 22B. Offences by societies or trusts.

(1) Where an offence under this Act has been committed by a society or trust, every person (including the promoter of society or settlor of the trust) who at the time the offence was committed was in charge of, and was responsible to, the society or trust for the conduct of the business of the society or the trust, as well as the society or trust, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised reasonable care to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section *(1)*, where any offence under this Act has been committed by a society or trust and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any promoter, director, manager, secretary, trustee or other officer of the society or trust, such promoter, director, manager, secretary, trustee or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. --For the purpose of this section, --

(a) "society" means anybody corporate registered under the Societies Registration Act, 1860 (21 of 1860) or any other State Act governing the registration of societies;

(b) "trust" means anybody registered under the Indian Trusts Act, 1882 (2 of 1882) or any other State Act governing the registration of trusts;

(c) "director", in relation to a society or trust, means a member of its governing board other than an *ex officio* member representing the interests of the Central or State Government or the appropriate statutory authority.]

12. Compliance under the Foreign Contribution Regulation Act (FCRA), 2010:

Charitable Trusts, Societies, section 8 Company that receive foreign contribution or donation from foreign sources are required to obtain registration under Section 6(1) of Foreign Contribution Regulation Act, 2010. This is overlooked by the Ministry of Home Affairs (MHA).

Foreign Contribution u/s 2(1)(h) of FCRA, 2010, means the donation, delivery or transfer made by any foreign source, —

(i) of any article, not being an article given to a person* as a gift for his personal use, if the market value, in India, of such article, on the date of such gift is not more than such sum as may be specified from time to time by the Central Government by rules made by it in this behalf;

(ii) of any currency, whether Indian or foreign;

(iii) of any security as defined in clause (h) of section 2 of the securities Contracts (Regulation) Act, 1956 and includes any foreign security as defined in clause (o) of Section 2 of the Foreign Exchange Management Act, 1999.

The major forms applicable to trust/institution for the purpose of registration/prior permission/annual filings and compliance are as under:

Form	Compliance	Nature	Due date of filing
FC-1 (Part-A)	For informing the Government about receiving large gifts from relatives (Who are Foreign Citizen). This applies to all individuals and HUFs. The cut-off is Rs. one lakh in one financial year. (Person has to file this intimation for each receipt after crossing Rs. 1 lakh during the financial year)	Intimation	Within 30 days of receipt
FC – 1 (Part B)	Providing information about Articles/Securities received during the year	Intimation	31st December following the end of the year
FC- 3 (Part A)	Persons who want to accept foreign contribution regularly should apply in form FC-3 for registration. (Generally NGOs having a proven track record of three years and have spent Rs. 10 lakhs or more for the object of the trust)	Permission	Generally, takes 4 to 6 months to get registered
FC- 3 (Part B)	Persons who cannot get FCRA registration should apply for prior-permission. (Prior permission is linked to specific project of NGOs and for a specified sum of Foreign Contribution. Though Foreign contribution may be received in instalments)	Permission	Generally, takes 3 to 6 months to get Prior permission
FC- 3 (Part C)	Renewal of FCRA registration since only valid for 5 years	Permission	Apply 5 to 6 months before expiry
FC-4 (Auditor's report included)	Form FC-6 is an annual report on how much foreign contribution has been received and used during the financial year. This includes contribution in money as well as in kind. – To be filed by FCRA registered person or having prior permission persons	Annual Return	On before 31st December, following end of the year
FC - 6	Any FCRA registered person who wants to change Association name or Designated bank account or Utilization Bank Account or more than 50% of Key members.	Intimation	Within 15 days of change

Do's and Don'ts for Foreign Contribution (FC)

- Foreign Contribution can only be first received by the donee trust in the designated current account held with State Bank of India, New Delhi Branch, after which it can transfer the same to local foreign contribution designated bank account.
- The bank account used for domestic donation and foreign contribution cannot be the same.
- Books of accounts and cash book should be separately maintained for FC
- The purpose for which such FC was received should be mentioned in the Annual filings with the Ministry of Home Affairs.

- The trust shall not utilize more than 20% of foreign contribution, received in a particular financial year towards administrative expenses. In case, an organization wants to spend more than 20% of the contribution towards administrative expenses, it may do so with prior permission of the Central Government.
- No association/NGO/Society having a definite cultural, economic, educational, religious or social programme shall accept foreign contribution unless obtains prior permission or a certificate of registration under FCRA from the Central Government
- Trust must file NIL returns in case it is registered/has received prior permission even if no FC was received during the year.

13. A Summary of applicable provisions and due dates chronologically for a newly incorporated trust as at 1st April, 2022 and onwards

Sr.	Form	Compliance	Law	Due date	Penalty/Consequences
1.	10AB	Application for registration/Approval	Income Tax	-	Trust cannot claim exemption u/s 11 or 12 and shall be treated as an AoP. Donor's shall be able to claim deduction from their total income for the donations given to this trust
2.	9A	Application of deferment of income u/s 11(1) explanation clause 2	Income Tax	2 months prior to the due date of ITR	No exemption available for the amount of income
3.	10	Application of deferment of income u/s 11(2)	Income Tax	2 months prior to the due date of ITR	No exemption available for the amount of income
4.	10B/BB	Audit report	Income Tax	1 month prior to the due date of ITR	Disentitlement of the trust or institution from claiming exemption under sections 11 and 12.
5.	10BD/BE	Statement of Donations/ Certification of Donations	Income Tax	31st May of next FY	Rs. 200 per day and penalty of Rs. 10,000 to Rs. 1,00,000 imposed by the Tax Officer
6.	Schedule III	Change report (C/R)	Maharashtra Public Trust Act, 1950	Within 90 days from occurrence of change	Delay in filing C/R may extend/condone by authority on the ground of sufficient cause subject to payment of cost
7.	Schedule VIII and IX	Balance Sheet Income & Expenditure	Maharashtra Public Trust Act, 1950	Within 6 months from the end of FY	Delay in filing C/R may extend/condone by authority on the ground of sufficient cause subject to payment of cost
8.	Schedule VII A	Annual Budget	Maharashtra Public Trust Act, 1950	At least One Month before commencement of each Accounting Year.	Auditor will have to comment in his Audit report whether the trust has filed the budget

Annexure A: Books of Accounts & Documents

The trust/institution shall ensure the following compliances after getting obtaining the registration:

- Maintenance of proper books of accounts as required by the law.
- Filing of Income Tax Return and getting the books of accounts audited by the Chartered Accountant as required by the Income Tax Act, 1961.
- Undertake activities as per the objects subject to which the registration was granted.
- Furnish the requisite details as required by Rule 18AB for each financial year.
- Issue of certificates in Form 10BE to the donors.

I. Books of accounts under the ITA, 1961

Rule 17AA of the Income Tax Rules, 1962: Books/documents to be kept by Charitable Trusts/other Institution

Background:

The requirement to maintain the books of account is prescribed under section 44AA of the Income Tax Act, 1961. However, there was no specific provision under the Act providing for the books of accounts to be maintained by trusts or institutions.

The **Finance Act, 2022** amended section 12A(1)(b) and section 10(23C) of the Act to provide that where the total income of the trust or institution, without giving effect to an exemption under section 11 and 10(23C) respectively, exceed the maximum amount not chargeable to tax, such trust or institution **shall keep and maintain books of account and other documents in such form and manner and at such place, as may be prescribed**.

The Central Board of Direct Taxes (CBDT) has notified a rule 17AA on 10th August, 2022 prescribing books and other documents to be kept and maintained by trusts/NGOs/ universities/ hospitals/ educational/ medical institutions (collectively known as "the trust") registered under sections 12A/10(23C) in written/electronic/digital form for a period of 10 years from the end of the relevant assessment year.

The question arises as to whether this amendment is w.e.f 1st April, 2022 or after 10th August, 2022. Since the notification is silent about the change and its effect and timing, it can be considered that the amendment is prospective and is applicable from 10th August, 2022.

The key extracts of the newly notified rule 17AA are enumerated as under:

i. What are the books/documents required to be maintained?

(i) cash book;

(ii) ledger;

(iii) journal;

(iv) copies of bills or counterfoils of receipts issued by the assessee;

(v) original bills and receipts in respect of payments;

(vi) any other book that may be required to be maintained in order to give a true and fair view of the state of the affairs which explain the transactions effected

ii. The following other documents are required to be maintained by an institution/trust registered under section 12A or section 10(23C):

(i) record of all the projects and institutions run by the person containing details of their name, address and objectives;

(ii) record of income of the person during the previous year, including details of voluntary contribution, income from property held under trust and any other income.

(iii) records related to application of income

(iv) records related to application out of accumulated income

(v) record of voluntary contribution made with a specific direction that they shall form part of the corpus

(vi) records related to contribution received for the purpose of renovation or repair of religious institutions notified u/s 80G(2)(b)

(vii) record of loans and borrowings (viii) record of properties held by the assessee

(ix) records of specified or related persons specified under section 13(3)

iii.The trust must also keep the documents for the following nature of transactions:

Records related to projects	
Nature of Transaction	**Documents to be maintained**
Records of Projects	Project name, address where the project will be conducted and it's objectives
Records related to Income	
Nature of Transaction	**Documents to be maintained**
Voluntary Contribution received during the year	Name, address, PAN and Aadhaar No. of the donor from whom voluntary contributions were received during the previous year
Income from property held under trust	List of properties held under trust and income there of
Other Income of Trust	Records of any other income of the Trust or NGO
Records related to the Application of current-year income	
Nature of Transaction	**Documents to be maintained**
Application of income in India or outside India	Records of application of income in India or outside India to contain the amount of application, name, and address of the person to whom payment is made, and the object for which the payment is made
Nature of Transaction	**Documents to be maintained**
Payment to any other trust	Records of the payment to any trust approved/registered under sections 10(23C) or 12AB to contain their name, address, PAN, and the object for which such payment is made
Deemed application of income	Records of the deemed application of income under section 11 to contain details of reasons for availing such deemed application.

	Deemed application: *Where whole or any part of the income has not been received during the year, the trust has an option to apply such income for such purposes during the previous year in which it is received or during the previous year immediately following the said previous year.*
Details of purposes	Records of accumulated income containing details of purposes for which such income has been accumulated

Records related to application out of accumulated income

Nature of Transaction	Documents to be maintained
Application out of accumulated income	Records of ➢ year of accumulation, ➢ application amount during the previous year out of such accumulation, ➢ name and address of the person to whom payment is made ➢ the object for which such payment is made.
Application out of the deemed application of income	Records of ➢ year of deemed application, ➢ application amount during the previous year out of such deemed application, ➢ name and address of the person to whom payment is made ➢ the object for which such payment is made
Application out of income accumulated during any preceding year	Records of ➢ the year of accumulation, application amount during the previous year out of such accumulation, ➢ name and address of the person to whom payment is made ➢ the object for which such payment is made

Records related to Corpus donation

Nature of Transaction	Documents to be maintained
Contribution received from persons	Name, address, PAN and Aadhaar No. of the donor
Application out of corpus donation received	Record of application out of corpus donation received <u>during the previous year</u> or <u>preceding previous year(s)</u> containing details of the amount of application, name and address of the person to whom any payment is made and the object for which such application is made
Amount paid as corpus fund to any fund or institution	Records of amount paid as corpus fund to any trust approved/registered u/s 10(23C) u/s 12AB out of corpus donation <u>during the previous year</u> or <u>preceding previous year(s)</u> containing their name and address and the object for which such payment is made. *The above documents are also required to be maintained for voluntary contribution received by the religious institution/trust for the purpose of renovation or repair of a temple, mosque, gurdwara, church, or other place notified under section 80G(2)(b), which is being treated as corpus.*

Record of Investment or Deposits	
Nature of Transaction	**Documents to be maintained**
invested or deposited as per section 11(5)	Whether: out of income received during the year, out of income accumulated of any PY preceding the current year out of contribution that shall form part of the corpus, invested back into such corpus contribution (which was applied during any preceding PY and not claimed as application)
Nature of Transaction	**Documents to be maintained**
invested or deposited not in accordance with section 11(5)	Whether: out of income received during the year, out of income accumulated of any PY preceding the current year, out of contribution that shall form part of the corpus Invested back into such corpus contribution (which was applied during any preceding PY and not claimed as application)
Records related to loans and borrowings	
Nature of Transaction	**Documents to be maintained**
Loans and Borrowing received during the year	Information regarding amount of loan accepted and repaid with date, name, address and PAN of the lender.
Application out of loan or borrowings received during the previous year or preceding previous year(s)	Details of application amount, name and address of person to whom payment is made and the objects for such payment
Repayment of loan or borrowings during the previous year, which was applied during any preceding previous year but not claimed as application.	Amount and date of repayment
Records related to properties	
Nature of Transaction	**Documents to be maintained**
Immovable properties	Nature and address of immovable properties, cost of acquisition of the asset, registration documents
Transfer of immovable properties	Details of the transfer of such properties and the net consideration utilized in acquiring a new capital asset
Movable properties	Details of nature and cost of acquisition of movable properties
Records of specified or related persons under section 13(3)	
Nature of Transaction	**Documents to be maintained**
Specified or related persons u/s 13(3)	Records of specified or related persons u/s 13(3) containing name, address PAN and Aadhaar No.
Transaction with Specified or related person	Records of transactions including date and amount of such transactions with such related parties

iv. Form and manner for maintenance of books and documents:

The books of account and other documents may be kept in the following form

- Written form;
- Electronic form;
- Digital form;
- Print-outs of data stored in electronic or digital form; or
- Any other form of electromagnetic data storage device

v. Location of Books and Documents:

The books of account and other documents shall be kept and maintained by the entities at their registered office. However, books may be kept in another place if management decided to do so by passing a resolution intimate the jurisdictional Assessing Officer in writing giving the full address of that other place. Written intimation to the AO shall be signed by a person authorized to sign and verify income tax return u/s

vi. Retention of Books and Documents:

The books of account and other documents shall be kept and maintained for a period of 10 years from the end of the relevant assessment year.

In case of assessment u/s 147, the books of account, etc. shall be kept and maintained till such assessment u/s 147 has become final provided the notice for assessment has been issued within the period specified in section 149.

vii. Consequences of non- compliance:

- Denial of tax exemption u/s 11 & 12
- Assessing officer can make 'Best Judgment' tax assessment u/s 144 of the Act for failure to produce required /prescribed books of account during assessment proceedings
- Cancellation of registration granted u/s 12AB for failure to maintain prescribed books of accounts separately in respect of the business carried on by the public charity where such business is incidental to the attainment of its objectives [clause (b) of Explanation to section 12AB(4)]
- Penalty of amount equivalent to amount representing omission of entry in the books of account, etc. maintained by the assessee u/s section 271AAD.
- Imprisonment u/s 276D for up to 1 year and fine for failure to produce / caused to be produced books of accounts and documents in response to notice u/s 142(1).

II. Books of accounts/Documents under the Maharashtra Public Trusts Act, 1950

The Maharashtra Public Trust Act, 1950 requires that all the trustees are collectively responsible to maintain books of accounts of the trust where in all receipts and payments are recorded. The financial year should start from 1st of April and end on the subsequent 31st March.

i. Reporting of changes

- It is mandatory to inform the Deputy or Assistant Charity Commissioner of any change which has occurred in the trust in respect of the trustees, moveable or immovable properties. In case of changes in Immovable Property, these should be informed in the format as prescribed in Schedule III-A, while for other changes these should be informed in the format as prescribed in Schedule III.

- The information should be communicated within a period of 90 days from the change as provided under section 22 of the "The Maharashtra Public Trusts Act". The change so informed is necessary to be recorded on satisfaction of its legality and validity to the authority. It is the duty of trustee to inform the change and also substantiate the same with record about its legality and validity.

[Section 22 Read with Rule 13 of The Maharashtra Public Trusts Act,1950]

ii. Accounts & Audit:

- Every trustee of a public trust shall keep regular accounts of all receipts, moveable and immovable property. Proper accounts should be maintained of all encumbrances created on the trust property and of all payments and alienations made on behalf of the public trust.

- Contents of Audit Report: While "Audit Report" is the prerogative of Auditor, yet it is essential that the operational trustees take cognizance of the contents of 14 points as enlisted in Rule 19. Below points reflect the key aspects of "Audit Report:

1. Regularity in maintenance of Books of Accounts,
2. Reproduction of books, documents and relevant information to auditors,
3. Cash balance reconciliations,
4. Maintenance of register for moveable and immovable properties and timely communication of changes therein to Deputy or Assistant Commissioner
5. Application of funds or properties of trust for purpose other than the object of the trust,
6. Reasoning and justifications for any outstanding amounts for period of more than one year,
7. Ensure tenders being invited for repairs or construction made above Rs 5,000.
8. Ensuring compliance with the provisions of section 35 of The Maharashtra Public Trusts Act while making any investments pertaining to the trust.
9. Ensuring compliance with the provisions of section 36 of The Maharashtra Public Trusts Act while alienation of any immovable property of the public trust.
10. Filing of budgets in prescribed format of Schedule VII A. (Section 31A read with rule 16A), (Budget needs to filed at least one month before the commencement of each accounting year).
11. Ensuring adherence to aspects of propriety, prudence and legality. Time period for retaining of books of accounts: There is no such time limit prescribed in The Maharashtra Public Trusts Act. In that case one can take view that the accounts are to be maintained since inception of the trust.

[Section 32 Read with Rule 17 Of The Maharashtra Public Trusts Act, 1950]

Schedule to be maintained	Particulars
VIII	Balance Sheet
IX	Income and Expenditure Account
IX-C	Items claimed as deductions from the income chargeable to contribution
IX-A	Statement of Income for the year ending...
IX-B	Statement of expenditure for the year ending...

iii. Time period for retaining of books of accounts:

There is no such time limit prescribed in The Maharashtra Public Trusts Act, 1950. In that case one can take view that the accounts are to be maintained since inception of the trust.

iv. Register of movable and immovable properties

(i) A public trust shall prepare and maintain a register of all moveable and immovable properties (not being property of a trifling value) of such trust in such form or forms giving all such information, as may be prescribed by the Charity Commissioner,
(ii) Format of register should be as prescribed by X-AA,
(iii) Such register shall show the jewels, gold, silver, precious stones, vessels and utensils and all other moveable property belonging to the trust with their description, weight and estimated value,
(iv) Details of all movable assets with their description, weight and estimated value to be maintained.
(v) Such register shall be prepared within three months from the expiry of the accounting year,
(vi) Such register shall be signed by all the trustees or by any person duly authorised by trustees in this behalf after verifying its correctness.

[Section 36B read with Rule 24A of The Maharashtra Public Trusts Act, 1950]

v. Borrowing of money for or on behalf of trust

No trustee shall borrow moneys (whether by way of mortgage or otherwise) for the purpose of or on behalf of the trust of which he is a trustee, except with the previous sanction of the Charity Commissioner, and subject to such conditions and limitations as may be imposed by him in the interest or protection of the trust.

[Section 36A (3) of The Maharashtra Public Trusts Act, 1950]