



RE-REGISTRATION UNDER INCOME TAX &

DIRECT TAX COMPLIANCES FOR CHARITABLE TRUST

WEBINAR ORGANIZED BY CENTRAL
CHINMAYA MISSION TRUST ON 26TH
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WEBINAR PRESENTED BY JAYESH
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RE-REGISTRATION UNDER INCOME TAX ACT, 1961



Existing & New Provision

Existing Provision

Section 12 A

The Principal Commissioner

Earlier, charitable trusts and institutions were registered under section 12A or 12AA of Income Tax Act, 1961 in order to claim exemption under section 11.

Application was to be made to The Principal Commissioner or Commissioner (Exemption),
(i) shall pass an order in writing registering the trust or institution;
(ii) shall, if he is not so satisfied, pass an order in writing refusing to register the trust or institution.

Manual Registration Process

The Certificate issued was perpetual or for the life-time of the trust unless revoked.

New Provision

Electronic Registration

In order to digitize and simplify the compliance for new and existing charitable trusts and institutions, a new process of electronic registration under which a Unique Registration Number (URN) shall be issued to all new and existing charitable trusts and institutions is introduced in the Finance Act, 2020.

Section 12 AB

Compulsorily required to switch to section 12AB for fresh registration i.e re-apply for Income Tax Registration.
This led to the insertion of section 12AB which will replace existing sections 12A/ 12AA.

Renewal Insertion

This registration is not perpetual and comes with an expiry date, on which renewal has to be done once again.



RE-REGISTRATION UNDER SECTION 12AB

Existing Trust (Making First Time Application under 12AB)

- **Application to be made by :**
Within period of 3 months beginning from 01st April, 2021
- **Order to be passed** within a period of three months
- **Validity:** For a Period of 5 years

New Trust Incorporated

- **Application to be made by :**
On or Before 28th February preceding 01st April from which we intend to get the Exemption
- **Order to be passed :** within a period of 1 month.
- **Validity:** For a Period of 3 years

Re-Registration/Switch from 10(23C) to 12AB or Modification of Objects

- **Application to be made by :**
Within Six months before the Expiry of the period
- **Order to be passed :** within a period of Six months
- **Validity:** For a Period of 5 years



OTHER PROVISIONS

- ❑ The provisions as mentioned above shall also apply to Trust/Educational Institutions/University/Hospitals as registered under Section 10 (23C).
- ❑ Similarly, The Certificate under 80G also has to be availed following the procedure similar to that of 12AB.

{Only The Head Office (Responsible for Compliances) is liable for re-registration under 12AB, and **all branches** within the Trust does not have to apply for it separately. Since, application by HO, is for the entire Trust including all Branches. This is similar to the way, only HO files Income Tax return for entire Trust and all branches do not file separate Income Tax returns}



COMPLIANCES UNDER INCOME TAX ACT, 1961



MEANING OF CHARITABLE

□WHAT IS THE DEFINITION OF 'CHARITABLE' UNDER INCOME TAX :

- Relief of the Poor
- Education
- Yoga
- Medical Relief
- Preservation of Environment and preservation of monuments or places or objects of Artistic or historic Interest
- The advancement of any other object of general public utility



Manner of Computation

Gross receipts (excluding corpus donations)

b. Less: deductions

c. Income derived from property held under trust [s. 11 (1)(a)]. [a – b]

d. **Less:** i) application of income in India [s. 11(1)(a)]

ii) “deemed” application of income [s. 11(1)(a) r.w. Expl. (2) to s. 11(1)]

iii) “basic” accumulation up to 15% of income [s. 11(1)(a)]

iv) “secondary” accumulation for 5 years up to 85% [s. 11(2)]

v) application of capital gains [s. 11(1A)]

vi) anonymous donations (taxed separately under s. 115BBC @ 30%) [s. 13(7)]

e. **Add:** i) income chargeable under section 11(1B)

II) “deemed income” [s. 11(3)].

iii) business income not incidental to attainment of objects [s. 11(4A)]

iv) value of medical or educational services to interested parties [s. 12(2)]

v) income which is not derived from property held under trust.



Section 11 of Income Tax Act, 1961

- In order to claim exemption, it is essential that the income of the trust (**excluding the corpus donations**) is applied to the objects of the trust.
- A charitable trust or institution will have to **apply at least 85% of the income** to charitable purposes. Capital expenditure can be considered as application of income but, if capital expenditure is expensed out than we cannot claim any depreciation for the same. So, its either of the two, either we can claim depreciation or capital expenditure can be expensed out.
- In case the application of the income falls short of 85%, **the accumulated profits in excess of 15%** can be utilized in subsequent year(s) **not exceeding 5 years** provided, **surplus profits are invested in the modes specified u/s 11(5), Form 10 is uploaded** within the time allowed for furnishing return u/s 139(1) and **return is filed within the time allowed**.
- A trust registered u/s 12A/12AA/12AB can give donations to another trusts registered u/s 12A/12AA/12AB/10(23C) but, if the donation is given as a **corpus donation** than the same **will not be considered as application of funds** for the donor trust.

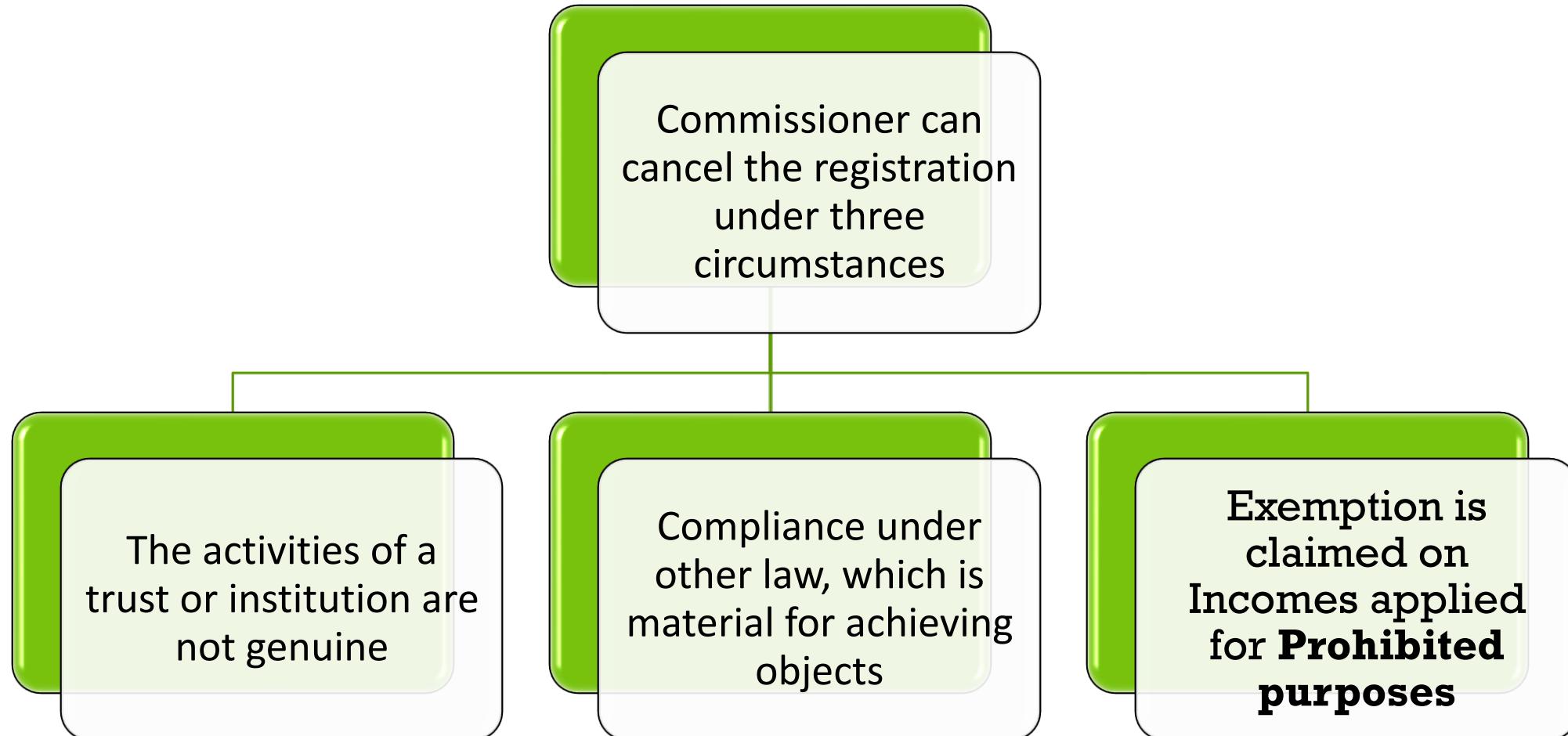


Section 11(1A) Exemption in relation to Capital Gains

- ❑ If the **whole of the net consideration** arising out of a sale of a capital asset are **invested in acquisition of a new capital asset** than **entire capital gains will be exempt**; and
- ❑ If only a **part of the net consideration is utilized**, the amount of **capital gains exempt** shall be equal to –
Cost of acquisition of new capital asset (-) Cost of capital asset transferred.
- ❑ Cost of capital asset transferred means the aggregate cost of acquisition of the asset and cost of improvement if any. In case of long-term capital asset the indexed cost of acquisition and indexed cost of improvement shall be considered.
- ❑ According to the CBDT's instruction No: 883 dated 24/09/1975, Taxman's Direct Tax Circular 1994 Ed. Vol. I, page 1.326 and according to the ruling in the case of CIT v/s East India Charitable Trust, **investment of net consideration in fixed deposit for a period of 6 months or more** can be **regarded as utilization of the net consideration for accusation of another capital asset** within the meaning of Section 11(1A).
- ❑ It is pertinent to mention here that the **charitable trusts have an option to either claim specific exemption u/s 11(1A) in relation to the capital gains or to claim general exemption u/s 11(1)(a)** by applying at-least 85% of the total income including the sale proceeds of sold capital assets towards their charitable objectives.



Circumstance in which Registration can be cancelled – 12AB





Circumstance in which Registration can be cancelled

What are Prohibited Purposes :-

- Where a trust or an institution has been granted registration, and subsequently it is noticed that its activities are being carried out in such a manner that,—
 - **its income not applied for the benefit of general public;**
 - **it is for benefit of any particular religious community or caste;**
 - **any income or property of the trust is applied for benefit of specified persons;**
 - **its funds are invested in prohibited modes.**

then the Principal Commissioner/ Commissioner may cancel the registration if there was no reasonable cause proved by the trust. The Principal Commissioner or Commissioner may, by an order in writing, cancel the registration of such trust or institution after affording a reasonable opportunity of being heard.

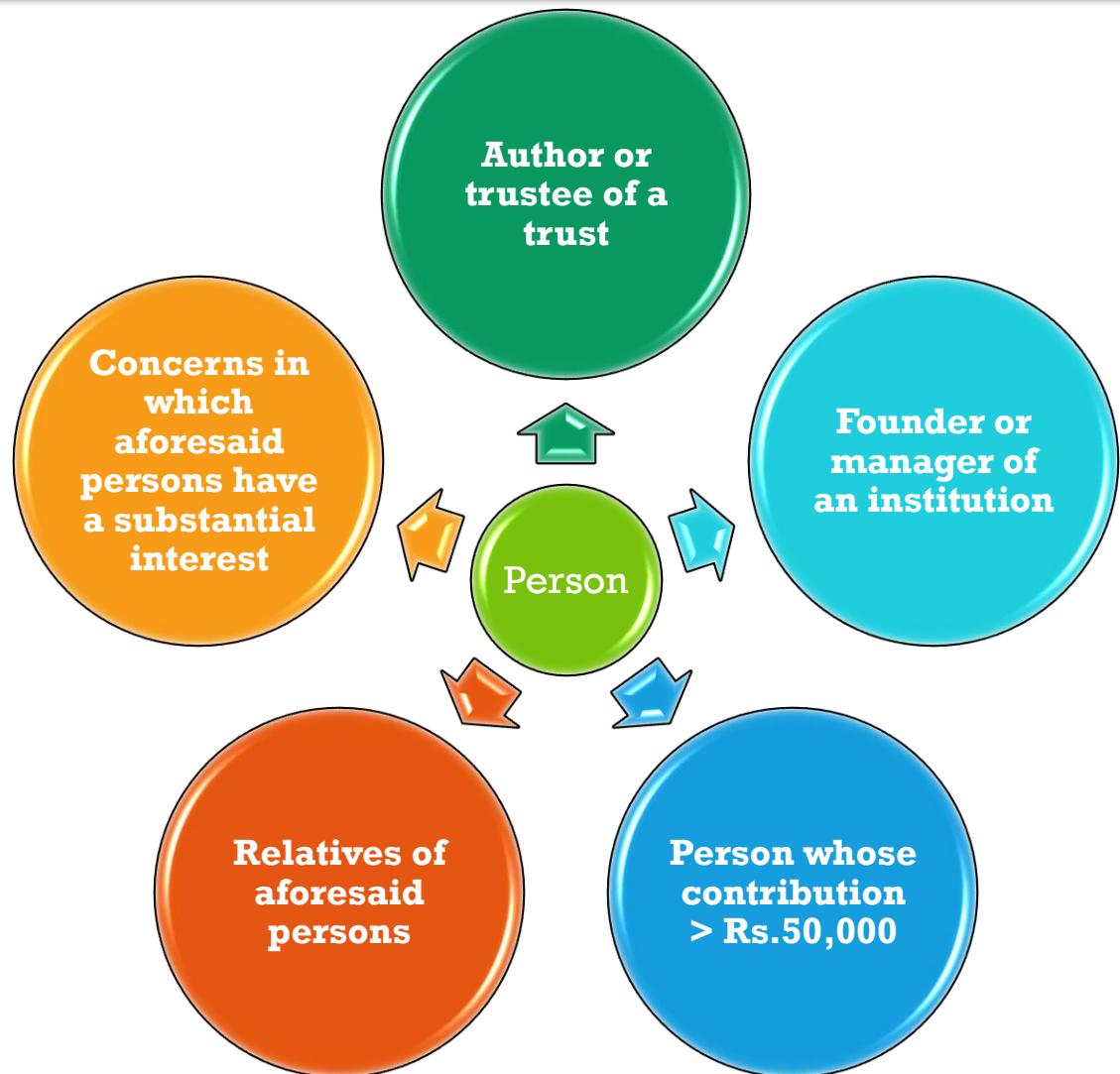
TRANSACTIONS



Specified Persons and Transactions

Loan to interested parties [s. 13(2)(a)]	Use of movable or immovable trust property [s. 13(2)(b)]
Payment of excessive salary or remuneration [s. 13(2)(c)]	Inadequate consideration for service provided [s. 13(2)(d)]
Purchase of investments at excessive price [s. 13(2)(e)]	Sale of investments for inadequate consideration [s. 13(2)(f)]
Diversion of trust income or property in excess of Rs. 1,000 [s. 13(2)(g)]	Investment in concern in which interested party has substantial interest [s. 13(2)(h)]

PERSON





Taxability of Anonymous Donation

Meaning of Anonymous Donation:

- ❑ Where Trust receiving such contribution does not maintain a record of the identity indicating the name and address of the person making such contribution , then it is treated as Anonymous Donation

- ❑ Tax Treatment in case of Anonymous Donation:
 - 30% Tax shall apply on Amount which exceeds higher of :
 - 5% of Total Donations received by Trust or
 - Rs. 1,00,000.

- ❑ Examples : Daan Peti Collection, Donation received but no receipts issued etc.

Note: Exemption does not apply on these donations even if they are applied.



New Compliance – For Donation Received

Filing of statement of donation by Trust to cross-check claim of donation by donor –

- ❑ In Budget 2020 it was proposed that the Trust accepting donations will have to submit a statement stating the name of the donors, amount of the donation, mode in which the same has been transferred, etc.
- ❑ Statement to be submitted, will be on similar lines to the statement of TDS/TCS.
- ❑ Donor's will get the deduction only if the Trust receiving donation has filed return giving appropriate details of Donor and the same is reflected in Form 26AS.
- ❑ Further entity receiving donation might have to issue a certificate to the donor based on which the donor will be able to claim exemption.
- ❑ This provision shall also come into force from 01st April, 2021.



Commercial Activity

- ❑ Commercial Activity, as the term suggests are activities carried out with the motive of earning profit.
- ❑ This goes against the basic principle of Charitable trusts. Hence, commercial activity should be avoided to the extent possible.
- ❑ Activities should be incidental to the attainment of main object and is incidental and inextricably linked to achieving of main objects can be carried out by Charitable Trusts.
- ❑ This involves, in each case an examination of not only the objects of the trust but also the manner in which the activities for advancing the charitable purpose are being carried on and the surrounding circumstances.
- ❑ Only, Trusts having Object as General public utility are allowed to carry out activities of Trade or commerce that too only, if it helps in achieving the object and aggregate receipts does not exceed 20 percent of total receipts.



Consequences if 12A/12AB registration is cancelled

Registration u/s 12A/12AA/12AB revoked

Total tax liability for the year in which registration was revoked

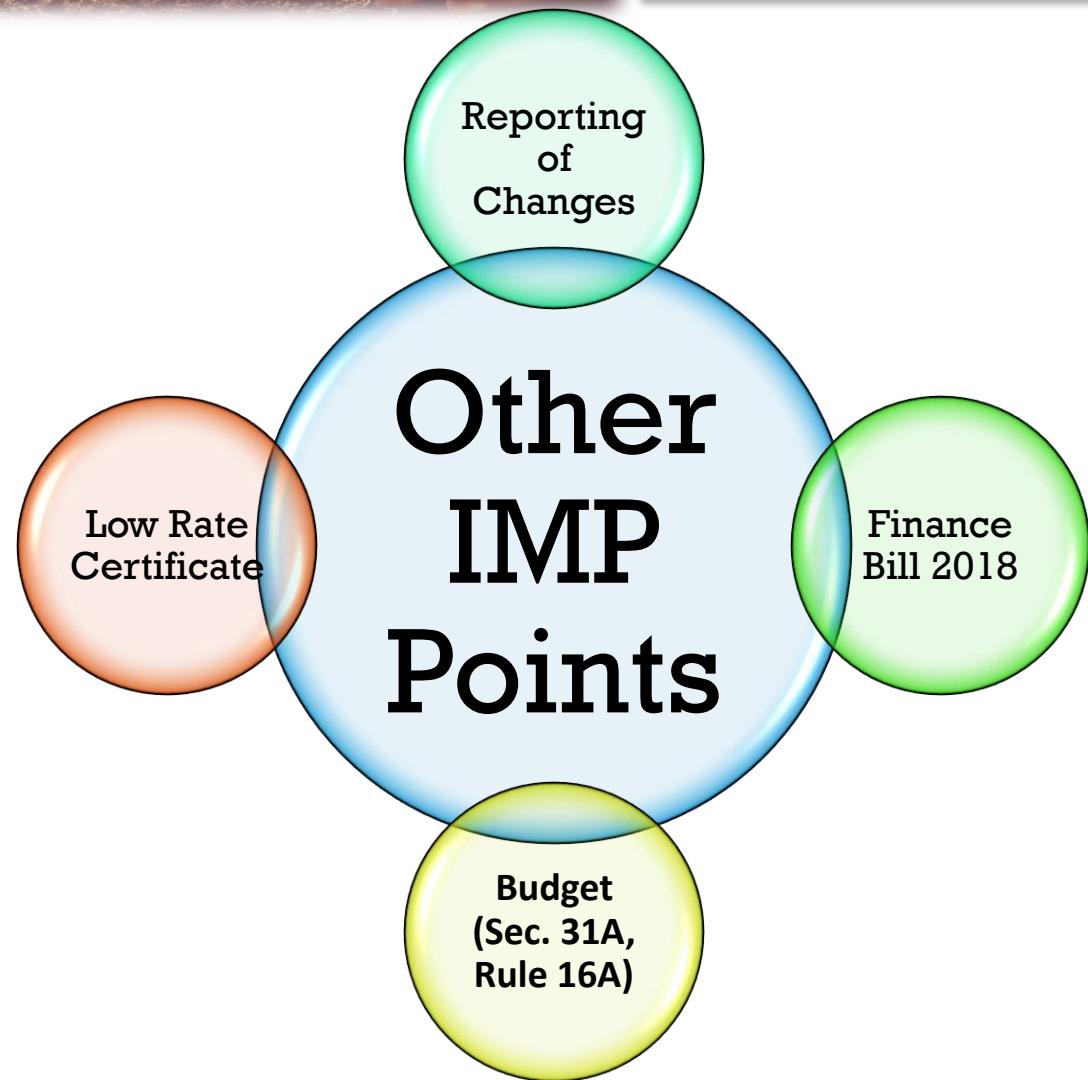
Tax on income of the trust according to the provisions under Income Tax Act 1961

Tax on corpus and asset base of the trust.

- When the trust was registered under the provisions of section 12A/12AA/12AB it was allowed to claim the exemption on the income earned by it. The intention of the legislature behind introducing this section is to levy an exit tax on the trusts. Accordingly when the registration is revoked, tax @ **42.77%** is levied on the accreted income of the trust.
- What is accreted income –** Accreted income is nothing but **Fair Market value of the assets of the trust (-) Liabilities of the trust.**



Important Time-Lines



- Budget (Sec. 31A, Rule 16A)** - If annual income exceeds ₹ 5,000/- for public religious trusts and ₹ 10,000/- for other trusts, then it is mandatory to file budget on the Maharashtra Public trust Act Portal.
- Low Rate Certificate** – Majority of our trusts and branches have interest income, usually 10% TDS is deductible on this interest income but, since we are charitable trust and educational institution, we are covered under the exemption mentioned u/s 11 and 10(23C) hence, we don't have income tax liability on fulfilling certain conditions. Hence, application is made at the beginning of the year to avoid TDS deduction.
- Finance Bill 2018** - According to the amendments in Finance Bill 2018, **PAN is mandatory for any entity entering into a financial transaction of Rs 2.5 lakh or more. It is essential to ensure that all Trustees have their PAN.**
- Reporting of Changes** - It is mandatory to inform the Deputy or Assistant Charity Commissioner. 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



Other Important Points – Cash Transactions

Provisions with respect to Payment in Cash:

- No payment exceeding ₹ 10,000 should be made to a single person in 1 day. It can be on account of many purposes, but the same is prohibited under law. (**The amount of payment made is not treated as application and is disallowed**)

Provisions with respect to Receipt in Cash:

- Limit of cash donation has been reduced to ₹ 2,000 hence, If we receive donation in cash in excess of ₹ 2,000 than 80G receipt should not be issued to the donor. (**No Deduction is allowed to donor and receipt is not a valid receipt**)
- Neither loan\advance should be received or repaid in cash in excess of ₹ 20,000 (**We shall be liable for penalty of similar amount.**)
- An Amount of ₹ 2,00,000 or more should not be received in cash from a single person or with respect to single transaction or with respect to one event. (**So, if Donation is received in cash of ₹ 2,00,000 or more from single person the same is prohibited and we shall be liable for penalty of similar amount. Hence, it should be strictly avoided**)

Hence, in order to avoid, it is recommended to use modes other than Cash, including payment by Account payee Cheque, Bank Draft, RTGS, NEFT etc.



Consequences of Non-Compliance of TDS Provisions

- The existing TDS provisions, under chapter XVII-B, are applicable to Charitable Trusts. But the provisions of section 40(a)(ia) were not applicable to the Charitable Trusts since section 40(a)(ia) was applicable under chapter – IV for computation of business income and the income tax provisions are applicable to charitable trusts are under chapter III of the Act therefore the section 40(a) (ia) was not applicable to Charitable Trusts. Therefore there was no disallowance in case of the defaults under Chapter XVII-B for TDS provisions.
- Based on the provisions prevailing at that point in time, Bombay High Court in the case of *Bombay Stock Exchange Ltd vs. Dy. DIT (Exp)* (2014) 52 taxman.com 29 / (2015) 228 Taxman 195 has decided that provisions of section 40(a)(ia) are not applicable to Charitable trusts.)
- Disallowance is there where proper TDS is not deducted (This disallowance was initially not there for Trust but has been brought now to make trusts more compliant) - Introduced by Finance Act, 2018 - Applicable from AY 19-20. - Explanation 3 to Section 11.
- Now, since the provision has been made applicable if it is not followed than disallowance of 30% of expense would be attracted. This disallowance can hamper our calculations of applying 85% of total income.

Expense on which TDS Provision not Complied



Application of 40(a)(i)/40(a)(ia)



30% of the Expense gets Disallowed from Application. Apart from Interest and Penalty.



Tax Deducted at Source

Sr. No.	Particulars	Section	Limit	Rate
1.	Interest Payments	194A	Payment > ₹ 5,000	10%
2.	Contractual Payments	194C	Single payment > ₹ 30,000 or, aggregate payment > ₹ 1,00,000	Service Provider – Individual, HUF = 1% Company = 2%
3.	Professional/ Technical services	194J	Payment > ₹ 30,000	Professional Services – 10% Technical Services -2%
4.	Commission or Brokerage	194H.	Payment > ₹ 15,000	5%
5.	Rent for use of machinery, plant or equipment	194I(a)	Payment > ₹ 2,40,000	2%



Tax Deducted at Source

Sr. No.	Particulars	Section	Limit	Rate
6.	Rent for use of land, building or property.	194I(b)	Payment > ₹ 2,40,000	10%
7.	Transfer of Immovable property by a resident person	194-IA	Payment > ₹ 50,00,000	1% or rate specified in the certificate u/s 197 or 206C(9).
8.	Salary	192	-	Average of Income Tax computed based on rates in force
9.	Payments (Except salary) made to Non – Resident.	195	No threshold limit	Rates in force or rate specified in the certificate u/s 197 or 206C(9).



Certain Important Issues - TDS

- ❑ Whenever a payment is made, we should determine whether the payment is for purchase or services. IN case of Purchases, the provisions of TDS does not apply, However, if it is services then we should find out, whether TDS is deductible and under which section, unless the same is specifically exempted under any provision.
- ❑ In case of Composite contracts, where we deduct TDS under section 194 C, if there is material and services both are supplied and both contracts can stand independently, then in such cases, we should insist for Separate Invoice for Material and separate for Services and accordingly deduct TDS only on service component. (However, where the service component and purchases are inextricably linked to each other, there should be no artificial splitting and TDS should be deducted on entire amount) .
- ❑ We should insist on getting the Invoices from the Suppliers, of current dates there should not be time lag, between service provided, date of Invoice and date of booking the same. This can affect our liability to deduct and pay TDS and Interest liability.



Due Dates in relation to TDS

Sr. No.	Particulars	Challans	Due date
1.	Deposit of TDS for previous month	281	7 th of next month For the month of March – 30 th April
2.	Challan - cum - statement u/s 194-IA and 194-IB for previous month	Form 26QB and form 26QC	Within 30 days from the end of the month in which deduction is made
3.	Issue of TDS Certificate u/s 194IA and IB	Form 16B and Form 16C	Within 15 days from the due date of furnishing challan cum statement in form 26QB or Form 26QC
4.	Quarterly TDS certificates	Form 26Q, 24Q (Quarterly statement of TDS deposited)	Q1 – 31 st July Q2 – 31 st October Q3 – 31 st January Q4 – 31 st May
		Form 16A (Tax deducted on payments other than salary)	Within 15 days from the due date for furnishing the statement/return of tax deducted at source
5.	Yearly TDS certificates	Form 16	15 th June of the year succeeding the previous year.



Interest and Penalty for non - compliance of TDS provisions

Sr. No	Violation	Section	Interest/Penalty
1.	Failure to deduct TDS	201A(i)	Simple Interest @ 1% for every month or part of a month on the amount of such tax from the date on which TDS was deductible to the date on which TDS is deducted.
2.	Failure to deposit TDS	201A(ii)	Simple Interest @ 1.5% for every month or part of a month on the amount of TDS from the date on which TDS was deducted to the date on which TDS is deposited
3.	Fee for default in furnishing statements	234E 271H	<p>₹200/day from the last day on which TDS statement should have been submitted to the day when TDS statement is submitted. Penalty amount will not exceed the amount of tax that was deductible.</p> <p>Minimum ₹ 10,000 which may extend to ₹ 1,00,000. Penalty under this section will not be levied if:</p> <ol style="list-style-type: none">1. The tax deducted/collected at source is paid to the credit of the government.2. Late filing fees and interest (if any) is paid to the credit of the government.3. The TDS/TCS return is filed before the expiry of a period of one year from the due date specified in this behalf.



Due dates in relation to PF/ESIC/PT and MLWF

Sr. No	Particulars	Form Challan	Due Date
1.	Deposit of PF contribution for previous month	EPFO portal	15 th of the succeeding month.
2.	Monthly return for PF	EPFO portal	25 th of the succeeding month.
3.	Annual Return for PF	EPFO portal	25 th April.
4.	Return for PT (Liability > ₹ 50,000)	State – Wise PT portal	On or before the last day of the month.
5.	Yearly return for PT (Liability < ₹ 50,000)	State – Wise PT portal	On or before 31 st March
6.	Deposit of ESIC contribution for previous month	ESIC portal	15 th of the succeeding month.
7.	Half Yearly return for ESIC	ESIC Portal	H1 = 11 th November H2 = 11 th May
8.	MLWF Payments	MLWB website	Jan-June = 15 th July July-Dec = 15 th Jan.



Other Form>Returns and due dates

Sr. No.	Particulars	Forms	Due Date
1.	Audit Report for audit done as per section 12A	Form 10B	31 st October of the assessment year
2.	Filing of Income Tax Return	ITR -7	30 th November of the assessment year
3.	Reporting of FCRA Receipts.	FCRA Portal	Q1 – 15 th July Q2 – 15 th October Q3 – 15 th January Q4 – 15 th April
4.	FCRA Annual Return	FC - IV	31 st December
5.	Renewal of Registration application	FC – 3C	6 months before the expiry of the existing registration
6.	Annual Budget uploading on MPTA portal	Schedule VIIA	Last day of February
8.	Annual accounts uploading on MPTA portal	Schedule VIII, IX, IXC and Audit Report	Within 15 days of completion of audited financials or By 15 th October.



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