

FORM 10B and Form 10BB for the FY 2022-23

Select nuances and possible approaches

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Key provisions (1/4)

- Erstwhile Sections 10(22) and 10(22A) now re-enacted as Section 10(23C)
- Section 10(23C)(iiiab)

Any university or other educational institution existing solely for educational purposes and not for purposes of profit, and which is wholly or substantially financed by the Government

- Section 10(23C)(iiiad)

Any university or other educational institution existing solely for educational purposes and not for purposes of profit if the aggregate annual receipts of the person from such university or universities or educational institution or educational institutions do not exceed five crore rupees

- Section 10(23C)(vi)

Any university or other educational institution existing solely for educational purposes and not for purposes of profit, other than those mentioned in sub-clause (iiiab) or sub-clause (iiiad) and which may be approved by the Principal Commissioner or Commissioner

Key provisions (2/4)

- Section 11
 - Income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and,
 - Where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of 15% of the income from such property
- Section 13 – when above exemption is denied



Key provisions (3/4)

- Section 2(15)
- “Charitable purpose” includes 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 the advancement of any other object of general public utility:

The advancement of any other object of GPU shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a ***cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity***, unless:

- (i) such activity is undertaken in the course of actual carrying out of the GPU object; and
- (ii) the aggregate receipts from such activity or activities during the previous year, do not exceed 20% of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year;

Key provisions (4/4)

Form	Entity to which applies	Additional condition
10B	10(23C)	i. Total income of entity exceeds Rs. 5 crores; or ii. Entity has received foreign contribution; or iii. Entity has applied any part of its income outside India
	11	
10BB	10(23C)	
	11	

Two critical recent developments (1/3)

- Ruling of Supreme Court in New Noble Education Society (448 ITR 594):
 - Context of section 10(23C) of ITA
 - Trust or educational institution must **solely** exist for object of educational activity only and not for profit
 - Institutions provide their premises or infrastructure to other entities, trusts, societies etc., for conducting workshops, seminars or even educational courses (which concerned trust is not actually imparting) and outsiders are permitted to enroll in such seminars, workshops, courses etc.
 - Objective of institution appears to be profit-oriented
 - Surplus in a year / years per se, it is not a bar, provided such surplus is generated in course of providing education or educational activities

Two critical recent developments (2/3)

- Ruling of Supreme Court in Ahmedabad Urban Development Authority (449 ITR 1):
 - Context of GPU in section 2(15) of ITA
 - A taxpayer advancing GPU cannot engage itself in any trade, commerce or business, or provide service in relation thereto for any consideration
 - In course of achieving GPU object, concerned trust, society, or other such organization, can carry on trade, commerce or business or provide services in relation thereto for consideration, provided that
 - Such activities are connected to achievement of its GPU objects;
 - Receipt from such business / commercial activity, does not exceed 20% of total receipts
 - Statutory Corporations, Boards, Authorities, Commissions, etc. in housing development, town planning, industrial development sectors are involved in advancement of GPU objects, therefore are entitled to be considered as charities in GPU categories

Two critical recent developments (3/3)

- If statutory corporations within section 10(46) derive their income by charging a nominal mark-up over cost of service rendered or goods supplied, meant to recover costs of activities they engage in primarily or to achieve object for which they were set-up, such as development of housing, road infrastructure, water supply, sewage treatment, supply of food grains, medicines, etc., with or without regulatory powers, mere fact that some surplus or gain is derived would not disentitle them from benefit of section 10(46)
- Amounts which are significantly higher than recovery of costs, have to be treated as receipts from trade, commerce or business and quantitative limit in proviso to section 2(15) applies but no such activities would be permitted to local authorities and corporations



Before we start (1/4)

- Orientation for the audit:
 - Particulars of Form 10B are true and **correct**
 - Higher degree of scrutiny by CA and accountability for CA
 - Minor error could result in denial of exemption by CPC and result in huge demand at the time of the intimation itself
 - Remedy only by way of appeal – ‘mandatory’ deposit of 20% of demand
 - Appreciation of trust taxation provisions and the interplay in the online form at the Revenue – both at CPC or Exemptions Range or NFAC
- Awareness of trust taxation provisions for the CA
 - Section 10(23C) – approx. 20 pages in ITA as per Taxmann publication; 15 Explanations across sub-clauses; 34 Provisos across sub-clauses
 - Section 11-13 – approx. 33 pages in ITA as per Taxmann publication; 16 Explanations across sub-clauses and sections; 25 Provisos across sub-clauses and sections

Before we start (2/4)

- First principles of trust taxation:
 - Why exemption to these entities?
 - 'Fundamental duties' of such entities; ghost of Dilip Kumar (2018) (9 SCC 1)
 - Commercial principles of income and expenditure as against accounting principles; e.g., depreciation prior to 2016 amendment, carry forward of expenditure; principle of 85:15
 - Some rulings to read to understand the concept better: Breach Candy Swimming Bath Trust (27 ITR 279); Loka Shikshana Trust (101 ITR 234); Surat Art Silk Cloth Manufacturers Association (121 ITR 1); Andhra Chamber of Commerce (55 ITR 722); Dharmadeepti (114 ITR 454); Thanthi Trust (247 ITR 785); Queens's Educational Society (372 ITR 699); Rashtreeya Shikshana Samiti Trust (152 taxmann.com 664); Programme for Community Organization (248 ITR 1); Rao Bahadur Calavala Cunnan Chetty Charities (135 ITR 485); Subros Education Society (96 taxmann.com 652); Fr. Mullers Charitable Institutions (363 ITR 230).

Before we start (3/4)

- Some examples of non-profit organisations: (a) educational institutions; (b) hospitals with medical college; (c) vocational training and education; (d) skill development; (e) development of tools and materials for skill development; (f) distribution of food; (g) environment protection awareness; (g) organizations established for public good under a statute or at the behest of a government or a government department or ministry; (g) religious and community trusts operating temples, praying halls, goshalas etc.
- How does the trust operate on a day-to-day basis?
- What do each of the words in section 2(15) connote?
- If the entity has an excess of expenditure over income, how is it operating on a day-to-day basis? What is the basis of treating 'corpus' / 'capital' contributions as not taxable?

Before we start (4/4)

- Audit efforts:
 - Understanding of the manner in which the organization achieves its objects; manner of accounting of incomes and expenses; what if project-wise tracking of incomes and expenses.
 - Importance of 'Yes', 'No', and 'Not Applicable' in the Form
 - Intellectual efforts in appreciating facts and law
 - Document test / verification efforts for testing appropriateness above
 - Audit with the expectation that the form will be scrutinized and any GPU entity will be questioned on its income streams deeply
- Finally,
 - Provisions on trust have gone through approx. 400 amendments since inception with many court interpretation yet to be reversed
 - How can the CA be 'correct' in deciding whether or not a position in the Form is appropriate

Key clauses (1/12)

Clause No.	Clause requirement	Remarks
6	Other addresses, if applicable	Address decided by management by a resolution and intimated to the JAO within 7 days of such resolution per Proviso to Rule 17AA(3)
7	Type of auditee	Peruse the charter documents; trust deed / by-laws / memorandum of association; latest documents as applicable (amendments to be factored)
8	Whether the auditee is established under an instrument?	
9(1)	Section under which registered/provisionally registered or approved/provisionally approved/notified (refer note**)	See note in Form 10B – different clauses have different implications
9(3)	Registration/Approval/Notification/Unique Registration No. (URN), if available	Important to ensure no typing error
10(a)(4)	Unique Identification Number	Purpose is to synchronise through Aadhar / PAN linking; increased use of the Insight Portal
10(a)(5)	Id Code (refer note##)	

Key clauses (2/12)

Clause No.	Clause requirement	Remarks
10(a)(6)	Address	Use of latest address; need to check address annually vis-à-vis importing from previous year form
10(b)	In case if any persons [as mentioned in row 10(a)] is not an individual, then, details of the natural persons who are beneficial owners (5% or more) of such person at any time during the PY.	Tracking beneficial ownership; difficulty / reluctance in sourcing
10(b)(6)	Non-individual person [as mentioned in row no 10(a) in which beneficial ownership held.	Reconciliation with ITR filed by the trustee; need for consistency by that person
11	Objects of the auditee	Relevant for authorities to test whether auditee is charitable per sec. 10(23C) or section 2(15) (any or multiple limbs, specifically GPU); renewed focus on drafting of the objects clause

Key clauses (3/12)

Clause No.	Clause requirement	Remarks
11(i)	Whether the auditee, being a trust or institution referred to in section 11 or 12, has adopted or undertaken modification of the objects which do not conform to the conditions of registration?	Focus should be on modifications that modify objects and not say, administrative or operational aspects of the organization.
14(ii)	Details of books of account and other documents	Rule 17AA – Rule running into 6 pages; 50 line items
14(ii)(2)	Nature of Books of Account	

Key clauses (4/12)

Clause No.	Clause requirement	Remarks
15	In any of the projects/institutions run by auditee, one of the charitable purposes is advancement of any other object of general public utility then	<ul style="list-style-type: none">• One of the difficult clauses for the taxpayer given the typical context in which they would have been established.• Test of the strength of auditee's internal controls;• Need thorough understanding of multiple revenue streams of the auditee;• Whether any activity is a trade, commerce or business; what are these terms?• Has ruling of SC in 449 ITR 1 given a new dimension?• Pricing of a service how relevant?
17(ii)	Details of business undertaking	<ul style="list-style-type: none">• What is business undertaking?• Why separate books of account?

Key clauses (5/12)

Clause No.	Clause requirement	Remarks
19	Details of the receipts of the auditee on which tax has been deducted at source referred to in section 194C or 194J or 194H or 194Q	<ul style="list-style-type: none"> To 'label' a receipt as a business income; especially entities which have registered under section 80G (important to engage with donors to not deduct tax at source) If any party inadvertently has deducted tax at source?
23	Total sum of donations reported in Form No. 10BD furnished by the auditee for the previous year	<ul style="list-style-type: none"> Alignment of Form No. 10B with financial statements and thereafter with ITR
	Donations which could not be reported in Form No 10BD due to non-availability of identification of donor as required under Form No. 10BD	<ul style="list-style-type: none"> Trigger for section 115BBD; anonymous donations
25	Total foreign contribution out of the total voluntary contributions stated in 24	<ul style="list-style-type: none"> FCRA registration FIRC description FCRA compliance

Key clauses (6/12)

Clause No.	Clause requirement	Remarks
26	Voluntary contribution forming part of corpus (which are included in 24)	<ul style="list-style-type: none">• How to demonstrate an amount is voluntary contribution?• How to demonstrate a corpus contribution?• Importance of contents of grant letters, receipts issued for corpus etc.
29	Income applied outside India which is eligible under section 11(1)(c)	<ul style="list-style-type: none">• A2 forms and narrations therein• Expenses vouchers and expenses
31(i)(a)	Contribution or donation to any other person during the previous year object-wise application	<ul style="list-style-type: none">• Difficult clause to populate• Test of auditee's internal control• Whether or not auditee is GPU• Application which cannot be specifically categorized under (I) to (VIII) – trigger for scrutiny and hence requires deliberation prior to decision-making

Key clauses (7/12)

Clause No.	Clause requirement	Remarks
31(ii)	Application of income – resulting in payment in excess of Rs.50 lakh during the PY to any person.	<ul style="list-style-type: none"> To track whether this sum is offered to tax by the recipient Possible near-term integration into AIS and Insight
31(vi)	Bifurcation of application in 31(v) into Revenue or Capital.	<ul style="list-style-type: none"> How to address pooling of funds and common bank account?
	Amount invested or deposited back in corpus which was applied during any preceding previous year and not claimed as application during that previous year	<ul style="list-style-type: none"> Test of accounting detail and internal controls Tracking mechanism; use of different bank accounts
	Repayment of loan or borrowing during the previous year which was earlier applied and not claimed as application during that previous year	

Key clauses (8/12)

Clause No.	Clause requirement	Remarks
31(ii)	Applied for any purpose beyond the objects of the auditee	<ul style="list-style-type: none"> • Every line item of expenditure should be validated as being for the objects • If a new line of activity is proposed, such new line should be factored in the objects
31(vi)	Any other disallowance (Please specify)	<ul style="list-style-type: none"> • Any decision to populate this field should be cogitated
33(a)	Whether the auditee has any deemed income referred to in sub-section (1B) of section 11 which is chargeable to tax @ 30 % under section 115BBI and the amount of such deemed income?	<ul style="list-style-type: none"> • Trigger for section 115BBI should be satisfied • 'Specified income' • Use of accumulations
37	Application of income out of the following sources during the previous year: Income of earlier previous years up to 15% accumulated or set apart	<ul style="list-style-type: none"> • Very challenging unless internal controls are in place and historic accumulations and their usage are tracked by the client • Hazardous position if data unavailable

Key clauses (9/12)

Clause No.	Clause requirement	Remarks
40(a)	Whether any amount of expenditure incurred during the previous year which is of a religious nature and the amount of such expenditure	<ul style="list-style-type: none"> • Relevant esp. where donations far exceed current year expenditure and accruals • Importance of corpus contributions for religious expenses (say, construction of gopuram, dining hall etc.)
43	<p>Specified Violation</p> <p>Whether the auditee has incurred any specified violation as referred to in Explanation 2 to the fifteenth proviso to clause (23C) of section 10 or Explanation to sub-section (4) of section 12AB and the amount of such violation</p>	<ul style="list-style-type: none"> • CA to be aware of all laws which govern the trust activities • Important to also identify if there is no law which governs trust activities • Knowledge of FCRA especially if entity has foreign sourced funds • Actual violation or potential violation? Guidance of Schedule

Key clauses (10/12)

Clause No.	Clause requirement	Remarks
43(b)	Whether the auditee has income from profits and gains of business which is not incidental to the attainment of its objectives or separate books of account are not maintained by auditee in respect of the business which is incidental to the attainment of its objectives.	<ul style="list-style-type: none">• Clause is well articulated and a position can be adopted that where the activity is not stamped with a profit motive / object• If any gain is impressed with the trust which is a charitable trust, then it is immaterial whether the institution is run as a commercial institution or not. If in running of the institution, profits are made and the profit goes to any private individual or if the institution is intended for any private gain, then, the institution would likely not be charitable.

Key clauses (11/12)

Clause No.	Clause requirement	Remarks
	Schedule Corpus: Details of Corpus:	<ul style="list-style-type: none"> Nature of corpus
Schedule LB	Details of Loan and Borrowing	<ul style="list-style-type: none"> Test of auditee's internal controls
Schedule Int App	Details of income applied outside India	<ul style="list-style-type: none"> Context and background; See Mumbai ITAT in Tata Education and Development Trust (ITA Nos 1423 and 1424/Mum/2018 dated 24.07.2020)
(8)	Whether applied for promoting international welfare in which India is interested and is and not to be included in total income of the auditee?	<ul style="list-style-type: none"> Test of auditee's internal controls What is the meaning of 'promoting international welfare in which India is interested'? See Mumbai ITAT in Tata Education and Development Trust (supra)
Schedule DI	Details of deemed application under Explanation 1 to section 11(1) and deemed income under section 11(1B)	<ul style="list-style-type: none"> Mapping with Form 9A

Key clauses (12/12)

Clause No.	Clause requirement	Remarks
Schedule DA	Details of accumulated income taxed in earlier assessment years as per section 11(1B)	<ul style="list-style-type: none">• Mapping with Form 9A
Schedule AC	The details of accumulation	<ul style="list-style-type: none">• Mapping with Form 10• Common pool of funds• Hazardous disclosure

Last word

- Arguably, most complex Form in the income-tax law, if the ITR is not considered
- Onerous nature that will likely de-incentivize claim of exemption
- Exception diligence required both for client and CA
- Risk management by CA; scope and nature of management representations
- Fee for the audit

THANK YOU

