



Tax alert: CBDT issues circular clarifying exemption for inter-Trust donations

7 March 2024

The Central Board of Direct Taxes (CBDT), vide Circular No. 3/2024 dated 6 March 2024, has clarified the manner of computation of exemption for donations made by an eligible Trust/institution to another eligible Trust/institution [considering the amendment introduced vide Finance Act, 2023].

Background:

- Income of any fund or institution or Trust or any university or other educational institution or any hospital or other medical institution referred to in certain clauses of section 10(23C) of the Income-tax Act, 1961 (ITA) ['first regime'] or any Trust or institution registered under section 12AA or 12AB of the ITA ('second regime') is exempt, subject to the fulfilment of certain conditions. The conditions, *inter-alia*, include the following:-
 - at least 85% of income of the Trust/institution should be applied during the year for charitable or religious purposes;
 - Trusts or institutions are allowed to apply mandatory 85% of their income either themselves or by making donations to the Trusts with similar objectives; and
 - If donated to other Trust/institution, the donation should not be towards corpus.
- In order to ensure intended application towards charitable or religious purposes, Finance Act, 2023 (FA 2023) provided that eligible donations made by a Trust/institution shall be treated as application for charitable or religious purposes, only to the extent of **85% of such donations** and accordingly, the FA 2023 made the following amendments:
 - inserted clause (iii) in Explanation 2 to third proviso of section 10(23C) of the ITA¹;

¹ "any amount credited or paid out of the income of any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or subclause (via), other than the amount referred to in the twelfth proviso, to any other fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via), or trust or institution registered under section 12AB, as the case may be, **shall be treated as application for charitable or religious purposes only to the extent of eighty-five per cent of such amount credited or paid"**

(b) inserted clause (iii) in Explanation 4 to section 11(1) of the ITA²

- The CBDT has now issued a Circular³ dated 6 March September 2024 [‘Circular’] clarifying whether the remaining 15% of donation to other Trust / institution would be taxable or would be eligible for 15% accumulation (since the funds would not be available having been already disbursed).

Summary of the Circular:

- It has been reiterated that eligible donations made by a Trust/institution to another Trust/institution under any of the two regimes shall be treated as application for charitable or religious purposes only to the extent of **85% of such donations**. Hence, when a Trust/institution donates INR 100 to another trust/institution, it will be considered to have applied 85% (INR 85) for the purpose of charitable or religious activity.
- Further, it clarifies that 15% (INR 15) of such donations by the donor Trust/institution shall not be required to be invested in specified modes under section 11(5) of the ITA [relating to accumulated/set apart income to be invested or deposited in specific forms or modes] as the entire amount of INR 100 has been donated to the other Trust / institution and is accordingly, eligible for exemption under the first or second regime.
- The following illustration explaining the above mechanism has also been provided:

Trust 1, Trust 2, and Trust 3 are Trusts or institutions under any of the two regimes. Further, Trust 1 is making eligible donation to Trust 2 and Trust 2 is further making eligible donation to Trust 3.

Sr. No.	Particulars	Trust 1		Trust 2		Trust 3	
1.	Income (A)	300		100		100	
2.	Income which is required to be applied (B = 85% of A)		225		85		85
3.	Application of income						
4.	Donation to other trusts under the first or second regime (C)	100		100			Nil
5.	Amount to be considered as application of income against the donations at row no. 3 [as per clause (iii) of the Explanation 2 to third proviso to section 10(23C) or clause (iii) of the Explanation 4 to section 11(1) of the ITA]. (D = 85% of C)		85		85		
6.	Balance income for application (E = A-C)	200		Nil		100	
7.	Application other than Sr. No. 4 (F = 85% of E)		170				85
8.	Remaining income which may be accumulated without Form No. 10/9A (G = 15% of E)		30				15
9.	Funds required to be invested in section 11(5) of the ITA modes (H = G)		30				15
10.	Exemption of income (I = C + F + G)	300		100		100	

² “any amount credited or paid, other than the amount referred to in Explanation 2, to any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10, as the case may be, or other trust or institution registered under section 12AB, as the case may be, shall be treated as application for charitable or religious purposes only to the extent of eighty-five per cent of such amount credited or paid”

³ Circular No. 3/2024 issued under section 119 of the ITA

Comments:

The Circular shall provide clarity in interpreting the amendments brought vide FA, 2023 in relation to computation of application of income by an eligible Trust/institution and accordingly, claiming exemption under section 10(23C) / 11 of the ITA.

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