

Relaxations to charitable trusts and not-for-profit institutions

29 May 2023



Summary

Charitable and not-for-profit organisations (NPO) enjoy tax exemption, subject to the fulfilment of certain conditions. One such condition is to obtain suitable registration from the income tax authorities. The registration scheme was revamped by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020. All existing, as well as new charitable and NPO organisations, were required to comply with registration requirements as prescribed within the stipulated time ('New scheme'). Due dates under the new scheme were then extended on multiple occasions.

Further, the Finance Act, 2023, expanded the scope of tax on accreted income to cover those NPOs that did not apply for timely registration under the new scheme. Consequently, such non-compliant NPOs would attract tax on accreted income. This provision is applicable immediately from AY 2023-24.

Considering genuine cases where registration under the new scheme could not be applied within the extended timelines, CBDT provides yet another opportunity to facilitate the registration process.

CBDT has also issued clarifications in respect of the applicability of provisional registration, status of tax exemption in case of delays in filing a statement for accumulation and/or deemed application, disclosure related to electronic modes of payments in recently notified audit reports. The due date of filing of statement of donations for FY 2022-23 has also been extended to 30 June 2022.

Background

- Organisations engaged in charitable and NPO activities may avail the benefit of tax exemption under the Income-tax Act, 1961 (Act), subject to obtaining appropriate registration from the income tax authorities and meeting conditions as prescribed in the relevant sections¹.
- Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020², revamped the registration process under the act for charitable and NPO entities.
- The new scheme provides for two types of registration - regular and provisional registration, with a validity of five and three years, respectively.

¹ As per Section 10(23C) or Section 12AB of the Act

² Notification No. 38 of 2020 dated 29 September 2020. Rules regarding registration process under New scheme were notified vide Income-tax (6th Amendment) Rules, 2021

- Under the new scheme:
 - Existing registered organisations are required to revalidate their registration and renew it in every five years.
 - New organisations are required to first obtain a provisional registration. Such provisional registration needs to be then converted to regular registration within the prescribed time³.
- The Finance Act, 2023 (FA 2023), w.e.f Assessment Year (AY) 2023-24:
 - Provided that non-compliance with registration requirements under the new scheme would be subject to severe consequence of being liable to tax on accreted income⁴.
 - The amended due date of filing of forms to accumulate income⁵ or deemed application⁶.
- Further, the Central Board of Direct Taxes (CBDT) has recently notified a revised audit report⁷ for NPOs claiming tax exemption.

Circular No. 6 of 2023 dated 24 May 2023 issued by the CBDT has discussed the above-mentioned aspects. The same is summarised below:

Key takeaways from the circular

1. Extension of timelines for registration

Sr No.	Particulars	Relevant Forms	Earlier timeline	New timeline
1	Revalidation of registration by	Form 10A	25 November 2022 ⁸	30 September 2023

³ Application for regular registration to be made at least six months before the expiry of provisional registration or within six months of commencement of activities, whichever is earlier.

⁴ As per provisions of Section 115TD of the Act

⁵ Form 10 is to be filed where income is accumulated or set apart under Explanation 3 to third proviso of Section 10(23C) or Section 11(2) of the Act

	existing registered NPOs			
2	Conversion into regular registration by provisionally registered NPOs	Form 10AB	30 September 2022 ⁹	30 September 2023

- Application for conversion into regular registration made after 30 September 2022 and:
 - Pending for disposal before the income tax authorities shall be treated as a valid application.
 - Such application was rejected solely on account of a delay in making the application, a fresh application may now be filed within the new timeline.
- An existing NPO that failed to apply for revalidation under the new scheme by 25 November 2022, and hence, applied for provisional registration, may withdraw/surrender its registration and make a fresh application for revalidation within the new timeline.

2. Clarity on applicability of tax on accreted income

- With expansion in the scope of tax on accreted income¹⁰, NPOs that failed to comply with registration requirements under the new scheme could be subjected to such tax.
- It is clarified that NPOs shall not be subjected to the said tax where registration application is made within the

⁶ Form 9A is to be filed for opting deemed application of income under certain cases as per Clause 2 of Explanation 1 to Section 11(1) of the Act

⁷ Notification No. 7 of 2023 dated 21 February 2023

⁸ Circular No. 22 of 2022 dated 1 November 2022

⁹ Circular No. 8 of 2022 dated 31 March 2022

¹⁰ As per Section 115TD of the Act

new timeline and such registration is granted.

3. Applicability of provisional registration

- Provisional registration shall be effective from the financial year in which such application is made. For example, if an application for provisional registration is made in Financial Year (FY) 2023-24, it shall be effective from FY 2023-24, i.e. AY 2024-25.

4. Filing of statement to accumulate income or deemed application

- Effective AY 2023-24, the due date of filing of the statement of accumulation of income¹¹ or deemed application of income¹² has been amended to two months prior to the filing of return of income.
- This amendment was made with a view to capture details regarding accumulation and/or the deemed application during the audit process.
- While due dates for filing such statements remain unchanged, the tax exemption shall not be denied even if such forms are filed on or before the due date of furnishing the return of income.

5. Extension of due date of filing of statement of donations for FY 2022-23

- The due date of filing the annual statement of donations¹³ for FY 2022-23 has been extended from 31 May 2023 to 30 June 2023.

6. Clarification regarding audit report

- The recently notified audit report requires disclosure regarding the income applied in electronic modes and otherwise. In addition to the list of 'electronic modes' provided in the said notification, the following has been included:
 - Account payee cheque;
 - Account payee bank draft; and
 - Electronic clearance system.

¹¹ As per provisions of Explanation 3 to third proviso of Section 10(23C) or Section 11(2) of the Act by filing Form 10

¹² As per Clause 2 of Explanation 1 to Section 11(1) of the Act by filing Form 9A

¹³ As per Section 80G of the Act by filing Form 10BD

Our comments

By the extension of timelines for making applications to revalidate registration and conversion to regular registration, NPOs have yet another opportunity to comply with the new scheme. Thus, NPOs that earlier failed to apply for registrations under the new scheme within the stipulated time can use this extended timeframe to make good their non-compliance. Further, the non-applicability of tax on accreted income where a NPO applies within the new timeline and obtains registration has provided a great relief to NPOs. This ensures that genuine cases do not attract stringent consequences of being liable to tax due to such non-compliance.

As exemption would be available provided the statement to accumulation and/or the deemed application is filed on or before the due date of filing of return of income, NPOs can ensure that such statements are in line with the tax computation.

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