

Income Tax Provisions

The income earned by Section 25 companies is taxable under the provisions of the Income tax Act, 1961. The income tax return of such companies must be filed in Form-3A before 31st October every year. However, such a company can get itself registered u/s 12A of the Income Tax Act and can get the benefit of accumulation of its income to some extent for utilization in future years. Such a company can also get itself registered u/s 80G of the Income Tax Act and the donor donating the amount to such a company shall be entitled to a deduction to the extent of 50% of the sum donated from its income. Section 12A(b) of the Income Tax Act provides for mandatory audit of accounts of such companies provided the total income without giving effect to the provisions of section 11 & 12 exceeds Rs. 50000/- in any year. The audit report is to be submitted in Form No. 10B and must be duly signed by a chartered accountant holding certificate of practice. There are certain restrictions as to investment of funds by such entities registered u/s 12A of the Income Tax Act. The investment by such companies must be made in approved forms and modes of investment as specified in Section 11(5) of the Income Tax Act. All voluntary donations received by such a company are treated as income. Any amount applied out of such income is eligible for deduction be it a revenue expenditure or a capital expenditure. However, any donation received with the intent of forming a corpus is not treated as income. □

ACCUMULATION AND INVESTMENT OF INCOME

ACCUMULATION OF INCOME

01 Where 85% of the income is not applied for charitable purposes, the NGO is required to accumulate or set apart such income for future application. The incomes so accumulated will not be included in the total income of the NGO if the following conditions are applied :

i) the NGO has to give a notice to the assessing officer in Form No. 10, alongwith a certified copy of resolution passed by the governing body. This resolution should specify the purpose and the period for which the income is so accumulated. The period of accumulation cannot exceed five years under any circumstances. Earlier this period used to be ten years but has been reduced to five years with effect from 01.04.2002.

ii) the NGO has to enclose copies of annual accounts alongwith the details of investments of the money so accumulated before the expiry of six months from the end of each relevant previous year.

iii) the amount so accumulated should be invested in any one or more forms specified in section 11(5) within six months from the end of the each of the previous year.

FORMS ON INVESTMENTS SECTION 11(5)

02 The forms and modes of investing or depositing the money for accumulated income as per Income Tax Act is as follows :

i) investment in Government Savings Certificates and any other securities or certificates issued by the Central Govt. under the Small Savings Scheme ;

ii) deposit in any account with the Post Office Savings Bank Account ;

iii) deposits in any account with any scheduled bank or a co-operative society engaged in carrying on the banking business (including a co-operative land mortgage bank or a co-operative land development bank) ;

iv) investment in units of the Unit Trust of India.

v) investment in any security for money created and issued by the Central Govt. or a State Govt.

vi) investment in debentures of any company or corporation, the principal whereof and the interest whereon are guaranteed by the Central or State Government.

vii) investment or deposit in any public sector company.

viii) deposit with or investment in any bonds issued by a Central Government approved financial corporation engaged in providing long-term finance for industrial development in India.

ix) deposits with or investments in any bonds issued by any Central Government approved public Company formed and registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses

ixa) w.e.f. 01.04.2001, deposits in bonds issued by a public company engaged in long term finance for development of urban infrastructure.

x) investment in immovable property.

xi) deposits with the Industrial Development Bank of India (IDBI).

xii) any other form or mode of investment or deposit as may be prescribed. Rule 17C of the Income Tax Rules, 1962 have so far prescribed the following :

a) investment in the units issued under the Scheme of the Mutual Fund referred to in clause (23D) of Section 10 of the Income Tax Act, 1961 ;

b) any transfer of deposits to the Public Account of India;

c) deposits made with an authority constituted in India for the purposes of housing accommodation, planning & development of cities, towns and villages.

d) investment by way of acquiring equity shares of a depository as defined in clause (e) of sub-section (1) of Section 2 of the Depositories Act, 1996.

THE TWO PERMISSIBLE TYPES OF ACCUMULATION

03 It may be noted that under the existing provisions, two kinds of accumulation are possible :

(1) Accumulation upto 15% of income under section 11(1). Such accumulations are not subject to application within a maximum permissible period of 5 years. In other words, 15% of income can be retained by a Charitable Organisation without applying it for charitable purposes in the year in which the income was accrued. This 15% accumulation is an indefinite accumulation and the organisation does not have to apply it for charitable purposes in subsequent years. It can be retained as a part of its corpus of capital.

(2) Accumulation beyond 15% of income under section 11(2). Such accumulations are subject to application within a maximum permissible period of 5 years. In other words income in excess of 15% cannot be retained by a charitable or Religious Organisation. If the income is not spent in the current year then the assessee is permitted to spend it within the next 5 years.

CIRCUMSTANCES WHERE ACCUMULATION IS PERMITTED

04 It has been held that accumulation under the provisions of section 11(2), is to be specifically made only under those circumstances where 85% of the income of the Trust could not be applied. Section 11(2), only becomes operative beyond the 15% of the accumulation of income which is otherwise allowed under section 11(1).

Illustration - For instance, the total income of an organisation is Rs. 1,00,000 and it applies Rs. 20,000 only for charitable purposes during the year, Rs. 80,000 remains unutilized subject to accumulation. In this case, the assessee would be required to accumulate only Rs. 65,000 under section 11(2). As the deemed application under section 11(1) would be Rs. 35,000 [Rs. 20,000 actually applied + Rs. 15,000 - 15% of total income allowable for accumulation].

FILLING OF FORM 10 UNDER RULE 17

05 The organisation desiring to accumulate funds has to give a notice in writing to the Assessing Officer of its intention and reasons for such accumulation in Form 10 under Rule 17 of the Income-tax Rules; 1962. This notice has to be made before the expiry of the due date of filing return under section 139(1). The following enclosures and details should be submitted with Form 10 :

1) A resolution has to be passed by the governing body of the organisation and such resolution has to be filed with the Form 10.

2) Copies of the annual accounts of the organisation along with the details of investment and utilization, if any, of the money so accumulated or set apart have to be furnished before the Assessing Officer before the expiry of six months commencing from the end of each relevant previous year.

3) For accumulation of income, it is necessary that the Organisation/Trust must indicate specific purpose or purposes for which it wants to accumulate the funds. A general decision to accumulate listing all the objects of the organisation would not be sufficient.

POWER OF C.I.T TO CONDONE THE DELAY

06 The Commissioner of Income-Tax (C.I.T) is authorized to condone the delay in deserving circumstances. (Re: CBDT Circular No. 273, dated 3-6-1980). Normally Trusts/Organisations make delay in filing Form 10 and the Commissioner condones the delay after ensuring that the failure to apply in time was not deliberate and did not benefit the settlor, Trustee and Founders in any manner and the accumulation of income was necessary for carrying out the objects of the organisation. The condonation of delay by the CIT has become even more important, in the light of the Supreme Court ruling in Nagpur Hotels case, (supra), where it was held that the time limit to file Form 10 is mandatory. The CBDT circular no. 273, dt. 03.06.1980, has empowered the CIT under section 119(2)(b) to condone the delay in filing of application in Form 10.

GUIDELINES FOR CONDONING DELAY

07 Further, in addition to the above circular, an order No. 120/57/80-IT (A-I) dated 3-6-1980 was issued providing the guidelines for the Commissioner of Income-Tax, while exercising the powers conferred under section 119(2)(b) to admit application under section 11(2) filed beyond the time stipulated. As per this order, the following conditions were required to be fulfilled in order to avail condonation of delay in filing Form 10 under section 11(2):

- i) the genuineness of the Trust is not in doubt,
- ii) the failure to give notice to the Income-Tax officer under section 11(2) of the Act and investment of the money in the prescribed securities was due only to oversight,
- iii) the Trustees or the settlor have not been benefited by such failure directly or indirectly,
- iv) the trust agrees to deposit its funds in the prescribed securities prior to the issue of the Government sanction extending the time under section 11(2), and
- v) the accumulation or setting apart of income was necessary for carrying out the objects of the Trust.

FLOW CHART SHOWING ACCUMULATION AND INVESTMENT OF INCOME

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