

SPECIAL PROVISIONS RELATING TO TAX ON ACCRETED INCOME OF CERTAIN TRUSTS AND INSTITUTIONS

SECTION 115TD: TAX ON ACCRETED INCOME

Notwithstanding anything contained in this Act, where in any previous year, **a trust or institution registered under section 12AB/section 10(23C)** has—

- (a) converted into any form which is not eligible for grant of registration under section 12AB/section 10(23C);
- (b) merged with any entity other than an entity which is a trust or institution having objects similar to it and registered under section 12AB/section 10(23C); or
- (c) failed to transfer upon dissolution all its assets to any other trust or institution registered under section 12AB/section 10(23C), within a period of twelve months from the end of the month in which the dissolution takes place,

then, in addition to the income-tax chargeable in respect of the total income of such trust or institution, the **accreted income** of the trust or the institution **as on the specified date** shall be charged to tax and such trust or institution, as the case may be, shall be liable to pay additional income-tax (herein referred to as tax on accreted income) at the maximum marginal rate on the accreted income. (*i.e., 30% + 12% + 4% = 34.944%*)

“ACCRETED INCOME” SHALL BE COMPUTED ON THE “SPECIFIED DATE” AS UNDER:

Aggregate Fair Market value of the total assets of the trust	XXXX
Note: However, following assets shall not be taken:	
(i) Assets proved to have been acquired out of agricultural income.	

(ii)	Assets acquired by the Trust from the date of creation of trust to the date from which registration became effective under section 10(23C) or section 12AB . (Suppose trust was established on 01.07.2008 and registration of trust under section 12AB became effective from previous year starting from 1 st April, 2016 then the assets acquired during the period 1.7.2008 to 31.3.2016 shall not be included because trust has not claimed and has not been allowed exemption under section 11 and 12 during this period.)	
(iii)	Assets transferred on dissolution to other trust registered under section 12AB or section 10(23C) within a period of 12 months from the end of the month in which dissolution takes place.	
Less:	Total liabilities of the Trust	
Note:	However, the liabilities related to assets referred to in (i), (ii) and (iii) above shall not be taken into account.	XXXX
	Accreted Income	XXXX

TRUST REGISTERED UNDER SECTION 12AB/SECTION 10(23C) CONVERTED INTO ANY FORM NOT ELIGIBLE FOR REGISTRATION UNDER SECTION 12AB/SECTION 10(23C)

This happens when –

CASE 1: Registration granted to trust under section 12AB/section 10(23C) has been cancelled or

CASE 2: It has adopted or undertaken modification of its objects which do not confirm to conditions of registration and it

- (a) has not applied for fresh registration under section 12AB/section 10(23C) in the said previous year; or
- (b) has filed application for fresh registration under section 12AB/section 10(23C) but the said application has been rejected.

CASE 1:

Against the order of cancellation, the trust can file an appeal to ITAT within 60 days of receipt of order of cancellation. Suppose order of cancellation of registration dated 14.08.2023 was received by the Trust on 17-08-2023, now an appeal can be filed to ITAT against cancellation order upto 16.10.2023.

Situation A – ITAT by its order passed under section 254 quashes the order of cancellation and order is received by Trust on 15.07.2024, then section 115TD is not applicable and Trust is not required to pay tax on accreted income.

Situation B – ITAT by its order passed under section 254 confirms the order of cancellation and order is received by Trust on 15.07.2024.

Now accreted income of the trust shall be calculated on specified date, i.e., the date of the order cancelling the registration i.e., on 14.08.2023.

The Trust will have to pay tax on accreted income within 14 days from the date on which on which order of ITAT confirming the cancellation is received by Trust. The Trust will therefore tax on accreted income by 29.07.2024.

Situation C – Trust does not file an appeal to ITAT against the order of cancellation. Now accreted income of the trust shall be calculated on specified date, i.e., the date of the order cancelling the registration i.e., on 14.08.2023.

The Trust will have to pay tax on accreted income within 14 days from the date on which period of filing appeal to ITAT against the order of cancellation expires where no appeal has been made to ITAT.

Now trust will pay tax on accreted income by 30.10.2023

CASE 2:

Situation X – If trust has adopted or undertaken modification of its object which do not confirm to condition of registration and trust has not applied for fresh registration under section 12AB/section 10(23C) in the said previous year.

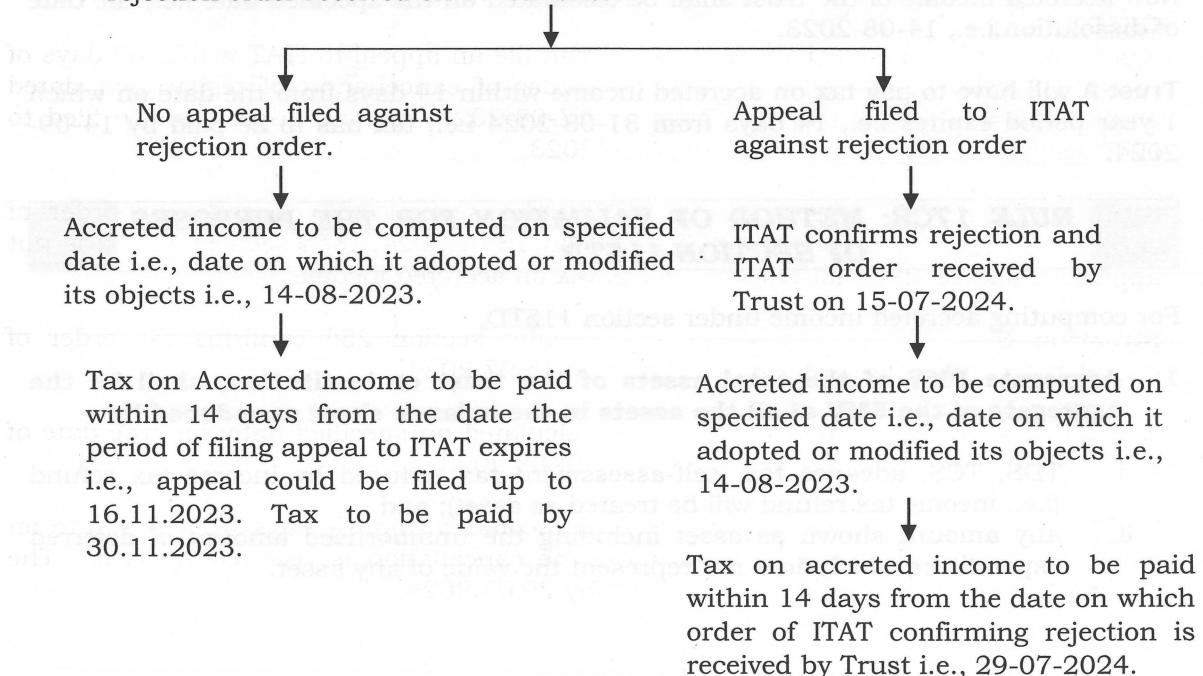
Suppose, the trust adopted or modified objects on 14.08.2023. The Trust has to apply for fresh registration upto 31.03.2024 and it has not applied for fresh registration.

Now accreted income of the trust has to be calculated on the specified date i.e., 14.08.2023. And Trust has to pay tax on accreted income within 14 days from 31.3.2024 i.e., by 14.04.2024.

Situation Y – If trust has adopted or undertaken modification of its object which do not confirm to condition of registration and trust has applied for fresh registration under section 12AB/section 10(23C) but the said application has been rejected.

Following will be the cases:

1. Trust gets fresh Registration, then section 115TD shall not apply.
2. Trust application for fresh registration has been rejected. Trust applies for fresh registration on 16-08-2023 and CIT rejects the same on 14-09-2023 and rejection order received on 17-09-2023.



TRUST MERGED WITH ANY ENTITY OTHER THAN AN ENTITY WHICH IS A TRUST OR INSTITUTION HAVING OBJECTS SIMILAR TO IT AND REGISTERED UNDER SECTION 12AB/SECTION 10(23C)

Section 115TD shall not apply if trust is merged with an entity:

1. Which has objects similar to it and
2. Which is registered under section 12AB/section 10(23C).

Suppose, Trust A is merged with Trust B on 14-08-2023 and objects of Trust A and objects of Trust B not similar, or Trust B is not registered under section 12AB/section 10(23C).

Now accrued income of the Trust A shall be calculated on specified date i.e., date of merger i.e., 14.08.2023. And, trust has to pay tax on accrued income within 14 days from the date of merger i.e., 28.08.2023.

FAILURE TO TRANSFER 100% ASSETS ON DISSOLUTION OF TRUST TO ANY OTHER TRUST REGISTERED UNDER SECTION 12AB/SECTION 10(23C) WITHIN 12 MONTHS FROM THE END OF THE MONTH IN WHICH DISSOLUTION TAKES PLACE.

Section 115TD is not applicable if the trust transfers 100% assets to any trust registered under section 12AB/section 10(23C) within 12 months from the end of the month in which dissolution takes place EVEN IF OBJECTS OF TRANSFEREE TRUST/INSTITUTION are not the same as that of TRANSFEROR TRUST.

Suppose Trust A is dissolved on 14-08-2023 and it fails to transfer 100% assets to any other trust registered under section 12AB/section 10(23C) by 31-08-2024.

Now accrued income of the trust shall be calculated on the specified date i.e., the date of dissolution i.e., 14-08-2023.

Trust A will have to pay tax on accrued income within 14 days from the date on which 1-year period expires i.e., 14 days from 31-08-2024 i.e., tax has to be paid by 14-09-2024.

RULE 17CB: METHOD OF VALUATION FOR THE PURPOSES OF SECTION 115TD

For computing accrued income under section 115TD,

- 1. Aggregate FMV of the total assets of the trust or institution, shall be the aggregate of the FMV of all the assets in the balance sheet as reduced by—**

- i. TDS, TCS, advance tax, self-assessment tax reduced by income tax refund (i.e., income tax refund will be treated as asset); and
- ii. any amount shown as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset.

2. Total liability of the trust or institution shall be the book value of liabilities in the balance sheet on the specified date but not including the following amounts:—

- i. capital fund or accumulated funds or corpus, by whatever name called;
- ii. reserves or surpluses or excess of income over expenditure, by whatever name called;
- iii. any amount representing contingent liability;
- iv. provisions made for unascertained liabilities;

Note: The following shall be a liability:

Provision for income tax

- (-) Excess provision
- (-) TDS, TCS
- (-) Advance Tax
- (-) Self-assessment tax
- (+) Income tax Refund

3. For the purpose of sub-rule (1), FMV of the asset shall be determined in the following manner:

I. Valuation of shares and securities,

a) FMV of quoted share and securities shall be the following:

- i. the average of the lowest and highest price of such shares and securities quoted on a recognised stock exchange as on the specified date; or
- ii. where on the specified date, there is no trading in such shares and securities on a recognised stock exchange, the average of the lowest and highest price of such shares and securities on a recognised stock exchange on a date immediately preceding the specified date when such shares and securities were traded on a recognised stock exchange,

b) FMV of unquoted equity shares shall be determined as per Rule 11UA, with following modifications:

- i. In the formula given in Rule 11UA,

$$A + B + C + D - L \times PV/PE$$

D is taken as stamp duty value of immovable property. But for the purpose of this Rule, 'D' shall be higher of the following:

- a) Stamp duty Value
- b) Price that the immovable property will fetch if sold in open market on the specified date on basis of report from a registered valuer.

- ii. In rule 11UA, liabilities include dividend payable on preference and equity shares if declared before the date of gift. But for this Rule dividend payable on preference and equity shares shall not be regarded as liability (Date of declaration of dividend is not relevant).

c) FMV of shares and securities other than equity shares shall be as per Rule 11UA.

II. FMV of an immovable property shall be higher of the following:

- a) price that the property shall ordinarily fetch if sold in the open market on the specified date on the basis of the valuation report from a registered valuer; and
- b) stamp duty value as on the specified date.

III. FMV of a business undertaking, held by a trust or institution, shall be its net assets determined in accordance with the following formula given in Rule 11UA, i.e.:

$$\mathbf{A + B + C + D - L}$$

Modifications as given in (b) above shall apply.

IV. FMV of any other asset shall be the price that the asset shall ordinarily fetch if sold in the open market on the specified date on the basis of valuation report from a registered valuer.

Question:

The registration granted under section 12AB of the Income-tax Act, 1961 on 1-4-2012 to M/s S Charitable Trust, was cancelled on 31-1-2023 on a finding that the Trust was merged, with another entity neither having similar objects nor registered under section 12AB. An appeal was preferred against the order of cancellation, which was dismissed by the Appellate authorities. The order confirming the cancellation was received on 31-3-2023.

The Balance Sheet of M/s S Charitable Trust as on 31.1.2023, and its other information is given hereunder:

Particulars	(₹ in lakhs)
Liabilities	
Capital fund	800.00
Sundry creditors	335.00
Total	1135.00
Assets	
Land (existing since 1-4-2011)	100.00
Land and buildings purchased in the year 2018	800.00
2000 equity shares of ₹ 1000 each in M/s X Ltd. shares are listed in Bombay Stock Exchange (at face value)	20.00
Balance in current account of a nationalized bank	10.00
Balances in fixed deposits with scheduled banks	200.00
Cash in hand	3.50
Tax Deducted at Source	1.50
Total	1135.00

Additional Information:

- (1) Stamp duty value of the land (existing since 2011) as on 31-1-2023 was ₹ 120.00 lakhs but if sold in the open market, the property would fetch ₹ 250 lakhs as per a registered valuer's certificate.
- (2) Land and building (purchased in 2018), if sold in the open market will fetch ₹ 1000 lakhs as per a registered valuer's certificate. Stamp duty value as on 31-1-2023 was ₹ 1050 lakhs.
- (3) The highest and lowest value per share of M/s X Ltd. traded on 31-1-2023 was ₹ 1098 and ₹ 1051 respectively.
- (4) Included in Sundry Creditors is ₹ 30 lakhs provided on estimated basis to contractors for which no bills are received.

Based on the above information, calculate the exit tax payable by the Charitable Trust and state the latest day on which the said tax has to be paid. Give working notes wherever necessary.

Answer:

As per section 115TD, the accreted income of "M/s S Charitable Trust", registered under section 12AB would be chargeable to tax at maximum marginal rate @ 34.944% [30% plus surcharge @ 12% plus cess @ 4%] on 31.1.2023 for the reason of cancellation of registration on 31.1.2023.

Computation of exit tax payable by M/s S Charitable Trust	
Particulars	Amount (₹)
Aggregate FMV of total assets as on 31.1.2023, being the specified date (date of order of cancellation of the registration) [See Working Note 1]	12,84,99,000
Less: Total liability computed in accordance with the prescribed method of valuation [See Working Note 2]	3,05,00,000
Accreted Income	9,79,99,000
Tax Liability @ 34.944% of ₹ 9,79,99,000	3,42,44,770
Working Note 1: <u>Aggregate fair market value of total assets on the date of cancellation of the registration</u>	
Valuation of Land, being an immovable property, existing since 2011	Nil
[Any asset acquired by the trust or institution during the period beginning from the date of its creation or establishment and ending on the date from which the registration under section 12AB became effective, if the trust or institution has not been allowed any benefit of sections 11 and 12 during the said period, shall be excluded	
Since registration was granted to trust on 1.4.2012, it can be said that registration became effective from previous year starting from 1.4.2011. Since land was in existence on 1.4.2011, it can be said	

that land was acquired during the period when registration was not effective i.e., prior to 1.4.2011 and hence shall not be considered for computing accreted income]¹

Valuation of Land and building, being an immovable property, purchased in 2018

10,50,00,000

[The fair market value of land and building would be higher of ₹ 1,000 lakhs i.e., price that the land and building would ordinarily fetch if sold in the open market as per registered valuer's certificate and ₹ 1,050 lakhs, being stamp duty value as on the specified date i.e., 31.1.2023]

Valuation of Quoted equity shares in M/s X Ltd. [2,000 × 1,074.50 per share]

21,49,000

[The fair market value of quoted shares would be ₹ 1,074.50 per share, being the average of the lowest (₹ 1,051) and highest price (₹ 1,098) of such shares on the specified date i.e., 31.1.2023]

Balance in current account of a nationalized bank

10,00,000

Balance in fixed deposits with scheduled banks

2,00,00,000

Cash in hand

3,50,000

12,84,99,000

Working Note 2 - Total liability

Book value of liabilities in the balance sheet on specified date

11,35,00,000

Less: Capital fund

8,00,00,000

Less: Contingent liability on estimated basis to contractor for which no bills are received

30,00,000

Total liability of M/s S Charitable Trust

3,05,00,000

The latest day on which such tax has to be paid is 14th April, 2023, being 14 days from 31.3.3023, the date on which the order confirming the cancellation is received.

SECTION 49(8): COST WITH REFERENCE TO CERTAIN MODES OF ACQUISITION

Where capital gain arises from the transfer of asset held by a trust or an institution in respect of which accreted income has been computed and the tax has been paid thereon in accordance with the provisions of section 115TD, COA of such asset shall be deemed to be the FMV of the asset which has been taken into account for computation of accreted income as on the specified date referred to in section 115TD.

¹ However ICAI in its solution has taken the view that this land was purchased during the previous year 31.3.2012 and hence included 250 lakhs in accreted income.