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MODULE II

Income Tax, TDS, Labour Laws &
GST

Contents

CHAPTER I- 12A REGISTRATION & CONDITIONS FOR EXEMPTION.....	1
1.1. 12A Registration and Renewal	1
1.1.1 An Introduction to 12A	1
1.1.2 Benefits of 12A	1
1.1.3 Eligibility for 12A Registration	1
1.1.4 Categories under Registration	1
A. Fresh Registration under 12AB (New Registration)	2
B. Migration of existing registrations	2
1.2. Charitable Purpose & Condition for exemption.....	4
1.2.1. Application of Income & Accumulation of Funds.....	5
1.2.2. Investment of income under Income Tax 11(5).....	6
1.2.3. Audit and Return filing	7
1.2.4. Inter Charity Donation	7
1.2.5. Anonymous Donations- Definition and Treatment.....	8
1.2.6. Cash Payments	8
1.2.7. Deduction of TDS on specified payments	9
1.3. Cancellation of 12A Exemption.....	9
1.3.1. Violation of any other laws	9
1.3.2. Income of the trust applied for the benefit of interested person 13(3).....	10
1.3.3. Accredited Income (Exit Tax).....	11
CHAPTER II -80G REGISTRATION AND OPERATIONAL ISSUES.....	13
2.1. An Introduction to 80G	13
2.2. Need for 80G Registration	13
2.3. Registration and validation under 80G	14
2.4. Operational Issues under 80G	14
2.4.1. Issuance of Receipt	14
2.4.2. Cash Donations under 80G	14
2.4.3. 80G Return.....	14
CHAPTER III- TDS COMPLIANCES AND RETURN FILING.....	16

3.	TDS Compliances	16
3.1.	Introduction to TDS	16
3.2.	Deduction of TDS on Specified Payments.....	16
3.2.1	TDS on Payments.....	16
3.2.2	Time limit for deduction of TDS	16
3.2.3	Specified Payment on which TDS needs to be deducted	16
3.2.1.	Deposit of Tax Deducted at Source	18
3.3.	TDS Return	19
3.4.	Issue of Certificate	19
3.5.	Interest, Penalties and Punishment.....	20
3.6.	Audit and Return Filing	21
3.6.1.	Introduction to Audit & Filing	21
3.6.2.	Tax Audit Report (10B)	21
3.6.3.	Income Tax Return (ITR) forms and procedure	21
A.	ITR-7.....	22
B.	Contents of ITR-7	22
C.	Time Limits.....	22
D.	Late Filing of Return.....	22
E.	What happens if the Return is not filed till 31st March?	23
F.	Revision/Correction in ITR.....	23
	CHAPTER IV GST- APPLICABILITY AND COMPLIANCES FOR NGOs	24
4.	Applicability	24
4.1	Applicability of GST On Charitable Activities.....	24
4.2	Definition of “Charitable Purpose” under GST	24
4.3	Conditions to claim exemption Under GST	25
4.4	Registration under the GST Law	25

4.5	GST on educational and medical institutions.....	26
4.5.1	Specific exemption in case of educational services	26
4.6	Services by way of right to admission	27
4.7	Export of Services.....	27
4.8	Import of service by NPOs.....	28
4.9	Returns under GST Law	28
4.10	Due Date of Filing Returns	28
CHAPTER V: PROVIDENT FUND COMPLIANCES AND RETURN FILING		30
5.1	Introduction.....	30
5.2	Applicability	30
5.3	Concept of UNIVERSAL ACCOUNT NUMBER (UAN).....	30
5.4	Contribution	31
5.5	Time Limit to deposit.....	31
5.6	Filing of returns under PF.....	31
5.7	Penalty for delay in pf payment	32
CHAPTER VI: PAYMENT OF GRATUITY ACT, 1972		33
6.1	Applicability	33
6.2	Payment of Gratuity	33
6.3	Amount of Gratuity.....	33
Annexure 1.....		34

CHAPTER I-12A REGISTRATION & CONDITIONS FOR EXEMPTION

1.1. 12A Registration and Renewal

1.1.1 An Introduction to 12A

An organization registered as trust, society or a section 8 company, can claim for tax exemption in its income after getting itself registered with income tax under section 12A of the Income Tax Act (referred to as *the Act*). Exemption provided under section 12A is an application based exemption and is attached with certain conditions which have been mentioned in this study material.

“It is important to note here that notwithstanding the fact that trust, society and section 8 companies are registered as per their respective acts, the registration under section 12A is necessary to claim exemption under Income Tax Act.”

1.1.2 Benefits of 12A

The benefits of section 12A registration are as follows:

- The registered NGOs will be eligible to get application based tax exemption under Income Tax Act 1961.
- NGO's receives various grants from government and other agencies. They are eligible to get grants and financial funding from various agencies. These agencies generally make grants to 12A registered NGO's.

1.1.3 Eligibility for 12A Registration

In order to qualify for registration under Section 12A, **the organization should meet the definition of charitable purpose** as defined in the section 2(15) of the Income Tax Act. The primary qualifying criterion will be to check whether **there is any profit motive involved in the activities** carried on by the organization. The details of the definition of charitable purposes and the incidental commercial activities have been covered in point no. 1.2 of the study material.

Also, it may be noted that **12A Registration is not applicable for Private or Family Trusts**. The activities of the Assessee should be genuinely for the benefit of the public.

1.1.4 Categories under Registration

Recently, the Act has inserted new procedures for registration for the religious and charitable organization. The new procedure and amendment stated that the registration under 12A would be valid for a period of 5 years, whereas it was permanent in nature earlier. On the basis of the new

amendments, we can classify the registration into following below mentioned categories:

- A. Fresh Registration under 12AB (New Registration)
- B. Migration of existing registration

A. Fresh Registration under 12AB (New Registration)

In order to claim exemption for a new NGO, an NGO should make afresh registration under section 12AB application.

Initially, a provisional registration for 3 years will be provided to the new organizations. The registration once granted shall be valid for three years from the Assessment Year from which the registration is sought.

However, application for renewal of such new registration needs to be submitted

- at least six months prior to the expiry of validity period or
- within 6 months from commencement of activities,

Whichever is earlier.

The Renewed Registration shall be valid for 5 years and further needs to be renewed at the interval of every 5 years.

Time limit for Approval

As per the Act, **in case of New registration**, an order granting provisional registration or approval shall be passed within a period of **one month** from the end of the month in which the application for provisional registration is made. Such registration or approval shall be valid for 3 years.

Point to be kept in mind...

- *Earlier registration procedure was defined under section 12AA which cease to be applicable from 1st April 2021 with insertion of new section 12A.*
- *Earlier one time registrations was given under section 12A and once the registration was granted it will held valid until and unless it is cancelled by the appropriate authorities. From 1st April 2021, all new registration will be provided provisionally for 3 years only and subsequently, for 5 years thereafter.*

B. Migration of existing registrations

All the existing NGOs that are registered under 12A are required to apply for re-validation of the registration within three months from 1st April 2021. In other words, the application for revalidation of the registration has to be done on or before 30th June, 2021.

Renewal of Registration

Once granted, the Registration shall be valid for a period of 5 years. Therefore, the organization would have to apply for renewal after every 5 years. The application for the renewal of registration (after five years) needs to be submitted at least **six months** prior to the expiry of validity period.

Procedure

With the new amendments, Government intends to create a National Register of all charitable and religious institutions and the Income Tax Department will issue an electronically generated Unique Registration Number (URN) to all charitable and religious institutions.

However, the forms and procedure for revalidation of existing registration has not been notified yet by the statutory authorities.

Time limit for Approval

In case of existing registrations, an order granting re-registration shall be passed by the statutory authorities within a period of **three months** from the end of the month in which the application was received and such registration shall be valid for a period of 5 years.

For Instance, if application for revalidation of existing registration is applied on 15th May, 2021, the order should be passed on or before 15th August, 2021 as per the Act.

In case of Renewal of registration (after 5 years), an order of renewal of registration can be passed by the statutory authorities within a period of **six months** from the end of the month in which the application for renewal of registration is made.

Summary of Time Limit for Application and Approval

Situation	Time limit for Application	Time limit for passing the order
New Registration (Provisional Registration)	Application shall be made at least 1 month prior to the commencement of the previous year relevant to the assessment year from which the registration is sought	Within 1 month from the end of the month in which application is made

Migration of Existing Registration	Application shall be made on or before 30 th June, 2021 (within 3 months from 01.04.2021)	Within 3 months from the end of the month in which application is made.
Renewal of Registration	<u>In case of regular registration</u> Application shall be made at least 6 months prior to the expiry date of 5 years <u>In case of Provisional Registration</u> Application shall be made- (a) at least 6 months' prior to the expiry date of provisional registration, or (b) within 6 months of commencement of its activities, whichever is earlier	Within 6 months from the end of the month in which application is made.

1.2. Charitable Purpose & Condition for exemption

One of the basic conditions of the 12A exemption is that the application of income should be towards religious and charitable purposes. The term charitable purpose has been defined under Section 2(15) of the Act. Any other activity which is not defined under the act shall not be treated charitable activity or purpose.

The expression “charitable purpose” has been defined under Section 2(15) of the Act to include:

- (a) Relief of the poor,
- (b) Education,
- (c) Medical relief,
- (d) Preservation of environment (including water sheds, forests and wild life)
- (e) Preservation of monuments or places or objects of artistic or historic interest
- (f) Yoga and,
- (g) Advancement of any other object of public utility

The definition includes advancement of any other object of general public utility; however, it also provides that the advancement of any other object of general public utility shall not be considered as charitable purpose, if the gross receipts of activity in the nature of trade, commerce or business, exceeds 20% of the total Income of the organization.

*Therefore, in simpler words, the charitable institutions are allowed to carry out business activities without any ceiling limit in case, the overall objective of the organization falls under the first 6 limbs {Section 2 (15)(a) to (f)} of Charitable purposes. However, in case of “advancement of any other object of general public utility” the receipts from business activities **shall not exceed 20%***

of the total receipt of the institution. In case, such activities exceed 20 % of the total receipts of the organization, the organization stands the risk of losing its 12A exemption.

Conditions for undertaking commercial activity:

- The business or commercial activity should be incidental to the attainment of the objectives of the entity.
- Separate books of account should be maintained in respect of such business. The amount of receipts from such business should be separately disclosed in Income Tax Return (in case of advancement of general public utility).

Condition for Claiming Exemption U/s 11

The organization may obtain registration under section 12A of the Act. However, there are certain conditions attached to the tax exemption which needs to be complied by the exempted organizations. Some of the basic conditions have been provided below:

- (i) Application of Income and Accumulation of funds
- (ii) Investment of funds in specified modes u/s 11(5)
- (iii) Audit and return filing
- (iv) Inter-Charity Donations
- (v) Anonymous Donations
- (vi) Cash Payment
- (vii) Deduction of TDS on specified payments

Now, we would study each of the conditions in below paragraphs.

1.2.1. Application of Income & Accumulation of Funds

Application of Income

In order to be eligible for tax exemption an institution or trust is required to apply **at least 85% of its income received in a financial year** for charitable or religious purposes **in India**. While computing 85% of the income, repayment of loan and purchase of capital assets are also treated as an application of income, provided they are for charitable purposes. However, any **voluntary contributions towards the corpus of the organization would be excluded** for the purposes of calculating the application of income.

In other words, 15% of income can be retained by a charitable organization without applying it for charitable purposes in the year in which the income is received. This 15% accumulation is an

indefinite accumulation and the organization does not have to apply it for charitable purposes in subsequent years.

What if 85 % is not spent?

As per the provisions of income tax act, an institution registered under 12A where fails to apply 85% of the income for charitable purposes than in order to claim exemption that institute is required to **accumulate or set apart such income for future application**. There are 2 options available to the organization registered u/s 12A.

- Deemed Application (explanation to Section 11 (1))
- Accumulation of Income U/s 11(2)

Deemed application

In the said section, the organization has to apply such shortfall of the application of income in the **next financial year**. However, the following condition are to applied

- Such trust or institution furnishes electronically **Form No. 9A** – notice of application of income by charitable trust or institution electronically to assessing officer, on or before the due date for filing the return of income.
- **Mention the purpose** for which income is being accumulated or set aside.

Accumulation of Income U/s 11(2)

In the other option, the income so accumulated will not be included in the total income of the institution if the following conditions are applied:

- Such trust or institution furnishes **Form No. 10** – notice of accumulation of income by charitable trust or institution electronically to assessing officer, on or before the due date for filing the return of income.
- **Mention the purpose** for which income is being accumulated or set aside.
- Income shall not be accumulated for more than **5 years** and years in which income accumulated or set aside due to order or injunction of any court to be excluded in computing 5 years.
- Money so accumulated or set aside is **invested or deposited in specified mode** as mentioned under section 11(5).

1.2.2. Investment of income under Income Tax 11(5)

Section 11(5) of the Act provides for the forms and modes of investing or depositing the income accumulated or set aside under section 11(2). In other words, an organization registered under 12A can invest in the following modes as per the above section. Some of the modes of investments under the said section have been provided in **annexure 1** of the module.

1.2.3. Audit and Return filing

The next condition is with regard to audit and return filing for availing the exemption available under the Act:

- a) Audit by qualified chartered accountant.
- b) Return filing within the prescribed time limits

It means audit by a Chartered Accountant is a pre-requisite for claiming exemption under section 11 and 12, where the total income of the trust exceeds Rs 2, 50,000 in any previous year.

Also, the Income Tax returns should be filed within the prescribed time limits for availing the exemption of a particular financial year. In other words, *if the income tax returns are not filed within the prescribed time limits, all the income would be taxable in the hands of the recipient organization.*

The critical aspects regarding timelines, forms and procedures of Income Tax return have been mention in detail in the Chapter III of the study material.

1.2.4. Inter Charity Donation

While calculating the application of income, a donation made by one charitable organization to another shall be considered as application of income for the objectives of the organization provided the recipient organization also has objects similar to the object of donor organization.

However, there are 3 conditions attached for the valid application of income as per the Act:

Donation out of current income: wherever inter-Charity donations are made out of current year's income it is considered as application of funds under the provisions of the act. In other words, the donation should be made out of current year's income and should not be made out of accumulated funds u/s 11 (2), which is also explained in the next paragraph.

Donation out of accumulated fund: If an organization makes donation from funds accumulated under section 11(2) than it would be considered as violation of the section, and the amount so donated shall not be considered as application of the income. In other words, the amount so donated shall be taxed in the hands of donor organization.

However, as an exception, inter-charity donation out of accumulated funds will be permissible only in case of dissolution of a Charitable Organization.

Donation to Corpus Fund: Any amount paid out of income, being voluntary contributions with specific direction that it shall form part of the corpus, to any trust or institution registered under section 12A will not be treated as application of income to the objects of such entities. *In other words, any inter-charity donations cannot be made to the corpus of the recipient organization. If such donations are made, it would not be considered as application of income and hence, taxed in the hands of the donor organization.*

In the light of above provisions, we can conclude the following:

- Inter-organizational donations out current year's income is allowed, and considered as application of the income;
- Donations out of the funds accumulated under section 11(2) is not at all valid except in case of dissolution of charitable organization;
- Inter-Charity donation as corpus to other organization with same objectives cannot be treated as application of income.

1.2.5. Anonymous Donations- Definition and Treatment

"Anonymous donation" means any voluntary contribution, where a person receiving such contribution does not maintain a record of the identity indicating the name and address of the person making such contribution and such other particulars as may be prescribed.

Anonymous donations are taxable for trust or institutions registered under section 12A or 10(23C), at the rate of 30%. However, it is permissible to receive anonymous donation up to

- Rs. 1, 00,000 or
- 5% of total donations received,

whichever is higher.

Exemptions on anonymous donations [section 115BBC (2)]

The following entities shall not be liable to pay tax on anonymous donations received by them:

- Donations received by any trust or institution created or established '**wholly for religious purposes**'; and
- Donations received by any trust or institution created or established for both religious as well as charitable purposes. [115BBC(2)(ii)]

1.2.6. Cash Payments

Where an organization incurs any expenditure in respect of which a payment or aggregate of payments made to a person in a day in cash exceeds **Rs. 10,000**, no deduction shall be allowed in respect of such expenditure. [section 40A (3)]

Earlier, this section was not applicable for trusts. However, an amendment under Finance act 2018 has made it applicable for trusts also. Thus, **payment exceeding Rs. 10,000 in cash in a day with respect to particular expenditure will not be considered as the application of income** and the same will be taxable in the hands of 12A registered organization.

1.2.7. Deduction of TDS on specified payments

The Act provides that, failure to make deduction at source from payment of specified nature or failure to make payment to the account of the Central Government on or before the due date of

filing of ITR, attracts disallowance 30% of such payments in the hands of the payer. *In other words, if an organization fails to deduct TDS on certain specified payments, then 30% of such expenditure shall be taxable in the hands of the defaulting organization.*

The details of certain specified payments and the related TDS compliances have been mentioned in the Chapter III of the study material.

1.3. Cancellation of 12A Exemption

Section 13 of the Act specifies the circumstances under which the benefits under section 12A would not be available to an organization. Section 13 has been enacted as an exception to section 11, thereby, the benefits which are otherwise available under sections 12A, will not be available under the circumstances stated in section 13.

Grounds for cancellation of 12A certificate

An organization, under the following circumstances, may risk losing its exemptions under section 11:

- If the income is not applied for the benefit of the public [section 13(1)(a)].
- If the income is applied for the benefit of any particular religious community or caste [section 13(1)(b)].
- If the income or property of the trust or institution is applied/used for the benefit of the persons specified in section 13(3) who may be the founders, trustee, manager, chief functionary, major donors, relatives of the founders or persons who have a substantial interest in the organization [explained in next point].
- If the funds are applied in modes other than those specified in section 11(5) or shares of companies other than a government company are held [explained in Point 1.2.2 of the study material].
- Violation of Any other laws (as amended in Finance Act, 2019)

1.3.1. Violation of any other laws

The said provision states that the registration under 12A can be cancelled by the Assessing Officer if it is found that the organization has violated any other law which had to be complied by the said organization. A point-wise summary has been provided below

Registration can be refused for violation of other laws at:

- the time of initial registration
- any point of time after registration if such violation is noted

However, the registration would be cancelled only if

- Violation of the laws is undisputed or attained finality and
- Reasonable opportunity of being heard is provided

Some of the laws (on sample basis) to be followed by an NGO are as follows:

- FCRA Act, 2010
- EPF Act
- Payment of Gratuity Act, 1972
- Societies, Act 1860
- Bombay Public Trust Act, 1950
- Companies Act, 2013
- Goods and Service Tax Act

The provisions of section 13 specify complete withdrawal of the exemptions available under section 11, in respect of various incomes. In other words, violations as specified under section 13 will have the effect of forfeiting exemptions on incomes which are otherwise available under section 12A.

1.3.2. Income of the trust applied for the benefit of interested person 13(3)

One of the circumstances specified under section 13 is payments made to specified person. As per the Act, following are considered as specified persons:

- Author/Founder of Trust
- Person who made donation of more than 50,000 rupees
- Trustee or manager of trust
- Relative of Founder, donor, member, trustee and manager
- Any concern in which any of the above person has substantial interest

When any trust or institution has made payment to or provide any service to specified persons then it has to disclose following details in its audit report (Form 10B) filed under section 12A (b):

- any part of the income or property of the trust/institution was lent, or continues to be lent, in the previous year to specified person
- any land, building or other property of the trust/institution was made, or continued to be made, available for the use of specified person during the previous year
- payment made during the previous year by way of salary, allowance or otherwise services of the trust/institution made available to previous year
- any share, security or other property was purchased by or on behalf of the trust/institution during the previous year from specified person
- any share, security or other property was sold by or on behalf of the trust/institution during the previous year to specified person
- income or property of the trust/institution was diverted during the previous year in favor of specified person
- income or property of the trust/institution was used or applied during the previous year for the benefit of any such person in any other manner
- Investments held at any time during the previous year(s) in concerns in which persons referred to in section 13(3) have a substantial interest.

In simpler words, all the benefits provided to specified persons should be disclosed in Form 10B. Further, if it is found that **there is any undue benefit being provided to such specified persons, then the organization may stand the risk of losing its income tax exemption.**

Important Note: It should be noted here that payment to a Secretary who is also acting as a Project Director in an Executive position may receive salary in the capacity of the Project Director as per the prevailing market rates.

1.3.3. Accredited Income (Exit Tax)

A society or a section 8 company or a trust or an institution carrying on charitable activity (defined under 2(15)) may voluntarily wind up its activities and dissolve or may also merge with any other charitable or non-charitable institution, or it may convert into a non-charitable organization.

Provisions under section 115TD is introduced to ensure that the benefit conferred over the years by way of exemption claimed by charitable trusts is not misused by converting it into non-charitable organization. It is a kind of exit tax that we usually call tax on accredited income.

Circumstances under which Exit Tax would be levied

Section 115TD prescribes circumstances under which exit tax is leviable. There are three conditions under which exit tax would become leviable:

1. Trust is converted into **any form which is not eligible for grant of registration** under section 12AA. Trust or an institution shall be deemed to have been converted into any form not eligible for registration under section 12AA:
2. The registration granted to it under section 12AA has been cancelled or
3. Trust has adopted or undertaken modification of its objects which do not conform to the conditions of registration and it:
 - has not applied for fresh registration under section 12AA in the said previous year.
 - has filed application for fresh registration under section 12AA but the said application has been rejected.
4. Trust is merged with an entity which is not having similar objectives and not registered u/s 12AA.
5. Trust failed to transfer upon dissolution all its assets to any other trust or institution registered under section 12AA or approved u/s 10(23C) within a period of **twelve months from the end of the month in which the dissolution takes place.**

Rate of Accreted Income Tax

Tax on accreted income is to be paid at **Maximum Marginal Rate**; this levy is in addition income-tax chargeable in hands of entity and is calculated as below:

Accreted Tax = Accreted Income * Maximum Marginal Rate (**42.744% for Financial year 2020-21**)

Meaning of Accreted Income

Accreted income is Fair Market Value (FMV) of assets and Liabilities of trust/institution as on specified date. In computing FMV of assets, following assets shall not be included:-

- a. Assets, which have been acquired directly out of agriculture income referred to in section 10(1).
- b. Assets which have been acquired between the period beginning from the date on which trust is created and ending on the date on which registration u/s 12AA becomes effective, if no benefit u/s 11 and 12 is given during said period.
- c. In case of dissolution of trust, the assets which have been transferred to either Trust/institution registered u/s 12AA or other institution registered u/s 10(23C)(iv)/(v)/(vi)/(via), within period of 12 months from the end of the month in which dissolution takes place

CHAPTER II -80G REGISTRATION AND OPERATIONAL ISSUES

2.1. An Introduction to 80G

As we already know that an NGO can avail income tax exemption by getting itself registered and complying with certain other formalities, but such registration does not provide any benefit to the persons making donations. The Income Tax Act has certain provisions which offer tax benefits to the "donors". All NGO's should avail the advantage of these provisions to attract potential donors. Section 80G is one of such sections.

2.2. Need for 80G Registration

Section 80G of the Income Tax Act'1961 provides deduction while computing the total income in the hands of donor. The recipient of money or the donee gives a receipt of donation, based on which the donor is entitled to claim deduction provided that the donee institution is approved under section 80G of the Income Tax Act'1961.

It is important to note that when registration is granted under section 12A, it does not mean that section 80G approval is to be given i.e. registration under section 12AA will not provide automatic approval under section 80G. Section 80G applies only to charitable trusts or institution. It does not apply to religious trust or institutions.

The threefold benefits of this registration would be:

- As a society bylaw, 80G registration makes your NGO a promising prospect, enhancing its goodwill and the confidence of those associated with your brand.
- It enables the donor to reap the tax advantage of lowering taxable income associated with it, while contributing to a good cause.
- Only an NGO with both 12A and 80G registrations is eligible for government funding.

Benefit to the donor under Section 80G

If an NGO gets itself registered under section 80G then the person or the organization making a donation to the NGO will get a deduction of 50% from his/its taxable income.

However, such benefit is available only up to a ceiling limit of 10% of the Gross Total Income of the Individual/ Institutional donor for that particular year.

2.3. Registration and validation under 80G

As per the new amendments, the provisions for registration and revalidation under 80G are same as the provisions of 12A registration and has been already covered in section 1.1 of the study material.

2.4. Operational Issues under 80G

2.4.1. Issuance of Receipt

Deduction under section 80G can be claimed by any taxpayer (whether individual/partnership firm/HUF /company/LLP etc.) irrespective of whether he is earning income from salary or business. In order to claim this deduction, the donor is also required to furnish a proof of payment. A stamped receipt is issued by the recipient trust or society in this regard, details of which should be mentioned by the taxpayer while filling his income tax return. Therefore, any organization issuing 80G money receipt should necessarily mention the following:

- a) The name and address of the Trust
- b) The name of the Donor
- c) The amount donated
- d) The registration number of the trust, as given by the Income Tax Department u/s 80G along with its validity.

2.4.2. Cash Donations under 80G

Section 80G is applicable only to donations made in terms of money. Explanation 5 to section 80G clearly states that no deduction will be allowed in respect of any donation unless such donation is in the form of money. In other words, donations in kind are not considered for deduction under section 80G.

Any donation in excess of Rs. 2,000/- under section 80G should be made any mode other than cash. In other words, a charitable organization cannot receive more than Rs. 2,000 as donation in cash from a particular person in a financial year under 80G provisions. (Amended by Finance Act, 2017)

2.4.3. 80G Return

The Finance Bill 2020 provides that the donee institution/ fund has to submit the statement of donation received in such manner as may be prescribed and the benefit of 80G shall be available to the donor on the basis of information relating to donation furnished by the corresponding institution/fund.

However, the forms and the procedure of such returns have not been prescribed yet.

Late filing of returns or Failure to furnish statements

In case of delay in filing such statement, a late fee of Rs.200 per day shall be applicable under newly inserted section 234G of the Income-tax Act. Further, a penalty under Section 271K, which shall not be less than Rs.10, 000/-and which may extend up to Rs.1 Lakh shall be levied if the trust or institution fails to file such statement.

CHAPTER III- TDS COMPLIANCES AND RETURN FILING

3. TDS Compliances

3.1. Introduction to TDS

Under the Act, every person making payment or crediting income of specified types to another person is required to deduct a specific proportion of amount payable/creditable and deposit the sum so deducted. Every such person shall have to apply to the Income Tax Department for allotment of a **Tax Deduction Account Number (TAN)**. In other words, if an organization wants to deduct TDS on any type of specified payments, it should have a valid TAN in the name of the organization.

In case, an organization has separate branches or units in different places, it can apply for a separate TAN for each branch or unit. However, it should be noted here that all the TDS compliances have to be maintained with respect to each TAN i.e. organization would have to file separate TDS returns for each TAN.

3.2. Deduction of TDS on Specified Payments

3.2.1 TDS on Payments

Under the Income-tax Act, every person making payment or crediting income of specified types to another person is required to deduct a specific proportion of amount payable/creditable and deposit the sum so deducted.

3.2.2 Time limit for deduction of TDS

The concept of TDS is based on a principle i.e. tax is to be deducted at the time of:

- payment getting due or
 - actual payment
- whichever is earlier.

3.2.3 Specified Payment on which TDS needs to be deducted

Section **200** of the Act specifies a list of payments which require deduction of tax at source. The below table shows the payments on which a NGO should deduct TDS while making payments.

The type of payments along with the rates of deduction and ceiling limit above which TDS needs to be deducted has been provided in the table below. Please note this is just an illustrative list from the purview of the NGOs.

S.no	Nature of payments	Section	Basic Cut off	TDS rates for	
				Individual and HUF	Other than Individual/HUF
1	Payment to Contractors ,Advertisement /Sub Contractor , Payment to Transporter	194C	30,000 (Single bill) or 100,000 aggregate bills during the year.	1%	2%
2	Insurance Commission	194D	15,000	5%	10%
3	Commission/Brokerage	194H	15,0000	5%	5%
4	Rent-property	194I	240,000	10%	10%
5	Rent-Plant / Machinery	194I	240,000	2%	2%
6	Professional Fees	194J	30,000 (Fees for professional, Royalty, Director sitting fees)	10%	10%
			30000(Fees for technical services, call centers)	2%	2%
7	Salary	192B	As per applicable slab rates		
8	Cash Withdrawal*	194N	1 Crore	2%	

*It should be noted that TDS on account of Cash withdrawal from the Bank/Post office would be deducted by the respective banking authority and not the organization withdrawing cash.

It should be noted that in case the deductee does not have PAN, 20% TDS needs to be deducted irrespective of the nature of the payment and the status of deductee.

Note: The above rates of deduction are the normal rates of deduction for an organization. However, due to the COVID-19, the CBDT has temporarily reduced some of the TDS rates which has been shared in the next paragraph.

Important Update

*In order to provide more funds at the disposal of the taxpayers for dealing with the economic situation arising out of Covid-19 pandemic, the rates of the TDS for non- salaried specified payments made to residents has been reduced by 25% for the period from **14th may 2020 to 31st March 2021**. In other words, TDS on the amount paid or credited during the period from 14th May 2020 to 31st March 2021, shall be deducted and deposited at below mentioned reduced rates:*

S. No	Nature of payments	Section	Existing Rate	Reduced Rate
1	Payment to Contractors ,Advertisement /Sub Contractor , Payment to Transporter	194C	1% (Individual and HUF) 2% (Others)	0.75 % 1.5 %
2	Rent-property	194I	10%	7.5 %
3	Rent-Plant / Machinery	194I	2%	1.5 %
4	Professional Fees	194J	10%	7.5 %

It to be noted that there will be no reduction in rates of TDS for TCS where the tax is required to be deducted or collected at higher rates due to non furnishing of PAN/Aadhaar.

3.2.1. Deposit of Tax Deducted at Source

The tax deducted at source is required to be deposited to the credit of the Central Government within the stipulated time limit. Such deposit can be made in various specified nationalized banks with the help of TAN challans. Whenever a TDS is deposited it is mandatory to quote the TAN on challan.

Time limit for deposit of TDS

All month except March: Any amount of TDS that is deducted should be deposited before the 7th of next month in which such TDS has been deducted.

In the month of March: In case, TDS is deducted in the month of March, the TDS can be deposited by 30th April.

3.3. TDS Return

All organizations responsible for deduction of tax at source are required to submit to the prescribed income-tax authority; a return(s) within a stipulated period after the end of each quarter. The relevant return form and the respective due dates have been provided as under:

Quarter	Type of expenditure	Type of Form	Due Date for filing of Return
April to June	Salaries	24Q	31 st July
	Contractor/Rent/Profession	26Q	
July to September	Salaries	24Q	31 st October
	Contractor/Rent/Profession	26Q	
October to December	Salaries	24Q	31 st January
	Contractor/Rent/Profession	26Q	
January to march	Salaries	24Q	31 st may
	Contractor/Rent/Profession	26Q	

3.4. Issue of Certificate

Under section 203 the organization deducting TDS is required to issue a certificate to the person from whose income-tax has been deducted. This certificate will enable the person to claim credit for such tax deducted in his/her return of income. Organisation can download the TDS certificates from TRACES portal. The following below mentioned forms are issued by the deductor of TDS to the deductee:

Particulars	Form	Date of Furnishing
Salary	Form 16	15 th June of next year
Other than Salary	Form 16A	Within 15 days of last day on which TDS return needs to be filed
For fringe Benefits/amenities and profit in lieu of salary	12BA	15 th June of next year

3.5. Interest, Penalties and Punishment

Failure to deduct income-tax at source on various payments as discussed may attract interest, penalty and even severe punishment.

Nature of Interest payments

Section	Nature of Default	Interest subject to TDS/TCS amount	Period for which interest is to be paid
201A	Non deduction of TDS, either in whole or in part	1% per month	From the date on which tax deductible to the date on which tax is actually deducted.
	TDS Deducted but not deposited, either in whole or in part	1.5% per month	From the date of deduction to the date of payment

Nature of Penalties and imprisonment

Section	Nature of Default	Penalty subject to TDS/TCS amount	Period for which interest is to be paid
271C	Failure to deduct TDS	Amount of tax not deducted	From the date on which tax deductible to the date on which tax is actually deducted.
234E	Failure to furnishing TDS return on or before due date	A sum of Rs. 200 per day during which the failure continues. The amount of late fees shall not exceed the amount of TDS.	For every day after the due date of filing of return until the day return is filed.
278B	After deduction of tax, non-payment of tax either in whole or in part	Imprisonment for a period of 3 month to 7 years with fine.	
272B	For furnishing wrong information (Like PAN or amount) in TDS return.	Penalty ranging from Rs. 10,000 to Rs. 1,00,000 may be imposed.	

3.6. Audit and Return Filing

3.6.1. Introduction to Audit & Filing

Section 12A states two conditions for availing the exemption available under the Act:

- Registration u/s 12A
- Audit by qualified chartered accountant.

It means audit by a Chartered Accountant is a pre-requisite for claiming exemption under section 11 and 12, where the total income of the trust exceeds Rs 2, 50,000 in any previous year.

3.6.2. Tax Audit Report (10B)

Under the Section 12A(b) of the Income Tax Act, the Chartered Accountant needs to submit a Tax Audit Report in Form 10B, which needs to be furnished along with the Income Tax return of the organization.

The tax auditor shall furnish tax audit report online by using his login details in the capacity of 'Chartered Accountant'.

The tax audit report should be filed one month prior to the due date of filing the return of income. In case the due date of filing of return is 31st October, the form 10B should be filed on or before 30th September

In case, the organization fails to furnish form 10B within the prescribed time limits, all the income of the organization should be taxable and the 12A exemption would not be available for that particular year.

3.6.3. Income Tax Return (ITR) forms and procedure

A. ITR-7

All Charitable Organizations' having income exceeding Rs. 2,50,000 is required to file their return of income. The 'income' for the purposes of filing the return should be computed without giving effect to the provisions of sections 11 and 12 of the Act. Such returns are to be filed with the Income-Tax officer or the Assessing Officer under whose local jurisdiction they fall.

It is mandatory to file return of income electronically with or without digital signature. However, an organization liable to get its accounts audited shall furnish the return electronically under digital signature.

B. Contents of ITR-7

The ITR-7 form has been divided into 2 parts that are Part A, Part B and 23 schedules. They are as follows:

- **Part-A** includes General information for the Assessment Year (AY) 2019-20, a taxpayer has to also provide complete information regarding the details of registration or approval.

- **Part-B includes** the detailed outline of the total income and tax computation of the taxpayer with respect to income liable for taxation.

C. Time Limits

All organizations or trusts are required to file the return in ITR-7. Charitable Institution/Trust whether registered as a public charitable trust or society under the Act of 1860 or as a company licensed under section 8 of the Indian companies Act is required to file the return in Form ITR-7 by **31st October (as amended by Finance Act 2020, earlier it was 30th September) of the assessment year.**

Due to the Covid-19 pandemic, the due date for filling income tax returns for F.Y 2019-2020 has been extended to 31st December 2020.

D. Late Filing of Return

The concept of belated return arises when the taxpayer misses the due date of filing of the Income Tax Return. A belated return can be filed either by the end of the relevant assessment year or before the completion of the assessment, whichever is earlier. For instance, with regard to the any assessment year, a belated return can be filed any time before 31st March of the Assessment Year.

E. What happens if the Return is not filed till 31st March?

In case the organization fails to file returns till 31st March of the Assessment year (Year succeeding Financial year), the income Tax exemption would not be available for that particular year. **In other words, all the income of the organization would be taxable if the returns are not filed before 31st March of the Assessment year.**

For instance, the normal due date for filing the return for financial year 2020-21 is 30th October, 2021. However, a belated return can be filed till 31st March, 2022.

F. Revision/Correction in ITR

At the time of filing our income tax return (ITR), the organization may make a mistake while filing our ITR. These could include mentioning the wrong bank account number, forgetting to declare interest income, or claiming the wrong deduction. The Income-Tax Act allows organizations to rectify their mistake by filing a revised income tax return. This section states that the Assessee can furnish a revised return any time before **the end of relevant assessment year or before the completion of assessment, whichever is earlier.**

According to current income tax laws, you now only have time till the completion of the relevant assessment year to rectify your mistake. Thus, once you have filed ITR for FY 2019-20, you have time till March 31, 2021 to correct your mistake, if any.

CHAPTER IV GST- APPLICABILITY AND COMPLIANCES FOR NGOs

4. Applicability

The section 2(84) of CGST Act defines the term “person”. This definition includes Trusts, Societies and all types of artificial juridical persons. Therefore, charitable organisations irrespective of their mode of registration are included in the definition of “person”.

4.1 Applicability of GST On Charitable Activities

In order to decide the applicability of GST on charitable activities, we need to look into the component of supply and consideration in the activity and whether it can be considered as “in the course or furtherance of business”.

The activities of NPOs can be divided into three categories from GST perspective:

- a) Activities pertaining to grants and donations which are completely without consideration and not in the course or furtherance of business are outside the scope of GST provided no benefit is given to the donor in return.
- b) Activities having a component of supply which could be considered as “in the course or furtherance of business” are taxable under GST. However, some of such activity may be specifically exempt under GST.
- c) Activities having a component of supply but are not “in the course or furtherance of business” are not taxable under GST. In such cases, the onus will be on the NPO to establish that the activity was not “in the course or furtherance of business”.

4.2 Definition of “Charitable Purpose” under GST

The term “charitable purpose” has not been defined under the GST Act. However, vide a notification no **12/2017** the term “charitable activity” has been explained. As per this notification following activities under GST are to be considered as “Charitable activities”:

(i) public health by way of:

(A) care or counselling of

- (i) terminally ill persons or persons with severe physical or mental disability;
- (ii) persons afflicted with HIV or AIDS;
- (iii) persons addicted to a dependence-forming substance such as narcotics drugs or alcohol;

(B) public awareness of preventive health, family planning or prevention of HIV infection;

(ii) advancement of religion, spirituality or yoga;

(iii) advancement of educational programmes or skill development relating to,-

- (A) abandoned, orphaned or homeless children;
- (B) physically or mentally abused and traumatized persons;
- (C) prisoners; or
- (D) persons over the age of 65 years residing in a rural area;

(iv) preservation of environment including watershed, forests and wildlife;

4.3 Conditions to claim exemption Under GST

The GST Act has not defined the term “Charitable Organisation”; however, in order to claim an exemption as charitable activity under GST, a Charitable Trust or NPO must satisfy the following two conditions:

- (i) The entity must be registered under Section 12AA of the Income Tax Act, 1961
- (ii) The services provided by the entity must be charitable in nature as defined under Notification no. 12/2017.

Important points

- GST applies to specific economic activities which could be treated as in furtherance of business under GST. Therefore, NPOs which are not engaged in activities which are covered within the definition of charitable activity shall be subjected to GST provided their activities have a component of supply as defined under the GST Act.
- The exemption is not to the organization but to the services in relation to charitable activity as defined in the notification and therefore, if such organization, apart from services in relation to specified charitable activities, are engaged in providing other taxable supply then the organization shall be subjected to GST in respect of such taxable supplies.

4.4 Registration under the GST Law

Any NGO who makes a taxable supply i.e. supply of goods and / or services are liable to tax under GST law. If its aggregate turnover in a financial year exceeds the threshold limit of 40 lakhs (in case of sale of goods) and 20 lakh rupees (in case of service provider), it shall be liable to register himself in the State or the Union territory of Delhi or Puducherry from where he makes the taxable supply.

On the other hand, as per Section 23 of the Act, an agriculturist in of supply of his agricultural produce as also any person exclusively making supply of non-taxable or wholly exempted goods and/or services under GST law will not be liable for registration.

4.5 GST on educational and medical institutions

Any activity which is technically not covered under the definition of education would not become a commercial activity subject to GST. “Education” is not defined in the CGST Act. However, the education is defined by the Supreme Court in its decision in *Loka Shikshana Trust v. CIT* [1975] 101 ITR 234 (SC), as a process of training and developing knowledge, skill and character of students by normal schooling which results in a recognised degree.

The GST law vide exemption notification 12/2017 “Educational Institution” means an institution providing services by way of:

- pre-school education and education up to higher secondary school or equivalent;
- education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force;
- education as a part of an approved vocational education course.

4.5.1 Specific exemption in case of educational services

Some educational services are exempted while others are not, the exempted services are mentioned below:

“Services provided:

- a) By an educational institution to its students, faculty and staff; by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee;
- b) To an educational institution, by way of,
 - Transportation of students, faculty and staff;
 - Catering, including any mid-day meals scheme sponsored by the Central Government, State Government, Union Territory;
 - Security or cleaning or house-keeping services performed in such educational institution;
 - Services relating to admission to, or conduct of examination by, such institution;
 - Supply of online educational journals or periodicals;

Provided that nothing contained in (b) shall apply to an educational institution other than an institution providing services by way of pre-school education and education up to higher secondary school or equivalent.

Thus, there are two types of exemptions in this entry. Services provided by the educational institution and services received by educational institution.

4.6 Services by way of right to admission

Many NPOs are indulge in exhibition, dramas, and sporting events etc. which have entry fees. If no exemption is given, all such organizations will come within the ambit of GST. So, by way of notification some exemptions are provided:

“Services by way of right to admission to-

- (a) Circus, dance, or theatrical performance including drama or ballet;
- (b) Award function, concert, pageant, musical performance or any sporting event other than a recognized sporting event;
- (c) Recognized sporting event;
- (d) planetarium,

Where the consideration for right to admission to the events or places as referred to in items (a), (b), (c) or (d) above is not more than Rs. 500 per person.” So, if there is entry fee up-to Rs. 500/- at any of the events mentioned above, then they will be exempted from GST. Amount limit was Rs. 250/- which was increased to Rs. 500/- through amendment.

4.7 Export of Services

“Export of services” means the supply of any service when, the supplier of service, recipient of service and place of supply of service is located in India; and the payment of such services has been received by the supplier of service in convertible foreign exchange or in Indian rupees where permitted by RBI.

All registered tax payers who export the goods or services will have to furnish Letter of Undertaking (LUT) in GST RFD-11 form on the common portal of GSTN in order to make exports without payment of IGST. This Letter of undertaking has to be filed /submitted online before exporting the goods/services.

By doing this, Exporter undertakes the following:

- a) Export of goods/services will be completed within a period of three months from the date of issue of export invoice or further period allowed by the Commissioner if any.
- b) To abide by GST law in respect of exports
- c) To pay IGST along with Interest if failed to Export

Interest must be paid at the rate of 18% per annum for the period from date of issue of export invoice upto date of Payment of IGST

4.8 Import of service by NPOs

Any service received from a provider of service located in non-taxable territory by any entity registered under section 12AA of the Income-tax Act, 1961 for the purposes of providing charitable activities shall be exempt from GST. Thus, the charitable entity is not liable to pay GST on import of services under reverse charge mechanism. However, “charitable activities” shall have the same meaning as defined earlier part of this module. It is also specified that exemption shall not apply to online information and database access or retrieval services received by such charitable entities.

4.9 Returns under GST Law

GSTR-1: It is a monthly or quarterly return that should be filed by every registered person. It contains details of all outward supplies. It is a monthly return that summarises the all outward supply of registered person. If a registered person has outward supply upto 1.5 crore, then he has option to file quarterly return.

GSTR-3B: It is a monthly self-declaration to be filed, for furnishing summarized details of all outward supplies made, input tax credit claimed, tax liability ascertained and taxes paid. GSTR-3B is to be filed by all normal taxpayers registered under GST.

GSTR-9: It is the annual return to be filed by taxpayers registered under GST. It will contain details of all outward supplies made, inward supplies received during the relevant previous year under different tax heads i.e. CGST, SGST & IGST and HSN codes, along with details of taxes payable and paid. It is a consolidation of all the monthly or quarterly filed during that year.

GSTR-9C: It is the reconciliation statement to be filed by all taxpayers registered under GST whose turnover exceeds Rs.2 crore in a financial year. The registered person has to get their books of accounts audited by a Chartered/Cost Accountant. The statement of reconciliation is between these audited financial statements of the taxpayer and the annual return GSTR-9 that has been filed.

4.10 Due Date of Filing Returns

Return Form	Description	Frequency	Normal Due Date
GSTR-1	Return in which summary of outward supplies is filed.	Monthly/	<ul style="list-style-type: none">- 10th of next month for taxpayers with aggregate turnover in the previous financial year more than Rs 1.5 crore.- 10th of the month next to the quarter end where aggregate turnover in the previous

			financial year less than Rs 1.5 crore.
GSTR-3B	Simple return in which summary of outward supplies along with input tax credit is declared and payment of tax is affected by the taxpayer.	Monthly	<ul style="list-style-type: none"> - 20th of next month for taxpayers with an aggregate turnover in the previous financial year more than Rs 5 crore. - For the taxpayers with aggregate turnover equal to or below Rs 5 crore, 22nd of next month for taxpayers in category X states/UTs. - 24th of next month for taxpayers in category X states/UTs
GSTR-9	Annual return for a normal taxpayer.	Annually	31st December of next financial year.
GSTR-9C	Certified reconciliation statement	Annually	31st December of next financial year.

CHAPTER V: PROVIDENT FUND COMPLIANCES AND RETURN FILING

5.1 Introduction

Provident fund is a welfare scheme for the benefits of the employees. Under this scheme both the employee & employer contribute their part but whole of the amount is deposited by the employer. Employer deducts the employee share from the salary of the employee. The interest earned on this investment is also credited in pf account of the employees. At the time of retirement, the accumulated amount is given to the employees, if certain conditions are satisfied.

5.2 Applicability

The provisions of Provident Fund apply to establishments belonging to notified category of Industries/Class of establishments employing 20 or more persons with certain exceptions. Provisions also exist for coverage on voluntary basis on joint request by the employer and majority of the employees of establishments of non-applicable category.

Important Note: An establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time falls below twenty.

5.3 Concept of UNIVERSAL ACCOUNT NUMBER (UAN)

It is a 12-digit number allotted to the employee who is contributed to EPF. It remains same throughout the life of the employee. It does not change with the change of Job. It will help in easy transfer and withdrawals of claims. Along with the service of Online Passbook, SMS Service on each deposit of contribution & online KYC update can be provided on the basis of UAN. In order to avail all these service, the employee need to activate its UAN number through EPFO portal.

5.4 Contribution

Contribution is payable monthly by the employer and employee both at equal rate. The employer is required to deposit both the shares of contribution including those of contractors' employees, if any. The employer is authorized to recover the employees share from the salary of the employees share from the contractor concerned.

Basic rate provident fund contribution rate is @12% (basic pay + dearness allowance + retaining allowance). The entire 12% of your contribution goes into your EPF account along with 3.67% (out of 12%) from your employer, while the balance 8.33% from your employer's side is diverted to your EPS (Employee's Pension Scheme) and the balance goes into the EPF account.

Basic Wages means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case, in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include:

- The cash value of food concession;
- Any DA, HRA, overtime allowance, bonus, commission or any other similar allowance payable to the employee;
- any presents/gifts made by the employer;

5.5 Time Limit to deposit

Employer shall pay the amount of contribution within 15 days of the close of every month pay to the PF Authority which is authorized for collection on account of contributions and administrative charge.

5.6 Filing of returns under PF

All employers having PF registration are responsible to file returns on a monthly basis. The filing of returns must be completed by the 25th of each month. Apart from monthly returns and annual return must be filed by 30th April of each given year.

S.No	Type of Return	Due Date
1.	Monthly return in Form 12A	25 th of each month
2.	Annual return in Form 3A* & 6A*	25 th April of subsequent year

¹Form 3A: It depicts the month-wise contributions made by the subscriber/member and employer towards E.P.F and Pension Fund in a particular year. The data is calculated for every member who is a part of the scheme.

²**Form 6A:** It is a consolidated annual contribution statement that contains details about the annual contributions of each member of the establishment.

5.7 Penalty for delay in pf payment

Delay in payment of PF by employer having PF registration will attract penalty as follows:

Period of Delay	Rate of Penalty
Upto 2 months	5%
2 - 4 months	10%
4 - 6 months	15%
Above 6 months	25%

CHAPTER VI: PAYMENT OF GRATUITY ACT, 1972

6.1 Applicability

Any establishment having employed more than 10 persons at any time during the financial year will be covered under the payment of Gratuity Act. Therefore, every public charitable and religious trusts would be covered by payment of Gratuity Act, provided that they have employed more than 10 persons at any time during the year. There is no specific exemption for NGOs under the said Act.

6.2 Payment of Gratuity

Gratuity shall be paid to an employee on the termination of his employment after s/he has rendered continuous service of not less than 5 years i.e. on superannuation, retirement, resignation, death or disablement due to accident or disease (Sec 4).

The period of 5 years is not necessary if the termination of the employee is because of death or disablement. In the case of death, the amount is paid to the legal heirs.

There is no law that restricts an employer from paying gratuity to his employees even if the organisation is not covered under the Act.

6.3 Amount of Gratuity

Gratuity is calculated at 15 days wages as per the last drawn salary for each completed year of service or part of thereof in excess of six months. The monthly wage is divided by 26 and multiplied by 15. In computing a completed year of service, the period in excess of six months shall be taken as a full year.

The maximum amount of gratuity payable under the Act is Rs.20,00,000.

Annexure 1

Modes of investment under section 11(5)

- 1 Investment in Government Savings Certificates and any other securities or certificates issued by the Central Govt. under the Small Savings Scheme ;
- 2 Deposit in any account with the Post Office Savings Bank Account ;
- 3 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) ;
- 4 Investment in units of the Unit Trust of India.
- 5 Investment in any security for money created and issued by the Central Govt. or a State Govt.
- 6 Investment in debentures of any company or corporation, the principal whereof and the interest whereon are guaranteed by the Central or State Government.
- 7 Investment or deposit in any public sector company.
- 8 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.
- 9 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
- 10 Deposits in bonds issued by a public company engaged in long term finance for development of urban infrastructure.
- 11 Investment in immovable property.
- 12 Deposits with the Industrial Development Bank of India (IDBI).
- 13 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:
 - 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.
 - any transfer of deposits to the Public Account of India;
 - deposits made with an authority constituted in India for the purposes of housing accommodation, planning & development of cities, towns and villages;
 - 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.

