

Important Points for the Consideration of Finance Minister for inclusion in DTC (Direct Taxes Code), Finance Ministry, Govt. of India

1. Taxation vis a vis Endowment/ Charity Registration:

- a. New Clause: Religious Trusts should compulsorily register with Endowments Department of each state, wherever an act is passed in the state legislature, to entail 100% exemption.
- b. Status: Taxation at actuals, if income is more than individual limit. Endowments Registration (Though Mandated by concerned states) is not a pre-requisite for Income Tax Department Exemption/ Registration.
- c. Implications: Every Trust has to report to state Endowments Department, which is another Process itself. These organisations are vulnerable to the corrupt/ inefficient mechanism, apart from payment clause. (Ill effects of Endowments are very much visible in States like AP; where genuine organisations are wriggling hard to come out of the clutches of Endowments).
- d. **Representation: Remove the reference of Endowments in DTC.** Any Trust can be superseded/ Enquired/ Takenover by Endowments, if any complaint is filed, under existing acts. (This clause itself is a deterrent to abuse). IT Department can suo motu may initiate action/ refer to concerned departments in case of complaints.
- e. Ramifications: Inclusion of this connection/ reference to Endowments will disadvantage Majority Institutions of Hindu, while being lenient on Islamic Groups, Christian, Sikh Groups. Contrary to the letter and spirit of the constitution, which bestows equality on all the citizens of India, irrespective of religion, this new reference, will subject Majority to disadvantageous new regulation.

2. Application of Funds

- a. New Clause: Donations to Trusts with similar objectives cannot be treated as application of funds.
- b. Status: Trust may support the ventures of Trusts with similar objectives. This way, collaboration and mutual support is possible. (Probable Intention: To detect duplication of Reflection of Activities, without the actual activity. Example: Whereas just one charity is conducted; but reflected in two or more Trust's reports).
- c. Implications: No Trust can support another activity of another Trust. Smaller Trusts cannot send donations to bigger projects of other Trusts. (If some Trust wanted to contribute an amount to Sri Venkateswara Prana Daana Trust, Some Free Feeding Venture of Guru Dwaras; Or a Mammoth Book Project/ Renovation Projects of Prominence – it will not be permissible. Similarly, if a smaller Trust with lesser resources cannot be supported by a bigger Trust, for its activities or Maintenance).
- d. **Representation: Allow supporting similar activities of Trusts with similar objectives.** (To detect duplication, reporting norms may be altered to separately mention the Support of other Trusts along with their Pan Number).

Apart from the above two points, the new DTC should concern Following Issues:

3. Contribution to Corpus Fund:

- a. **Status:** At least 85% Funds, accumulated from Donations in a financial year, should be spent towards the objectives. Unutilised Funds may be accumulated for 5 years, with a specific permission from CIT (Commissioner of Income Tax).
- b. **Implication:** Incessant tinkering amendments to the IT Act 1961 has resulted in this type of difficult situation, where as the contributions towards the Corpus Fund are not exempted from this 85% Application Rule.
- c. **Representation: Exempt Corpus Fund Donations, supported by Declaration by Donors, from the rule to spend 85% of the current year accumulations.**
- d. **Benefit:** By this exemption, a donor can institute one fund under a Trust, to sponsor a charitable activity in their memory or their parents. Example: Sponsor the education of a child every year; or conduct Anna Daanam or conduct a medical camp annually in the name of their elders. Thus, this will encourage charity, which is the backbone of Indian Ethos.

4. Not For Profit Nomenclature

- a. Further it is requested to frame Rules to categorise an organisation either as an **Not For Profit** or **For Profit**; rather than analyse the activity ala carte. This would help the organisation reflect the subsidiary activities to mobilise funds for a charitable act.

Another Point for consideration

5. Registration of a Trust

- a. **Creation:** Rules Governing the Registration of a Trust are ambiguous, due to the absence of a proper law, directly dealing with the Charity/ Religious Organisations. Currently, indirect clauses of Indian Societies Act and Indian stamps and Registration Act (of Pre-Independence Era) are cited for registration. Subsequently innumerable rulings/judgements of Honourable Supreme Court have complicated issue, rendering the entire gamut of Charities, subject to interpretation of various authorities/ experts.
- b. **Creation of Subsidiary Trusts and Dissolution** is also matters left for interpretation.
- c. **Representation: Enact a law to promote Charity and to govern the NGOs** on the lines of Companies Act, to address all the issues on the fore.
- d. **Registration Procedures for Charity Organisations by Income Tax Department should also be standardised and published on the website**, rather than leaving to whims and fancies of individual officers. (For Example: In a Passport Application; Patterns of affidavits, forms are provided for easy reference.) This will enable cut bureaucracy to deny/ dodge registration and make the process simple and straight.

This note is prepared after taking into the DTC and the subsequent discussion paper brought out by the Finance Ministry, Compiled by Vamshi Krishna Ghanapathi (Mysore) an administrator, associated with a number of NGOs founded/ inspired by Sri Ganapati Sachchidananda Swamiji. He may be reached at vkg@dattapeetham.com