

Indian Finance Bill 2006

Proposal to Bring Anonymous Donations under the Tax Net

Indian Finance Minister Mr. P. Chidambaram in his Budget Speech delivered on February 28, 2006 said, *“The Standing Committee on Finance has expressed concern that many charitable institutions misuse the provisions of the Income Tax Act. I propose to focus on one misuse, namely, receiving anonymous or pseudonymous donations. Accordingly, I propose that anonymous or pseudonymous donations to **wholly charitable institutions** will be taxed at the highest marginal rate. Such donations to partly religious and partly charitable institutions/trusts will be taxed only if the donation is specifically for an educational or medical purpose. However, I make it clear that such donations to wholly religious institutions and religious trusts will not be covered by the new provision.”*

Accordingly, the Finance Minister has proposed a new section 115BBC seeking to tax any income comprising anonymous donations received by any university or any hospital or other institutions referred to under various sub-clauses of Section 10(23C) or any trust or institution referred to under Section 11.

Amendments have also been proposed in Section 2(24)(ia) so that voluntary contributions received by any university or other educational institution or by any hospital or other institution are included in the definition of income. Section 13 has also been amended such that the benefit of tax exemption under sections 11 and 12 would not be available with respect to anonymous donations referred to in the new section 115BBC.

“Anonymous donation” means any voluntary contribution referred to in the now amended Section 2(24)(ia) 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.

Section 11(1)(a) of the Income Tax Act 1961 refers to "income derived from property held under trust wholly for charitable or religious purpose".

Section 2(15) of the Income tax Act defines "charitable purpose" to include, "relief of the poor, education, medical relief and the advancement of any other object of general public utility".

"Religious purpose" includes the advancement or propagation of religious teaching or worship and includes temples, churches, mosques and other places of worship.

Traditionally devotees drop money and sometimes even other valuables in donation boxes or *Hundis* at temples and churches. Some devotees give donations against official receipt but prefer not to give their names. All such donations/collections run into millions of rupees at prominent places of worship. According to the new Section 115BBC these anonymous donations will continue to remain tax free.¹

However, in the case of trusts and institutions for "charitable purpose" including schools, hospitals or other voluntary or not-for-profit organisations, anonymous donations will be taxed at the maximum marginal rate. While the object of the new Section 115BBC is to plug laundering of black money through anonymous donations made to certain trusts, this new amendment could have a negative effect on NGOs that have installed 'donation boxes' near cash counters of various up-market shops, shopping malls and other retail outlets.

NGOs issuing expensive "Donor Cards" for various charity events will also have to keep a record of who these cards are issued to against donations, failing which the collections would be liable to tax. NGOs participating in mega events like the 'Mumbai Marathon' will also have to keep immaculate records of every donation, sponsorship and other collections.

To sum up:

- anonymous donations to religious trusts and institutions will not be taxed
- anonymous donations to trusts and institutions having both religious and charitable objects will not be taxed as long as they are given for religious purpose.
- Anonymous donations to charitable trusts and institutions will be taxed.

Noshir H. Dadrawala

¹ By inference, anonymous donations to private religious trusts would be taxed.