TAXATION OF CHARITABLE TRUSTS AND INSTITUTIONS - A STUDY

[Based on the law as amended by the Finance Act, 2008]

Direct Taxes Committee
The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi
FOREWORD TO THE SIXTH EDITION

Taxation of “Charitable trusts and Institutions” is an important area in the Income-tax Act. Since the medium of charitable trusts is widely perceived as a toll of tax planning, the government has progressively made the law relating to taxation of charitable trust very strict. In the recent past there have been many amendments in the law through which the Government has tried to bring the anonymous donations made to these trusts under the tax net. The Government may bring more stringent rules so that no income of these charitable trusts and institutions actually chargeable to tax escapes the tax net. The amendment of the definition of Charitable purpose under section 2(15) is one of the important steps in this direction.

This publication brings out all aspects of the law of taxation relating to a charitable trust. Recent case laws which may be important for our members have also been included. However, all essential aspects relating to audit of public charitable Institutions have been dealt with separately in the “Guidance Note on the audit of Public Charitable Institutions”.

I deeply appreciate CA. A.H. Dalal, Past President, ICAI and CA. Gautam Nayak for revising this important publication. I further compliment the members of the Direct Taxes Committee and particularly CA. Mahesh P. Sarda, Chairman, Direct Taxes Committee who took all efforts in bringing out this revised publication.

I hope and wish that the revised edition will prove to be a useful guide in the hands of our members.

Date: 3.2.2009
Place: New Delhi

Ved Jain
President
PREFACE TO THE SIXTH EDITION

The publication “Taxation of charitable trusts and institutions – A Study” deals with the legal aspects of taxation of charitable trusts and institutions. The fifth revised edition of this publication was published in the year 2002. Since then, many significant amendments have been put on the statute book by the Finance Ministry. The amendment relating to taxation of anonymous donations is very important as it intends to pug the loopholes in the law giving way to tax planning. The impact of the amendment of the recent circulars clarifying the meaning of charitable trusts and institutions have also been taken care of.

The Direct Taxes Committee has thoroughly debated all these issues and has come out with this revised edition.

I am thankful to CA. A.H. Dalal, Past President, ICAI and CA. Gautam Nayak for preparing the draft of this revised edition. I thank all the members of the Direct Taxes Committee for devoting their valuable time in considering the revised draft in detail.

CA. Ved Jain, President and CA. Uttam Prakash Agarwal, Vice-President, have been the guiding force in this endeavour.

Finally, I appreciate the efforts of CA. Mukta Kathuria Verma, Secretary, Direct Taxes Committee, CA. Anil K. Bhatt, Former Sr. Assistant Secretary for providing technical and administrative support in co-ordinating this project and Mr. Y.S. Rawat, Private Secretary for rendering secretarial assistance.

I am sure that this revised edition will be of great use to the members.

Date : 2.2.2009  mahesh P. Sarda
Place : New Delhi  Chairman

Direct Taxes Committee
FOREWORD TO THE FIFTH EDITION

The law of taxation of charitable trusts and institutions is highly complex and has always been the subject matter of frequent amendments due to the fact that the medium of charitable institutions is widely perceived as a handy tool for tax planning. Recently the law relating to taxation of educational institutions and hospitals has undergone drastic changes and the Government is keen to bring all the charitable institutions claiming exemption of their income under the Income-tax Act into tighter scrutiny in the coming years.

The Fiscal Laws Committee has brought out two important publications on this subject. The first one “Taxation of Charitable Trusts and Institutions - A Study” comprehensively covers all the facets of the law of taxation of charitable trusts and the second one “Guidance Note on Audit of Public Charitable Institutions under the Income-tax Act, 1961” brings out all the essential aspects of audit of charitable institutions under the Income-tax Act.

I thank Mr. N. K. Poddar, FCA, Kolkata, a former Council Member, who has done the commendable job of preparing the revised version of the study on taxation of charitable trusts and institutions.

I compliment the Fiscal Laws Committee for bringing out these two publications after exhaustive deliberations and analysis. I am sure that they will be of great use to the members.

New Delhi
11th January, 2002

N.D. Gupta
President
Since the publication of the last edition of this book, much water has flowed in the form of legislative changes as well as judicial pronouncements by the different High Courts and the Supreme Court covering numerous grey areas. Tax Laws including those relating to charities cannot remain static. The latest panel to suggest changes in the provisions relating to charitable institutions is the Advisory Group headed by Sri Parthasarthi Shome appointed by the Planning Commission, which gave its report in May, 2001. The panel has interalia recommended that the income-based deduction for donations under section 80G and 80GGA should be converted to a tax credit at the lowest marginal rate of 10 percent without any limit as a fraction of gross income. Further, the exemption under sections 10 and 11 to 13 of the Income-tax Act, 1961 in respect of income derived by charitable trusts and institutions should be restricted only to donative non-profit organisations (NPO) and should be denied to those in which 90 per cent of the receipts are through donations. The panel has also suggested that non-distribution constraint should be made explicit and universal. The recommendations made by the Shome Panel are under the consideration of the Planning Commission as well as the Government.

The revision of this volume has involved the rewriting and recording of a considerable part of the text and the introduction of many new forms and cases. All the changes brought out through the various enactments have been discussed elaborately at the appropriate places. This edition is based on the Income-tax law as amended by the Finance Act, 2001 and covers cases and circulars reported till the end of October, 2001 including 250th Volume of the Income Tax Reports.

Attempt has been made to reproduce most of the important clarificatory as well as explanatory circulars issued from time to time in relation to the taxation of charitable trusts and institutions. The judicial decisions have been discussed elaborately. An alphabetical updated table of cases covering more than 400 court decisions has been given at the end of this volume. All relevant forms prescribed in the Income-tax Rules, 1962, which are
required to be filled in by the charitable trusts and institutions to comply with the various laws and regulations have also been reproduced along with the text of Statute Law and the Rules.

On behalf of the Fiscal Laws Committee I thank Mr. N. K. Poddar, FCA, Kolkata, a former Council Member, who has revised this publication in a most comprehensive and competent manner covering all the facets of the law relating to taxation of charitable trusts and institutions.

I thank the members of the Fiscal Laws Committee for their valuable cooperation in finalising this publication.

I also thank Mr. N. D. Gupta, President and Mr. A.K. Chandak, Vice-President for their able guidance.

The Fiscal Laws Committee has also brought out a Guidance Note on Audit of Public Charitable Institutions under the Income-tax Act, 1961.

I am sure that the above publications, taken together, will be a great aid to the members for understanding the complex law of taxation and audit of public charitable institutions under the Income-tax Act, 1961.

Sunil Goyal
New Delhi
11th January, 2002

Chairman
Fiscal Laws Committee
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