

Social Sector Hotline

March 20, 2007

COMPANIES TO DRAW UP CHARITY LISTS FOR TAX DEPARTMENT

According to data compiled by the central government for the 2005-06 fiscal, Indian companies have donated approximately INR 2,200 million to charity. This figure is all set to rise in the coming year. However, their generosity has come under the scanner of the revenue authorities, which are seeking to restrict the currently available tax break for donations made to trusts and charities under Section 80G of the Income Tax Act, 1961 ("ITA"), if provided to "ostensible" entities. Companies that make donations to public charities are eligible for the S. 80G tax benefits and there is a suspicion that many charitable trusts may have been set up by companies with the sole purpose of siphoning off funds to avoid tax.

Currently under S. 80G, donors, including companies, who or which donate to public charitable entities which are non-government organizations ("NGOs") can claim a tax deduction of 50% on such donations, which are capped at 10% of the gross total income reduced by all other deductions, such as contributions to PPF, insurance premia, pension schemes, etc. The deduction is increased to 100%, without any percentage cap on the gross total income, on donations made to certain trusts and funds set up by the government and other specified charitable organisations.

Though S. 80G has not been touched in the recently announced Budget, the Central Board of Direct Taxes ("CBDT"), in a move to check the misuse of the provision, has now made it mandatory for all companies to provide details of the charities to which they have made donations as a "drop down entry" in their e-returns. Earlier, companies were only required to compute the total amount of returns as claimed in the e-returns. While some companies have, in the past, voluntarily provided donation receipts when claiming the exemption, perhaps to avoid any enquiry by the revenue authorities, the new provision now makes it mandatory for all companies making donations to do so.

Media reports indicate that there is an expectation that donations by companies will rise to INR 3,000 million in the coming year, which would deny the exchequer INR 509 million through the tax break. This recent mandate is in line with the other measures introduced by the CBDT to curb any misuse of tax exemption provisions.

- Nithya Reddy & Rina Kamath

Sources:

- Charity begins at I-T Dept: Companies to furnish list of donees, The Economic Times, Mumbai edition, March 14, 2007
- Taxhounds chase charity black sheep, The Economic Times, March 8, 2007

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