

TAX AUDIT OF NPOs

♦ Legal Series Vol. XVI ♦ Issue 1

For private circulation only

AUDIT REPORT UNDER FORM 10B AND FORM 10BB



Standards & Norms

Resource support on NGO Governance, Accounting and Regulations



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INTRODUCTION

- 1.01** NPOs exempt under Sections 11 and 12 of the Income Tax Act are required to meet certain conditions, one of which is the auditing of their accounts under Section 12A(1)(b). Similarly, the tenth proviso to Section 10(23C) requires institutions approved under that clause to have their accounts audited. Trust or institutions, with income exceeding the maximum amount not chargeable to tax are required to get their accounts audited.
- 1.02** Recently there have been radical changes in the reporting format of the auditors report under Form 10B and 10BB. The amended forms are comprehensive with many changes and certifications which were not required earlier.
- 1.03** CBDT has notified new audit reports in Form 10B and 10BB to be furnished by charitable or religious trusts and other institutions vide Notification No. 7/2023, dated 21-02-2023. As per the amended Rules common forms are being prescribed for the organisations registered under section 12AB and the organisations approved under section 10(23C), and the distinction for use of Form 10B and 10BB is made on the basis of specified situations, mainly on the basis of total income of the trust/institution exceeding INR 5 crore without giving effect of Section 11, 12 & 10(23C) or receiving foreign contribution or on the basis of amount applied outside India.
- 1.04** In other words, Form 10B shall be used in the following circumstances:
- (i) Organisations having total income of INR 5 crore or more
 - (ii) Organisations that have received foreign contribution
 - (iii) Organisations that have applied income outside the country.
- For all other organisations, Form 10BB shall be used.

REQUIREMENT OF AUDIT

- 2.01** It is mandatory for a trust to get its books of accounts audited to avail the exemption under Section 11 and Section 12. The relevant extract of section 12A(1)(b) is as under:

“(b) where the total income of the trust or institution as computed under this Act without giving effect to the provisions of sections 11 and 12 exceeds the maximum amount which is not chargeable to income-tax in any previous year,—

(i)

(ii) the accounts of the trust or institution for that year have been audited by an accountant defined in the Explanation below sub-section (2) of section 288 before the specified date referred to in section 44AB and the person in receipt of the income furnishes by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars, as may be prescribed;”

Therefore, if the income of the trust/institution *without giving effect to the provisions of sections 11 and 12 exceeds the maximum amount which is not chargeable to income-tax*, it is mandatory for a trust/institution to get their accounts audited before the specified date and also furnish the audit report by that date.

PRE-AMENDED RULE 16CC AND RULE 17B

- 3.01** Rule 16CC and Rule 17B provides for the format of audit report to be used by the charitable institutions registered under section 12AB or approved under section 10(23C).
- 3.02** Prior to the Notification No. 7/2023, dated 21-02-2023, Rule 16CC provided Form 10BB for the organisations approved under section 10(23C) and Rule 17B provided Form 10B for the organisations registered under section 12AB.

Hence two separate forms were used for two different types of organisations. Form 10B was used for organisations registered under section 12AB, and form 10BB was used for organisations approved under section 10(23C).

AMENDED RULE 16CC & RULE 17B w.e.f. 01-04-2023

- 4.01** Rule 16CC and Rule 17B of the Income-Tax Rules, 1962 have been substituted w.e.f. 01-04-2023 vide Income-tax amendment (3rd Amendment) Rules, 2023
- 4.02** CBDT has notified new audit reports in Form 10B and 10BB to be furnished by charitable or religious trusts and other institutions vide Notification No. 7/2023, dated 21-02-2023.
- 4.03** As per the amended Rules, common forms have been prescribed for the organisations registered under section 12AB and the organisations approved under section 10(23C). The distinction for use of Form 10B and 10BB is made on the basis of specified circumstances;
- Form 10B is required to be used if the total income of the trust/institution exceeds INR 5 crore without giving the effect of Section 11, 12 & 10(23C) otherwise Form 10BB will be used.
 - Form 10B is required to be used if the organisations have received foreign contribution even if the income is below INR 5 crore.
 - Form 10B is required to be used if the income is applied outside India, even if the income is below INR 5 crore.

AMENDMENTS AT A GLANCE

- 5.01** In the Income - Tax Rules, 1962, hereinafter referred to as the principal Rules, Rule 16CC has been substituted as follows:

“Rule 16CC. Form of report of audit prescribed under tenth proviso to section 10(23C).—The report of audit of the accounts of a fund or institution or trust or any university or other educational institution or any hospital or other medical institution which is required to be furnished under clause (b) of the tenth proviso to clause (23C) of section 10 shall be in-

(a) Form No. 10B where;

(I) the total income of such fund or institution or trust or university or other educational institution or hospital or other medical institution, without giving effect to the provisions of the sub-clauses (iv), (v), (vi) and (via) of the said clause, exceeds rupees five crores during the previous year; or

(II) such fund or institution or trust or university or other educational institution or hospital or other medical institution has received any foreign contribution during the previous year; or

(III) such fund or institution or trust or university or other educational institution or hospital or other medical institution has applied any part of its income outside India during the previous year;

(b) Form No. 10BB in other cases.

Explanation.—For the purposes of sub-clause (II) of clause (a), the expression “foreign contribution” shall have the same meaning assigned to it in clause (h) of sub-section (1) of section 2 of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010).”

5.02 In the principal Rules, Rule 17B has been substituted as follows:

“17B. Audit report in the case of charitable or religious trusts, etc. -
The report of audit of the accounts of a trust or institution which is

required to be furnished under sub-clause (ii) of clause (b) of sub-section (1) of section 12A, shall be in-

(a) Form No. 10B where—

(I) the total income of such trust or institution, without giving effect to the provisions of sections 11 and 12 of the Act, exceeds rupees five crores during the previous year; or

(II) such trust or institution has received any foreign contribution during the previous year; or

(III) such trust or institution has applied any part of its income outside India during the previous year;

(b) Form No. 10BB in other cases.

Explanation.— For the purposes of sub-clause (II) of clause (a), the expression foreign contribution shall have the same meaning assigned to it in clause (h) of sub-section (1) of section 2 of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010)."

SUMMARY OF AMENDED RULES

6.01 Who is required to file Form 10B ?

The trusts or institutions registered under Section 12AB or approved under Section 10(23C) who satisfy any of the following conditions must file an audit report in Form 10B

- (a) If the total income of the trust or institution, without giving effect to the provisions of sections 11 and 12 or Section 10(23C) (iv), (v), (vi), (via) of the Act, exceeds rupees five crores during the previous year; or
- (b) If such trust or institution has received any foreign contribution during the previous year; or

- (c) If such trust or institution has applied any part of its income outside India during the previous year.

6.02 Who is required to file an audit report in Form 10BB?

The trusts or institutions registered under Section 12AB or approved under Section 10(23C) not falling into any of the above mentioned criteria must file an audit report in Form 10BB. Hence, reporting in Form No. 10BB must be used **if all of the following situations are satisfied:**

- (a) If the total income of the trust or institution, without giving effect to the provisions of sections 11 and 12 or Section 10(23C) (iv), (v), (vi), (vii) of the Act, is up to rupees five crores, &
- (b) If such trust or institution has not received any foreign contribution during the previous year, &
- (c) If such trust or institution has not applied any part of its income outside India during the previous year.

6.03 Points to be noted

- (a) If the organisation receives even a single rupee as - foreign contribution, then such organisation is required to choose Form 10B, despite the fact that the total income of the trust/institution is much less than the specified limit of INR 5 crore. It may further be noted that Form 10B shall also apply in cases where the organization has earned bank interest from FC funds.
- (b) It may also be noted that in case an organisation is registered under FCRA but has not received any foreign contribution, including bank interest from the FC bank account and it has not applied any income outside India, then such organisation shall have to choose Form 10B or Form 10BB, depending upon its total income without giving effect of Section 11 & 12.

FORM 10B AND FORM 10BB

7.01 The audit report in Form 10B/10BB consists of two parts:

- (a) Audit Report
- (b) Annexure

Every year, a trust is required to prepare financial statements such as the balance sheet and income and expenditure statement based on its books of accounts. An audit report is then prepared to assist the income tax department in verifying whether the assessee has complied with the provisions of sections 11 to 13 and Section 10(23C) of the Act.

7.02 The auditor is required to provide an opinion in the audit report stating that the balance sheet and profit and loss account/income and expenditure account of the entity for the year ended are in agreement with the books of account maintained by the entity. Additionally, the auditor must provide an opinion stating that proper books of account have been maintained at the registered office of the entity and that the particulars given in the annexure are true and correct, subject to any observations or qualifications.

COMPARISON OF THE AMENDED FORMAT OF THE AUDIT REPORT WITH THE PREVIOUS FORMAT

8.01 On comparing the newly amended format of the audit report with the previous one, we have identified the following differences:

- (i) **Financial Statement to be examined**
- (ii) **Information on place of maintaining of books of account**
- (iii) **Opinion by the Auditor on the Financial Statement**
- (iv) **Opinion by the Auditor on annexure forming part of Form 10B/10BB**

8.02 Financial Statement to be examined***Pre-Amended:***

The auditor was required to examine the Balance Sheet and the Profit & Loss Account.

Amended:

According to the amended format the auditor is required to provide **certification** for the Balance Sheet, Income & Expenditure Account or Profit & Loss Account.

Analysis:

The inclusion of the term "Income & Expenditure Account" is appropriate in the context of NPOs. However, allowing the option to include either Income & Expenditure Account or Profit & Loss Account, while continuing to refer the latter as a financial statement, requires further clarity. In most cases, it is deemed appropriate that auditors should include the Balance Sheet and Income & Expenditure Account.

Further, the Receipt and Payment account has not been referred to as one of the financial statements, even though most of the income and application are considered on a cash basis.

8.03 Information on place of maintaining of books of account***Pre-amended:***

The auditor was required to certify that, in their opinion, proper books of account have been maintained by both the head office and branches, and that they have received all necessary books of account and returns for the audit. However, there was no requirement to include information about the location where the books of account are maintained.

Amended:

The amended format requires Auditors to include the following:

*“In * my/our opinion, proper books of account have been maintained at the registered office of the above named fund or trust or institution or university or other educational institution or hospital or other medical institution at the address mentioned at row 11 of the Annexure”*

Analysis:

It is important to note that Rule 17AA mandates the maintenance of books of account and requires that they are to be kept at the registered office of the organization. However, if the books of account are maintained at a location other than the registered office, the Assessing Officer must be notified within a specified time frame. This modification in the audit report format is in line with the new requirement of Rule 17A regarding the maintenance of books of account.

8.04 Opinion by the Auditor on the Financial Statement:**Pre-amended:**

The auditor was required to report that:

- (i) *in the case of the balance sheet, of the state of affairs of the abovenamed trust/institution as at and,*
- (ii) *in the case of the profit and loss account, of the profit or loss of its accounting year ending on*

Amended:

As per the modified format the auditor is required to report that:

- (i) *in the case of the balance sheet, of the state of affairs of the above named * fund or trust or institution or university or other educational institution or hospital or other medical institution as on; and*

(ii) in the case of the Income and Expenditure account or Profit and Loss account, of the **income and application**/ profit or loss of its accounting year ending on

Analysis:

The key distinguishing feature in the opinion part is the use of the words "in the case of Income and Expenditure Account, of the **income and application of its accounting year ending on**". This is the most appropriate inclusion in the opinion part because, as per the present scheme of taxation, the amount of "application" is required to be computed which is a broader term than "expenditure". However, the financial statements are still referred to as "Income & Expenditure Account" not "Income & Application Account".

However, as the new format requires the opinion on the amount of application, then the Income & Expenditure Account must include even the Capital expenses and the amount applied out of the loan etc. so that the amount of application to be computed under Income Tax Act is duly reflected in the Income & Expenditure Account.

8.05 Opinion by the Auditor on annexure forming part of Form 10B/10BB:

Pre-amended:

There was no requirement for making separate certification on the Annexure forming part of Form 10B, though it was mentioned in the audit report "the prescribed particulars are annexed hereto_".

Amended:

The amended format requires opinion on –

*"In *my/our opinion and to the best of *my/our information and according to explanations given to *me/us, the particulars given in the Annexure **are true and correct** subject to following observations or qualifications, if any-*

(a)

(b)

(c)"

Analysis:

This new requirement removes any ambiguity regarding whether the auditor should audit the annexure forming part of the audit report. Now, the auditor is required to audit the annexure and provide a certification whether the annexure is true and correct.

COMPREHENSIVE CHANGES IN ANNEXURE TO AUDIT REPORT IN FORM 10B & 10BB

- 9.01** The Annexure to Form 10B & 10BB is a statement of particulars - that forms part of the audit report. The auditor is required to give an opinion on whether the particulars given in the Annexure are true and correct subject to the observations or qualifications, if any
- 9.02** There are comprehensive changes in the contents and requirements of the annexure forming part of Form 10B and Form 10BB. The annexure forming part of Form 10BB consist of 15 sections and 6 schedules whereas the annexure forming part of Form 10B consist of 26 sections and 19 schedules.

OVERVIEW OF ANNEXURE TO FORM 10BB

- 10.01** The Form 10BB consists of fifteen sections, each has either one or more rows requiring information to be furnished against that particular section. In some case schedules are also required to be filled in. A snapshot of information asked in the Annexure is as under:

S.No.	Section	Information rows	Schedules Applicable
1	Basic Details	01-06	
2	Legal	07-08	
3	Management	9	
4	Commencement of Activities	10	
5	Details of place where books of accounts and other documents have been maintained	11	
6	Voluntary Contribution	12-20	
7	Income to be applied	21-22	
8	Application of Income	23-24	TDS Disallowed, 40A(3), 40A(3A),
9	Section 115BB1	25	
10	Section 115BB2	26	
11	Application of Income out of different sources	27	
12	Persons referred to in Section 13(3)	28-29	
13	Specified Violation	30-31	
14	TDS/TCS as per the Provisions of Chapter VII-B or Chapter VII-BB	32	Schedule TDS/TCS, Statement of TDS/TCS, Interest on TDS/TCS,

OVERVIEW OF ANNEXURE TO FORM 10B

11.01 The Annexure to Form 10B is a statement of particulars that forms part of the audit report. The auditor is required to give an opinion on whether the particulars given in the Annexure are true and correct, subject to the observations or qualifications, if any. The Form 10B consists of a number of sections, each section has either one or more rows requiring information to be furnished against that particular section. In some cases, schedules (total twenty-nine schedules) are required to be filled in as applicable.

A significant portion of Form 10B is identical to Form 10BB. However, upon comparing the two annexures, it is apparent that additional information is required in Form 10B, which can be summarized as follows:

- a) Additional section are required to be filled with or without schedule.
- b) Additional details for certain sections already covered in form 10BB.

a) Additional sections included in Form 10B

A snapshot of additional sections asked in the Annexure is as under:

S.No.	Section	Information rows	Schedules Applicable
1	Registration Details	9	
2	Objects	11-12	
3	Advancement of GPU	15-16	
4	Business Undertaking	17	
5	Business Incidental to Objects	18	
6	TDS on Receipts	19	
7	Other Income	35	Schedule Corpus
8	Capital Assets	36	
9	13(10) and 22 nd proviso to section 10(23C)	39	Schedule TDS Disallowable, 40A(3) 40A(3A)
10	Expenditure incurred for religious purposes	40	

b) Additional details for the sections already covered in Form 10BB

The additional details required for the common sections which are already covered in Form 10BB are summarised in **Annexure 1** enclosed herewith.

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Annexure 1**THE ADDITIONAL DETAILS REQUIRED IN FORM 10BB**

Sl. No.	Section	Form 10BB	Form 10B	Additional info required in 10B	Schedules Applicable
1	Commencement of Activities	10	13	Status, date and URN of registration.	
2	Details of place where books of accounts and other documents have been maintained	11	14	Nature of books of accounts, whether maintained in computer system and whether books have been audited.	
3	Voluntary Contribution	12-20	21-27	1) Donations not reported in Form 10BD to be further grouped into donations received u/s 80G, Donation in kind, anonymous donation, etc.	Schedule Corpus, FC
				2) VC forming part of corpus classified into:	
				i) Corpus donation for temples u/s 80G (2)(b)	
				ii) Other Corpus donation invested in specified mode as per 11(5)	
4	Application of Income	23-24	31-32	1) Application of Income to be classified purpose-wise with bifurcation of each purpose into electronic and other than electronic as per Rule 6AABA.	Schedule Corpus, LB, TDS Disallowed, 40A(3), 40A(3A), DI & DA, AC & ACA
				2) Details for application in excess of 50 lacs required.	
				3) Bifurcation of application into Capital and revenue.	
5	Section 115BBI	25	33	Details of various income u/s 115BBI to be specified.	
6	Application of Income out of different sources	27	37-38	1) Source of application to be further classified into electronic modes and other than electronic modes referred in Rule 6AABA.	Schedule Corpus, LB, AC, DI
				2) Details for application in excess of 50 lacs to a single person .	
7	Persons referred to in 13(3)	28-29	41-42		Schedule SP-a, SP-b, SP-c, SP-d, SP-e1/e2, SP-f1/f2, SP-g, SP-h

<i>Sl. No.</i>	<i>Section</i>	<i>Form 10BB</i>	<i>Form 10B</i>	<i>Additional info required in 10B</i>	<i>Schedules Applicable</i>
8	Specified Violation	30-31	43-44		Schedule Other Violation
9	Others (Independent)	26,32	20, 45-49	Additional information regarding deduction claimed u/s 10 other than 10(1),10(23C), 10(46) and whether loan taken/ repaid in violation of 269SS, 269T and amount received exceeding the limit specified in section 269ST .	Schedule TDS/TCS, Statement of TDS/ TCS, Interest on TDS/TCS, 269SS, 269ST, 269T