

# **PHILANTHROPY TAXATION**

**- Research Paper for ITRAF**

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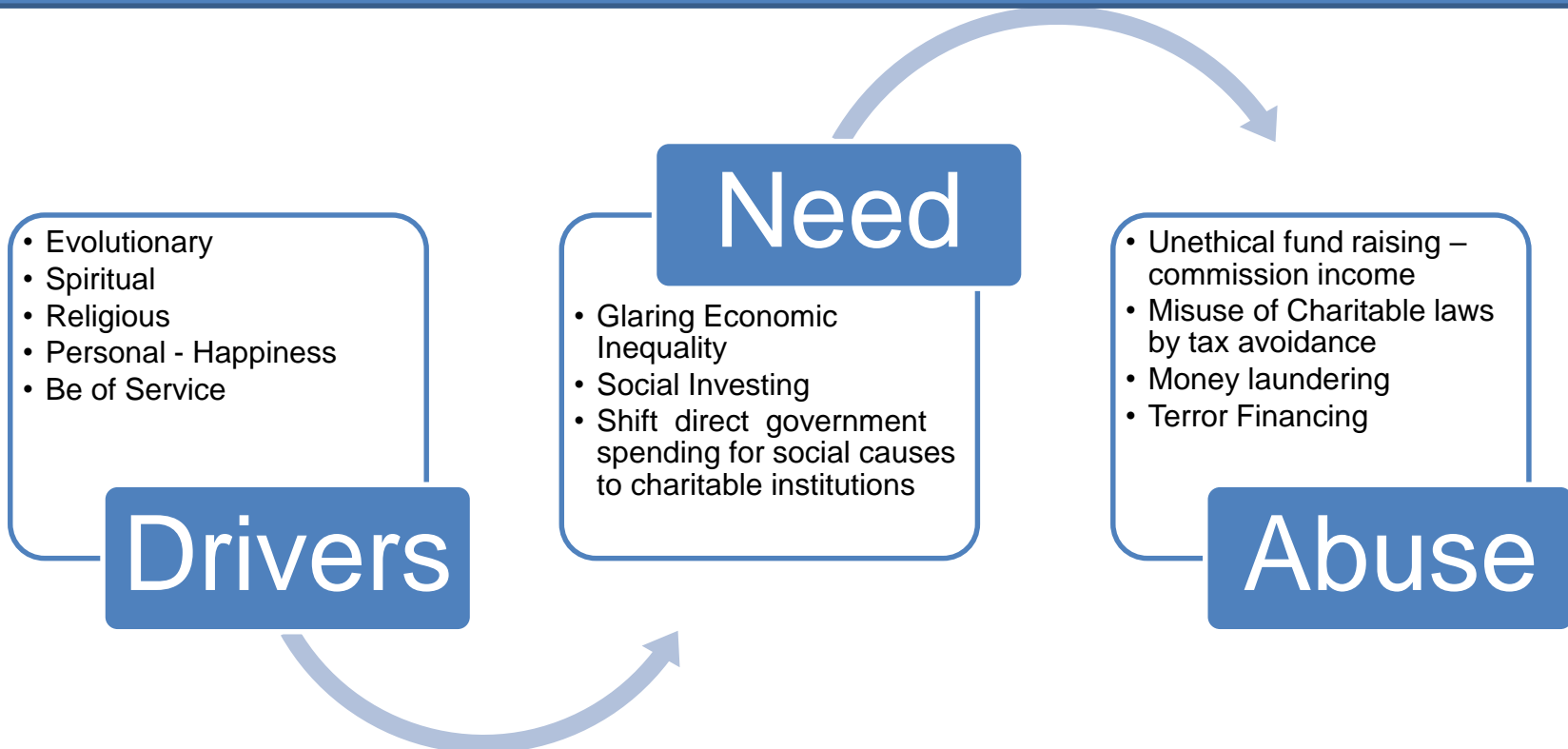
# Charity – Evolution and Growth

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- The word ***“charity”*** entered English Language through French word ***“charite”*** derived from the Latin word ***“caritas”*** or ***“carus”*** meaning generous love, dear or beloved. Was in use as a Roman Christian name.
- The English name “charity” came into use among the Puritans post Protestant Reformation.
- Merriam Webster Dictionary defines ***“charity”*** as–
  - ✓ Benevolent good will towards or love for humanity
  - ✓ Generosity or helpfulness especially towards the needy; aid given to those in need
  - ✓ An institution engaged in relief of the poor

# Charity

*“...morality represents the way we would like the world to work, and economics represents how it actually does work.”* This is not a new phenomenon. Since the very first economic or social barter was made by man, a disconnect has existed between the creation of individual and social wealth. This gap has been filled by ‘giving.’



# Philanthropy- Importance in India

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*“We hear all around us about practical religion, and analysing all that, we find that it can be brought down to one conception — charity to our fellow beings.”*

*Swami Vivekananda*

- The cultural roots of philanthropy in India are ancient and deep, and have given life to long established traditions of philanthropic engagement, social service, and voluntary work.
- Religion has always played a major role in philanthropic giving in India, and continues to be a profound influence on giving. However various other factors —social, economic, and political — have affected and accelerated the emergence of civil society in modern India and shaped the role and practice of philanthropy today.
- A contemporary trajectory beginning in the mid-nineteenth century has built upon religious and cultural traditions and created a vibrant and innovative philanthropic landscape.
- While the ethos of ‘giving’ in India is clearly ‘personal’, in contrast with the institutionalized charitable giving practiced in the West, the last decade in particular has witnessed a trend towards more organized charitable giving.

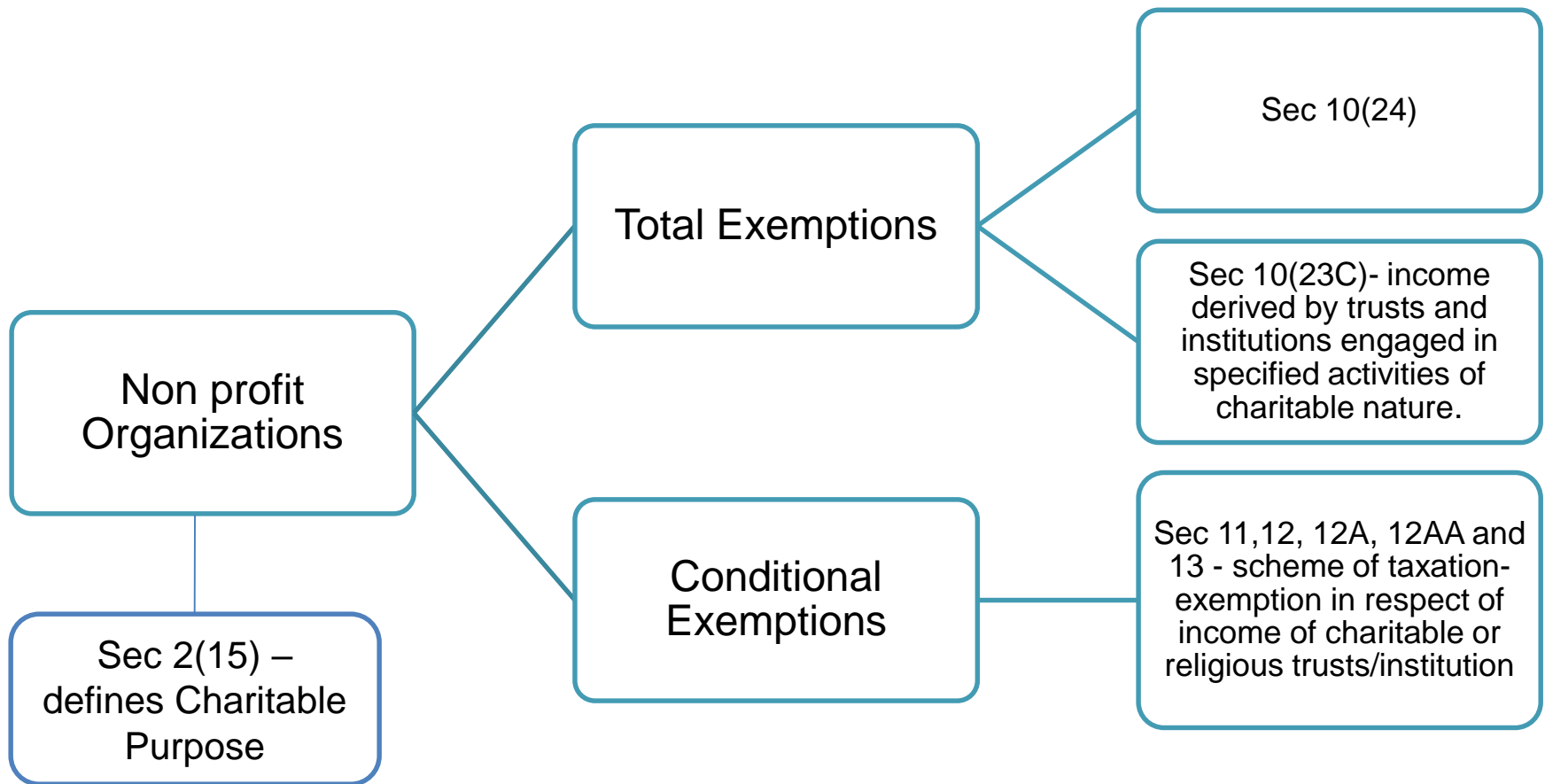
# Legal Constitution

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Public trusts set up in India are categorised into charitable and religious trusts and are governed by the :

- Societies Registration Act 1960
- Charitable and Religious Trusts Act, 1920,
- Indian Trusts Act 1882
- Religious Endowments Act, 1863,
- the Charitable Endowments Act, 1890 and
- Additionally regulated by specific state legislations such as the Maharashtra Public Trusts Act, 1950 and the Gujarat Public Trusts Act, 1950.

# Charitable contributions – The Indian Tax system



# Meaning of ‘Charitable Purpose’

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- Income-tax Act, 1922—Section 4(3)(i) “Charitable purpose” includes relief of the poor, education, medical relief and the advancement of any other object of general public utility.
- Income-tax Act, 1961 Section 2(15): “Charitable purpose” includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility not involving the carrying on of any activity for profit.
- Finance Act 1983 w.e.f. 1-4-1984 omitted the words “not involving the carrying on of any activity for profit”.
- Finance (No. 2) Act, 2009, w.r.e.f. 1-4-2009 added “Preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest”
- **‘Charitable purpose’ includes relief of the poor, education, [ w.e.f. 1.4.2016], medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility.**
- A purpose must in order to be charitable, be directed to the benefit of the community or a section of the community, as distinguished from an individual or a group of individuals as held in – ***CIT v Ahmadabad Rana Caste Association (1983) 140 ITR 1 (SC)***
- The exemption u/s 11 available to public religious trusts only; and not available to trust for private religious purposes which does not enure for the benefit of the public

# ‘Charitable Purpose’ all inclusive omnibus definition?

## Education’ Is An Object, Charitable Per Se Under The I.T Act

- While deciding on whether an educational institution charging the high fees can be termed as a "charitable institutions"; the Hon'ble Chennai ITAT in the case of M/s Rajah Sir Sannamalai Chettiar Foundation Vs. The Director of income Tax [Exemptions] ITA NO. 2927/Mds./2010 observed that "the definition clearly shows that carrying on educational activities by itself is not a charitable purpose. A charitable purpose should always take care of the welfare and interest of the public and especially the poor section of the public. Running schools by collecting huge amounts of fees with five star facilities cannot be treated as charitable activity only on the ground that the business carried on by such institutions is the business of education.
- In the case of Punjab Urban Planning and Development Authority, ITAT Chandigarh has observed that "no activity can be carried on efficiently, properly unless and until carried out on business principle but it does not mean that the provision is misused in any manner under the garb of charity and any institution be allowed to become richer and richer under the garb of by making it a non tax payable organization. A charitable institution to provide services for charitable purposes free of cost and not for gain".
- However taking a contrary view there are many instances wherein the Courts after careful reading of the definition of Charitable purpose in the Act have observed that "...Where, therefore, the purpose of a trust or institution is relief of the poor, education or medical relief, the requirement of the definition of "charitable purpose" would be fully satisfied, even if an activity for profit is carried on in the course of the actual carrying out of the primary purpose of the trust or institution." [Victoria Technical Institute Vs. Addl. Commissioner of Income-tax, Madras and another reported in AIR 1991 SC 997]



# ‘Charitable Purpose’ all inclusive omnibus provision?

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- It is pertinent to bring to notice a clarification issued by the Board in Circular No. 11/2008 dated December 19, 2008:

*"The amendment made by the finance Act, 2008 will not apply in respect to the first three limbs of Section 2[15]. Consequently, where the purpose of a trust or institution is relief for the poor, education or medical relief, preservation of environment and preservation of monuments, it will constitute 'Charitable Purpose' even if it incidentally involves the carrying on of commercial activities.....Similarly, entities whose object is 'education' or 'medical relief' would also continue to be eligible for exemption as charitable institutions even if they incidentally carry on a commercial activity subject to the conditions mentioned above.*

*The newly inserted proviso to section 2(15) will apply only to entities whose purpose is 'advancement of any other object of general public utility' i.e. the fourth limb of the definition of 'charitable purpose' contained in section 2(15). Hence, such entities will not be eligible for exemption under section 11 or under section 10(23C) of the Act if they carry on commercial activities. Whether such an entity is carrying on an activity in the nature of trade, commerce or business is a question of fact which will be decided based on the nature, scope, extent and frequency of the activity."*

# ‘Charitable Purpose’ all inclusive omnibus provision?

Can it be inferred that schools imparting education, even if earning some amount of profits and charging high fees shall still be said to be engaged in charitable activities? Meaning thereby entities whose object is Education would continue to be eligible for exemption as charitable institutions even if they incidentally carry on commercial activities

- Where assessee-hospital was providing medical relief to people at large, merely because surplus was generated from hospital activities could not be ground to deny exemption under section 11 to assessee **[2015] 57 taxmann.com 333 (Pune – Trib.) Income-tax Officer, Ward -3, Ahmednagar v. Noble Medical Foundation & Research Centre\***  
**(In favour of assessee.)**

Trust having ‘medical relief’ object eligible for exemption even if they incidentally carry on a commercial activity?

# Existing Anti-Avoidance provisions under the Act

## Advancement of Object of general public utility :

Year	The trust/ institution is regarded as of non-charitable nature by virtue of Section 2 (15)
For A.Y.2009-10 to 2011-12	Receipts from commercial activities exceeds above Rs.10 lakhs
A.Y.2012-13 to 2015-16	Receipts from commercial activities exceeds above Rs.25 lakhs
A.Y.2016-17 onwards	<p>if it has receipts from commercial activity- <b>UNLESS</b> Such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility. And (ii)The aggregate receipts from such activity/activities during the previous year do not exceed 20% the total receipts.</p>

# Existing Anti-Avoidance provisions under the Act

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- The crux of the statutory exemption under Section 11(1)(a) and (b) of the Act is not the income earned from property held under trust but the actual application of the said income for religious and charitable purposes.-apply at least 85 % of the income to charitable or religious purposes.
- Income by way profits and gains of business, shall also be exempt in accordance with Sec 11(4)/(4A) subject to provisions contained in Sec 2(15) and Sec 13(8).

-The Supreme Court in the case of Asst. CIT vs. Thanthi Trust (2001) 247 ITR 785 (SC) has held that all that is required for the business income of a trust or institution to be exempt from tax is that the business should be incidental to the attainment of objective of the trust or institution. A business whose income is utilised by the trust or the institution for the purposes of achieving the objectives of the trust or the institution is a business which is incidental to the attainment of the objectives of the trust or institution.

-What is necessary to be considered is whether having regard to all the facts and circumstances of the case, the dominant object of the activity is profit-making or carrying out a charitable purpose

# Existing Anti-Avoidance provisions under the Act

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## **Corpus Donations**

- Corpus donations being capital receipt in the hands of the recipient trust are not income of the trust. Section 11(1)(d) expressly grants exemption to corpus donations to make the position clear beyond doubt.
- Corpus donations refer to the donations made by a donor to a trust with a specific direction that they shall form part of the corpus of the recipient trust. Trustees have no power to treat in their discretion any donation as corpus donation.
- An amendment by way of an Explanation to sec 11 has been made that a corpus donation given by a Fund or Trust of institution or any university or other educational institution whose income is exempt under section 10 or a Trust registered under section 12AA to another trust or institution which is registered under section 12AA, for this purpose, would not be considered as application of income in the hands of the donor trust

# Existing Anti-Avoidance nature of provisions under the Act

## Cancellation of Registration [Sec 12AA(3)]

- The registration once granted to a trust shall remain in force till it is cancelled by the Commissioner. If the Commissioner of Income Tax satisfied that
  - (i) the activities of any trust or institution are not genuine or
  - (ii) the activities are not being carried out in accordance with the objects of the trust or institutions,

he shall, after giving reasonable opportunity of being heard to the concerned trust or institution, pass an order in writing cancelling the registration granted under section 12AA or 12A.

- A new provision has been inserted by way of **sub-section (4) w.e.f. 1.10.2014. wide this provision, the Commissioner has been empowered to cancel the registration of trust on an additional ground, namely when he is satisfied that the activities of the trust are being carried out in a manner that the benefit of exemption u/s 11 and 12 is denied in respect of any income of the trust due to operations of section 13(1). Accordingly, where a trust has been granted registration, and subsequently it is noticed that its activities are being carried out in such a manner that**
  - (i) its income does not enure for the benefit of general public – private religious trust
  - (ii) it is for benefit of any particular religious community or caste (in case it is established after 1.4.1962),
  - (iii) any income or property of the trust is applied for benefit of specified persons like author of trust, trustees, etc. or
  - (iv) its funds are invested in prohibited modes,

then the commissioner may cancel the registration if such trust does not prove that there was a reasonable cause for the activities to be carried out in the above manner.

# Existing Anti-Avoidance provisions under the Act

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## **Anonymous donations [Sec. 115BBC]**

- Voluntary contributions being anonymous donations are taxable in case of where the recipient does not maintain a record of the identity indicating the name and address of the person making the contribution and other prescribed particulars.
- Anonymous Donation is taxable @30% +SC+EC .Further exemption is available upto 5% of the total donations or Rs. 1 Lakh whichever is higher..

## **Maintenance of Accounts and Audit**

- The trust should maintain regular and proper books of accounts, supported by receipts and vouchers. Under the Income-tax Law, accounts may be made on either cash or mercantile basis..
- In order to secure exemption u/s 11, the property must be held under trust, besides section 12A lays down that the exemption under section 11 and 12, shall not be available unless the following conditions are fulfilled:
  - (a) Registration: The trust is required to obtain registration u/s 12AA with the Commissioner of Income-tax.
  - (b) Compulsory Audit: Where the total income of the trust or institution, exceeds the basic exemption limit, in any previous year, the accounts of the trust or institution is required to be audited by a qualified Chartered Accountant, and the audit report in Form No. 10B is required to be furnished electronically before filing the e-return of income

# Existing Anti-Avoidance provisions under the Act

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## Exit Tax (Secs.115 TD to 115 TF) inserted wef-1.6.2016.

- Levy of tax at the maximum marginal rate where a charitable trust ceases to exist or converts into a non-charitable entity.
- In order to ensure that the benefit conferred over the years to charitable trust is not misused, section 115 TD is inserted w.e.f from June 1, 2016. This section provides for levy of **additional income –tax** in case of conversion into, or merger with, any non- charitable form or on transfer of assets of a charitable organisation on its dissolution to a non-charitable institution.
- **Tax liability – The taxation of accreted income shall be at the maximum marginal rate (i.e.35.535 per cent for the AY 2017-18). The following points should be noted-**
  - This levy shall be in addition to any income chargeable to tax in the hands of the entity.
  - This tax shall be final tax for which no credit can be taken by the trust or institution or any other person, and like any other additional tax, it shall be leviable even if the trust or institution does not have any other income chargeable to tax in the relevant previous year.



# SECTION 10 & 10 (23) (C)

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- Section 10 covers a number of categories (Now even Swaccha Bharat Kosh and Clean Ganga Fund set up by Central Govt. w.e.f. 1-4-2015) but the most important among them is section 10 (23C) which covers income of specified/approved funds, Hospital or institution/approved Hospital or institution and University or Educational institution / approved University or Educational institution, subject to certain Conditions.
- The sub section can be divided in to three groups:-
  - (i) Wholly or substantially financed by the Govt. 10 (23C) (iiiab) & (iiiac) Explanation is added w.e.f. 1-4-2015 that for the purpose of aforesaid sub section (i) the Govt. will prescribed the percentage of Govt. Grants for substantially financed, that the total receipts, including any voluntary contribution received by such percentage. As per Rule – 2BBB the said prescribed percentage substantial Govt. grant is 51%. ( CBDT Circular no-77 of 2014)
  - (ii) The aggregate annual receipts do not exceed the amount prescribed (As per Rule 2BC it is prescribe Rs. 1crore) 10 (23C)(iiiad) & (iiiae)
  - (iii) The aggregate annual receipts exceeds the prescribed amount (Rs. 1 Crore) are required to obtain approval from prescribed authority to avail exemption U/S10(23C) (iv) to (via).

# Rationale behind tax exemptions

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- As a fiscal policy tool, tax exemptions/deductions have been used since the inception of the Act in the belief that they lead to the attainment of objectives of public policy that would ordinarily be accomplished through public (revenue) spending or as an avenue of encouraging activities that will lead to setting up of investments that will provide revenue in future.
- Progressive taxation is the most efficacious route to redistribution. But a strong case for philanthropy is another way of making a strong case for lower taxation of the rich – to allow them with more money to spend on uplifting the poor.

# Relationship between Tax and Charity

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## Economics of Charity

- **Argument favouring tax incentive/exemption for charity-** tax expenditures such as charitable giving have positive external effects and are very responsive to tax incentives. Therefore, the Govt. should promote these types of activities by providing a tax break. A common argument is that if the elasticity of charitable contributions with respect to its tax price is higher than one, allowing the deduction of these expenditures from taxable income generates more contributions than what is lost in tax revenue because of the subsidy.
- **Argument against tax incentive/exemption for charity-** external effect of such tax expenditures is too small to justify a complete tax exemption, and allowing tax expenditures may both reduce the size of the tax base and increase significantly the elasticity of taxable income.
- However, the Charities Aid Foundation has found that the amount people donate to charity is not affected by whether they live in a high-tax or low-tax country and found no correlation between tax levels or Govt. spending and donations.
- While the tax rates that people face may not be correlated with charitable giving but specific incentives in the tax system for donations did have an effect.

# The International Experience – US, UK

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- The U.S. has a strong, long-standing tradition of philanthropy, consistently ranking first worldwide in dollars terms. If giving patterns hold, Americans will have collectively contributed approximately \$300B to charity in 2012, roughly 2% of GDP, about three quarters of which comes from individual contributions!
- In the Chronicle of Philanthropy's analysis, "blue" states (Republican States) generally contribute more taxes to fund generous Govt social programs and tend to give less to charity. But blue states have better health and social outcomes than red states, which must rely more on private donations to fund social programs
- In America when in 1917, four years after the federal government gained the constitutional right to levy an income tax, American taxpayers were allowed to deduct charitable donations from their taxable income (again, extending precedent established in the 19th century).
- President Barack Obama has made a number of attempts to limit the amount of giving that the rich can deduct from their taxable income, still US has the most generous tax incentives for charity, and has the highest giving as a proportion of GDP, at 1.67

# The International Experience – US, UK

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- UK charities do not pay income tax on their investment income devoted solely to charitable purposes under section 505 of the Taxes Act 1988. Charitable trusts do not pay capital gains tax on the disposal of assets provided they are devoted to charitable purposes only, under s256 of the Taxation of Chargeable Gains Act 1992. However, charities are required to pay Value Added Tax on goods and services purchased.
- It was first introduced in Britain, supposedly as a temporary measure to finance war with France, in 1798. This seemed fitting, as charities had already been largely exempt from earlier taxes on property since the Elizabethan age.
- Britain's tax breaks for charity are the next-most-generous, and it had the second-highest share of charity to GDP, 0.73%, followed by Australia, 0.69%, which also has significant tax breaks. By contrast, the relatively weakly incentivised Germans give only 0.22% of GDP. The correlation is not perfect, though; despite their generous tax breaks, the French give just 0.14% of GDP.

# Measuring the tax cost of charitable contributions

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- The idea that the government should subsidise giving to good causes is resilient, but not easily justified.
- In Britain the Treasury estimates the total cost to the state of the various tax breaks to donors and charities will be £3.64 billion (\$5.5 billion) the tax year 2012.
- In America the Treasury estimates that the total cost to the federal government in 2012 of charitable tax breaks will be \$39.6 billion, rising to \$51.6 billion in 2014.
- In the 1970s, early econometric studies by Martin Feldstein of Harvard, among others, suggested that the “tax-price elasticity” was more than one—that is, if the tax price were cut by 10%, giving would increase by more than 10%. If you assume that the public benefits more or less equally from charitable spending and taxable spending, that sounds like a good deal.
- As these studies have become more sophisticated, the consensus estimate of the tax-price elasticity has diminished to significantly less than one. This shift matters: at less than one, an additional dollar in incentives for giving generates less than a dollar's worth of donation. In such a situation charities need to produce more bang for the buck than state spending to justify their perks.

# The Importance of tax policy for charitable contribution

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- Globally, according to the Rules to Give By Index, 77 per cent of nations offer some form of incentive to corporate donors whilst 66 per cent of nations offer some form of tax incentive to individuals. This study finds that the terms of those incentives tend to be – though not exclusively – more favourable for companies too.
- Incentives can be articulated as a tax expenditure the idea that incentives for giving are merely an alternative funding mechanism for state services mischaracterises the strengths and weaknesses of civil society which cannot be understood as a proxy for Govt. service provision.
- Factors such as the legal environment in which civil society operates, the range of causes which are incentivised, administrative barriers to charity and the ability of organisations to fundraise publically are likely to be more important in motivating giving than tax incentives alone!
- Higher tax nations offer more compelling incentives (assuming that deductions or credits are equal to the rate of taxation). There is evidence that as the rate of income tax increases (assuming incentives rules stay the same) people are likely to give more as the marginal cost of giving decreases. This is particularly true for those in the highest income categories.

# Cross Border Philanthropy

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- Cross border giving is poorly incentivised. Tax incentives for cross border giving to foreign civil society organisations are rare and even where they exist on paper they are often difficult or impossible to claim in practice.
- In many transitional economies donors are not allowed to claim incentives even for domestically registered organisations that operate abroad
- The Bain & Co. Indian Philanthropy Report 2015 notes that foreign philanthropic funding in India more than doubled from 2004 to 2009, jumping from \$0.8 billion in FY'04 to \$1.9 billion in FY'09 – then one needs to go beyond the numbers and look at the economic underpinnings of corporate philanthropic initiatives.
- Section 80G applies to donations to institution or fund, only if it is established in India for a charitable purpose and thus no provisions under the Act which promote cross border philanthropy.



# Abuse of Charitable Institutions to facilitate Tax Evasion, Crime And Money Laundering

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The abuse has serious and increasing risks to Govt and the wider community. While the studies are limited, some countries like Canada report that the abuse of charities is costing their treasury millions of dollars in terms of misappropriated tax relief such as the overpayment of refund claims or fraudulent claims. In other countries, similar abuses are reported with serious consequences on tax revenues and the integrity of the charitable sector.

- a. An organization poses as a registered charitable organization to perpetrate a tax fraud;
- b. A registered charitable institution willfully participates in a tax evasion scheme for the personal benefit of its trustees and beneficiaries
- c. A registered charitable institution is involved willfully in a tax evasion scheme to benefit the organization and the donors, without the assistance of an intermediary;
- d. A registered charitable institution is involved willfully in a tax evasion scheme to benefit the organization and donors with the assistance of an intermediary;
- e. A charity is abused unknowingly by a taxpayer or a third party, such as unscrupulous tax return preparer who prepared and presented false charitable receipts

# Abuse of Charitable Institutions to facilitate Tax Evasion, Crime And Money Laundering

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- f. Tax sheltered donations as part of a tax evasion scheme;
- g. Salaried employees concealed as volunteer workers;
- h. An organization registered as exempted from the VAT that is performing taxed activities;
- i. The issuance of receipts for payments that are not true donations for a commission
- j. Criminals use names of legitimate organizations to collect money;
- k. Terrorism financing scheme using charities to raise or transfer funds to support terrorist organizations;
- l. Misuse of donations by charities; and
- m. Manipulation of the values of donated assets

Non-profit organizations are generally considered most at a risk of unauthorized diversion of funds, the most common method of terrorist abuse. These include organizations that receive large amounts of cash donations, operate internationally or in partnership with international NGOs or other entities, receive a large amount of donations from international sources, or provide the following services:

# Abuse of Charitable Institutions to facilitate Tax Evasion, Crime And Money Laundering

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- Examples of economic cost and/or level of tax evasion and money laundering associated with the abuse of charities:
- In Canada, just in terms of revenue losses, for the current cases under criminal investigations, such abuse represents an amount of \$200 million (€125 million) in tax revenue at risk.
- Spain has detected €40 million in offshore accounts. In tax revenue, the loss is approximately €15 million.
- UK cannot accurately quantify the total economic cost but the schemes relating to direct tax that they have found and challenged have been in the £tens of millions. In the case of indirect taxes the tax at stake is of the same order. There has been some negative publicity but the integrity of the charity sector has not yet been seriously damaged.
- The US cannot quantify the economic cost; however, based upon their related investigations, there are consequences on tax revenues and on the overall integrity of the charitable sector.

***‘ Basis - REPORT ON ABUSE OF CHARITIES FOR MONEY-LAUNDERING AND TAX EVASION – OECD’***

# Corporate Philanthropy-Abuse of CSR

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## Annual spending on CSR:

- Every financial year, at least 2% of the average net profits made during the three preceding financial years.
- Schedule VII of the Act indicates activities that may be included by a company in their CSR policies.
- Under the Act Explanation to Section 37 provides that no expenditure on account of CSR shall be allowed .
- CSR if approached as a 'tick-in-the-box' process, may expose an organization to a variety of fraud risks (some of which are elaborated below), all arising from ineffective due diligence and poor monitoring.
  - Conflict of interest
  - Advertising/Marketing fraud
  - Related or fraudulent entities/charitable trusts
  - Bribery/ Corruption
  - Inflated projects
  - Fictitious projects
  - Financial Frauds

# Conclusion

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- Government's policy of exempting income of charitable institutions plays a significant though not clearly quantified role in securing momentum for economic growth. In the same vein, it is indicated that this policy is substantially reducing the fiscal space and is therefore a serious challenge to revenue mobilization
- The double-edged nature of tax incentives and exemptions thus a comprehensive study on the costs and benefits that have accrued from these tax exemptions and deductions is unavailable
- The number of anti-avoidance embedded in the Act proves the abuse of the existing tax regime.
- Voluntary organizations receiving more than Rs. 11,500 crore (\$1.9 billion) in foreign funds annually, the Home Ministry has warned that the NGOs could be vulnerable to risks of money laundering and terror financing. A total of 43,527 NGOs are registered under the Foreign Contribution (Regulation) Act, as of March 31, 2012. An amendment to the Prevention of Money Laundering Act (PMLA) 2002, notified in the official Gazette to bring NPOs under the purview of the law.
- There is another element of the charitable deduction many find problematic: it consistently favors the wealthy, making it “cheaper” to give if you have more money than less. At the heart of the issue is also a debate about the role of Govt. versus philanthropy—which is better at delivering critical social services?

# Philanthropy vs. Charity

**Fundamental  
Relook at what  
should be  
Exempted?**

**Charity**

**Philanthropy**

Jeremy Beer, in his book **The Philanthropic Revolution: An Alternative History of American Charity**, argues that the displacement of charity by philanthropy was “the result of a reconceptualisation of voluntary giving as primarily a tool for social change.”

short-term,  
emotional,  
immediate response

focused primarily on  
rescue and relief

long-term, more  
strategic,

focused on  
rebuilding

problem-  
solving charity

# Recommendations

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- Rampant misuse of section 2(15) as it's an inclusive definition and in the light of contrary judgments the said section needs a relook. The activities intended to be included need a thorough description and not be too broad a genre of activities.
- The Shome Committee had earlier commended requiring that for eligibility for exemption, a charitable institution must have 90 percent of its receipts from donations alone.
- An exhaustive definition of charitable purposes should be introduced, in place of the present inclusive definition, to prevent too wide an interpretation. The charitable purposes could be exhaustively listed as set out in the Directive Principles of State Policy in the Constitution of India, wherever these mention any activity that is in the nature of service for advancement of public good. The list of purposes could also be updated periodically to address current needs.
- The provisions of section 10(23C) should be merged with those of sections 11, 12, 13 and 13A. That is to say, all charitable institutions seeking donations eligible for tax relief must submit to minimum discipline namely, obtaining initial approval, filing of returns annually and application of income and surpluses invested in specified ratios and channels. In judging the correct application of income by these entities, the existing anomalies arising from varying definition of "income" in the provisions governing charitable institutions should be removed.

# Recommendations

- Giving deductions u/s 80G for corporates needs a re-look just as CSR is not a deductible expenditure. Though the impact of tax revenue forgone is not very significant a relook at the existence of this section is necessary on par with CSR for corporate.

Statement of Revenue Impact of Tax Incentives under the Central Tax System Financial Years 2015-16 and 2016-17:

<b>Deduction on account of donations to charitable trusts and institutions (section 80G)</b>	<b>Revenue Impact (in ` Crore) [2015-16]</b>	<b>Projected Revenue Impact (in ` Crore) [2016-17]</b>
<b>for corporate tax payers</b>	<b>1275.9</b>	<b>1386.0</b>
<b>for non-corporate [Firms/AOPs/BOIs] tax payers</b>	<b>105.3</b>	<b>114.4</b>
<b>for individual/HUF tax payers</b>	<b>486.3</b>	<b>595.15</b>
<b>Total</b>	<b>1867.5</b>	<b>2095.55</b>



# Recommendations

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- A charity commission must be established in each state to both regulate and nurture the charity sector and also give the Income-tax Department adequate feedback on their activities.
- The reporting structure on tax revenue foregone should be more detailed and comprehensive. A mere report on amounts of tax revenue foregone, does not add much value to the process.
- A law on charities should be framed which includes provisions for Anti-Money Laundering and Anti-Terrorist Financing and Reporting.
- Risk Based Approach- the greater the risks, more the trustees have to do to ensure that they have discharged their duty and other legal duties.