AccountAble™

Tax Relief on Donations **Issue # 61; Jun-00**

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Overview

Non-profit or charitable organizations (NGOs) do not have to pay income tax on their own income. For getting this advantage, they have to register under section 12A or under section 10(23)(c). Some other conditions also apply.

On the other side, people who donate money to NGOs can also claim some tax deductions. Why? Because the Government recognizes that these organizations perform a useful function.

These deductions are useful for individuals, companies and other tax-paying organizations. Obviously, these are not relevant for grant-making Agencies, which are exempt from Income Tax.

What are these deductions? We discuss here the law in India.

Donations in kind

Many people donate things other than money. Land is a common example. Other examples are buildings, clothes, used equipment, food items, shares, employee stock options, jewellery, etc.

The donor in India cannot claim any of these as a tax deduction.

Money Donations

But donations of money to NGOs can be claimed as deduction from income. This means that the donor's total income is reduced. So he or she pays tax on a lower amount. The donor can claim 50% to 125% of the donation. The percentage depends on the approval for the NGO.

Most of the NGOs are approved under section 80G or under 35AC. Apart from these two, there are three other possible sections[1]. If the NGO is not approved under any of the five sections, you cannot claim a deduction.

Section 80-G

Who can be approved

Pilgrims to Tirupathi Temple in Andhra Pradesh offer their hair as a symbolic sacrifice. This hair is collected and auctioned annually. The temple Trust (managed by the Government) raises nearly Rs.10 crores annually from the auction.

Almost any NGO can be approved under section 80G(2)(iv). Important conditions for this are:

- The NGO's income should be exempt from income tax;
- Its income and assets are used for charitable purpose only. Also the benefits should not be limited to a religious community or caste[2].
- It should maintain proper accounts.
- It should be a public trust, registered society or a non-profit company.
- If the NGO is running some business, then it should keep separate books for the business. The donations should not be used for the business. Also the NGO should certify both these conditions to the donor.
- Finally, the Commissioner of Income Tax (CIT) should approve[3] the NGO for this purpose.

50% deduction for donor

For NGOs approved under section 80G, donor can claim 50% deduction. What does this mean to the tax-paying donor?

[1] 35(1)(iii), 35CCA, 35CCB. Of these, section 35CCA is more or less irrelevant as no new programs are being approved under this section since 1-Mar-1983.

[2] This condition does not apply if the community or caste is a scheduled tribe / caste / backward class or women or children.

[3] This condition was introduced in 1992.

Shanta lives in Chennai. She is working in a software design firm and gets a salary of Rs.20,000 per month. Income Tax on this came to Rs. 24,200. Then she remembered she had given Rs.6,000 to an NGO. The NGO was approved under section 80G. How much benefit will she get? Will her tax be reduced by Rs.3,000[4]?

No. We have to deduct 3,000 from her taxable income. Then we recalculate her tax.

Salary income	2,40,000
Various deductions	-80,000
Gross Total income	160,000
Less: deduction under section 80G	-3,000
Net income	1,57,000
Tax on this	23,210

So how much tax did she save on her donation of Rs.6,000? Just Rs.990.

The 10% Limit

Apart from this, there is a restriction on total donations under section 80G[5]. If you give away more than 10% of your gross income[6], the excess is ignored. What does this mean?

Suppose Shanta had given a donation of Rs.25,000 instead of Rs.6,000. How much deduction would she get?

Well, her gross total income is Rs.160,000. And 10% of this comes to Rs.16,000. So her donation would be eligible only up to 16,000. The deduction would be 50% of this 16,000, which comes to Rs.8,000.

How much tax would she save? Tax on balance income would be Rs.21,560. Savings come to Rs.2,640.

Receipt

For claiming this deduction, the donor needs a receipt. This is issued by the receiving NGO. The receipt should also give the number and period of CIT's approval[7].

Section 35AC

The main difference between 80G and 35AC is the percentage of deduction. Under 35AC, the donor gets 100% deduction from their income.

Secondly, you can donate upto 100% of your income also. The limitation of 10% for 80G donations does not apply here.

Who can be approved

These extra benefits come with a string attached. The donation must be made for a project, which is approved under section 35AC.

Approval is given only to priority projects. In the case of section 80G approval, there are no priority requirements. In this way, the Government has tried to channelize charity funds into certain directions.

This project is normally run by an NGO. For this, the NGO has to write a project proposal. A budget is also prepared. The application is sent to the National Committee at Delhi.

Approval is normally given within six months. A notification is issued. Approval is generally given for 2-3 years at a time[8].

The 100% deduction

How much does the donor save on taxes? Let's go back to Shanta's case. She saved Rs.990 in taxes by giving Rs.6,000. This NGO was approved under section 80G.

What if she had donated money to a project approved under section 35AC?

Salary income	2,40,000
Various deductions	-80,000
Gross Total income	160,000
Less: deduction under section 80GGA	-6,000
Net income	1,54,000
Tax on this	22,220

Clearly she gets more benefit here. She would save Rs.1,980 in taxes.

35AC or 80GGA?

Both these sections are broadly similar in nature. People who have business or professional income should claim the deduction under section 35AC. People who do not have any such income should claim it under 80GGA[9].

[4] 50% of Rs.6,000

[5] Some special donations under section 80G (Prime Minister's Funds etc.) are not covered by this limit.

[6] This means taxable income before allowing deductions under chapter VIA (sections 80A to 80U).

[7] The CIT issues a letter granting approval under section 80G.

[8] See AccountAble 17 for more details

[9] section 80GGA(2)(bb)

No 10% Limit

The 10% limitation does not apply under 35AC or 80GGA. We saw that more generous donors lose out under section 80G. For example, Shanta's donation of Rs.25,000 was partially ignored. She got only Rs.8,000 as a deduction. And she saved just Rs.2,640.

What if the donation had been made to a project approved under section 35AC? She will then claim the deduction under section 80GGA. The deduction will be the entire Rs.25,000. Her taxable income will come down to Rs.135,000. And she will pay a tax of Rs.17,600. Her tax benefit will now mount to Rs.6,600.

Form 58A

For claiming this deduction, the donor needs a certificate. This certificate is in form 58A. It is issued by the receiving NGO.

Section 35(1)(iii)

If you get 100% deduction under 35AC, this goes one step further. You get 125% deduction for donations made after 1-Apr-1999.

Secondly, you can donate up to 100% of your income also. The limitation of 10% for 80G donations does not apply here either.

Who can be approved

The donation must be made to an institution, which is approved under section 35[10]. The organization must be doing research in social sciences[11]. Or it should be doing statistical research.

For this approval, the NGO has to apply in form 3CF. The form has to be sent to CBDT[12], through your CIT.

The approval is not given for more than three years at a time. It can be renewed.

The NGO should maintain separate account[13] for money received in this way. An annual return (with audit tificate, Income & Expenditure count and Balance Sheet) should also be filed.

The 125% deduction

How much does the donor save on taxes? What if Shanta had donated her Rs.6,000 to a project approved under section 35?

If Shanta had business income, then she would have got a deduction of Rs.7,500 from her income. Her tax saving would be Rs.2,475. This deduction would come under 35.

What if she did not have business income? She would get a deduction of only 100% under 80GGA[14]. Her tax saving would be only Rs.1,980.

Why this discrimination? We don't know. May be it's just an oversight.

Section 35 or 80GGA?

People who have business or professional income should claim 125% deduction under section 35. People who do not have any such income can claim only 100% under section 80GGA.

Proof of donation

The donor has to prove the donation to Income Tax Department. For this a certificate or a receipt from the NGO is needed. The certificate or receipt should mention date and number of notification under section 35.

All good things come to an end…

This deduction will be withdrawn in 2005[15]. This means that you won't get any fit for donations made after 31-Mar-2005.

Section 35CCB

This section is similar to 35AC. Donors can claim 100% deduction for donations made for certain projects.

Who can be approved

The project must be for conservation of natural resources or afforestation.

The NGO[16] has to write a project posal. A budget is also prepared. The application is sent to the Secretary, Department of Environment at Delhi. No special form is required for this.

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[10] section 35(1)(iii)

[11] Psychology, sociology, history, anthropology, economics, geography, civics, etc.

[12] Central Board of Direct Taxes

[13] Separate account does not mean a separate cash book or bank account. It merely means a separate account or accounts in the ledger.

[14] section 80GGA(2)(aa)

[15] Earlier this was scheduled to end on 31-3-2000. But the time limit has now been extended to 2005. Who knows, it may be extended again when 2005 comes!

[16] The NGO itself should also be approved by the Department of Environment.

On approval, a notification is issued. Approval is generally given for 2-3 years at a time.

The 100% deduction

Deduction is calculated in exactly the same way as 35AC. Also the 10% limit for 80G does not apply to these donations either.

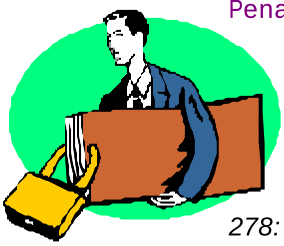
35CCB or 80GGA?

People who have business or professional income should claim the deduction under section 35CCB. People who do not have any such income should claim it under 80GGA[17].

Proof of donation

The donor should ask for a certificate or a receipt from the NGO. The certificate / receipt should mention date and number of notification under section 35CCB.

Cash or cheque?



Giving in cash may be convenient. It is seldom safe. Avoid giving to people who solicit cash donations[18]. All reputed NGOs have bank accounts and are perfectly willing to accept cheques.

Giving through cheque[19] protects both the donor and the NGO. A cheque donation is not likely to be challenged by the Income Tax people. You can also be sure that the money will reach the NGO.

The NGO is also protected, as unauthorized people cannot collect money in its name.

Misusing tax benefits

Evading taxes is second nature to most people. This is all the more true when tax rates are high and implementation is relatively lax. Charitable donations have also not been able to escape from this.

Some people set up fictitious charitable trusts or societies. These organizations obtain income tax exemption and also tax approval under section 80G. Tax paying individuals then make fake donations to these and claim deduction from tax. By and large, such fake organizations cause the biggest leakage of revenue.

However, some of the normal NGOs are also not free from blame:

- A friendly NGO may give receipt for a bigger donation. A person pays Rs.1,000 but takes a receipt for Rs.10,000. The donor gets a tax relief of Rs.1,650 – by paying just Rs.1,000.
- Often, however, the NGO does not even get the small donation – they end up issuing a receipt for nothing to oblige an important and influential person.

This also creates problems for the NGO. The NGO has to 'adjust' the donation in accounts by showing fictitious expenditure.

Penalties

This kind of misuse can attract severe penalties for all concerned (donor, NGO, adviser). These penalties are imposed under section *276C: Willful attempt to evade tax etc.* and section *278: Abetment of false return etc..* Penalties include fine and/ or prison ranging from three months to seven years.

These penalties have proved to be a great deterrent. As a result, no one has gone to prison for this in the last 25 years!

[17] section 80GGA(2)(c)

[18] Of course, this does not apply to small contributions made through collection boxes.

[19] Crossed as 'Account Payee'. A bearer or uncrossed cheque can be more dangerous than cash. If sending by mail, use registered post or reliable courier. See AccountAble 12 for more tips like this.

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