Date: 13th September 2023

To,

Shri. Nitin Gupta,

Chairperson of the Central Board of Direct Taxes

Honorable Sir,

SUBJECT: REPRESENTATION REGARDING DELAYED AVAILABILITY OF INCOME TAX FORMS 10B/10BB AND COMPLICATIONS/ISSUES IN FILLING PARTICULARS IN SUCH FORMS

The Karnataka State Chartered Accountants Association (R) (in short 'KSCAA') is an association of Chartered Accountants, registered under the Karnataka Societies Registration Act, in the year 1957. KSCAA is primarily formed for the welfare of Chartered Accountants and represents before various regulatory authorities to resolve the professional problems faced by Chartered Accountants and the business community.

In the past, we have written to your good selves many times populating various issues, challenges and hardships being faced by taxpayers and Chartered Accountants and suggesting possible solutions on the same. Herein, we are presenting before your good selves for your kind consideration, issues regarding the delayed availability/release of income tax forms 10B/10BB for the Financial Year 2022-23 and insertion of several new clauses which is causing hardship to the Taxpayers and Chartered Accountants.

Provisions applicable:

Sections 10(23C) and 12A of the Income Tax Act, 1961 require certain funds, trusts, institutions, universities, other educational institutions, hospitals and other medical institutions to get their books audited. The forms prescribed under rules 16CC and 17B of the Income Tax Rules, 1962 for this purpose are **Form 10B and Form 10BB.**

1. Audit Report in Form 10B is required to be filed if any one or more circumstance exists:

   i. The total income of the trust/institution [whether registered under 12AB or 10(23C)] exceeds Rupees Five crore without giving the effect of Section 11, 12 & 10(23C) during the previous year.

   ii. The organisation receives any foreign contribution (even if the income is below Rupees Five crore) during the previous year

iii. The income of the trust or institution is applied outside India (even if the income is below Rupees Five crore and the organisation has not received any foreign contribution) during the previous year.

2. Trusts or institutions registered under Section 12AB or under Section 10(23C) not falling under any of the above-mentioned criteria must file audit report in Form 10BB.

These forms are to be submitted by 30th September, failing which these trusts, institutions etc. are denied tax exemptions/benefits available under section 10(23C) and Section 11 and 12.

Details of few of the Challenges faced:

1. Late release of utilities for filing the Form 10B/10BB:

Form 10B/10BB have been introduced vide notification No. 7/2023 dated 21 February 2023. We wish to bring to your kind attention that the utilities required to file the above-mentioned forms have been made available/released in the Income Tax Portal on 24th August 2023. Your good selves may be aware that conducting an audit of trusts, institutions etc. is a time-consuming process and is considered complete when the forms mentioned above are filed with the Income Tax Department.

Since the utilities have been released recently, it is quite challenging for the Chartered Accountant Community as well as the assessees, to prepare and furnish the audit report within such short span of time. This is further challenging as both Forms (Form 10B and Form 10BB) have been changed/newly introduced for the current assessment year to include a lot more disclosures as compared to earlier years. This audit procedure requires a considerable amount of time, which is not available with the Stakeholders and the Professionals as the due date is approaching fast.

2. Comprehensive and Vast Form

The erstwhile Form 10B was a small, plain and simple form requiring minimal disclosures. Whereas the new Form 10BB requires reporting on 32 clauses along with numerous sub-clauses and further reporting under 7 various schedules. Form 10B requires reporting on 49 clauses along with numerous sub-clauses and further reporting under 29 various schedules, in addition to providing General information about the Organisation. The form is a detailed and lengthy form, requiring identifying, analyzing, compiling and reporting voluminous data. Such detailed and colossal reporting warrants lots of time and resources at the disposal of both the Auditor and the Organisation. Time is a critical factor in this respect, as very little time is available for amassing and reporting the required details.

3. Difficulty in bifurcating the total application of income into electronic and non-electronic modes:

The form requires bifurcation of the total application of income into electronic and other than electronic modes as per Rule 6ABBA of the Income tax Act. However, Rule 6ABBA does not provide any reference to application of Income under section 10(23C) and Section 11 and 12. Moreover, extraction and verification of this information is very difficult. There can be practical difficulties faced by the charitable institutions for furnishing this information as most of the Organisations may have not maintained their books of accounts in such manner so as to facilitate reporting of the data in this format.

4. Certification of adequacy of reasonableness of expenditure

The Auditor is tasked with the responsibility of certifying the adequacy and reasonableness of remunerations, consulting fees, rental expenditures, and other disbursements made to specified persons. However, there is a notable absence of any guidance and mechanism for assessing the reasonableness of these expenses, potentially resulting in a lack of consistent evaluation.

5. Reporting of contributions received from specified person

The Auditor is expected to provide details of substantial contribution made to the Organisation by persons specified under Section 13(3) by providing details of total contributions received up to the end of the previous year. The list of persons mentioned in Section 13(3) is quite extensive and the details of contributions received from such persons from the date of formation of the Organisation may not be available with such entities.

6. Third Party Software

Most of the Auditors rely on various third-party software to submit various Income tax forms and returns. Due to the complexity of the forms involved and delayed release of utilities for filing Form 10B/10BB, most of the third-party software have not updated and are not available for filing these forms. To this extent it might be challenging to submit the forms within the due date.

7. E-schema

The e-schema or xml form contains various elements which correspond to the various columns/form fields being filled in the Form. The schema describes the data types that can be used against each element and the validations being carried out to check the accuracy of the data submitted by the intermediaries. Since the schema is not yet available, it will be challenging to validate the data and submit the form within the prescribed due date.

Representation:

We would also like to bring to your kind attention, the judgement of the Hon'ble Delhi High Court in the case of Avinash Gupta vs. Union of India & Ors on 21 September 2015 (W.P.(C) No. 9032/2015). The Hon'ble High Court then instructed the Govt. to ensure the availability of forms for tax audit from the beginning of the next assessment year. The relevant paragraph is reproduced below for your reference:

"The counsel for the respondents appearing on advance notice is unable to give the reasons for the forms etc. being not available at the beginning of the assessment year on 1st April of every year and the same thereby causing inconvenience to the practitioners of the subject. There is sufficient time available to the Government, after the Finance Act of the financial year, to finalise the forms and if no change is intended therein, to notify of the same immediately. There appears to be no justification for delay beyond the assessment year in prescribing the said forms. Accordingly, though not granting any relief to the petitioner for the current assessment year, the respondents are directed to, with effect from the next assessment year, at least ensure that the forms etc. which are to be prescribed for the Audit Report and for filing the ITR are available as on 1st April of the assessment year unless there is a valid reason therefor and which should be recorded in writing by the respondents

themselves, without waiting for any representations to be made. The respondents, while doing so, to also take a decision whether owing thereto any extension of the due date is required to be prescribed and accordingly notify the public."

To summarise, the Hon'ble Delhi High Court has directed the Board to ensure that the forms prescribed for the Audit Report are made available as of the 1st of April of the assessment year unless there is a valid reason therefor and which should be recorded in writing by the Board. Unfortunately, Utilities in respect of Form 10B/10BB have been made available on the 24th August 2023 resulting in a delay of around 145 days from the beginning of the assessment year and the e-schema for submitting such forms is not yet available.

A charitable Organisation is an Organisation whose primary objectives are philanthropy and social well-being in various spheres like educational, religious and other activities of public interest or common good. These Charitable Organisations depend on donations from various individuals and businesses, and often struggle for survival. They focus more on charitable services and spend least time on administrative matters. Seldom they have administrative staff of high caliber who can assist in compilation of data required for preparing such comprehensive reports as required to be filled in Form 10B/Form 10BB. Since the forms are new, the Professionals are trying to analyse and interpret various clauses and details required to be submitted and may different views and may require more clarity on such interpretations. To summarise, many Organisations, working for philanthropy may not have the required bandwidth to prepare such complex reports. Also, few Organisations may not have data or data in the required format for preparing these reports. Too many procedures will only limit the ability of the Organisations to serve to their optimum level and snatch away their sheen.

Taking into consideration the hardships caused, and in the backdrop of the High Court order, we the members of Karnataka State Chartered Accountants Association, on behalf of the entire Chartered Accountants Community and also on behalf of various stake holders in the state of Karnataka, appeal to your good selves to kindly consider our request and defer the applicability of the forms by one year and also release simplified forms from next assessment year onwards, considering the practical difficulties faced by various stakeholders.

We request you to issue an immediate noticification in this regard as the due date of 30th September 2023 is fast approaching.

Yours sincerely,

For Karnataka State Chartered Accountants Association ®

CA. Sujatha Raghuraman President	CA. Sunil Bhandary Secretary	Babitha · G CA. Babitha G Chairperson, Representation Committee

Cc to:

1. Smt. Nirmala Sitharaman, Hon. Union Minister of Finance and Corporate Affairs, Government of India
2. Shri. Pankaj Choudhary, Hon'ble Minister of State, Finance.
3. Shri. Sanjay Malhotra, Hon'ble Revenue Secretary.
4. Smt. Chaitali P, PCCIT, Karnataka & Goa.