

## INDIA—PROPOSED AMENDMENT OF INCOME TAX ACT

According to [Noshir H. Dadrwala, Executive Secretary of the Centre for the Advancement of Philanthropy in Mumbai](#), the current definition of charitable purpose under Section 2 (15) of the Income Tax Act, includes:

- relief of the poor
- education
- medical relief, and
- advancement of any other object of general public utility

After the amendment, “advancement of any other object of general public utility” will not be considered as a “charitable purpose” if it involves carrying on of any activity in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business for any fee, assessment, or other consideration. If such an activity is carried on by a trust, fund or institution, then the organization will not be entitled to any exemption under section 11 and its income will be chargeable to tax even if utilized for charity. This rule will apply unless the organization is carrying on other charitable activities and it was created prior to 1st April, 1962.

Organizations involved in relief of the poor, medical relief, and education may safely carry out income generating activities. Micro finance for the poor, hostels run by educational institutions or fees charged by medical institutions will not be deemed to be business activities. However trade organizations and associations supporting commerce and industry will be affected by this amendment. In addition, rental income which is assessed under the head house property is not business income.

It is important point to note that in explaining the rationale behind this amendment, the Finance Minister in his [budget speech](#) said, “Charitable purpose includes relief of the poor, education, medical relief and any other object of general public utility. These activities are tax exempt, as they should be. However, some entities carrying on regular trade, commerce or business or providing services in relation to any trade, commerce or business and earning incomes have sought to claim that their purposes would also fall under “charitable purpose”. Obviously, this was not the intention of Parliament and, hence, I propose to amend the law to exclude the aforesaid cases. Genuine charitable organizations will not in any way be affected.”

It is also pertinent to note that the proposed amendment does not target all the activities falling under advancement of any other object of general public utility. Only those that are ‘commercial’ or ‘supporting commerce’ are affected. Thus research, livelihoods, child labor, environment, women’s rights, etc., are not covered as these are not in the nature of commerce, trade or industry.

Section 11(4A) of the Income Tax Act which permits business which is incidental to charity is also not to be amended. Section 11(4) which treat a business undertaking as a property held under trust has also been left untouched. Hence, as assured by the Finance Minister, genuine charitable organizations are not likely to be affected by the amendments discussed here.