

# EXEMPTION BLUES

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Educational institutions are nurseries of a progressive society. To underscore their importance government granted 100% exemption from income tax to such institutions in the country.

Any income of a university or other educational institution existing solely for educational purposes and not for the purpose of the profit is exempt from income tax as follows:

- A. Exempt u/s 10(23C)(iiiad) if the gross receipts of the institutions is upto Rs 1 crore
- B. Exempt u/s 10(23C)(vi) in case of institutions with gross receipts over Rs 1 crore. Provided such an institution applies to the prescribed authority in form no. 56-D.

Till 31<sup>st</sup> of May 2006 there was no time limit for making an application in form 56-D for claiming exemption for any financial year. In the absence of any time limit, 31<sup>st</sup> October being the last date for filing return was deemed to be the last date for filing form 56D.

W.e.f 1<sup>st</sup> of June 2006 a provision has been put to place whereby such application in form no. 56-D will have to be filled and filed during the respective financial year itself. The language of the proviso inserted reads as follows :

***Provided also that in case the fund or trust or institution or any university or other educational institution or any hospital referred to in the first proviso makes an application on or after the 1<sup>st</sup> day of June 2006 for the purposes of grant of exemption or continuance thereof, such application shall be made at any time during the financial year immediately preceding the assessment year from which the exemption is sought.***

The above proviso has been so ambiguously worded that some learned officers are interpreting it wrongly.

One fails to understand as to, how on or after 1<sup>st</sup> June 06 an assessee can be required to file the application in form 56-D within and for the financial year 2005-06 which has already closed on 31<sup>st</sup> march 2006. How can you go back in the past to file the application ?

In the proviso it is nowhere mentioned that it has been inserted with retrospective effect, moreover any addition or amendment which involves an 'act' cannot be justifiably w.e.f retrospective effect, because such an act becomes an impossibility.

In view of above, one can very safely conclude that :

1. The intention of the law cannot be interpreted in vacuum. This proviso brings about 'a time limit for filing the application in Form 56D' from financial year 2006-07 onwards because there was no time limit before such date.
2. Till 31<sup>st</sup> of May 2006 since there was no time limit for making an application, therefore an application for financial year 2005-06 does not come under any time limit.

3. That the last date for filing the form no. 56-D for Fin Year 2006-07 will be 31<sup>st</sup> March 2007.
4. Any provision which came into effect on 1<sup>st</sup> of June 06 can not require an 'act' to be done by the assessee on a date in the past, which is an impossibility. Therefore the new time limit does not apply to Financial year 2005-06.
5. Old Form No. 56-D would also require suitable amendments because it seeks some information which can be made available only after the completion of the financial year eg., Total income, income claimed exempt for the financial year etc.,