

# Update



## Electoral Trust's –MCA removes confusion and paves the way for pooled donations

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## *Update*

### **Introduction:**

In an another attempt to synchronize the law and make things easier for corporates, Ministry of Corporate Affairs (MCA) has once again removed difficulty vide notification dated November 07, 2013<sup>1</sup>, wherein it has finally granted exemption to electoral trusts from applicability of provisions of section 293A of the Companies Act, 1956 (Act 1956), corresponding to section 182 of Companies Act, 2013 (Act 2013).

### **Electoral Trusts:**

A section 25 company (corresponding to section 8 of Act 2013) is eligible for making an application for approval of electoral trust under Clause 2(22AAA) of the Income Tax Act, 1961 as per the notification dated January 31, 2013 issued by the Central Board of Direct Taxes (CBDT). Such trust shall receive voluntary contributions and distribute the same to political parties. Any amount advanced by way of contribution by any assessee to a political party or an electoral trust will be deducted in computing the total income. Therefore, any amount advanced by an assessee for the purpose of donations to political parties will be eligible for deduction.

### **Obstacle in availing the benefit under the Central Board of Direct Taxes (CBDT) notification and Income Tax Provisions:**

Sub-section (1) of Section 293A deals with the prohibits and restricts political contributions by the following companies:

- a) a government company
- b) company which has been in existence for less than three financial years

Therefore, the section practically narrow downs the scope of the sole object of an electoral trust i.e. contribution to political party, as this section curtails the contribution for a company in existence for less than three years. Therefore, practically an electoral trust could not function for minimum three years, even though its only object is to contribute to its political party. There was hence, a complete mismatch in the laws in as much as the CBDT provided a benefit but MCA in turn still had the restrictions and prohibitions. Therefore, there was ultimately no meaning of such benefit granted by the CBDT and its notification had no relevance at all.

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<sup>1</sup> [http://www.mca.gov.in/Ministry/pdf/electroltrust\\_07112013.pdf](http://www.mca.gov.in/Ministry/pdf/electroltrust_07112013.pdf)



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## **Update**

Section 182 Act 2013 corresponds to section 293A and surprisingly this section also did not lay any exemption to an electoral trust.

### **Exemption to Electoral Trust vide MCA notification:**

To motivate the Electoral Trust and to enhance the performance for contributing to political parties MCA has now vide its notification dated November 07, 2013 provided exemption to electoral trust from the applicability of provisions of section 293A (1) (b) and 293A (2) replaced with sub section (1) of section 182 of the Act 2013.

This exemption now clarifies the position of electoral trust and to the relief of all, now an electoral trust can function without any limitation.

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