



Which section has been newly inserted and what it is all about?

Answer:

Section 12AB has been newly inserted in the Income Tax Act which lays down the procedure for fresh registration for income tax exemption and renewal thereof. It will come in to force with effect from 01.06.2020.



Will registration u/s 12A/12AA will become inoperative?

Answer:

Yes, the registrations under erstwhile sections 12A/12AA shall be no longer valid after 01.06.2020.



Whether Section 12A shall become redundant completely?

Answer:

No, only provisions of Section 12AA shall become redundant with effect from 01.06.2020. Section 12A remains as it is and in fact, a new clause (ac) has been newly inserted which prescribes the procedure and timelines for a making an application for registration u/s 12AB.



What is the objective or intention behind the introduction of Section 12AB in the Income Tax Act?

Answer:

The objective is to establish a process of transparent monitoring of the activities of charitable organizations. The process of renewal will act as a check to ensure that the conditions for approval of registration is adhered to for want of continuance of exemption. It will also be reason for having a non-adversarial regime and not conducting roving inquiries in the affairs of the exempt entities in their day to day administration.



Under the existing provisions, the registration u/s 12AA was perpetual in nature and no renewal was required. What shall be the validity period u/s 12AB?

Answer:

The registration u/s 12AB shall be granted usually for a period of 5 Years, except in case of provisional registration to newly formed organizations which will be valid for 3 years.



Whether after 5 years, a separate application has to be filed for renewal or the registration will be auto-renewed?

Answer:

The registration will not be auto-renewed and a separate application as prescribed u/s 12A has to be filed at least 6 months prior to the expiry of the original registration granted u/s 12AB.



Does the new provisions of Section 12AB also applies to existing registered charitable organizations u/s 12A/12AA and if yes, whether they will be allowed to transit directly to Section 12AB or an application has to made?

Answer:

As given earlier, Section 12AA shall become redundant after 01.06.2020 and the accordingly the registration too shall become inoperative. So, even existing registered charitable organizations also have to file an application as prescribed in order to enjoy the continuance of exemption.



What is the time limit of application for already registered organizations?

Answer:

For already registered organizations, the application has to be made within 3 months form the date of the new provisions coming into force i.e. within 31st August, 2020.



What if an application is not filed within the prescribed time limit?

Answer:

Although it is not specifically covered but is clear that since the erstwhile section 12AA shall be no longer valid after 01.06.2020, the organizations who fail to apply within the prescribed time limit, shall be considered as unregistered and shall not be allowed the income tax exemptions for the relevant financial year.



What if an application u/s 12AA is pending as on 01.06.2020?

Answer:

All the applications pending as on 01.06.2020, shall be deemed to be an application so made under the new provisions of Section 12AB.



What is the concept of provisional registration?

Answer:

A new concept has been introduced for granting income tax exemption to newly formed organizations who wish to carry out charitable activities. The department shall grant them a provisional registration of 3 years without conducting detailed enquiry and even if the organization have not commenced its activities.



When can the organizations so provisionally registered can get the permanent registration?

Answer:

The organizations so provisionally registered has to re-apply at least 6 months prior to the expiry of the provisional registration or within 6 months from the commencement of activities whichever is earlier. However, in this case, the detailed enquiry shall be done by the Commissioner or the Principal Commissioner of Income Tax as per the provisions laid down under the Act.



What detailed enquiry is usually conducted before granting renewal to already existing registered organizations or permanent registration in case of provisionally registered organizations?

Answer:

It has been laid down that the Commissioner or the Principal Commissioner of Income Tax shall call for any such documents or information to verify the objects and genuineness of activities being carried out by the organization and the compliance with any other law for the time being in force by it as are material for the purpose of achieving its activities.



Whether already existing registered charitable organizations also have to go through the detailed process for renewal?

Answer:

In our view, the organizations which were already registered u/s 12A/12AA, shall be granted fresh registration u/s 12AB, only on filing an application and without detailed enquiry since the relevant clause of the Section 12AB for conducting such enquiry is not

applicable to the applications made by such organizations. But in case of further renewal after a period of 5 years, all such organizations will have to go through such detailed enquiry and have to produce such information and documents as may be directed by the concerned authorities.



What is time limit for application for newly formed organizations?

Answer:

Such organizations have to make an application at least 1 month prior to the commencement of the financial year relevant to the assessment year from which the registration is sought.

For example: If suppose any organization wants to get registered u/s 12AB for the AY 2022-23, it has to make an application latest by 01st March, 2021.

Considering the above provisions, in our view, if that is the time limit so prescribed, the newly formed organizations shall never be able to claim the benefit in the first year of incorporation and it also defeat the intention of the Government of granting provisional registration to such organizations, without commencement of activities.

However, CBDT or Finance Ministry shall come up with a specific circular/direction for clarification on the same to avoid any dispute in the matter.



Whether organizations registered u/s 10(23C)/10(46) as well as Section 12AA also have to re-apply for fresh registration u/s 12AB?

Answer:

No, it is not mandatory for organizations having registration u/s 10(23C)/10(46) to re-apply for fresh registration u/s 12AB, if they wish to continue to claim exemptions under Section 10. However, their registration u/s 12AA shall become inoperative with effect from 01.06.2020.



Whether organizations registered only u/s 10(23C) also have to re-apply for fresh registration?

Answer:

Yes, the first proviso to clause (23C) of Section 10 has been amended wherein the requirement of application for fresh registration has been incorporated in line with the similar procedures and time limit for registration with validity of 5 years as prescribed u/s 12AB.



Whether the concept of provisional registration is also applicable for Section 10(23C) registration?

Answer:

Yes, similar to the provisions laid down in Section 12AB in respect to newly formed organizations, even Section 10(23C) has been amended accordingly to include such provisions for granting them provisional registration of 3 years.



Whether any other amendment has been made in respect to organizations registered u/s 10(23C)?

Answer:

Yes, for organizations registered u/s 10(23C), corpus donation have now been exempted. Earlier the corpus donation was considered as part of the income for such organizations unlike for those registered u/s 12AA/12A. But with the amendment brought in Budget 2020, provisions similar to Section 12AA has been brought in for Corpus Donation and accordingly such donations shall not form part of the total income.



What if the organizations also registered u/s 10(23C)/10(46) wish to renew their registration u/s 12AA by applying as per the new provisions of Section 12AB?

Answer:

In Budget 2020, the scope of claiming dual exemption i.e. benefits of exemption under two different sections of the Act, has been completely foregone. If such organizations want to get themselves registered u/s 12AB by applying afresh, their registrations u/s 10(23C)/10(46) shall stand inoperative from the date of such application. This means they are allowed to switch from claiming exemption u/s 10(23C)/10(46) to Section 12AB.



Whether in future such organizations can apply for Section 12AB registration, if they are willing to forego their exemption u/s 10 or their exemption have been revoked for some reason or the other?

Answer:

Yes, definitely the provisions related to fresh registration cover such organizations and they can make an application at least 6 months prior to the commencement of the assessment year from which the registration is sought.



In the provisions where time limit of applications have been prescribed, the last clause says “in any other case.....” Which cases shall be covered under this clause?

Answer:

Neither any particular case have been covered specifically nor any clarification was issued in this regards, but in our view, suppose, at the time of granting renewal, if the Commissioner is not satisfied with the conditions for approval, and the registration is cancelled, such cases might be covered under this prescribed time limit of applying at least 1 month prior to the commencement of previous year relevant to the assessment year from which the said registration is sought.



Whether the same registration number will be renewed?

Answer:

No, under the new provisions a Unique Registration Number (URN) shall be allotted, which implies the old registration number shall be void after 01.06.2020.



Whether the above applications can be filed manually?

Answer:

No, the process of registration has been proposed to be completely electronic mandatorily.



Whether the registration u/s 80G also have to be renewed?

Answer:

Yes, clause (ix) to sub-section 5 of Section 80G have been newly inserted wherein the requirement of application for fresh registration has been incorporated in line with the similar procedures and time limit for registration with validity of 5 years as prescribed u/s 12AB.



Whether the concept of provisional registration is also applicable for Section 80G registration?

Answer:

Yes, similar to the provisions laid down in Section 12AB in respect to newly formed organizations, even Section 80G has been amended accordingly to include such provisions for granting them provisional registration of 3 years.



Whether any other amendment has been made in respect to organizations registered u/s 80G?

Answer:

Yes, clause (vii) to sub section 5 of Section 80G, has been inserted by Budget 2020. As per the provisions laid down under the aforesaid clause, the organizations registered u/s 80G shall have to furnish a statement to the prescribed income tax authority in the prescribed form and manner and within such time as prescribed. The statement shall contain the particulars related to donations received during the year.

As per our view, the statement shall contain the details of donor such as Name, Address, PAN along with date, purpose and amount of donation.



What is the purpose of furnishing such statement by the organizations registered u/s 80G?

Answer:

As per our view, the provision related to furnishing of statement of donations received have been brought in to cross-check the claims made by the donor at the time of filing their return of income. The process of claiming such donations is shall thus become standardized as the donee's information shall be pre-filled in the income tax return of the donor and the claim shall not be available if the donee organization fails to furnish the aforesaid statement. So the basic intention behind such mandate is to completely eliminate the claim of false donations.



Whether any time limit has been prescribed for furnishing such statement?

Answer:

No, the time limit is yet to specifically prescribed under the Act. However, in the Memorandum explaining the Finance Bill 2020, it was clarified that the standardization of the process through which one-to-one matching of donation received by the exempt entity (done organizations) and that claimed by the donor, may be in similar to the provisions relating to tax deducted/collected at source, which already exist in the Act.

Therefore taking in to the consideration the explanation provided in the Memorandum, as per our view, the statement might have to be filed on quarterly basis.



Whether such statement can be revised or corrected?

Answer:

Yes, as per the provisions so laid down, the done organization registered u/s 80G responsible to furnish the said statement can also file correction or revised statement for rectification of any error as well as to make any changes or update the information so furnished in the original statement.



What are the consequences specified in the Act for non-filing of statement?

Answer:

Two new sections 234G and 271K has been inserted in the Act that lay down the provisions for fees and penalty respectively that can be levied on the donee organization in case of failure to furnish the statement of donations received within the due date prescribed under the Act.

Fees for default in furnishing the statement u/s 234G – Rs. 200 per day till the failure continues. However, the amount of fees shall not exceed the amount of donation in respect of which such failure has occurred and have to be paid before the filing of such statement.

Penalty for such failure can be levied by the Assessing Officer up to the amount not less than Rs. 10,000 but which may extend up to Rs. 1,00,000.



Whether such statement can be revised or corrected?

Answer:

Yes, as per the provisions so laid down, the donee organization registered u/s 80G responsible to furnish the said statement can also file correction or revised statement for rectification of any error as well as to make any changes or update the information so furnished in the original statement.



Whether any other compliance have to be done related to the donations received?

Answer:

Yes, the donee organization also have to issue a donation certificate to the donor in the prescribed format and within the prescribed time limit as will be laid down in the Act.

However, as per our view, since the provisions related to filing of such statement has been brought in line with the existing TDS provisions, such certificate shall have to be issued within 15 days of the filing of the statement.



Whether there is any change in the due dates for filing Income Tax Return and Tax Audit Report in Form 10B?

Answer:

No, the due date for filing tax audit report in Form 10B has been kept same i.e. 30th September of assessment year relevant to the financial year for which the Form has to be filed. However, the due date for filing income tax return has been extended by a month to 31st October.



So whether the due date for filing Form 10 and Form 9A for accumulation of income and option exercise amount respectively, has also been extended?

Answer:

Although not specifically covered, but it seems that the due date for filing Form 10 and Form 9A also stands extended. The provisions laid down in Section 11(2)(c) and Explanation 2 to Section 11(1), specifies that the statement related to amount so accumulated or set-apart and amount for which option exercise, has to be furnished before the due date specified under sub-section (1) of Section 139 respectively, which after the amendment stands at 31st October.

However, CBDT or Finance Ministry should come up with a circular or clarification in this matter to avoid any dispute in interpretation because the amount for which Form 9A and Form 10 is filed, also has to be reported in tax audit report i.e. Form 10B which has to be filed by 30th September.



What was the intention behind extending the due date for filing income tax return but not the tax audit report?

Answer:

The intention behind filing of tax audit report before the income tax return is to pre-fill the data/information related to the tax audit in the latter to avoid any mismatch of details so filled and also make the process of filling the return easier for the assessee.

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