

E-NEWSLETTER

WHATS NEW IN 2020 FOR CHARITABLE ORGANIZATIONS

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The Budget 2020 brought in some sweeping changes for charitable organizations which might have far-reaching implications on the functioning of such organizations. On the one hand, such organizations have been burdened with increased compliances in the form of renewal of existing registrations that too for a limited period, filing of statements of donations received etc...and on the other, provided relaxation for registrations to newly formed organizations and extended the due date for filing return of income.

INSERTION OF NEW SECTION 12AB - PROCEDURE FOR RENEWAL OR FRESH REGISTRATION FOR INCOME TAX EXEMPTION

CONCEPT OF PERPETUAL VALIDITY WITHDRAWN

As per the existing provisions of Section 12AA, the registration for income tax exemption was a one time registration and had perpetual validity unless cancelled. The perpetuity of such registration seems to have been withdrawn under the new provisions.

REGISTRATION WITH VALIDITY

Under the new provisions, the erstwhile registration u/s 12A/12AA have to be renewed and fresh registration shall be granted only for a period of 5 years u/s 12AB and for 3 years only to new organizations applying for the registration first time.

GRANT OF PROVISIONAL REGISTRATION TO NEWLY FORMED ORGANIZATIONS

Under the new provisions, even if the charitable activities are yet to begin, the organization can be granted a provisional registration for a period of 3 years without detailed enquiry. This is a welcome provision for newly formed organizations. However, it seems that no benefit can be availed in the first year of incorporation, as the application for getting provisional registration have to be made atleast 1 month prior to the commencement of previous year relevant to the assessment year in which such registration is sought. **(Also Check point no. d in "our views" section on page 3).**

APPLICABILITY OF NEW PROVISIONS

The provisions of Section 12AB shall be applicable to all charitable organizations already registered under erstwhile Section 12A/12AA upto the date of this Section coming into force i.e. 01.06.2020, and any organization who wants to apply afresh for income tax exemption.

ALLOTMENT OF UNIQUE REGISTRATION NUMBER (URN)

The process of registration is proposed to be completely electronic under which a unique registration number shall be issued to all new and existing charitable organizations. This implies the old registration number shall now be void and held to be invalid after 01.06.2020

DUAL EXEMPTION BENEFIT SHALL CEASE TO BE IN EFFECT

The organizations registered u/s 12AA and also claiming exemption under clauses of Section 10 such as 10(23C) or 10(46) shall now be allowed to enjoy either of the both. Section 12AA shall be cease to be in effect post 01.06.2020. However, if the organizations intend to continue the benefit of Section 10, they have been granted extension without any further application of renewal. But if they want their 12AA registration to be operative in future or want to get themselves registered u/s 12AB, they need to apply afresh, post which their registrations u/s 10 of the Act shall become inoperative.

P.S. Clarification on whether or not such restrictions on switching between various exemptions also apply for those sub-clauses of Section 10(23C) for which no separate registration is required such as (iiid) or (iiiae) etc.. is yet to come.

VARIOUS TIME LIMITS FOR APPLICATION UNDER THE NEW REGIME OF 12AB

For already registered organizations wanting to renew their registrations, the application should be filed within 3 months from the date on which this Section comes into force i.e. by 31st August, 2020. The registration shall be granted for a period of 5 years. Further, for renewing it after 5 years, the application has to be filed at least 6 months before the expiry of such registration. **(Also check point no. c in "our views" section on page 3)**

For newly formed organizations wanting to apply for income tax exemption, the application has to be made at least 1 month before the commencement of previous year relevant to the assessment year from which the registration is sought. The registration shall be granted for a period of 3 years. For example: If registration is required from AY 2022-23, an application has to be filed latest by 1st March, 2021.

In order to regularize the registration in case of provisional registration as explained above, fresh application has to be made at least 6 months before the expiry of such provisional registration or within 6 months from the commencement of activities, whichever is earlier (since they have been granted provisional registration without any activities and detailed enquiry). The registration shall then be granted for a period of 5 years.

In case the registration has become inoperative due to approvals under various sub-sections of Section 10 of the Act, the fresh application has to be made at least 6 months before the commencement of the assessment year from which the said registration is sought. Such registration shall also be granted for a period of 5 years.

In case of modifications of objects, a fresh application has to be made within 30 days of making such modification and the registration so granted shall be for a period of 5 years.

In any other case, not covered above, if the registration u/s 12AB is sought, an application has to be filed at least 1 month before the commencement of previous year relevant to the assessment year in which the registration is sought.

The summary of new provisions as proposed in Budget 2020 and explained above is also given below:

Type of Entity	Timeline to make application for Registration	Applicability of exemption u/s 11 & 12	Validity of Registration	Time limit to grant registration
Trust registered under Section 12A or 12AA before relevant provisions of Finance Bill, 2020 comes into force	Within 3 months from the date on which this clause has come into force i.e. by 31.08.2020	From the assessment year from which such trust or institution was earlier granted registration	Registration shall be granted for a period of 5 years.	Within 3 months from the end of the month in which the application is received.
Trust registered under the proposed section 12AB and the period of the said registration is due to expire.	At least 6 months prior to expiry of the said registration period	From the assessment year immediately following the financial year in which such application is made.	Registration shall be granted for a period of 5 years after satisfying about the conditions of the section.	Within 6 months from the end of the month in which the application is received.
Trust provisionally registered under Section 12AB	At least 6 months prior to expiry of period of the provisional registration or within 6 months of commencement of its activities, whichever is earlier	From the first of the assessment year for which it was provisionally registered	Registration shall be granted for a period of 5 years after satisfying about the conditions of the section.	Within 6 months from the end of the month in which the application is received.
Registration has become inoperative due to approval under Section 10(23C) or 10(46)	At least 6 months prior to the commencement of the assessment year from which the said registration is sought to be made operative.	From the assessment year immediately following the financial year in which such application is made	Registration shall be granted for a period of 5 years after satisfying about the conditions of the section.	Within 6 months from the end of the month in which the application is received.
Trust has adopted or undertaken modifications of the objects which do not conform to the conditions of registration	Within a period of 30 days from the date of the said adoption or modification	From the assessment year immediately following the financial year in which such application is made	Registration shall be granted for a period of 5 years after satisfying about the conditions of the section.	Within 6 months from the end of the month in which the application is received.
In any other case	At least one month prior to the commencement of the previous year relevant to the assessment year from which the said registration is sought.	From the assessment year immediately following the financial year in which such application is made.	Provisional Registration shall be granted for a period of 3 years	Within 1 month from the end of the month in which the application is received.

RENEWAL OF REGISTRATION U/S 80G

Similar amendments have also been made for registration u/s 80G by inserting new clauses to Sub-Section (5) of Section 80G, which lays down similar procedures for renewing the registration, time limits of application, period of validity and grant of registration.

CONDITIONS FOR RENEWAL OF REGISTRATIONS U/S 12AB AND 80G(5)

The Principal Commissioner or Commissioner of Income Tax shall, before granting registrations for a further period of 5 years, may satisfy themselves regarding:

- a) Genuineness of the activities being carried out by the organization and
- b) The compliance of such requirements of any other law for the time being in force as are material for the purpose of achieving its objects.

P.S. Clarification that whether or not the organizations already registered u/s 12AA/12A/80G/10(23C) and applying within the prescribed limit for renewal of registration shall also have to go through the above process of detailed enquiry related to activities, compliance with other laws etc.. is yet to come.

FURNISHING OF STATEMENT OF DONATIONS RECEIVED

Every charitable organization registered u/s 80G of the Act, have to now furnish a statement of donations received in the form and manner as may be prescribed under the Act. These provisions 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 thus standardised 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. The donation details might contain the amount of donation and details of the donor such as Name, Address, PAN etc...The intention behind such increased compliance burden is to completely eliminate the claim of false donations.

TIME LIMIT FOR FILING THE STATEMENT

Although not yet specifically provided under the Act, but as per the Memorandum explaining the Finance Bill 2020, 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.

FEES AND PENALTY FOR NON-FURNISHING OF STATEMENT FOR DONATIONS RECEIVED

Two new sections 234G and 271K has been inserted in the Act that lays down the provisions for the 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 upto the amount not less than Rs. 10,000 but which may extend upto Rs. 1,00,000.

EXTENSION OF DUE DATE FOR FILING OF RETURN

Under the current provisions, the tax audit report in Form 10B was mandatory to be furnished along with the return of income. However, in the Budget 2020, it was proposed that the tax audit report shall now be furnished one month prior to the due date of filing the return. Accordingly, keeping the due date for tax audit report unchanged from 30th September, the deadline for filing the return of income has been extended by 1 month i.e. to 31st October of the relevant assessment year. It was also mentioned that the data related to tax audit report shall come auto-filled in the XML for income tax return.

OUR VIEWS ON THE ABOVE AMENDMENTS

- a) With these amendments, there might come a paradigm shift in the working methodologies of charitable organizations and NGOs as accountability and transparency in the day-to-day operations will be in key focus.
- b) At the time of renewal, it seems that the onus of proving the genuineness of activities and proper compliances shall now be upon the trustees/members/directors of such charitable organizations.
- c) For the existing charitable organizations, the government could have given a relaxation from filing a fresh application as after 5 years, in any case, they would have applied for renewal. So, they must have been given the benefit of direct transition to the new provisions u/s 12AB for a period of next 5 years from the date the amendment is coming in to force.

However, on plain reading of the amended Section 12A, it seems that the existing charitable organizations only have to make an application and the Commissioner of income Tax shall, without any detailed enquiry might grant the renewal within the prescribed time limit of 3 months.

- d) Newly formed charitable organizations usually struggle for donations to commence their activities. Also certain charitable activities such as construction of school building is a time-consuming process and donations received for purchase of land or development of infrastructure in the initial years might be liable to tax if registration is not granted. So, the amendment related to granting registration to such newly formed organizations without commencement of activities, though provisional, is a welcome step.

However, if such organizations are not allowed to file the application immediately on formation, the very intention might get defeated as they might not be able to get the benefit of exemption in the first year due to restrictions imposed by the provisions related to time limit prescribed for filing the application.

- e) Although the burden of compliance has increased, but mandatory filing of statement of donations is also a welcome step which will reduce the harassment for the charitable organizations in case of false claims in their name by the donor.
- f) Although not specifically covered, but the extended deadline of 31st October seems to be applicable to filing of Form 10 and Form 9A. 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.

Disclaimer: The views expressed in the newsletter have been compiled by the Team NGOenabler and should not be considered as a recommendation.