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Charitable Entities – Re-registration & Recent Amendments

Virtual CPE Meeting
WIRC of ICAI

April 13, 2021

Overview

- Re-registration of Charitable Institutions u/s 12AB
- New Registrations u/s 12AB
- Renewal of Registration u/s 12AB
- Forms & Documents
- Reapproval u/s 10(23C)
- New Approvals u/s 10(23C)
- Increase in approval limits u/s 10(23C)
- Approval u/s 10(23C) – Procedure
- Option to be Exercised u/s 11(7)
- Re-Approval of Research Institutions
- Re-Approval u/s 80G
- Statement of Donations Received & Certificate of Donations Received
- Corpus Donations & Application of Income
- Loans & Application of Income
- Carry forward of Deficit

Re-registration of Charitable Trusts

- **CAG Audit Report 20 of 2013 – Exemptions to Charitable Trusts and Institutions**

The Ministry may consider providing suitable database of registered trusts/institutions to AOs to have co-ordination between Approving Authorities and AOs

- Contemplated All-India law for regulation of trusts

- **Amendments by Finance Act 2020 – further amended by Taxation & Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 –**

FM Speech

In order to claim tax exemption, charity institutions have to be registered with the Income Tax Department. In the past, process of the registration was completely manual and scattered all over the country.

In order to simplify the compliance for the new and existing charity institutions, I propose to make the process of registration completely electronic under which a unique registration number (URN) shall be issued to all new and existing charity institutions. Further, to facilitate the registration of new charity institution which is yet to start their charitable activities, I propose to allow them provisional registration for three years.

Re-registration of Charitable Trusts

Explanatory Memorandum

Rationalising the process of registration of trusts, institutions, funds, university, hospital etc and approval in the case of association, university, college, institution or company etc

The present process of registration of trusts, institutions, funds, university, hospital etc u/s 12AA or under sub-clauses (iv), (v), (vi) or (via) of clause (23C) of s.10, and approval of association, university, college, institution or co etc need improvement with advent of technology and keeping in mind the practical issue of difficulty in obtaining registration/approval/notification before actually starting the activities.

It is also felt that the approval/registration/notification for exemption should also be for a limited period, say for a period not exceeding 5 years at one time, which would act as check to ensure that the conditions of approval/registration/ notification are adhered to for want of continuance of exemption. This would in fact also be a reason for having a non-adversarial regime and not conducting roving inquiry in the affairs of the exempt entities on day to day basis, in general, as in any case they would be revisiting the concerned authorities for new registration before expiry of the period of exemption.

This new process needs to be provided for both existing and new exempt entities.

Re-registration of Charitable Trusts - s.12AB

Trusts with Existing Registration

- All trusts currently registered u/s 12A/12AA to make an application for registration to Pr CIT within 3 months from 1st April 2021 (between 1st April 2021 to 30th June 2021 – earlier June 2020 to August 2020)
- Registration to be granted u/s 12AB for a period of 5 years by Pr CIT within a period of 6 months from end of month in which the application is made
- No provisions for calling for documents, making of inquiry, requirement of satisfaction – automatic registration after verifying earlier registration
- Application to be online – new Form 10A prescribed
- To apply for renewal of s.12AB registration at least 6 months before end of 5 years registration
- Pr CIT to call for documents and make enquiries to be satisfied about
 - Genuineness of activities of the trust
 - Compliance of requirements of any other law as are material for the purposes of achievement of its objects
- After satisfaction about objects of the trust, genuineness of activities and compliance with requirements of other laws, Pr CIT to grant registration for period of 5 years within 6 months from end of month in which application made

Re-registration of Charitable Trusts - s.12AB

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- If not satisfied, application to be rejected, and registration to be cancelled after affording opportunity of being heard
 - Applicability of s.115TD
 - Consequences

New Registration of Charitable Trusts - s.12AB

New Registrations

- New trusts applying for registration u/s 12AB to apply for registration one month prior to commencement of previous year relevant to assessment year from which registration sought
- All trusts whose application u/s 12AA pending as on 1.4.2021 where no order passed, deemed to be applications made as above
- Pending applications – automatically converted into applications under the new procedure – whether fresh form to be filed?
- New trust – no registration/exemption for financial year in which trust is set up?
- Provisional Registration to be granted u/s 12AB for a period of 3 years from assessment year from which registration sought by Pr CIT within a period of 1 month from the end of the month in which the application is made
- No provisions for calling for documents, making of inquiry, requirement of satisfaction – automatic registration

Renewal of Provisional Registration of Charitable Trusts - s.12AB

Renewal of Provisional Registrations

- To make application for regular registration 6 months prior to expiry of period of provisional registration (3 years) or within 6 months of commencement of activities, whichever is earlier
- Meaning of “commencement of activities” –
 - whether would cover activities of fund raising, or would only cover activities in attainment of objects
 - Whether commencement of hiring of employees, or actual start of activities by employees
 - In case activity involves setting up of institution, when is commencement of activities – starting to look out for land, acquisition of land, completion of construction of building, completion of building or actual start of working of institution?
 - Whether act of donation to other trust would amount to commencement of activities
 - Would delay in application be fatal to renewal of registration?
- Pr CIT to call for documents and make enquiries to arrive at satisfaction
- After satisfaction about objects of the trust, genuineness of activities and compliance with requirements of other laws, Pr CIT to grant registration for period of 5 years within 6 months from end of month in which application made

Re-registration of Charitable Trusts - s.12AB

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Trust Modifying Objects not Conforming to Conditions of Registration

- Application to be made for registration within 30 days from date of adoption or modification of objects
- Same procedure as cases of renewal of registration

Trusts whose Registration becomes Inoperative due to application of first proviso to s.11(7)

- Application to be made 6 months prior to commencement of assessment year from which registration sought to be made operative
- Same procedure as cases of renewal of registration

Re-registration of Charitable Trusts – rule 17A

Procedure

- Existing Rule 17A replaced
- Applications for re-registration and new registration in Form 10A
- Applications for renewal, renewal of provisional registration, making inoperative registration operative, and modification of objects in Form 10AB
- Forms to be furnished electronically – verified by person authorized to verify return of income
- On application in Form 10A, order granting registration to be passed by Pr CIT in Form 10AC
- 16 digit alphanumeric Unique Registration Number (URN) to be issued
- For new registration applications during financial year 2021-22, provisional registration effective AY 2022-23
 - S.12A(1)(ac) – from subsequent AY
 - What about application in subsequent years?
- On applications in Form 10AB – order of approval, rejection or cancellation to be in Form 10AD

Cancellation of Registration of Charitable Trusts – rule 17A

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- Registration and URN given in Form 10AC can be cancelled at any point of time if Form 10A has not been duly filled in by not providing, fully or partly, or by providing false/incorrect information or documents required to be provided under the rules
 - Not for Form 10AB
 - Opportunity of being heard to be provided
 - In case of cancellation, registration/URN deemed never to have been granted/issued
 - Is rule ultra-vires the Act?
 - Act has provision for cancellation of registration only under certain circumstances specified in s.12AB(3) & (4) – earlier corresponding in s.12AA

Re-registration of Charitable Trusts – Form 10A

- **Relevant Section Code –**
 - 19 different categories – s.12A, s.10(23C)(iv),(v),(vi),(via), s.80G and s.35(1)(ii),(iii),(ia) – reregistration/ reapproval and new registration/approval
- **Nature of activities –**
 - charitable, religious, religious-cum-charitable
- **Type of constitution –**
 - trust/society/company/others
 - Society also registered under Maharashtra Public Trusts Act – select society
- **Whether established under instrument**
 - Would include trust deed, memorandum and articles of association/bye-laws
- **Date of incorporation/creation/registration**
 - In case of trust, date of creation would be date of trust deed – date of registration would be subsequent – date of creation to be given
- **Objects –**
 - religious, relief of poor, medical, educational, yoga, preservation of environment, advancement of any other object of general public utility, etc

Re-registration of Charitable Trusts – Form 10A

- **Whether trust deed contains clause that trust is irrevocable**
 - Section 11 – Subject to provisions of sections 60 to 63,
 - Absence of irrevocability clause does not make trust revocable – presence of clause indicating revocability does
 - If no power retained with Settlor, trust is irrevocable
 - S.78 of Indian Trusts Act, 1882 –
 - Revocation of trust.***—*A trust created by will may be revoked at the pleasure of the testator.*
 - A trust otherwise created can be revoked only—*
 - (a) where all the beneficiaries are competent to contract—by their consent;*
 - (b) where the trust has been declared by a non-testamentary instrument or by word of mouth—in exercise of a power of revocation expressly reserved to the author of the trust; or*
 - (c) where the trust is for the payment of the debts of the author of the trust, and has not been communicated to the creditors—at the pleasure of the author of the trust.*
 - Dissolution clause also indicative that trust is irrevocable

Re-registration of Charitable Trusts – Form 10A

- **CIT vs Raghbir Singh (1965) 57 ITR 408 (SC)**

“The proviso contemplates cases in which there is a provision for retransfer of the income or assets and such provision is for retransfer directly or indirectly. It also contemplates cases where there is a provision which confers a right upon the settlor to reassume power over the income or assets directly or indirectly. It is the provision for retransfer directly or indirectly of income or assets or for reassumption of power directly or indirectly over income or assets which brings the case within the first proviso. Cases in which there was a settlement, but there was no provision in the settlement for retransfer or right to reassume power do not fall within the proviso, even if as a result of the settlement, the settlor obtains a benefit.”

- **CIT vs Jayantilal Amratlal (1968) 67 ITR 1 (SC)**

“The words "reassume power" in section 16(1)(c), give indication to the correct meaning of the proviso. The latter part of the proviso contemplates that the settlor should be able, by virtue of something contained in the trust deed, to take back the power he had over the assets or income previous to the execution of the trust deed. A provision enabling the settlor to give directions to trustees to employ the assets or funds of the trust in a particular manner or for a particular charitable object contemplated by the trust cannot be said to confer a right to reassume power within the first proviso. Otherwise a settlor could never name himself a sole trustee. Latter part of the proviso contemplates a provision which would enable the settlor to take the income or assets outside the provisions of the trust deed.

Re-registration of Charitable Trusts – Form 10A

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Coming to the various clauses of the trust deed in the instant case, there was no doubt that the settlor had retained power to see that his wishes were carried out while he was alive. But he could only direct the carrying out of his wishes within the terms of the trust deed. What he could direct under clause 4 was the application of income to a particular charitable purpose. Similarly under clause 6 he could nominate the charitable object and the fund or investment which should be utilized for that object. This was in no sense a power to reassume control. Clause 8 enabled the settlor to delegate the carrying out of a particular charitable object. For instance, he could direct some contributions to be made to a hospital or a school without obliging the trustees to see that the hospital or the school did not misapply the funds. Clauses 10 and 11 which enabled the settlor to give directions regarding the investment must be read subject to the provisions of the Bombay Public Trusts Act and the general principles of law relating to trusts. He could not legally direct a loan to be made to himself.”

Re-registration of Charitable Trusts – Form 10A

- **Whether registered on DARPAN portal, under FCRA or any provision of Income-Tax Act – registration no, date of registration, authority granting registration, date from which registration effective**
 - DARPAN portal registration details mandatory if receiving or entitled to receive any grant or assistance from Central/State Government
- **Whether any application made in the past rejected**
 - If application rejected in the past, but allowed in appeal/writ petition, what should be answer?
- **Details of Author/Founder/settlor/Trustees/Members of Society/Members of Governing Council/Directors/Shareholders holding 5% or more of shareholding/ Office Bearers on date of application**
 - Name, relation (category), UIN, ID Code (PAN or Aadhar), address, mobile no, e mail address
 - If any of above not individual, then details of natural persons who are beneficial owners of 5% or more of such person
- **Whether return of income filed for last AY for which due date of filing of return has expired?**
 - AY 2020-21
 - Belated return filed also permissible – though exemption u/s 11 & 12 may not have been available
 - Can application be rejected if return not filed?

Re-registration of Charitable Trusts – Form 10A

- **Financial details as on date of application:**
 - **Corpus**
 - **Funds/Reserves and Surplus other than Corpus**
 - **Long-term Liabilities**
 - **Other Liabilities**
 - **Land and Building**
 - **Other Fixed Assets**
 - **Investments/Deposits in modes specified in s.11(5)**
 - **Other Investments/Deposits**
 - **Other Assets**
- **Income received in 3 immediately preceding previous years -**
 - **Grants from Central/State Government**
 - **Grants from Companies under CSR**
 - **Other Specific Grants**
 - **Other Income**
- **Financial Details to be given only if:**
 - Application for fresh registration/approval u/s 12AB, 10(23C) or 80G, or
 - Application for registration/reapproval u/s 12AB, 10(23C) or 80G and return of income not filed for last assessment year for which due date has expired

Re-registration of Charitable Trusts – Form 10A

- **Issues:**
- Practical Difficulty in giving details as on date of application – no time gap allowed
- Whether capital funds such as Building Fund to be shown as corpus or Funds/Reserves or Surplus other than corpus?
- Whether liabilities to be shown if cash method of accounting followed?
- Whether fixed assets to be shown at cost, written down value or book value?
- **In case of application for fresh approval u/s 80G, further details to be given for earlier 3 years if expenditure of religious nature incurred:**
 - **Total income**
 - **Expenditure of Religious Nature**
 - **Percentage to total income**
 - Total income on commercial basis?
 - If debatable whether expenditure is religious or not – no provision for disclosure

Re-registration – Documents – Rule 17A/Form 10A

- **In cases of re-registration, Form 10A to be accompanied by following documents**
 - Self certified copy of instrument of creation/establishment
 - Self certified copy of registration with ROC/RoF/RoSoc/RoPT
 - For Society registered under Maharashtra Public Trusts Act, enclose both Society Registration certificate as well as Public Trust registration certificate
 - Self-Certified copy of registration with FCRA
 - Self-certified copy of order granting registration u/s 12A/12AA/12AB
 - Self-certified copies of financial accounts for 3 years preceding financial year in which application is made
 - March 2021 Accounts – practical difficulty
- **In cases of new registration, Form 10A to be accompanied by following additional documents**
 - If business undertaking held in trust u/s 11(4), self-certified copies of 3 years annual accounts and tax audit report u/s 44AB
 - Self-certified copies of order rejecting grant of registration u/s 12A/12AA/12AB
 - Rejection how many years before? No time limit
 - Whether new application can be rejected or provisional registration is automatic?
 - Order granting registration u/s 12A/12AA/12AB not required

Renewal of registration of Charitable Trusts – Form 10AB

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- In addition to details required to be furnished in Form 10A, additional details
- **Details of school/college/university/hospital/yoga institute/religious places/any other institution being managed/controlled/administered/owned by the applicant**
 - Name, nature of activity, address, whether owned by applicant, name, contact number and e mail id of person in charge
- **If business undertaking “property held under trust” – s. 11(4):**
 - Nature of business, address and whether separate books of account maintained
- **If any income in nature of profits and gains of business:**
 - Whether business incidental to attainment of objectives, nature and address of business and whether separate books of account maintained
- **Details of all bank accounts held by the trust –**
 - IFSC Code, Name of bank, Account No
- **Details of all land and buildings held by the trust –**
 - Address, size in sq mtrs, purchase consideration, stamp value at time of acquisition, mode of acquisition (whether acquired/gifted), date of acquisition

Renewal of registration of Charitable Trusts – Form 10AB

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- **In case of advancement of any other object of general public utility:**
 - **Whether it involves carrying on any activity in nature of trade, commerce or business, or in relation to trade, commerce or business, for a cess, fee or any other consideration?**
 - **Whether activity is undertaken in course of actual carrying out of such advancement of any other object of general public utility?**
 - Details of receipts from such activity – total receipts, aggregate receipts from such activity, percentage to total receipts, remarks

Renewal, etc – Documents – Rule 17A/Form 10AB

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- **In cases of renewal of registration, renewal of provisional registration, making inoperative registration operative, and modification of objects, Form 10AB to be accompanied by following documents**
 - Self certified copy of instrument of creation/establishment
 - Self certified copy of registration with ROC/RoF/RoSoc/RoPT
 - Self-Certified copy of registration with FCRA
 - Self-certified copy of order granting registration u/s 12A/12AA/12AB/10(23C)/80G
 - Self-certified copies of financial accounts for 3 years preceding financial year in which application is made
 - If business undertaking held in trust u/s 11(4), self-certified copies of 3 years annual accounts of business and tax audit report u/s 44AB
 - If income includes profits and gains of business or profession u/s 11(4A), self certified copies of 3 years annual accounts of business and tax audit report u/s 44AB
 - Cases where litigation ongoing as to whether business or not?
 - Self-certified copies of documents evidencing adoption/modification of objects
 - Note on activities of the trust/institution

Re-Approval of Charitable Trusts – s.10(23C)

- **Trusts with existing approval**
- All trusts approved u/s 10(23C)(iv), (v), (vi) or (via) to make an application for approval to Pr CIT within 3 months from 1st April 2021 (between 1st April 2021 to 30th June 2021)
 - Approval still not required for trusts falling under clauses (iiiab), (iiiac), (iiiad) and (iii ae)
- Same provisions as in case of s.12AB re-registration

- **New Approval & Renewal of Approval**
- Same timelines and procedure as for s.12AB renewal, except
 - No concept of fresh approval in case of adoption/modification of objects
 - No concept of approval becoming inoperative

Finance Act 2021 – s.10(23C) approval limits

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- Clauses (iiiad) and (iii ae) – university/other educational institution and hospital/other institution for reception and treatment of persons suffering from illness/mental defectiveness and treatment of persons during convalescence or of persons requiring medical attention/ rehabilitation
 - complete exemption of income
 - only condition of existence solely for educational/philanthropic purposes and not for purposes of profit
- If aggregate annual receipts of such university/hospital/institution do not exceed the amount of annual receipts as may be prescribed - rule 2BC – Rs 1 crore
- Amendment wef AY 2022-23 – if aggregate annual receipts of the person from such university/educational institution/hospital/institution do not exceed five crore rupees
- Explanation inserted – aggregate of educational institutions and hospitals to be considered
- FM Speech – Annex to Part B – *In order to reduce compliance burden on the small charitable trusts running educational institutions and hospitals, it is proposed to increase the limit on annual receipts from these trusts from present Rs 1 crore to Rs 5 crore for non-applicability of various compliances like approval, etc.*

Finance Act 2021 – s.10(23C) approval limits

- **Explanatory Memorandum** – *Representations have been received to increase this limit of Rs 1 crore, as provided under rule 2BC. In order to provide benefit to small trust and institutions, it has been proposed that the exemption under sub-clause (iiid) and (iiiae) shall be increased to Rs 5 crore and such limit shall be applicable for an assessee with respect to the aggregate receipts from universities.... as referred in sub-clause (iiid) as well as from hospitalsreferred in sub-clause (iiiae)*
- Trusts with multiple institutions may now require approval, though each institution did not require approval earlier, or may have been approved earlier
 - New approval now required from 1.4.2021
 - Will first be provisional approval for 3 years
- If trust was earlier also registered u/s 12A/12AA, choice would need to be exercised under proviso to s.11(7) whether to renew s.12A/12AA or to opt for s.10(23C)
- Institutions where trust now falling below threshold – need not apply for renewal of approval
- Many trusts account for net receipts of each institution in consolidated accounts - for s.10(23C), gross of all institutions to be considered, and not net amounts

Approval – s.10(23C) – rule 2C

- Rule 2C replaced by new rule
- Application in Form 10A for reapproval and new approvals
- Application in Form 10AB for renewal of existing or provisional approvals
- Forms to be furnished electronically – verified by person authorized to verify return of income
- On Form 10A, order granting registration to be passed by Pr CIT in Form 10AC
- 16 digit alphanumeric Unique Registration Number (URN) to be issued
- In case of new registration applications during financial year 2021-22, provisional registration effective AY 2022-23
- Applications made in Form 10AB – order of approval, rejection or cancellation to be in Form 10AD
- Cancellation of approval and URN in cases of Form No 10AC approvals

Option to be Exercised – s.11(7)

- Where trust registered u/s 12A/12AA/12AB, then no exemption allowable u/s 10, except s.10(1), 10(23C) or 10(46)
- 2 provisos inserted w.e.f. 1.6.2020 [no change in date by Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020]
- Registration to become inoperative from date on which approved u/s 10(23C) or notified u/s 10(46), or date on which proviso has come into force (1.6.2020), whichever is later (1.6.2020)
- Can apply to get registration operative u/s 12AA/12AB – on doing so, approval u/s 10(23C) or notification u/s 10(46) ceases to have effect from date on which registration becomes operative – thereafter not entitled to exemption under those clauses
- Presumption that s.10(23C) or s.10(46) opted for in preference to s.12AA/12AB
- Can once go back to s.12AA/12AB – cannot then go back to s.10(23C) or s.10(46)
- Provisos not applicable to clause (iiiab), (iiiac), (iiiad), or (iiiiae) of s.10(23C) – no approval – option still available

Option to be Exercised – s.11(7)

- **Explanatory Memorandum to Finance Act, 2020**

- *It has been noticed that there is some anomaly by providing exclusion to institutions or funds registered under clause (23C) of s.10, but the same exclusion is not available to entities claiming exemption under clause (46) of s. 10 which are established or constituted under a Central or State Act or by a Central or State Government. Such entities are, thus, not able to get notified under clause (46) of s.10 if they are holding registration u/s 12A/12AA.*
- *The anomaly pointed out above, needs to be addressed. However, as the provisions relating to charitable entities constitute a complete code and that once any trust or institution has voluntarily opted for it by obtaining the requisite registration, it flows that the conditions in relation thereto should be complied with and the option of switching at convenience should not be available. Accordingly, while request for exclusion of clause (46) may be acceded to for exemption thereunder even in those cases where registration u/s 12AA or 12A remains in force, there should be only one mode of exemption available and also, that the switching may be allowed only once so that such switching is not done routinely and also it remains efficient to be administered*

Option to be Exercised – s.11(7)

- Anomaly of effective dates
- Cases of existing approvals u/s 10(23C)/10(46)
- S.12A/12AA/12AB approval becomes inoperative w.e.f. 1.6.2020
- If prefer s.12A/12AA/12AB registration, then need to apply to make it operative
- For AY 2021-22, application to be made 6 months prior to commencement of AY from which registration sought to be made operative – by 30th September 2020
- No form or procedure laid down till 1st April 2021 – impossible to exercise option for AY 2021-22
- Even if s.11(7) provisos held effective from 1st April 2021, problem still unresolved

Option to be Exercised – s.11(7)

Section 11 vs section 10(23C)(vi)/(via)

Provision	Section 10(23C)	Section 11
Audit	Required	Required
Accumulation of 15%	Yes	Yes
Option to spend in subsequent year	No	Yes
Accumulation for 5 years	Yes – no form	Yes – form to be filed
Consequence if accumulation not spent within 5 years	Loss of Exemption	Unspent Accumulation Taxable in 6 th year
Exemption for corpus donation	Yes	Yes
Applicability of s.115TD	No	Yes
Taxability of Anonymous Donations	Yes	Yes
Exemption for capital gains on reinvestment in capital asset	No	Yes
Restriction on Investments	Yes	Yes
Restriction on benefit to specified persons	No	Yes

Re-Approval of Research Associations – s.35(1)(ii) & (iii) read with s.10(21)

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- **Associations with existing approval**
- All trusts approved u/s 35(1)(ii) or (iia) to make an application for reapproval to prescribed authority (Pr CIT) within 3 months from 1st April 2021 (between 1st April 2021 to 30th June 2021)
- Approval to be granted u/s 35(1)(ii) or (iia) for a period up to 5 years by prescribed authority – valid from AY 2022-23
- Procedure for reapproval laid down in rule 5CA – application to be made in Form 10A to Pr CIT – to be furnished electronically
- Documents to be furnished along with application
 - Self-certified copy of instrument of creation
 - Self Certified copy of certificate of registration with RoC/RoF/RoSoc/RoPT
- Self-certified copy of notification granting approval u/s 35
- **16 digit alphanumeric URN to be allotted**

13-04-2021

Approval of Research Associations – s.35(1)(ii) & (iii) read with s.10(21)

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- **Associations seeking new approval**
- New approvals – no specific provisions – same provisions applicable
 - No concept of provisional approval for 3 years
- Procedure for new approvals continues under rule 5C – Forms 3CF-I and 3CF-II replaced by Form 3CF – to be filed electronically – other procedure remains the same

Re-Approval under s.80G

Trusts with existing approval

- All trusts approved u/s 80G to make an application for approval to Pr CIT within 3 months from 1st April 2021 (between 1st April 2021 to 30th June 2021)
- Approval to be granted u/s 80G for period of 5 years by Pr CIT within a period of 6 months from end of month in which application made
- No documents to be called for, no inquiry to be made, no satisfaction required – automatic registration after verifying earlier approval
- To apply for renewal of approval at least 6 months before end of 5 years approval
- Pr CIT to call for documents and make enquiries to be satisfied about
 - Genuineness of activities of the trust
 - Fulfilment of all conditions laid down under clauses (i) to (iv) of s.80G(5)
- After satisfaction about above, Pr CIT to grant registration for period of 5 years within 6 months from end of month in which application made
- If not satisfied, application to be rejected, and approval to be cancelled after affording opportunity of being heard

New Approval under s.80G

Trusts seeking new approval

- All pending applications for approval as on 1 April 2021 and applications for fresh approval under s.80G to be made *one month prior to commencement of previous year relevant to assessment year from which approval sought*
- Pending applications – whether automatically converted into applications under the new procedure
- New trust – no approval for financial year in which trust set up?
- Provisional approval to be granted under s.80G for a period of 3 years from the assessment year from which registration is sought by Pr CIT within a period of 1 month from the end of the month in which the application is made
- No provisions for calling for documents, making of inquiry, requirement of satisfaction – automatic approval
- To make application for regular approval 6 months prior to expiry of period of provisional approval (3 years) or within 6 months of commencement of its activities, whichever is earlier
- Same procedure as for other renewals

Re-Approval under s.80G

- Requirement of renewal every 5 years done away with earlier in 2009

- **Explanatory Memorandum to Finance Act 2009**

Further as per clause (vi) of sub-section (5) of section 80G of the Income-tax Act, 1961, the institutions or funds to which the donations are made have to be approved by the Commissioner of Income-tax in accordance with the rules prescribed in rule 11AA of the Income-tax Rule, 1962. The proviso to this clause provides that any approval granted under this clause shall have effect for such assessment year or years, not exceeding five assessment years, as may be specified in the approval.

Due to this limitation imposed on the validity of such approvals, the approved institutions or funds have to bear the hardship of getting their approvals renewed from time to time. This is unduly burdensome for the bonafide institutions or funds and also leads to wastage of time and resources of the tax administration in renewing such approvals in a routine manner.

Therefore, it is proposed to omit the proviso to clause (vi) of sub-section (5) of section 80G to provide that the approval once granted shall continue to be valid in perpetuity.

Re-Approval under s.80G – rule 11AA

- Existing rule 11AA replaced by new rule 11AA
- Form 10A to be filed for reapproval and new approval
 - Can multiple Form 10A be filed? If not, is it consolidated approval of both s.12A and s.80G?
- Form 10AB to be filed for renewal of approval and renewal of provisional approval
- Forms to be furnished electronically – verified by person authorized to verify return of income
- Order granting approval to be passed by Pr CIT in Form 10AC
- 16 digit alphanumeric Unique Registration Number (URN) to be issued
- In case of new approval applications, provisional approval effective from the date of the order
 - Provisions of s.80G(5), 4th proviso – from AY following FY in which application is made
- Applications in Form 10AB – order of approval, rejection or cancellation to be in Form 10AD
- Registration and URN can be cancelled at any point of time if Form 10A has not been duly filled in by not providing, fully or partly, or by providing false or incorrect information or documents required to be provided under rules
 - Not for Form 10AB
 - Opportunity of being heard to be provided
- In case of cancellation, registration/URN deemed never to have been granted/issued

Statement of Donations Received & Issue of Certificate - s.80G/35(1)

CNK

- New requirements w.e.f. 1.4.2021
- Furnishing of periodical statements in prescribed form to tax authorities and issue of certificate to donor containing amount of donation and other prescribed particulars – additional conditions for applicability of s.80G
- **FM Budget Speech 2020**

Currently, a taxpayer is required to fill in the complete details of the donee in the income tax return for availing deduction.

In order to ease the process of claiming the deduction for the donation, it is proposed to pre-fill donee's information in taxpayer's return on basis of information of donations furnished by donee. This would result in hassle-free claim of deduction for donation made by taxpayer.
- **Explanatory Memorandum to Finance Act 2020**

Filing of statement of donation by donee to cross-check claim of donation by donor

At present, there is no reporting obligation by the exempt entity receiving donation/any sum in respect of such donation/sum. With the advancement in technology, it is now feasible to standardise the process through which one-to-one matching between what is received by the exempt entity and what is claimed as deduction by the assessee. This standardisation may be similar to the provisions relating to the tax collection/deduction at source, which already exist in the Act. Therefore, the entities receiving donation/sum may be made to furnish a statement in respect thereof, and to issue a certificate to the donor/payer

Statement of Donations Received & Issue of Certificate - s.80G/35(1)

CNK

and the claim for deduction to the donor/ payer may be allowed on that basis only. In order to ensure proper filing of the statement, levy of a fee and penalty may also be provided in cases where there is failure to furnish the statement.

- Expln 2A inserted – claim of deduction for donation to be allowed on basis of statement of donations furnished, subject to verification under risk management strategy formulated by CBDT
 - Assessment of statement of donations?
- Fee for default relating to statement or certificate – for failure to deliver statement or furnish certificate within prescribed time – fee of Rs 200 per day
 - Fee cannot exceed amount for which failure occurred
 - To be paid before delivering the statement or furnishing the certificate
 - Rs 200 per day vis-à-vis each certificate?

Statement of Donations Received – rule 18AB

- New Rule 18AB inserted
- Statement to be furnished electronically for each financial year (beginning 2021-22) in Form 10DB – to be filed by 31st May following financial year in which donation received
- Multiple Forms 10DB can be filed
- While aggregating amounts for determining sums received for reporting in respect of any person:
 - Take into account all donations of same nature paid by that person during the financial year; and
 - Proportionately attribute value of donations (or aggregated value of all donations) to all persons, where donation is recorded in name of more than one person – where no proportion specified by donors, attribute equally to all donors

Statement of Donations Received – Form 10DB

CNK

- UIN of Donor – PAN/Aadhar
- Section Code – 80G, 35(1)(iia), (ii) or (iii)
- Name of Donor
- Address of Donor
- Donation Type – Corpus, Specific Grant or Others
- Mode of Receipt – Cash, Kind, Electronic Modes (including account payee cheque/draft), Others
- If donor has given donations of different types or in different modes, separate rows to be shown

Certificate of Donation Received – Rule 18AB

CNK

- Deduction not available unless certificate in prescribed form issued
- Certificate of Donation to be given to donor in Form 10BE specifying amount of donation received from donor during the financial year, starting financial year 2021-22
- Certificate is required to be furnished by 31st May following the financial year in which donation received
- Whether certificate to be issued to all donors, or only to donors whose donation qualifies for deduction u/s 80G?
 - Donations in kind
 - Donations in cash exceeding Rs 2,000
 - If s.80G deduction to be allowed on basis of statement of donations filed, what is purpose of issue of such certificate?

Certificate of Donation Received – Form 10BE

CNK

¹[FORM NO. 10BE
(See rule 18AB)

Certificate of donation under clause (ix) of sub-section (5) of section 80G and under clause (ii) to sub-section (1A) of section 35 of the Income-tax Act, 1961

Donee	1	PAN of the reporting person	<table border="1"> <tr> <td>A</td><td>B</td><td>C</td><td>D</td><td>E</td><td>1</td><td>2</td><td>3</td><td>4</td><td>F</td> </tr> </table>										A	B	C	D	E	1	2	3	4	F																							
	A	B	C	D	E	1	2	3	4	F																																			
	2	Name of the reporting person																																											
	3	Address of the reporting person																																											
	4	Order number granting approval under section 80G or Notification number under section 35 (Unique Registration Number)																																											
5	Date of approval/Notification																																												
Donor and donations	6	Unique Identification Number	<table border="1"> <tr> <td>PAN</td> <td>A</td><td>B</td><td>C</td><td>D</td><td>E</td><td>1</td><td>2</td><td>3</td><td>4</td><td>F</td> </tr> <tr> <td>Aadhaar</td> <td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td> </tr> <tr> <td>Other</td> <td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td> </tr> </table>										PAN	A	B	C	D	E	1	2	3	4	F	Aadhaar											Other										
	PAN	A	B	C	D	E	1	2	3	4	F																																		
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	Other																																												
	7	Name of Donor																																											
	8	Address of Donor																																											
9	Amount of donation received																																												
10	Financial year in which such donation was received																																												
11	Type of donation	Corpus <input type="checkbox"/> Specific grants <input type="checkbox"/> Others <input type="checkbox"/>																																											
12	Section under which donation is eligible for deduction	Section 80G(5)(vi) <input type="checkbox"/> Section 35(1)(ii) <input type="checkbox"/> Section 35(1)(iii) <input type="checkbox"/> Section 35(1)(iii) <input type="checkbox"/>																																											

VERIFICATION

I, son/ daughter of solemnly declare that to the best of my knowledge and belief, the information given in the certificate is correct and complete and is in accordance with the provisions of the Income-tax Act, 1961. I further declare that I am making this certificate in my capacity as _____ and I am also competent to issue this certificate. I am holding permanent account number _____.

Date:
13-04-2021

Signature:]

Summary of Amendments

○ Explanatory Memorandum to Finance Act 2020

Hence, it is proposed to amend relevant provisions of the Act to provide that,-

(i) similar to exemptions under clauses (1) and (23C), exemption under clause (46) of s.10 shall be allowed to an entity even if it is registered under s.12AA subject to the condition that the registration shall become inoperative. If the entity wishes to make it operative in the future, it will have to file an application and then it would not be entitled for deduction under clause (46) from the date on which the registration becomes operative.

(ii) the registration u/s 12AA would also become inoperative in case of an entity exempt under clause (23C) of s.10 as well, to have uniformity. The condition about making it operative again would also be similar to what is proposed for clause (46) of s. 10.

(iii) an entity approved, registered or notified under clause (23C) of s.10, s.12AA or s.35, as the case may be, shall be required to apply for approval or registration or intimate regarding it being approved, as the case may be, and on doing so, the approval, registration or notification in respect of the entity shall be valid for a period not exceeding five previous years at one time calculated from 1st April, 2020.

(iv) an entity already approved u/s 80G shall also be required to apply for approval and on doing so, the approval, registration or notification in respect of the entity shall be valid for a period not exceeding five years at one time.

Summary of Amendments

(v) application for approval u/s 80G shall be made to Principal Commissioner or Commissioner.

(vi) an entity making fresh application for approval under clause (23C) of s.10, for registration u/s 12AA, for approval u/s 80G shall be provisionally approved or registered for three years on the basis of application without detailed enquiry even in the cases where activities of the entity are yet to begin and then it has to apply again for approval or registration which, if granted, shall be valid from the date of such provisional registration. The application of registration subsequent to provisional registration should be at least six months prior to expiry of provisional registration or within six months of start of activities, whichever is earlier.

(vii) the application pending for approval, registration, as the case may be, shall be treated as application in accordance with the new provisions, wherever they are being provided for.

(viii) deduction u/s 80G/ 80GGA to a donor shall be allowed only if a statement is furnished by the donee who shall be required to furnish a statement in respect of donations received and in the event of failure to do so, fee and penalty shall be levied.

(ix) similar to s.80G, deduction of cash donation u/s 80GGA shall be restricted to Rs 2,000/- only.

Corpus Donations & Application of Income

- Corpus donations exempt u/s 11(1)(d) – made with a specific direction that they shall form part of corpus
- Now, wef AY 2022-23, exemption subject to condition that such donations invested or deposited in modes specified in section 11(5), maintained specifically for such corpus
- Earmarking of corpus investments now required
- Explanation 4 inserted - Application from corpus not to be treated as application of income
- Treated as application in previous year in which amount invested or deposited in modes specified in s.11(5) maintained specifically for such corpus to extent invested/deposited
- Similar amendments in s. 10(23C) – expln 2 to third proviso to s. 10(23C)
- Track to be kept of movement in corpus investments - starting point would be balances of corpus fund and corpus investments as on 31st March 2021
 - reduction of investments to be reduced from application of income of that year
 - addition to investments (over and above corpus donations for the year) to be added to application of income for the year
- No time limit for recoupment of corpus investments

Application of Income from Corpus - Illustration

- Corpus donation of Rs 10,00,000 received in June 2021
- Invested for 1 year bank fixed deposit in July 2021
- Fixed deposit encashed in July 2022 and spent for acquiring asset
- Corpus Donations of Rs 15,00,000 received and invested in bank fixed deposits during FY 2022-23
- Corpus donations of Rs 5,00,000 received during FY 2023-24 and additional bank fixed deposits of Rs 11,00,000 invested in same year

Assessment Year 2022-23 (FY 2021-22)

- Corpus donation of Rs 10,00,000 exempt u/s 11(1)(d)

Assessment Year 2023-24 (FY 2022-23)

- Corpus Donations of Rs 15,00,000 exempt u/s 11(1)(d)
- Rs 10,00,000 to be reduced from expenditure while computing application of income for charitable or religious purposes

Assessment Year 2024-25 (FY 2023-24)

- Rs 6,00,000 to be added to application of income for charitable or religious purposes

Application of Income from Loan

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- Application from loan or borrowing also not to be treated as application of income
- To be treated as application in previous year in which loan repaid from income of that year to extent of repayment – Explanation 4
- Similar amendments in s. 10(23C) – expln 2 to third proviso to s. 10(23C)

Carry Forward of Deficit

- Can excess expenditure incurred in earlier assessment year be set off against income of subsequent year
- CIT(E) vs Subros Educational Society [2018] 11 ITR-OL 468 (SC)
- Tax Return format for AY 2020-21
- Schedule ER

D	Total Revenue expenditure incurred during the year (A16 + B10 + C)	D	
E	Source of fund to meet revenue expenditure	E	
	1 Income derived from the property/income earned during previous year	1	
	2 Income deemed as application in any preceding year under clause 2 of explanation 1 of section 11(1) (applicable only when exemption is claimed u/s 11 and 12)	2	
	3 Income of earlier years upto 15% accumulated or set apart	3	
	4 Borrowed Fund	4	
	5 Any other (Please specify)	5	
F	Total Amount applied during the previous year – Revenue Account [A16 + B10 - E2 - E3 - E4 - E5]	F	

- Similar details to be given in Schedule EC (Capital Expenditure)
- Would carry forward of deficit now depend upon source?
- Explanation 5 inserted wef AY 2022-23 – no set off or deduction for deficit of earlier years – ratio of SC decision reversed

- Within what period investment of corpus required to be made? Immediately or by year-end?
- Would deposit in current account with bank qualify?
- Earmarking – in books of account
- For how long corpus investment to be maintained?
- What if corpus donation deposited in bank account and spent in same year? Whether double hit?
- Receipt of Assets other than Immovable Property by way of Corpus Donations or Corpus Donations for acquiring such assets – e.g. receipt of ambulance by medical trust/receipt of jewellery by temple as corpus
- Mismatch of fund and investment balances if corpus donation invested in immovable property, and depreciation provided on immovable property
- Position where existing corpus already utilised in earlier years – investments not matching – whether recoupment of corpus can be claimed?
- What if deficit of earlier years financed by loan, and loan now repaid?

Thank
you

