

RECENT DEVELOPMENTS IN TAXATION OF CHARITABLE TRUSTS

(Proposed amendments by The Finance Bill 2020)

by

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Synopsis

Proposed amendments by The Finance Bill 2020

- Amendments in section 12A / 12AA / 115TD / insertion of section 12AB
- Cancellation of registration under section 12AB(4)
- Cancellation of registration under section 12AB(5)
- Amendments in section 80G / 234G / 271K
- Interplay between s. 12A / 12AB and s. 80G
- Amendment in section 11(7)
- Amendment in section 10(23C)

Amendments in section 12A / 12AA / 115TD / insertion of section 12AB

BACKGROUND AND EXISTING PROVISION

- (a) A charitable trust or institution (“trust”) is not entitled to exemption under s. 11 / 12 if it is not registered under s. 12A / 12AA.
- (b) The registration is perpetual, that is, valid till cancelled.

PROPOSED AMENDMENTS¹

- (a) Nothing in s. 12AA will apply with effect from 1st June 2020 [s. 12AA(5)].
- (b) S. 12A(1)(ac) is inserted.
- (c) A new section 12AB is inserted.

¹ With effect from 1st June 2020

Amendments in section 12A / 12AA / 115TD / insertion of section 12AB

(d) **New scheme of registration:**

- (i) an application for registration to be made by a trust (**including an existing registered trust**) in the prescribed form and manner within the specified time;
- (ii) trusts divided into various categories;
- (iii) the application to be made to the PCIT / CIT [s. 12A(1)(ac)]; and
- (iv) the PCIT/CIT to
 - pass the order in the prescribed form and manner;
 - register / provisionally register the applicant [s. 12AB(1)];
 - grant a unique registration number (URN) to the registered trust¹.

(e) In section 115TD (re. exit tax), reference to section 12AB is inserted.

(f) **Rationale**²

- (i) The present process of registration needs improvement
 - with the advent of technology; and
 - keeping in mind the practical issue of difficulty in obtaining registration before actually starting the activities.

¹ On the basis of the Finance Minister's speech.

² According to Explanatory Memorandum.

Amendments in section 12A / 12AA / 115TD / insertion of section 12AB

(ii) **The Tax Department will not make roving enquiries in the affairs of the trust on day to day basis, since it wants a non-adversarial regime.**

(iii) Instead, it will revisit the registration every five years before expiry of the period of the exemption.

Does this mean that the AO would accept the sanctity of registration under s. 12AB during the assessment proceedings?

[Except upon fresh facts coming to light, the AO or CIT(A) cannot go behind registration to hold that the institution does not exist for charitable purposes

- (i) Mudra Foundation for Communications Research & Education v. CCIT, (2015) 64 taxmann.com 275 (Guj);
- (ii) Ahmedabad Urban Development Authority v. DDIT, (2011) 335 ITR 575 (Guj);
- (iii) Surat City Gymkhana v. ACIT, (2001) 76 ITD 327 (Ahd);
- (iv) ITO v. Dwarkaprasad Trust, (1989) 30 ITD 94 (Del)(TM)]

Amendments in section 12A / 12AA / 115TD / insertion of section 12AB (cont.)

(g) Categories of trusts for registration purposes:

- (i) **A trust registered under erstwhile s. 12A / 12AA** [s. 12A(1)(ac)(i)].
- (ii) A trust registered under s. 12AB and the period of the said registration is due to expire [s. 12A(1)(ac)(ii)].
- (iii) **A trust provisionally registered under s. 12AB** [s. 12A(1)(ac)(iii)].
- (iv) A trust whose registration is inoperative due to the first proviso to s. 11(7) [s. 12A(1)(ac)(iv)].
- (v) A trust which has modified the objects in a manner not conforming to the conditions of registration [s. 12A(1)(ac)(v)].
- (vi) **Other cases¹:**
 - A trust formed
 - before 1st June 2020 but which has not made an application for registration till the said date [s. 12AA(1)(ac)(vi)].
 - **on or after 1st June 2020** [s. 12AA(1)(ac)(vi)].
 - before 1st June 2020 and which has already made application before 1st June 2020 but it has not been registered till that date [s. 12AB(2)].

¹ To be granted provisional registration

Amendments in section 12A / 12AA / 115TD / insertion of section 12AB (cont.)

(h) Table

A table summarising the provisions relating to registration for different categories is given below:

Sr. No.	Category	Time limit for application	Period for which registration to be granted	Time limit for passing the order	Whether the PCIT / CIT can make inquiries, call for documents, etc.?
1.	A trust registered under erstwhile s. 12A / 12AA	On or before 31st August 2020	5 years	3 months*	No
2.	A trust registered under s. 12AB and the period of the said registration is due to expire	At least 6 months prior to expiry of period of registration	5 years	6 months*	Yes
3.	A trust provisionally registered under s. 12AB	See Note (a) below	5 years	6 months*	Yes

* from end of the month in which application for registration was received.

Note:

(a) At least six months prior to expiry of the period of the provisional registration or within six months of commencement of its activities, whichever is earlier.

Amendments in section 12A / 12AA / 115TD / insertion of section 12AB (cont.)

Sr. No.	Category	Time limit for application	Period for which registration to be granted	Time limit for passing the order	Whether the PCIT / CIT can make inquiries, call for documents, etc.?
4.	A trust whose registration is inoperative due to the first proviso to s. 11(7)	See Note (b) below	5 years	6 months*	Yes
5.	A trust which has modified the objects in a manner not conforming to the conditions of registration	See Note (c) below	5 years	6 months*	Yes

* from end of the month in which application for registration was received.

Notes:

- (b) At least six months prior to the commencement of the assessment year from which the registration is sought to be made operative.
- (c) Within thirty days from the date of the said adoption or modification.

Amendments in section 12A / 12AA / 115TD / insertion of section 12AB (cont.)

Sr. No.	Category	Time limit for application	Period for which registration to be granted	Time limit for passing the order	Whether the PCIT / CIT can make inquiries, call for documents, etc.?
6.	<u>Other cases¹</u>				
6.1	A trust formed before 1st June 2020 but which has not made an application till the said date	See Note (d) below	3 years**	1 month*	No
6.2	A trust formed on or after 1st June 2020				
6.3	A trust formed before 1st June 2020 and which has already made application before 1st June 2020 but it has not been registered till that date				

* from end of the month in which application for registration was received.

** from the assessment year for which registration is sought.

Note:

(d) At least one month prior to the commencement for the previous year relevant to the assessment year from which the said registration is sought.

¹ Granted provisional registration.

Amendments in section 12A / 12AA / 115TD / insertion of section 12AB (cont.)

Registration sequence

Type of trust	Category		
	Initial	Subsequent	Later on
Existing Trust	(i)	(ii)*	(ii)*
New Trust	(vi)** (other cases)	(iii)	(ii)*

* registration under s. 12AB due to expire

** provisional registration

Amendments in section 12A / 12AA / 115TD / insertion of section 12AB (cont.)

ANALYSIS AND ISSUES

(a) Existing trust already registered [category (i)]

- (i) **All registered trusts have to mandatorily apply if exemption is desired irrespective of**
 - size;
 - period for which registration has been enjoyed;
 - whether charitable or religious.
- (ii) PCIT / CIT has to compulsorily grant registration.
No discretion to call for documents or information or make enquiries.
- (iii) Period of exemption
From the assessment year **from which registration was earlier granted.**
- (iv) What if application is delayed?
 - Whether software will accept the application?
 - No power with PCIT / CIT for condonation of delay in making application;
 - CBDT can condone delay [s. 119(2)(b)].
 - Whether covered by “other cases”?
- (v) What if application not made at all?
 - No exemption from assessment year 2021-22.
 - Whether liable to exit tax under s. 115TD?

Amendments in section 12A / 12AA / 115TD / insertion of section 12AB (cont.)

(b) Other cases [category (vi)]

- (i) PCIT / CIT has to compulsorily grant “provisional registration” without inquiries, etc. [s. 12AB(1)(c)].
- (ii) Does the PCIT / CIT have the power to satisfy himself about the objects?
- (iii) Period of exemption:
From the assessment year immediately following the financial year in which application is made.
- (iv) Can a trust seek registration
 - immediately after it is set up (say, within a week)?
 - after it has commenced activities?
 - although formed before many years?
- (v) Trusts litigating before Tribunal due to non-grant of registration - whether covered?

Amendments in section 12A / 12AA / 115TD / insertion of section 12AB (cont.)

(c) The trust has been provisionally registered under s. 12AB [s. 12A(1)(ac)(iii)] [category (iii)]

(i) Time limit for application

Earlier of the following:

- at least six months prior to expiry of the period of the provisional registration; or
- within six months of commencement of its activities

Illustration 1

- A trust commences activities on 15th July 2020
- Trust makes application on 31st December 2020
- The PCIT / CIT grants provisional registration on 31st January 2021
- The registration is granted for three years from assessment year 2021-22, that is, up to assessment year 2023-24, that is, up to 31st March 2023.

The trust is required to apply for final registration on earlier of the following dates:

- at least six months prior to 31st March 2023; and
- six months from commencement of activities, that is, 15th January 2021.

Amendments in section 12A / 12AA / 115TD / insertion of section 12AB (cont.)

Issues

The provisional registration granted on 31st January 2021 whereas expiry of six months from commencement of activities is 15th January 2021.

How will the trust fulfil the time limit?

A person cannot be expected to perform an impossibility [Krishnaswamy S. Pd. v. UOI, (2006) 151 Taxman 286 (SC), para 17].

Amendments in section 12A / 12AA / 115TD / insertion of section 12AB (cont.)

Illustration 2

- A charitable trust with the object of medical relief obtains registration on 1st December 2021.
- The trust has reimbursed Rs.5,000 incurred as medicine cost by an indigent person on 31st March 2022; there is no such reimbursement thereafter.
- The trust decides to construct a hospital.
- It purchases land on 31st December 2021.
- The hospital is operational from 1st November 2023.

Issues

Will the activity be regarded as commenced on

- 31st December 2021 (when land is purchased); or
- 31st March 2022 (when medicine cost is reimbursed); or
- 1st November 2023 (when hospital is operational)?

Amendments in section 12A / 12AA / 115TD / insertion of section 12AB (cont.)

(ii) Meaning of 'activity'

- connotes a specified form of supervised action or field of action [Kottayam Co-operative Land Mortgage Bank Ltd v. CIT, (1988) 172 ITR 443 (Ker)¹].
- *“The work, or one of several lines of work, carried on within any organization or organizational subdivision.”* (Kohler’s dictionary for Accountants by W. W. Cooper, 6th Edn., page 20)
- *“a specific deed, action, function, or sphere of action: social activities”* (Random House Compact Unabridged Dictionary, page 20)

¹ For the purpose of s. 80P(2)(c) of the Income-tax Act, 1961 which provides for deduction to a co-operative society engaged in “activities” other than special activities.

Amendments in section 12A / 12AA / 115TD / insertion of section 12AB (cont.)

(iii) Procedure upon receipt of application:

- PCIT / CIT has to be satisfied about
 - > the genuineness of activities of trust; and
 - > the compliance of such requirements of any other law for the time being in force by it as are material for the purpose of achieving its objects.

- The PCIT / CIT can
 - > call for such documents; or
 - > call for such information; or
 - > make such inquiries
as he thinks necessary.

- If satisfied, the PCIT / CIT shall pass an order
 - > in writing
 - > registering the trust for five years.

[s. 12AB(1)(b)(ii)(A)]

Amendments in section 12A / 12AA / 115TD / insertion of section 12AB (cont.)

- If not satisfied, PCIT / CIT shall
 - > afford the trust a reasonable opportunity of being heard; and
 - > subsequently, pass an order in writing
 - rejecting such application and also
 - **cancelling its registration.**

[s. 12AB(1)(b)(ii)(B)]

Legally, same as under existing s. 12AA;

Whether more detailed examination of genuineness of activities and compliance with laws?

What if activities not commenced?

(iv) Possibility of denial of registration on other grounds.

(d) Appeal

If trust aggrieved by the order of the PCIT / CIT, it may appeal to the Appellate Tribunal [s. 253(1)(c)].

Amendments in section 12A / 12AA / 115TD / insertion of section 12AB (cont.)

(e) Some principles laid down under the pre-amendment law [for categories (ii) to (v)]

(i) Irrelevant factors

- **The capacity, credentials, qualifications and ethical background of the trustees, etc.**
 - > Prayer for India v. ITO, (2011) 7 ITR(Trib) 201 (Chennai)
- **The institution has generated surplus/profit (in the absence of any other circumstances)**
 - > Kanchan Singh Bhuli Devi Shiksha Prasar Samiti v. CIT, (2013) 33 taxmann.com 113 (Luck Trib)
 - > Make The Future of Country Educational Society v. CIT, (2012) 51 SOT 98 (Del)
 - > St. Mary's Christian Charitable Trust v. ITO, (2012) 20 taxmann.com 110 (Chennai)

Amendments in section 12A / 12AA / 115TD / insertion of section 12AB (cont.)

- (ii) Reasonable opportunity of being heard has to be granted before rejecting the application

Illustrations of reasonable opportunity of being heard not given

- 1 day [Peerless General Finance & Investment Co. Ltd. v. ACIT, (2006) 5 SOT 17 (Kol)].
- 2 days [Concerto Software India (P) Ltd. v. ACIT, (2012) 25 taxmann.com 382 (Del)].
- 4 days with supervening weekend [Systra SA Project Office v. DRP, (2017) 397 ITR 555(Del)].
- 1 week [Hamon Shriram Cottrell Pvt. Ltd. v. ITO, (2013) 34 taxmann.com 162 (Mum Trib)].

Amendments in section 12A / 12AA / 115TD / insertion of section 12AB (cont.)

(iii) Whether opportunity of being heard means personal hearing?

View 1: The expression “opportunity of being heard” does not necessarily imply personal hearing

- Veerabhadraswara Rice and Oil Mill v. CCE, AIR 1961 AP 350
- Narasimha Raju v. State Transport Authority, 1938 Andh LT 627
- UOI v. Trustees of Major Maharaja Hari Singh Benefit of Defence Services Personnel Charitable Trust, AIR 2005 Raj 250
- Radhika Charan Banerjee v. Sambalpur Municipality, AIR 1979 Ori 69

View 2: An opportunity of being heard means a personal hearing

- Vikas Industries v. Deputy Commissioner, (2002) 125 STC 494 (STTN Trib)
- Manipal Industries Ltd. v. CIT, (1991) 57 Taxman 155 (Kar)
- CWT v. Sri Jagdish Prasad Choudhary, (1995) 211 ITR 472 (Pat)

Amendments in section 12A / 12AA / 115TD / insertion of section 12AB (cont.)

(iv) Speaking order to be passed

- CBDT Circular No. 762, dt. 18th Feb. 1998 (1998) 145 CTR (St) 5, para 19.2
- Shantagauri Ramniklal Trust v. CIT, (1999) 239 ITR 528 (Guj)

(v) Conditional registration

CIT can impose “reasonable” stipulations and conditions. See

- DIT(E) v. Commerce Teachers Association, (2011) 203 Taxman 171 (Del)

However, conditions cannot override the provisions of the Act and if they do, they would only be directory to that extent [Sera Foundation v. ITO, (2012) 26 taxmann.com 126 (Del Trib)].

Amendments in section 12A / 12AA / 115TD / insertion of section 12AB (cont.)

(vi) Consequences of registration not granted in the specified time limit [s. 12AA(2)]

- CITs to strictly adhere to the time limit of 6 months [CBDT Instruction no. 16 / 2015 dated 6th November 2015].
- **Deemed registration:**
 - > CIT v. Society for the Promotion of Education, Adventure, Sport & Conservation of Environment, (2016) 67 taxmann.com 264 (SC)
 - > Registration would take effect only after 6 months from the date of the application.

(f) Whether tax on accreted income (“exit tax”) under s. 115TD is leviable upon not making an application?

View 1: Exit tax leviable upon a trust not making an application

- (i) If no application is made on or before due date, registration is deemed to be cancelled.
- (ii) ‘Cancel’ means **‘surrender, abandon, make void, destroy effectiveness, to bring to nothingness’** [Words and Phrases Permanent Edition, Vol. 6, pages 47, 48 & 50; Nandi Infrastructure Corr. Ent. Ltd. v. Election Commission of India, (2010) 12 SCC 334]

Amendments in section 12A / 12AA / 115TD / insertion of section 12AB (cont.)

View 2: If no application is made on or before due date, registration is not deemed to be cancelled

- (i) 'Cancel' essentially means annulment or rescindment [Words and Phrases Permanent Edition, Vol. 6, pages 47, 48 & 50].
- (ii) 'Cancel' has been distinguished from surrender or **expiry** [Corpus Juris Secundum, Vol. 12, page 936 and 937]
- (iii) 'Cancellation' does not cover the case of '**non-renewal**' [Kanhaiyalal Azad v. District Magistrate, (1955) CriLJ 1019 (Ajmer)].
- (iv) Cancellation presupposes affirmative action on the part of the CIT(E).
- (v) The expression used in s. 12A(1)(ac) is "has" made an application and not "shall" make an application; thus, application for registration is not mandatory [s. 12A(1)(ac)].

Amendments in section 12A / 12AA / 115TD / insertion of section 12AB (cont.)

(vi) Cancellation results in tax under s. 115TD which is a penal provision:

- A penal statute is to be strictly construed and if two views are possible, one favourable to citizens is to be ordinarily preferred [Govind Impex (P.) Ltd. v. Appropriate Authority, (2011) 196 Taxman 425 (SC) as explained in Medical Land v. CIT, (2014) 363 ITR 81 (Ker)].
- If different meanings are possible to be given, must be construed liberally in favour of an accused [Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd., (2007) 6 SCC 528].

Hence,

- s. 115TD should be interpreted strictly in favour of the trust and against the Tax Department;
- if two views of s. 115TD are possible, the one favourable to the trust should be ordinarily preferred;
- even if different meanings of the word 'cancelled' are possible, it must be construed liberally in favour of the charitable trust;

(vii) Where objects not conforming to conditions of registration are modified but no application for fresh registration has been made, the registration is deemed to have been cancelled [s. 115TD(3)(ii)]. No such explicit provision in other cases.

Amendments in section 12A / 12AA / 115TD / insertion of section 12AB (cont.)

TIMELINE TO FURNISH AUDIT REPORT

A trust ought to get the accounts audited before the specified date referred to in s. 44AB and furnish the report of audit by that date [s. 12A(1)(b)].

“Specified date” in s. 44AB is now “one month” prior to the due date for filing of return of income under s. 139(1) [Explanation (ii) to s. 44AB].

Thus, a trust has to file audit report one month before the due date for furnishing the return of income.

Cancellation of registration under s. 12AB(4)¹

PRE-CONDITIONS FOR APPLICABILITY

- (a) A trust has been granted registration under s. 12AB(1)(a)/(b)
- (b) PCIT/CIT is satisfied that
 - (i) the activities of such trust are not genuine; or
 - (ii) the activities are not being carried out in accordance with the objects of the trust;
- (c) PCIT / CIT gives the trust a reasonable opportunity of being heard before passing an order.

CONSEQUENCES

- (a) PCIT/CIT shall pass an order
- (b) The order shall be in writing
- (c) The order shall have the effect of cancelling the registration of the aforesaid trust

¹ With effect from 1st June 2020; **similar to section 12AA(3)**

Cancellation of registration under s. 12AB(4) (cont.)

ANALYSIS / ISSUES

- (a) The PCIT / CIT “shall” pass an order.
- (b) No specific exemption that if there is reasonable cause for a default, the PCIT / CIT may not cancel the registration.
- (c) Cancellation of registration can be effected only if registration has been granted under s. 12AB(1)(a) / (b).
Provisional registration granted under s. 12AB(1)(c)?
- (d) Whether registration can be cancelled retrospectively?
- (e) If yes, can it be for the period before 1st June, 2020?
 - (i) Industrial Infrastructure Development Corporation (Gwalior) M.P. Ltd. v. CIT, (2018) 90 taxmann.com 281 (SC), para 27
 - (ii) CBDT Circular No. 1/2011 dt. 6-4-2011 containing explanatory notes to the provisions of Finance Act, 2010, para 7.4;
 - (iii) Oxford Academy for Career Development v. CCIT, (2009) 315 ITR 382 (All);
 - (iv) Mumbai Cricket Association v. DIT, (2012) 24 taxmann.com 99 (Mum), (the registration to a charitable institution could not be cancelled beyond 1st October, 2010, being the date on which the provision became applicable).
 - (v) PCIT v. JIS Foundation, (2018) 89 taxmann.com 226 (Cal), para 9

Cancellation of registration under s. 12AB(5)¹

PRE-CONDITIONS FOR APPLICABILITY

- (a) A trust has been granted registration under s. 12AB(1)(a)/(b).

- (b) After the registration, it is noticed that
 - (i) the activities of the trust are being carried out in a manner that s. 11/12 do not apply to whole or any part of the income due to operation of s. 13(1); or
 - (ii) the trust has not complied with the requirement of any other law material for the purpose of achieving its objects

and

the order, direction or decree, by whatever name called, holding that such non-compliance has occurred, has either not been disputed or has attained finality

- (c) The PCIT / CIT gives a reasonable opportunity of being heard to the trust.

¹ With effect from 1st June 2020; **similar to section 12AA(4)**

Cancellation of registration under s. 12AB(5) (cont.)

CONSEQUENCES

- (a) The PCIT / CIT may cancel the registration of such trust.
- (b) Such cancellation shall be done by an order.
- (c) Such cancellation order shall be in writing.

ANALYSIS / ISSUES

- (a) PCIT / CIT “**may**” cancel the registration [See J. M. Sheth v. CIT, (1965) 56 ITR 293 (Mad); CIT v. Standard Mercantile Co., (1985) 23 Taxman 452 (Pat) (both in the context of s. 186); Dilip N. Shroff v. JCIT, (2007) 161 Taxman 218 (SC)].
- (b) Non-cancellation for default on account of reasonable cause withdrawn.

Amendments in s. 80G / 234G / 271K

EXISTING PROVISION

Deduction in respect of donations available only if the trust is, inter alia, for the time being approved by the Commissioner in accordance with the rules made in this behalf [s. 80G(2)(a)(vi)].

PROPOSED AMENDMENT

Deduction available only if additional conditions are satisfied.

- (a) The trust prepares and files a statement [s. 80G(5)(viii)].
- (b) The trust furnishes a certificate to the donor [s. 80G(5)(ix)].
- (c) The trust is approved [proviso to s. 80G(5)(ix)].
- (d) The deduction shall be allowed only,
 - (i) on the basis of information relating to said donation furnished by the trust to the income-tax authority or the person authorized by such authority, and
 - (ii) subject to verification in accordance with the risk management strategy formulated by the CBDT from time to time [Explanation 2A to s. 80G(5D)].

Amendments in s. 80G / 234G / 271K (cont.)

THE TRUST PREPARES AND FILES A STATEMENT WHICH

- (a) has to be for the **prescribed** period;
- (b) should be in the **prescribed** form;
- (c) should be verified in **prescribed** manner;
- (d) should set forth the **prescribed** particulars;
- (e) should be delivered or cause to be delivered to the **prescribed** income-tax authority or the person authorized by such authority;
- (f) should be filed within the **prescribed** time.

If any mistake or any addition, deletion or updation is warranted, then a correction statement may be delivered in **prescribed** form and verified in **prescribed** manner.

THE TRUST FURNISHES TO THE DONOR A CERTIFICATE

- (a) specifying the amount of donation in **prescribed** manner;
- (b) containing **prescribed** particulars;
- (c) within **prescribed** time from the date of receipt of donation.

Amendments in s. 80G / 234G / 271K (cont.)

CONSEQUENCES FOR FAILURE TO DELIVER STATEMENT / CERTIFICATE

(a) **Trust:**

(i) The trust liable to payment of fees/penalty if it

- fails to deliver a statement within the time prescribed under s. 80G(5)(viii), or
- furnish a certificate prescribed under s. 80G(5)(ix),
[s. 234G / 271K]

(ii) Quantum of fees

Lower of the following:

- Rs.200 for every day during which the failure continues.
- The amount in respect of which the failure referred has occurred.

(iii) Fees be paid before delivering the statement or before furnishing the certificate.

(iv) Payment of fees is mandatory – no discretion with AO.

(v) Quantum of penalty

- Between Rs.10,000 and Rs.1,00,000.
- The AO ‘may’ levy penalty; thus, levy of penalty is discretionary [Dilip N. Shroff v. JCIT, (2007) 161 Taxman 218 (SC)] [in the context of s. 271(1)(c)].

(b) **Donor:** Whether deduction to donor available:

(i) when statement is delayed? or not filed at all?

(ii) when certificate is delayed? or not issued at all?

Amendments in s. 80G / 234G / 271K (cont.)

APPROVAL

(a) Pre-amendment law

Approval under s. 80G was valid for perpetuity till it was withdrawn / cancelled [upon deletion of proviso to s. 80G(5)(vi) stating that approval was valid for maximum five years].

(b) Amendment

The approval will be valid for a maximum period of five years only.

(c) Circular No. 7 of 2010 dated 27th October 2010

*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 bona fide 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.

Amendments in s. 80G / 234G / 271K (cont.)

(d) Categories for the purpose of approval

- (i) A trust formed before 1st June 2020 and which is already approved under s. 80G(5)(vi) (and its approval is continuing on 1st June 2020 [clause (i) to first proviso to s. 80G(5)]).
- (ii) A trust approved under the post amendment provision and such approval is due to expire [clause (ii) to first proviso to s. 80G(5)].
- (iii) A trust which is provisionally approved [clause (iii) to first proviso to s. 80G(5)].
- (iv) Other cases [clause (iv) to first proviso to s. 10(23C)].

Barring two exceptions, the categories are similar to those in s. 12A(1)(ac) read with s. 12AB.

Amendments in s. 80G / 234G / 271K (cont.)

(e) Table

A table summarising the provisions relating to approval for different categories is given below:

Sr. No.	Category	Time limit for application	Period for which registration to be granted	Time limit for passing the order	Whether the PCIT / CIT can make inquiries, call for documents, etc.?
1.	A trust already approved under s. 80G(5)(vi)	On or before 31st August 2020	5 years	3 months*	No
2.	A trust approved under the post amendment provision and such approval is due to expire	Atleast 6 months prior to expiry of period of approval	5 years	6 months*	Yes
3.	A trust which is provisionally approved	See Note (a) below	5 years	6 months*	Yes

* from end of the month in which application for approval was received.

Notes:

(a) Atleast six months prior to expiry of the period of the provisional registration or within six months of commencement of its activities, whichever is earlier.

Amendments in s. 80G / 234G / 271K (cont.)

Sr. No.	Category	Time limit for application	Period for which registration to be granted	Time limit for passing the order	Whether the PCIT / CIT can make inquiries, call for documents, etc.?
4.	<u>Other cases</u>				
4.1	A trust formed before 1st June 2020 but which has not made an application till the said date.	See Note (b) below	3 years	1 month*	No
4.2	A trust formed on or after 1st June 2020.				
4.3	A trust formed before 1 st June 2020 and application made on or before 1st June 2020 but approval not received.				

* from end of the month in which application for approval was received.

Note:

(b) At least one month prior to the commencement for the previous year relevant to the assessment year from which the said registration is sought.

Amendments in s. 80G / 234G / 271K (cont.)

(f) Condonation of delay

- (i) No provision for PCIT / CIT condoning the delay in making the application; delay can be condoned by CBDT under s. 119(2)(b).
- (ii) Are cases of delay in category (i) to (iii) covered by category (iv), that is, other cases?
- (iii) Deduction to donor if application is delayed:
Explanation 2(i) applies.

(g) Appeal

- (i) Any trust aggrieved by the order of the PCIT / CIT under **s. 80G(5)(vi)** may appeal to the Tribunal [s. 253(1)(c)].
- (ii) Order is under second proviso to **s. 80G(5)(ix)**.
- (iii) Could be argued that while the application may be under clause (ix), the approval is still under clause (vi)?

(h) Speaking order to be passed

(i) Consequences if approval not granted within prescribed period

Whether deemed approval?

Interplay between s. 12A / 12AB and s. 80G

EXISTING LAW

- (a) Approval under s. 80G available only if income is exempt under s. 11, that is, registration under s. 12A is obtained [s. 80G(5)(i)].
- (b) Application under existing s. 80G requires F. 12AA certificate to be attached (rule 11AA).
- (c) Existing Form 10G requires details “if registered” [Sr. No. 6(i)].

Interplay between s. 12A / 12AB and s. 80G (cont.)

EXISTING TRUST

(a) Applications under new s. 12A and 80G to be made on or before 31st August 2020.

(b) **Issue**

Compliance with the time limit for making application (on or before 31st August 2020) may be difficult if application under s. 80G is permitted only after approval under s. 12AB is obtained.

(c) **Possible solution**

CBDT clarification / amended rules?

Interplay between s. 12A / 12AB and s. 80G (cont.)

NEW TRUSTS - APPLICATION FOR PROVISIONAL REGISTRATION

(a) Background

Registration / approval to be granted within one month from end of the month in which application was received.

(b) Issue

(i) If the assessee makes simultaneous applications under s. 12A and s. 80G, can the application under s. 80G be rejected on the ground that registration under s. 12AB is not obtained?

(ii) If yes, will the trust have to

- first make an application under s. 12A,
- obtain registration under s. 12AB (within one month from end of month in which application made),
- then make application under s. 80G?

(c) Thus, maximum period for obtaining both provisional registrations is 4 months from the date of application for registration under s. 12A.

Interplay between s. 12A / 12AB and s. 80G (cont.)

NEW TRUSTS - SUBSEQUENT REGULAR REGISTRATION

(a) Background

- (i) Applications under s. 12A/80G have to be made within six months from commencement of activity.
 - (ii) Registration / approval to be granted within six months from end of the month in which application was received.
- (b) Compliance with the time limit for making application (within 6 months from commencement of activity) (on or before 31st August 2020) may be difficult if application under s. 80G is permitted only after approval under s. 12AB is obtained.

Amendment in s. 11(7)

EXISTING LAW

A trust registered under s. 12AA would not get exemption under s. 10 except agricultural income under s. 10(1) or s. 10(23C) [s. 11(7)].

PROPOSED AMENDMENTS

(a) A trust registered under s. 12AB also would not be eligible to get exemption under s. 10 except income specified in s. 10(1), s. 10(23C) and s. 10(46).

(b) **First proviso to s. 11(7)**

The registration under s. 12AB shall be inoperative if an approval is obtained under s. 10(23C) or the Institution is notified under s. 10(46).

Registration shall be inoperative from later of the following:

- (i) 1st June 2020; or
- (ii) The date on which the trust is approved under s. 10(23C).

Amendment in s. 11(7) (cont.)

(c) Second proviso

The trust whose registration has become inoperative may apply to get its registration again operative under s. 12AB.

Once “re-registration” is granted, the approval under s. 10(23C) shall cease to have any effect from the date on which the said registration becomes operative.

Amendment in s. 11(7) (cont.)

ANALYSIS / ISSUES

(a) Under existing law,

- (i) A trust claiming exemption under section 11 can also claim exemption under s. 10(23C).
 - see s. 11(7);
 - Venu Charitable Society v. DGIT, (2017) 80 taxmann.com 57 (Del), para 20;
- (ii) If a trust has several educational institutions, it could claim exemption for certain institutions under s. 10(23C) and other institutions under s. 11.

Post amendment, such option is curtailed.

- (b) Provisos do not apply to s. 10(23C)(iiiab) to (iii ae) where the exemption is granted without any approval to the trust.

Amendment in s. 11(7) (cont.)

- (c) By virtue of first proviso, registration under s. 12AA or s. 12AB becomes inoperative but is not cancelled.
- (d) **Maximum two switches possible**
 - (i) obtain approval under s. 10(23C)/(46) and make the existing registration under s. 12AB inoperative.
 - (ii) obtain fresh registration under s. 12AB thereafter and the approval under s. 10(23C) / (46) ceasing to have any effect.

However, subsequently the trust cannot switch again to s. 10(23C).

Amendment in s. 11(7) (cont.)

Table for existing trusts as on 1st June 2020:

Sr. No.	Situation	Consequence	Claim under s.	
			11 and 12	10(23C)
1.	A trust is holding approval under s. 10(23C) and registration under s. 12A / 12AA.	Registration under s. 12A / 12AA becomes inoperative.	Not possible	Possible
2.	The trust is holding approval under s. 10(23C) and subsequently it wishes to obtain registration under s. 12AB and commence an activity not covered by s. 10(23C) or is covered but proposes to claim exemption under s. 11.	(a) Assessee has to be make application for registration under s. 12AB. (b) On plain language PCIT / CIT ought to grant registration under s. 12AB.	Possible?	Possible

Amendment in s. 10(23C)

BACKGROUND AND EXISTING LAW

S. 10(23C)(iv) to s. 10(23C)(via) provide for exemption of income of the following institutions

- (a) Institution, etc. established for charitable purposes and approved by the prescribed authority having regard to its **objects and its importance throughout India or any State/(s)** [s. 10(23C)(iv)].
- (b) Any institution **wholly for public religious purposes or for public religious and charitable purposes** and approved by the prescribed authority having regard to the **manner in which its affairs are administered and supervised** for ensuring that the income accruing thereto is properly applied for the objects thereof [s. 10(23C)(v)].
- (c) **Any university or other educational institution** existing solely for educational purposes and not for purposes of profit and which is approved by the prescribed authority [s. 10(23C)(vi)].
- (d) **Any hospital or other institution,**
 - (i) for the reception and treatment of persons
 - suffering from illness or mental defectiveness; or
 - during convalescence; or
 - requiring medical attention or rehabilitation, and
 - (ii) existing solely for philanthropic purposes and not for purposes of profit; and
 - (iii) which is approved by the prescribed authority.

[s. 10(23C)(via)]

Amendment in s. 10(23C) (cont.)

PROPOSED AMENDMENT

The requirements regarding approval, the period for which approval shall be granted, the time within which the audit report should be furnished, etc. are amended

CATEGORIES FOR THE PURPOSES OF APPROVAL

- (a) An Institution, etc. formed before 1st June 2020, which is already approved (and its approval is continuing on 1st June 2020 [clause (i) to first proviso to s. 10(23C)].
- (b) Institution which is approved and whose approval is due to expire [clause (ii) to first proviso to s. 10(23C)].
- (c) An Institution, etc. which is provisionally approved [clause (iii) to first proviso to s. 10(23C)].
- (d) Other cases [clause (iv) to first proviso to s. 10(23C)].

Barring two categories, the categories are similar to those in s. 12A(1)(ac) read with s. 12AA.

Amendment in s. 10(23C) (cont.)

TABLE

A table summarising the different aspects of approval for different categories is given below:

Sr. No.	Category	Time limit for application	Whether the PCIT / CIT can make inquiries, call for documents. etc.?	Time limit for passing the order	Period for which approval is to be granted	Start date from which exemption is available
1.	Institution, etc. which is already approved and its approval is continuing on 1st June 2020 [clause (i) to first proviso to s. 10(23C)]	On or before 31st August 2020	No	3 months*	5 years [see Note (a)]	See Note (b)

* from end of the month in which application for approval was received.

Notes:

- (a) 5 years from the assessment year from which approval was earlier granted under the pre-amended s. 10(23C) [eighth proviso to s. 10(23C)].
- (b) Assessment year from which approval was earlier granted under the pre-amended s. 10(23C) [eighth proviso to s. 10(23C)].

Amendment in s. 10(23C) (cont.)

Sr. No.	Category	Time limit for application	Whether the PCIT / CIT can make inquiries, call for documents. etc.?	Time limit for passing the order	Period for which approval is to be granted	Start date from which exemption is available
2.	An Institution, etc. which is approved and whose approval is due to expire [clause (ii) to first proviso to s. 10(23C)]	Atleast 6 months prior to expiry of period of approval	Yes	6 months*	5 years	See Note (c)
3.	An Institution, etc. which is provisionally approved [clause (iii) to first proviso to s. 10(23C)]	See Note (d) below	Yes	6 months*	5 years	See Note (e)

* from end of the month in which application for approval was received.

Notes:

- (c) From the assessment year immediately following the financial year in which application is made
- (d) Six months prior to expiry of the period of the provisional approval or within six months of commencement of its activities, whichever is earlier.
- (e) From the first of the assessment years for which provisional approval was received.

Amendment in s. 10(23C) (cont.)

Sr. No.	Category	Time limit for application	Whether the PCIT / CIT can make inquiries, call for documents. etc.?	Time limit for passing the order	Period for which approval is to be granted	Start date from which exemption is available
4.	<u>Other cases:</u>					
4.1	An Institution, etc. formed before 1st June 2020 but which has not made an application till the said date [clause (iv) to first proviso to s. 10(23C)]	See Note (f) below	No	1 month*	3 years	See Note (c)
4.2	An Institution, etc. formed on or after 1st June 2020 [clause (iv) to first proviso to s. 10(23C)]					
4.3	Application made on or before 1st June 2020 but approval not received					

* from end of the month in which application for approval was received.

Notes:

- (c) From the assessment year immediately following the financial year in which application is made
- (f) One month prior to the commencement for the previous year relevant to the assessment year from which the said approval is sought

The amendment applies to all Institutions, etc. irrespective of their size.

Thank You