

## NOTES ON REGISTRATION WITH IT DEPARTMENT & APPROVAL U/S80G

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Compiled by CA. Suhas K. Malankar

### REGISTRATION U/S12A – 12AA

#### **Conditions for applicability of sections 11 and 12.**

**Sec.12A.** (1)The provisions of section 11 and section 12 shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely:— (a) **This clause is applicable for applications made prior to 1<sup>st</sup> June 2007**

In these cases it was possible for Commissioner to grant registration from date of creation or establishment of Trust /institution where application was not submitted within one year from the date of creation /establishment by condoning the delay.

#### **Provision applicable for applications made for registration on or after 1<sup>st</sup> June 2007**

(aa) the person in receipt of such income has to make an application for registration of the trust or institution on in the prescribed form and manner ( Form No. 10A & Rule 17A) to the Principal Commissioner or Commissioner and such trust or institution is required to be registered under section 12AA;

(b) This clause says Audit to be carried out by a Chartered Accountant and Report in Form No.10B to be submitted - where the total income of the trust or institution as computed under this Act without giving effect to the provisions of section 11 and section 12 exceeds the maximum amount which is not chargeable to income-tax in any previous year,

(c) omitted w.e.f.1/4/2002

(2) Where an application is made for registration u/s.12A the provisions of sections 11 and 12 shall apply in relation to the income of such trust or institution from the assessment year immediately following the financial year in which such application is made (i.e. benefit of sec 11 & 12 can be claimed by such trust or institution from financial year in which application in Form No.10A is made)

**Provisions inserted w.e.f.01-10-2014- Benefit for period prior to registration**

**Provided** that where registration has been granted to the trust or institution under section 12AA, then, the provisions of sections 11 and 12 shall apply in respect of any income derived from property held under trust of any assessment year preceding the aforesaid assessment year, for which assessment proceedings are pending before the Assessing Officer as on the date of such registration and the objects and activities of such trust or institution remain the same for such preceding assessment year:

**It is provided further** that no action for reopening of assessment under section 147 shall be taken by the Assessing Officer in case of such trust or institution for any preceding assessment years only on the ground of non-registration of such trust or institution for the earlier assessment year/s:

However concession on granted by above two provisions is not available :-

- (a) in case of any trust or institution which has applied for registration in the past but was refused registration or
- (b) the registration granted to it was cancelled at any time under section 12AA.

**Procedure for registration.**

**Sec. 12AA.** (1) The *Principal Commissioner or Commissioner*, on receipt of an application for registration of a trust or institution made under clause (a) or clause (aa) of sub-section (1) of section 12A, shall—

(a) call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about the genuineness of activities of the trust or institution and may also make such inquiries as he may deem necessary in this behalf; and

(b) after satisfying himself about the objects of the trust or institution and the genuineness of its activities, he—

(i) shall pass an order in writing registering the trust or institution;

(ii) shall, if he is not so satisfied, pass an order in writing refusing to register the trust or institution,

and a copy of such order shall be sent to the applicant :

**Provided** that no order under sub-clause (ii) i.e. refusing registration shall be passed unless the applicant has been given a reasonable opportunity of being heard.

(1A) This s.s. is related to applications pending on 31<sup>st</sup> May 1999 :- All applications, pending before the 2a[*Principal Chief Commissioner or*] Chief Commissioner on which no order has been passed under clause (b) of sub-section (1) before the 1st day of June, 1999, shall stand transferred on that day to the *Principal Commissioner or Commissioner* and the *Principal Commissioner or Commissioner* may proceed with such applications from the stage at which they were on that day.

**Time limit for passing order** :- s.s (2) states that every order granting or refusing registration under clause shall be passed before the expiry of six months from the end of the month in which the application is made under section 12A.

### **Cancellation of registration granted u/s 12A (old) or 12AA :-**

s.s.(3) states that where a trust or an institution has been granted registration under old Sec 12A or Sec 12AA.

and subsequently the *Principal Commissioner or Commissioner* is satisfied that  
(a) the activities of such trust or institution are not genuine or  
(b) are not being carried out in accordance with the objects of the trust or institution,

he shall pass an order in writing cancelling the registration of such trust or institution:

however it is provided that no such order cancelling registration shall be passed unless such trust or institution has been given a reasonable opportunity of being heard.

***the Finance (No 2) Act 2014 has made following amendments to cancellation provisions by inserting S.S.(4) as follows:***

*Where trust or institution has been granted registration u/s 12A (old) or u/s 12AA and subsequently it is noticed that the activities of the trust or the institution are being carried out in a manner that the provisions of sections 11 and 12 do not apply to exclude either whole or any part of the income of such trust or institution due to operation of sub-section (1) of section 13, then, the*

*Principal Commissioner or the Commissioner may by an order in writing cancel the registration of such trust or institution:*

However it is **provided** that the registration shall not be cancelled under this sub-section, if the trust or institution proves that there was a reasonable cause for the activities to be carried out in the said manner.

### **What section 13(1) says:**

Sec. 13. (1) Nothing contained in section 11 or section 12 shall operate so as to exclude from the total income of the previous year of the person in receipt of such income—

(a) any part of the income from the property held under a trust for private religious purposes which does not enure for the benefit of the public;

(b) in the case of a trust for charitable purposes or a charitable institution created or established after the commencement of this Act (i.e.01-04-1962) any income thereof if the trust or institution is created or established for the benefit of any particular religious community or caste;

*Explanation 2.*—A trust or institution created or established for the benefit of Scheduled Castes, backward classes, Scheduled Tribes or women and children shall not be deemed to be a trust or institution created or established for the benefit of a religious community or caste within the meaning of clause (b) of sub-section (1).

(bb) Omitted w.e.f..1-04-1984.

(c) in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof—

(i) if such trust or institution has been created or established after the commencement of this Act (01-04-1962) and under the terms of the trust or the rules governing the institution, any part of such income enures, or

(ii) if any part of such income or any property of the trust or the institution (whenever created or established) is during the previous year used or applied,

directly or indirectly for the benefit of any person referred to in sub-section (3) : (specified persons)

Exemption from provision of sub clause (ii) is available to: a trust or institution created or established before the commencement of this Act, the provisions of sub-clause (ii) shall not apply to any use or application, any part of such income or any property of the trust or institution for the benefit of any specified person, if such use or application is by way of compliance with a mandatory term of the trust or a mandatory rule governing the institution: (1<sup>st</sup> Provision to Sec 13)

(d) in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof, if for any period during the previous year—

(i) any funds of the trust or institution are invested or deposited on or after 1<sup>st</sup> March 1983 otherwise than in any one or more of the forms or modes specified in Section 11(5)

(ii) any funds of the trust or institution invested or deposited before the 1st day of March, 1983 otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11 continue to remain so invested or deposited after the 30th day of November, 1983; or (relates to old period)

(iii) any shares in a company, other than—

(A) shares in a public sector company ;

(B) shares prescribed as a form or mode of investment under clause (xii) of sub-section (5) of section 11, (Sec Rule 17 C- i.e. units of MF as per 10 (23D), equity shares of depository, etc.)

are held by the trust or institution after the 30th day of November, 1983:]

**Provided that provision of clause (d) shall not apply in relation to—**

(i) any assets held by the trust or institution where such assets form part of the corpus of the trust or institution as on the 1st day of June, 1973

(ia) any accretion to the shares, forming part of the corpus mentioned in clause (i), by way of bonus shares allotted to the trust or institution;

(ii) any assets being debentures issued by, or on behalf of, any company or corporation acquired by the trust or institution before the 1st day of March, 1983;

(iia) any asset, which is not an investment or deposit in any of the forms or modes specified in section 11 (5) and, such asset is not held by the trust or institution, in form or modes specified in section 11(5), after the expiry of

one year from the end of the previous year in which such asset is acquired (i.e. one year is available for converting such asset into investment in specified mode)

(iii) any funds representing the profits and gains of business, being profits and gains of any previous year relevant to the assessment year provided separate books of accounts are maintained by such trusts / institutions.

**When it is treated as use/ application for benefits of specified person:-**

As per Sec 13 (2) the income or the property of the trust or institution or any part of such income or property shall, for the purposes of that clause, be deemed to have been used or applied for the benefit of a person referred to in sub-section (3),—

- (a) if any part of the income or property of the trust or institution is, or continues to be, lent to specified person for any period during the previous year without either adequate security or adequate interest or both;
- (b) if any land, building or other property of the trust or institution is, or continues to be, made available for the use of specified person for any period during the previous year without charging adequate rent or other compensation;
- (c) if any amount is paid by way of salary, allowance or otherwise during the previous year to specified person out of the resources of the trust or institution for services rendered by that person to such trust or institution and the amount so paid is in excess of what may be reasonably paid for such services;
- (d) if the services of the trust or institution are made available to specified person during the previous year without adequate remuneration or other compensation;

Exception Medical/Educational institution (See Sec 13(6))

- (e) if any share, security or other property is purchased by or on behalf of the trust or institution from specified person during the previous year for consideration which is more than adequate;
- (f) if any share, security or other property is sold by or on behalf of the trust or institution to specified person during the previous year for consideration which is less than adequate;

(g) if any income or property of the trust or institution is diverted during the previous year in favour of specified person : Except - where the income, or the value of the property or, as the case may be, the aggregate of the income and the value of the property, so diverted does not exceed Rs.1000/-;

(h) if any funds of the trust or institution are, or continue to remain, invested for any period during the previous year in any concern in which any specified person has a substantial interest.

### **Who are treated as specified persons:**

Sec 13 (3) describes specified persons as follows :—

- a) the author of the trust or the founder of the institution;
- b) any person who has made a substantial contribution to the trust or institution, that is to say, any person whose total contribution up to the end of the relevant previous year exceeds 50000/- rupees
- c) where such author, founder or person is a HUF, a member of the family;  
(cc) any trustee of the trust or manager (by whatever name called) of the institution;
- d) any relative of any such author, founder, person, member, trustee or manager as aforesaid; ( meaning of term relative in Explanation 1 to sec 13)
- e) any concern in which any of the persons referred to in clauses (a), (b), (c), (cc) and (d) has a substantial interest.

Sec.13 (4) in a case where the aggregate of the funds of the trust or institution invested in a concern in which any specified person has a substantial interest, does not exceed 5% of the capital of that concern, the exemption under section 11 or section 12 shall not be denied in relation to any income other than the income arising to the trust or the institution from such investment,

Sec.13 (5) Relates to debentures issued by, any company or corporation are acquired by the trust or institution after the 28th day of February, 1983 but before the 25th day of July, 1991, the exemption under section 11 or section 12 shall not be denied .....

Sec 13 (6) Relates to cl 13(2) (d) : in the case of a charitable or religious trust running an educational institution or a medical institution or a hospital, the exemption under section 11 or section 12 shall not be denied in relation to any

income, other than the income referred to in sub-section (2) of section 12, by reason only that such trust has provided educational or medical facilities to specified

Sec 13(7) Nothing contained in section 11 or section 12 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof, any anonymous donation referred to in section 115BBC on which tax is payable in accordance with the provisions of that section.

Sec 13(8) Nothing contained in section 11 or section 12 shall operate so as to exclude any income from the total income of the previous year of the person in receipt thereof if the provisions of the first proviso to clause (15) of section 2 become applicable in the case of such person in the said previous year.

*Explanation 1.*—For the purposes of sections 11, 12, 12A and this section (i.e. Sec 13), “trust” includes any other legal obligation and for the purposes of this section “relative”, in relation to an individual, means—

- a) spouse of the individual;
- b) brother or sister of the individual; ( and their spouse)
- c) brother or sister of the spouse of the individual; ( and their spouse)
- d) any lineal ascendant or descendant of the individual; ( and their spouse)
- e) any lineal ascendant or descendant of the spouse of the individual; ( and their spouse)
- f) any lineal descendant of a brother or sister of either the individual or of the spouse of the individual.

*Explanation 3.*—For the purposes of this section, a person shall be deemed to have a substantial interest in a concern,—

- i) in a case where the concern is a company, if its shares (not being shares entitled to a fixed rate of dividend...) carrying not less than 20% of the voting power are, at any time during the previous year, owned beneficially by such person or partly by such person and partly by one or more of the specified person;
- ii) in the case of any other concern, if such person is entitled, or such person and one or more of the other specified persons are entitled in the aggregate, at any time during the previous year, to not less than 20% of the profits of such concern.



Following additional points to be noted:

- Registration u/s 12A is a condition precedent for availing benefit u/s 11 and 12. Unless and until an institution is registered u/s 12A, it cannot claim the benefit of section 11(1)(a)- U.P. forest Corporation v. CIT[2007] 165 taxman 533 (SC).
- While considering granting of registration u/s 12AA, the Commissioner should satisfy himself only about genuineness of activities of trust in accordance with its objects and not about credential , capacity and qualification, etc. of trust – PIMS Medical & Education Charitable Society v. CIT[2013] 56 SOT 522 (Chd.). At stage of granting registration , object of trust and not activities or purported utilization of its income for charitable purposes, has to be considered by Commissioner – CIT v. B.K.K. Memorial Trust [2013] 213 Taxman 1(Punj. & Har.), DIT v. Meenakshi Amma Endowment Trust [2013] 219 Taxman 136 (Kar.).
- While considering an application for registration u/s 12AA sufficiency or otherwise of initial contribution made by founder of trust and dedication to object of trust, is not a relevant factor – Acharya Sewa Niyas Uttaranchal v. CIT[2007] 13 SOT 54 (Delhi).
- Registration cannot be refused on the ground that trust is running a school in a village without seeking necessary prior permission from the appropriate authority to run the school. Even if school for some of classes is run without requisite permission , it is not fatal for grant of registration u/s 12AA- Sri Elumalayan Education Trust v.CIT[2010] 5 ITR (Trib.) 127 (Chennai).
- Likewise, registration cannot be denied on the ground that the assessee- trust has not submitted its return of income for last several years- CIT v. Shri Advait Ashram Society[2012] 211 Taxman 311 (All).
- A trust, which is in process of establishing educational institute, cannot be refused registration u/s 12AA on the ground that it has not yet commenced charitable or religious activity- Hardayal Charitable &

Educational Trust v. CIT[2013] 214 Taxman 655 (All). Moreover, in such a case, application cannot be rejected by the Commissioner on the ground that the trust failed to convince him about genuineness of activities – CIT v. Kutchi Dasa Oswal Moto Pariwar Ambama Trust[2013] 212 Taxman 435 (Guj.).

- Moreover, while granting registration the Commissioner cannot impose condition that trust should not charge any fee/amount from the beneficiaries – DIT v. Commerce Teachers Association[2011] 203 Taxman 171 (Delhi), Shri Gian Ganga Vocational & Education Society v. CIT [2013] 143 ITD 297 (Delhi).
- Case law on registration applications made prior to 1<sup>st</sup> June, 2007 – The application should be submitted with the Commissioner of Income- tax within one year from the date on which the trust is created. The Commissioner may, in his discretion, admit an application for the registration of any trust or institution after expiry of the aforesaid period. Where an application for registration is made after the aforesaid period, the provision of section 11 and 12 will apply from the date of the creation of the trust, if the Commissioner is satisfied that the person in receipt of income was prevented from making the application within the aforesaid period for sufficient reason. If however, the Commissioner is not so satisfied, provisions of section 11 and 12 will be applicable from the previous year in which application is made.

In the case of All India Primary Teachers Federation v. Director of Income-tax [2004] 140 Taxman 50, the assessee trust applied for registration u/s 12A after more than 25 years with a request to condone delay. The reason for delay had been the continuous change of office bearer after a few years. On being satisfied that the funds received by the trust were utilized for the charitable objects, the Delhi Bench of the Tribunal following the Supreme Court's decision in Motilal Padampat Sugar Mills Co. Ltd. v. State of Uttar Pradesh[1979] 118 ITR 326 held that everyone is not supposed to know the law.

- Other Judicial rulings – The propositions have been taken from judicial rulings –
  1. Merely because all trustee are family members. It does not mean that trust is not public trust. Merely because the assessee –trust has not carried out any activities, that would be incorrect to state that the trust has totally stopped activity forever and withdrawal of registration will not be justified – **Jupiter Medical Research Centre Trust v. DIT** (2010) 128 TTJ (Ahd.) (UO) 118.
  2. When certain amount is not spent for aims and objects of a charitable society, it cannot be a ground for cancellation of registration. In such a case, the benefits of exemption under section 11 maybe denied to the extent income is not applied for the objects of society- **Institute of Science & Management v. CIT**(2012) 53 SOT 167 (Ranchi).  
 AFTER REGISTRATION, EXEMPTION UNDER SECTION 10 NOT AVAILABLE – Where a trust or an institution has been granted registration for purpose of availing exemption under section 11, and the registration is in force for a previous year, then such trust or institution cannot claim any exemption under any provision of section 10[other than that relating to exemption of agricultural income and income exempt under section 10(23c)] for that previous year (applicable from the assessment year 2015-16).

### **Approval u/s 80G (5)**

Sec 80G(5) This section applies to donations to any institution or fund referred to in sub-clause (iv) of clause(a) of sub-section Sec 80G(2)(a)(iv),

only if it is established in India for a charitable purpose and

if it fulfills the following conditions, namely :—

(i) where the institution or fund derives any income, such income would not be liable to inclusion in its total income under the provisions of sections 11 and 12 or clause (23AA) (i.e. Regimental fund) or clause (23C)] of section 10 :

**Provided** that where an institution or fund derives any income, being profits and gains of business, the condition that such income would not be liable to inclusion in its total income under the provisions of section 11 shall not apply in relation to such income, if—

- a) the institution or fund maintains separate books of account in respect of such business;
  - b) the donations made to the institution or fund are not used by it, directly or indirectly, for the purposes of such business; and
  - c) the institution or fund issues to a person making the donation a certificate to the effect that it maintains separate books of account in respect of such business and that the donations received by it will not be used, directly or indirectly, for the purposes of such business;
- (ii) the instrument under which the institution or fund is constituted does not, or the rules governing the institution or fund do not, contain any provision for the transfer or application at any time of the whole or any part of the income or assets of the institution or fund for any purpose other than a charitable purpose;
- (iii) the institution or fund is not expressed to be for the benefit of any particular religious community or caste;
- (iv) the institution or fund maintains regular accounts of its receipts and expenditure;
- (v) the institution or fund is either constituted as a public charitable trust or is registered under the Societies Registration Act, 1860 or under any law corresponding to that Act in force in any part of India or under section 25 of the Companies Act, 1956, or is a University established by law, or is any other educational institution recognized by the Government or by a University established by law, or affiliated to any University established by law, or is an institution financed wholly or in part by the Government or a local authority;
- (vi) in relation to donations made after the 31st day of March, 1992, the institution or fund is for the time being approved by the Commissioner in accordance with the rules made in this behalf
- (vii) where any institution or fund had been approved under clause (vi) for the previous year beginning on the 1st day of April, 2007 and ending on the 31st day of March, 2008, such institution or fund shall, for the purposes of this section and notwithstanding anything contained in the proviso to clause (15) of section 2, be deemed to have been,—
- (a) established for charitable purposes for the previous year beginning on the 1st day of April, 2008 and ending on the 31st day of March, 2009; and

(b) approved under the said clause (vi) for the previous year beginning on the 1st day of April, 2008 and ending on the 31st day of March, 2009.]

80G(5B) Notwithstanding anything contained in clause (ii) of sub-section (5) and *Explanation 3*, an institution or fund which incurs expenditure, during any previous year, which is of a religious nature for an amount not exceeding five per cent of its total income in that previous year shall be deemed to be an institution or fund to which the provisions of this section apply.

*Explanation 1.*—An institution or fund established for the benefit of Scheduled Castes, backward classes, Scheduled Tribes or of women and children shall not be deemed to be an institution or fund expressed to be for the benefit of a religious community or caste within the meaning of clause (iii) of sub-section (5).

*Explanation 2.*—For the removal of doubts, it is hereby declared that a deduction to which the assessee is entitled in respect of any donation made to an institution or fund to which sub-section (5) applies shall not be denied merely on either or both of the following grounds, namely :—

- (i) that, subsequent to the donation, any part of the income of the institution or fund has become chargeable to tax due to non-compliance with any of the provisions of section 11, section 12 or section 12A
- (ii) that, under clause (c) of sub-section (1) of section 13, the exemption under section 11 or section 12 is denied to the institution or fund in relation to any income arising to it from any investment referred to in clause (h) of sub-section (2) of section 13 where the aggregate of the funds invested by it in a concern referred to in the said clause (h) does not exceed five per cent of the capital of that concern.]]

*Explanation 3.*—In this section, “charitable purpose” does not include any purpose the whole or substantially the whole of which is of a religious nature.

*Explanation 4.*—For the purposes of this section, an association or institution having as its object the control, supervision, regulation or encouragement in India of such games or sports as the Central Government may, by notification in the Official Gazette, specify in this behalf, shall be deemed to be an institution established in India for a charitable purpose.

**Requirements for approval of an institution or fund under section 80G.**

**Rule 11AA .** (1) The application for approval of any institution or fund under clause (v) of sub-section (5) of section 80G shall be in Form No. 10G and shall be made in triplicate.

(2) The application shall be accompanied by the following documents, namely :—

- i. Copy of registration granted under section 12A or copy of notification issued under section 10(23) or 10(23C) ;
- ii. Notes on activities of institution or fund since its inception or during the last three years, whichever is less ;
- iii. Copies of accounts of the institution or fund since its inception or during the last three years, whichever is less.

(3) The Commissioner may call for such further documents or information from the institution or fund or cause such inquiries to be made as he may deem necessary in order to satisfy himself about the genuineness of the activities of such institution or fund.

(4) Where the Commissioner is satisfied that all the conditions laid down in clauses (i) to (v) of sub-section (5) of section 80G are fulfilled by the institution or fund, he shall record such satisfaction in writing and grant approval to the institution or fund specifying the assessment year or years for which the approval is valid.

(5) Where the Commissioner is satisfied that one or more of the conditions laid down in clauses (i) to (v) of sub-section (5) of section 80G are not fulfilled, he shall reject the application for approval, after recording the reasons for such rejection in writing :

**Provided** that no order of rejection of an application shall be passed without giving the institution or fund an opportunity of being heard.

(6) The time limit within which the Commissioner shall pass an order either granting the approval or rejecting the application shall not exceed six months from the *end of the month* in which such application was made :

**Provided** that in computing the period of six months, any time taken by the applicant in not complying with the directions of the Commissioner under sub-rule (3) shall be excluded.

The Delhi High Court in the case of M.K. Nambyar Saarc Law Charitable Trust vs. Union of India 269 ITR 556 held that application of Income outside India could not be taken as a ground for refusing recognition u/s.80G.

The Gujarat High Court has held, in the case of N.N.Desai Charitable Trust vs. CIT (2000) 246 ITR 452, that while processing the application for approval under section 80G, the commissioner is not expected to act as an assessing authority, but his enquiry should be confined to finding out whether the trust satisfies the prescribed conditions. The Delhi High Court, in the case of Kirti Chand Tarawati Charitable Trust vs. DIT (E)(1998) 232 ITR 11, has held that the approval by the Commissioner is not to be granted merely by looking at the instrument creating the trust, but by looking at the real purpose of the trust as distinguished from the ostensible purpose. In Kalyanam Karoti vs.CIT (2010) 123 ITD 317 (Lucknow), the Tribunal held that the Commissioner could not refuse renewal of approval on the ground that Permanent Account Numbers of donors were not provided.

- Refusal to grant registration /approval by Commissioner remedy available is appeal to Tribunal .

## **General comments on Income Tax provisions about Charitable Organisations**

A large number of changes have been made in the laws affecting taxation of charitable trusts. Recent amendments to section 2(15) of the Income Tax Act have made the law even more cumbersome.

In any society, non-profit making organisations and NGO's play a pivotal role in extending much needed assistance to the needy. They complement the role of the Government by reaching out to the millions in the streets and in alleviating the misery of the economically downtrodden. One would expect that the task of such worthy organisations and the people behind them would be made lighter by the Government by extending as much assistance as possible. The laws applicable to such organisation should also be simple and easy to administer. The process of registration of such trusts for the purpose of extending tax benefits should be short and simple. Unfortunately, we have laws which make the task of the trustees of such trusts very difficult. While the Government's efforts to curb abuse of laws and misuse of money collected for charity is

laudable and justified, at the same time, that cannot be at the cost of turning away genuine Samaritans from doing charity and charitable work.

The Indian tax laws are a maze of sections and sub-sections. And we also have a large number of rules, notifications and judicial decisions. Amongst all these, trustees of charitable trusts often find themselves at their wit's ends..

**What is really needed is the change in the basic mind-set before enacting the law.**

THANK YOU



## DOCUMENTARY REQUIREMENT

### For New Case -12AA Registration

1. Form No. 10A (in duplicate)
2. 1 copy of Trust deed /Memorandum of Association certified by Charity Commissioner.
3. Copy of Charity Commissioners certificate for registration of Trust/ Society
4. Name & Addresses of Trustees with their PAN
5. PAN Card copy of Trust / Society/ All Trustees
6. Notes on activities of Trust / Society for last 3 years with supporting
7. Last 3 years Balance Sheet, Income & Expenditure a/c and acknowledgement of return , Bank Statement copies
8. N.O.C in respect of address proof in support of ownership of premises
9. Address Proof
10. Change Report in respect of change in trustees/address

### For New Case - 80G Registration

1. Form No. 10G ( in Triplicate)
2. 1 copy of Trust deed certified by Charity Commissioner
3. 1 copy of Charity Commissioners certificate for registration of Trust/ Society
4. Name & Addresses of Trustees with their PAN
5. PAN Card copy of Trust / Society/ All Trustees
6. Notes on activities of Trust / Society for last 3 years with supporting  
Last 3 years Balance Sheet, Income & Expenditure a/c and acknowledgement of return & Bank Statement.

**CIRCULAR**  
**INCOME-TAX ACT**

***Section 10(23C)(iv) of the Income-tax Act, 1961 - Exemptions - Charitable or religious trusts/institutions - Clarification regarding period of validity of approvals issued under section 10(23C)(iv), (v), (vi) or (vIA) and section 80G(5) of the Income-tax Act***

CIRCULAR NO. 7/2010 [F. NO. 197/21/2010-ITA-I], DATED 27-10-2010

The Board has received various references from the field formations as well as members of public about the period of validity of approvals granted by the Chief Commissioners of Income-tax or Directors General of Income-tax under sub-clauses (iv), (v), (vi) and (vIA) of section 10(23C) and by the Commissioners of Income-tax or Directors of Income-tax under section 80G(5) of the Income-tax Act, 1961.

2. It has also been noticed by the Board that different field authorities are interpreting the provisions relating to the period of validity of the above approvals in a different manner. The following instructions are accordingly issued for the removal of doubts about the period of validity of various approvals referred to above.

3. Sub-clauses (iv) and (v) of section 10(23C) were amended by Taxation Laws (Amendment) Act, 2006 by insertion of the following proviso to that clause :—

“**PROVIDED ALSO** that any (notification issued by the Central Government under sub-clause (iv) or sub-clause (v), before the date on which the Taxation Laws (Amendment) Bill, 2006 receives the assent of the President, shall at any one time, have effect for such assessment year or years, not exceeding three assessment years) (including an assessment year or years commencing before the date on which such notification is issued) as may be specified in the notification.”

The intention behind the insertion of the above proviso was laid out in the relevant portion of the explanatory notes to the Taxation Laws Amendment Act, 2006 which reads as under :

“A need has been felt to dispense with the requirement of periodic renewal of notifications. The requirement of periodic renewal of notifications has been resulting in delays in their renewal.

5.2 In order to overcome delays, the eighth proviso to section 10(23C) has been amended so as to provide that the above mentioned limit of effectivity for three assessment years shall be applicable in respect of notifications issued by the Central Government under sub-clause (iv) or sub-clause (v) before the date on which Taxation Laws (Amendment) Bill, 2006 receives the assent of the President.

5.3 The Taxation Laws (Amendment) Bill, 2006 received the assent of the President on 13-7-2006. Therefore, on account of the above amendment any notification issued by the Central Government under the said sub-clause (iv) or sub-clause (v), on or after 13-7-2006 will be valid until withdrawn and there will be no requirement on the part of the assessee to seek renewal of the same after three years.”

The intention of legislature that the approvals under section 10(23C)(iv) and (v)

after the cut off date mentioned above would be a one time approval which would be valid until withdrawn, is thus sufficiently clear.

4. Approvals under sub-clauses (vi) and (vIA) of section 10(23C) are governed by the procedure contained in rule 2CA. Rule 2CA was amended with effect from 1-12-2006, *INTER ALIA* by substitution of the existing sub-rule 3 by a new provision which is reproduced below :—

“(3) The approval of the Central Board of Direct Taxes or Chief Commissioner or Director General, as the case may be, granted before the 1st day of December, 2006 shall at any one time have effect for a period not exceeding three assessment years.”

Read in isolation, without any further guidance as was given by way of explanatory notes to Finance Act, 2006 in respect of amendment of sub-clauses (iv) and (v) of section 10(23C), the above amendment leaves some scope for doubt about the period of validity of the approval under section 10(23C)(vi) and (vIA) on or after 1-12-2006. For the removal of doubts if any in this regard, it is clarified that as in the case of approvals under sub-clauses (iv) and (v) of section 10(23C), any approval issued on or after 1-12-2006 under sub-clause (vi) or (vIA) of that sub-section would also be a one time approval which would be valid till it is withdrawn.

5. As regards approvals granted upto 1-10-2009 under section 80G by the Commissioners of Income-tax/Directors of Income-tax, proviso to section 80G(5)(vi) clarified that any approval shall have effect for such assessment year or years not exceeding five assessment years as may be specified in the approval. The above proviso was deleted by the Finance (No. 2) Act, 2009. The intent behind the deletion of above proviso as explained in the explanatory memorandum to Finance (No. 2) Bill, 2009 was as under :

“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 Rules, 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 *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. Further, the Commissioner will also have the power of withdraw the approval if the Commissioner is satisfied that the activities of such institution or fund are not genuine or are not being carried out in accordance with the objects of the institution or fund. This amendment will take effect from 1st day of October, 2009. Accordingly, existing approvals expiring on or after 1st October, 2009 shall be deemed to have been extended in perpetuity unless specifically withdrawn.”

It appears that some doubts still prevail about the period of validity of approval under section 80G subsequent to 1-10-2009, especially in view of the fact that no corresponding change has been made in Rule 11A(4). To remove any doubts in this regard, it is reiterated that any approval under section 80G(5) on or after 1-10-2009 would be a one time approval which would be valid till it is withdrawn.

