

REGULATORY UPDATE

Finance Bill, 2020

Amendments providing for Re-registration and Re-approval of Trusts and NGO's

The Finance Bill, 2020 (*hereinafter referred to as 'Act'*) passed on 23rd March, 2020 by the Lok Sabha has introduced significant noteworthy amendments to the existing provisions obligating/ providing for re-registration and re-approval of charitable trusts and other NGO's. Besides, changes also have been introduced pertaining to the taxation system of charitable trusts i.e. both for existing registered and as well as new entities incorporated/ registered in the future.

BACKGROUND

The purposes of the said changes in the Act, as reckoned by Hon'ble FM, while presenting the budget are as follows:

- (a) To provide a rational process of registration on the one hand,
- (b) To provide for a mechanism of regular/periodic check to ensure that the conditions of approval or registration or notification are adhered to and further
- (c) To avoid a non-adversarial regime.

Under the new tax regime, Section 10(23C), Section 11, Section 12A, Section 12 AA, Section 80G are said to be amended and a new Section 12AB introduced.

All the said amendments are proposed to be made w.e.f. June 01, 2020.

AMENDMENTS - SCOPE AND APPLICABILITY

The Income Tax Act, 1961 (*hereinafter referred to as "ITA"*) under its sections 11, 12, 12A, 12AA and 13 constitutes a complete code governing the grant or withdrawal of registration and its cancellation, providing exemption to income, and also the conditions under which a charitable trust or institution needs to function in order to be eligible for exemption.

The said Amendments also provide for withdrawal of exemption either in part or in full if the relevant conditions are not fulfilled.

The amendments introduced by the Act include re-registration of u/s 12AB for all Trust & NGO, re-approval u/s 80G for all Trust / NGO and such institutions, reporting of all donations to the Income Tax Authorities, re-registration if any object is changed, power of commissioner to cancel trust registrations.

RE-REGISTRATION U/S 12AB

The earlier provision with respect to registration i.e. section 12AA of the ITA has now been replaced by the new section 12AB. The registration process for all Trusts, NGOs and such institutions under the new provisions is as under:

1. **All existing trusts or institutions** which are registered under Section 12A or under Section 12AA of the Income Tax Act, shall be **mandatorily required to make new application** and such trust or institution should obtain registration under section 12AB.
 - Such an application in the prescribed form is to be filed with the Commissioner or Principle Commissioner of Income tax (hereinafter referred to as *Pr.CIT* or *CIT*) **within a period of 3 months from 01.06.2020. Registration under Section 12AA shall stand inoperative w.e.f. June 01, 2020.**
 - Registration shall be granted by the Principal Commissioner and the main requirements for the same shall be as follows:
 - a. **Existing registered trust/ other such entities:** An application has to be filed on coming into force the new procedure. Order by PCIT or CIT for registration shall be passed within a period of 3 months from the end of the month in which the application is received and the registration shall remain valid for a period of 5 years.
 - b. **Subsequent registration:** The PCIT or CIT after getting satisfied as to the genuineness of the activities of the trust/ other such entities shall be required to pass the order within a period of 6 months from the end of the month in which application is received and registration shall be operative for a period of 5 years.
 - c. **New trusts/ Trust/ other such entities making application for the first time:** Provisional registration shall be granted within one month and same will continue for a period of 3 years.
 - The registration will be granted within three months from the end of month in which application received by Pr.CIT/CIT.
 - The registration will be granted for a period of five years and application for renewal will need to be made at least six months prior to the expiry of the period of the earlier registration.
2. **A failure to make a new application will result in cancellation of the registration granted earlier on the expiry of 3 months i.e. 31st August, 2020. If the registration gets cancelled then, such trust or institution shall not be eligible for claiming exemption in respect of its income under section 11 of the Act.**
3. It may be noted that as per section 115TD of the Act, such trust or institution shall be required to pay tax on the aggregate fair market value of the total assets of the trust or the institution as on 31st August, 2020 which exceeds the total liability of such trust on that date. The tax payable on such value shall be at the maximum marginal rate.

4. If the earlier registration shall become in-operative in terms of section 11(7) of the Act by virtue of claiming deduction by such institutions u/s 10(23C) or 10(46) of the Act and the trust wish to get the registration operative then application shall be required to be done at least 6 months prior to the commencement of the assessment year for which the said registration is sought to be made operative.
5. In case of trust to whom provisional registration is granted earlier, an application has to be made at least 6 months prior to the expiry of the period of provisional registration or within 6 months from commencement of the activities of the trust, whichever is earlier.

RE-APPROVAL U/S 80G FOR ALL TRUST/NGO AND SUCH INSTITUTIONS

The Finance Act 2020 has also made amendments to section 80G wherein a benefit was bestowed upon the donors to registered trust and such institutions to avail deduction u/s 80G in relation to amount of donation so made (subject to some limits) from taxable income. The same are further enumerated in the following points:

1. The existing approved donee trust/fund etc. which are already approved u/s 80G of the Act shall have to apply for re-approval.
2. Application in the prescribed form is to be filed with the Pr.CIT or CIT within a period of 3 months from 01.06.2020 and order of registration in such cases will be made within three months from the end of month in which application received by Pr.CIT/CIT.
3. Such approval or registration shall be valid for a period 5 years only at any one time.
4. All such application which are pending for approval of registration as on date shall be treated as an application in accordance with the new provisions.
5. Any new applicants will be granted provisional registration first.
6. Further, the Charitable/religious trusts institution etc. shall be obligated to file a statement of receipts of donations to the prescribed Income tax authority within the prescribed time. This shall be an e-filing of statement and deductee will get the deduction only after it is reflected in their annual statement (like 26AS).
7. The charitable/religious trusts institution etc. shall furnish to the donor, a certificate specifying the amount of donation in such manner, containing such particulars and within such time from the date of receipt of donation, as may be prescribed.
8. The deduction to the donor u/s 80GGA shall be allowed only if a statement is furnished by the donee recipient & is reflected in the annual statement of the donee. Further, in case of delay in filing such statement a late fee of Rs.200 per day shall be applicable along with Penalty of Rs. 10,000 to Rs 100,000/-
9. As per Clause 34 of Finance Bill, 2020 No deduction shall be allowed to the donor under Section 80GGA in respect, of donation exceeding amount of Rs. 2,000/- unless donation is paid in a mode other than cash.

RE-REGISTRATION IF ANY OF THE OBJECTS IS CHANGED

1. Another amendment that has been introduced is with respect to re-registration in case of changes in objectives of the NGO or Trust. In cases wherein any NGO or Trust has carried

out modifications in its objective clause which is not in accordance with the conditions for registration, an application is to be made within a period of 30 days from the date of such modifications.

2. The application for registration is to be made before Pr. CIT/CIT.
3. For B and C category of trusts the Commissioner or Principle Commissioner of Income tax shall reject the application in case, they are not satisfied with the genuineness and compliances of the objects, after providing the reasonable opportunity of being heard.

POWER OF COMMISSIONER TO CANCEL REGISTRATION

1. The amendments introduced by the act have endowed upon **the commissioner the power to cancel registration** in the following cases:
 - Pr.CIT/CIT records a satisfaction that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust.
 - Pr.CIT/CIT notices that the activities of trust are carried out in such a manner that it results in contravention of the provisions of section 13(1) i.e.
 - a. The trust failed to make investment/deposit in accordance with modes as prescribed u/s 11(5) or;
 - b. Any benefit directly/indirectly has been provided to trustee/relatives of trustee etc. in contravention to provisions of section 13(3) or;
 - c. *The trust is created for any particular religious community or caste or;*
 - d. *It happens to be a private religious trust.*
 - Pr.CIT/CIT notices that the trust has ***not complied with any such requirements of any other law for the time being in force*** as may be applicable to trust or institution in case any such compliance is material for the purpose of achieving the objects of the trust.
2. The legislature under the new regime has taken away the safeguard of having a reasonable cause from the assessee trust against any act of cancellation of Pr. CIT/CIT. However, it continues to *provide a reasonable opportunity of being heard* to the assessee before any such cancellation of registration takes place. The assessee trust has the option to present before the authorities any such claim which will then be tested on touchstones of evolved jurisprudence as regard to applicable principles of law.

The exact text and copy of the Finance Bill 2020 can be downloaded from [here](#).

Should you need any clarification or would like to discuss any query related to the said development or generally any aspect related to the Indian Law, please feel free to contact:

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