

Webinar on Direct Taxes



Pune Branch of WIRC of ICAI



“Recent Amendments to Section 12A & 80G”

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Subject Expanse



- ✓ Taxation of Charitable Institutions
- ✓ Procedural Requirements
- ✓ New Law on Registration
- ✓ Deduction for Donations
- ✓ New Law on Eligibility
- ✓ Issues

Taxation of Charitable Institutions



“The word ‘Charity’ connotes altruistic thought and action. It involves an idea of benefiting others rather than oneself”
Supreme Court in the case Andhra Chamber of Commerce 55 ITR 722 (SC).

Functioning of such institutions play a significant role in promoting economic development and the social welfare objectives of the Government.

Taxation of Charitable Institutions



For conferring benefits to Society, the Government has offered various tax incentives and exemptions to eligible charitable institutions.

To examine eligibility, process of registration has been there since long.

Finance Act, 2020 has changed law for registration of Charitable Institutions.

Taxation of Charitable Institutions



SEC.	PROVISION
11	Income from property held for charitable or religious purposes.
12	Income of trusts or institutions from contributions
12A	Conditions for applicability of sections 11 and 12
12AA	Procedure for Registration
12AB	Procedure for fresh registration
13	Section 11 not to apply in certain cases



Taxation of Charitable Institutions

Distinguishing Features

- Accumulation u/s 11(1) v/s 11(2)
- TDS Defaults
- Cash Payments
- Carry forward of Excess Expenditure
- Audited Statement of Accounts
- Furnishing of ITR

Taxation of Charitable Institutions



EXAMPLES

A	Particulars	Rupees
1	Donations Received	70,00,000
2	Corpus Donations	30,00,000
3	Bank Interest	10,00,000
4	Expenses on Objects	50,00,000
5	Administrative Expenses	5,00,000
6	Ambulance Purchased	15,00,000
7	Depreciation on Ambulance	3,00,000

Taxation of Charitable Institutions



EXAMPLES

B	Particulars	Rupees
1	Donations Received	70,00,000
2	Corpus Donations	30,00,000
3	Bank Interest	10,00,000
4	Expenses on Objects	35,00,000
5	Administrative Expenses	5,00,000
6	Ambulance Purchased	15,00,000
7	Depreciation on Ambulance	3,00,000

Taxation of Charitable Institutions



EXAMPLES

C	Particulars	Rupees
1	Voluntary Contribution	70,00,000
2	Agricultural Income	30,00,000
3	Sale of Old Vehicle	10,00,000
4	Expenses on Objects	29,00,000
5	Function Day Cash Purchase	1,00,000
6	Fixed Deposit for 5 Years	15,00,000
7	New Vehicle	20,00,000

Taxation of Charitable Institutions



EXAMPLES

D	Particulars	Rupees
1	Voluntary Contribution	70,00,000
2	Agricultural Receipts	30,00,000
3	Sale of Old Vehicle	10,00,000
4	Expenses on Objects	25,00,000
5	Agricultural Expenses	15,00,000
6	Fixed Deposit for 5 Years	15,00,000
7	Reserve Created for New Vehicle	20,00,000

Taxation of Charitable Institutions



EXAMPLES

E	Particulars	Rupees
1	Voluntary Contribution	90,00,000
2	Building Construction Receipts	1.50,00,000
3	Interest Accrued But Not Received	20,00,000
4	Expenses on Objects	60,00,000
5	Corpus Donation to Trust	10,00,000
6	Building Construction WIP	1.00,00,000
7	Construction Contractor – No TDS	20,00,000
8	Building Construction Advance	10,00,000



Procedural Requirements

Eligibility for claim of exemption:

Section 12A

1. Registration – Section 12A(1)(ac)
2. Audit – Section 12A(1)(b)
3. ITR – Section 12A(1)(ba)



Procedural Requirements

Origin:

The Finance (No. 2) Act, 2020

Enactment:

**The Taxation and Other Laws
(Relaxation and Amendment of
Certain Provisions) Act, 2020**

New Law on Registration



FM in Budget Speech, 2020

- *Further, in order to claim the tax exemption, the charity institutions have to be registered with the Income Tax Department. In the past, the 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 the new charity institution which is yet to start their charitable activities, I propose to allow them provisional registration for three years.”*

Procedural Requirements



- Notification no. 19/2021 dated 26/03/2021
 - **MINISTRY OF FINANCE**
 - **(Department of Revenue)**
- **(CENTRAL BOARD OF DIRECT TAXES)**
 - **NOTIFICATION**
 - **G.S.R. 212(E), the 26th March, 2021**
 - **INCOME-TAX**



Procedural Requirements

Key objectives of new registration process:

- 1. Need improvement with the advent of technology and removal of practical difficulty in obtaining registration before actually starting the activities.
- 2. To make the process completely electronic under which a 16 digit Unique Registration Number (URN) to all new and existing charity institutions.
- 3. Registration for exemption should be for a period not exceeding five years at one time.



Procedural Requirements

Key objectives of new registration process:

- 4. To ensure that conditions of registration are adhered to for want of continuance of exemption.
- 5. For having a non-adversarial regime and not conducting roving inquiry in the affairs of the exempt entities on day-to-day basis.
- 6. To facilitate the registration of the new charity institution which is yet to start their activities, to allow **provisional registration for three years.**
- 7. To cross-check claim of donation by donor

New Law on Registration



- New Procedure for Registration is Applicable from April 1, 2021
- Relevant Sections
12A and 12AB
- Relevant Rules
17A
- Relevant Forms
10A and 10AB

New Law on Registration



(i) where the trust or institution is registered under section 12A [as it stood immediately before its amendment by the Finance (No. 2) Act, 1996 or under section 12AA, [as it stood immediately before its amendment by the Finance Act, 2020]

Application: *within three months from the date on which this clause has come into force;*

Form: 10AB

Approval : Three Months from Application Month End

New Law on Registration



(ii) *where the trust or institution is registered under section 12AB and the period of the said registration is due to expire, **Form 10A***

Application: *at least six months prior to expiry of the said period;*

Form: 10A

Approval :

Six Months from Application Month End

New Law on Registration



(iii) *where the trust or institution has been provisionally registered under section 12AB,*

Application: *at least six months prior to expiry of period of the provisional registration or within six months of commencement of its activities, whichever is earlier;*

Form: 10A

Approval :

Six Months from Application Month End

New Law on Registration



(iv) where registration of the trust or institution has become inoperative due to the first proviso to sub-section (7) of section 11,

Application: *at least six months prior to the commencement of the assessment year from which the said registration is sought to be made operative;*

Form: 10A

Approval :

Six Months from Application Month End

New Law on Registration



(v) where the trust or institution has adopted or undertaken modifications of the objects which do not conform to the conditions of registration,

Application: *within a period of thirty days from the date of the said adoption or modification;*

Form: 10A

Approval :

Six Months from Application Month End

New Law on Registration



(vi) *in any other case,*

Application: *at least one month prior to the commencement of the previous year relevant to the assessment year from which the said registration is sought,*

Form 10AB

Approval :

One Month from Application Month End

New Law on Registration



The application be accompanied by:

- (a) *where the applicant is created, under an instrument, self-certified copy of such instrument creating or establishing the applicant;*
- (b) *where the applicant is created, otherwise than under an instrument, copy of the document evidencing the creation of the applicant;*
- (c) *copy of registration with Registrar of Companies or of Firms and Societies or of Public Trusts.*

New Law on Registration



- *(d) self-certified copy of registration under Foreign Contribution (Regulation) Act, 2010(42 of 2010), if so registered*
- *(e) self-certified copy of existing order granting registration under section 12A / 12AA / 12AB*
- *(f) self-certified copy of order of rejection of application for grant of registration under section 12A or section 12AA or section 12AB, as the case may be, if any;*

New Law on Registration



- *(g) where the applicant has been existence during any year or years prior to the financial year in which the application for registration is made, self-certified copies of the annual accounts of the applicant relating to such prior year or years (not being more than three years immediately preceding the year in which the said application is made) for which such accounts have been made up;*

New Law on Registration



- *(h) where a business undertaking is held by the applicant as per the provisions of sub-section (4) of section 11 and the applicant has been in existence during any year or years prior to the financial year in which the application for registration is made, self-certified copies of the annual accounts of such business undertaking relating to such prior year or years (not being more than three years immediately preceding the year in which the said application is made) for which such accounts have been made up and self-certified copy of the report of audit as per the provisions of section 44AB for such period;*

New Law on Registration



- *(i) where income of applicant includes profits and gains of business as per section 11 (4A) and the applicant has been in existence during any year/s prior to financial year in which the application is made, self-certified copies of the annual accounts of such business relating to such prior year or years (not being more than three years immediately preceding the year in which the said application is made) for which such accounts have been made up and self-certified copy of the report of audit as per the provisions of section 44AB for such period;*

New Law on Registration



- *(j) self-certified copy of the documents evidencing adoption or modification of the objects;*
- *(k) note on the activities of the applicant.*

New Law on Registration



Course of Action by Commissioner

Clause 12A(1)(ac) & Situation		Action
(i)	Registered on 1-4-2021	Register
(ii)	S 12AB Registration period Over	Call Info to check genuineness, all law complied. Decide: Allow or Reject with reasons
(iii)	S 12AB Provisional Registration period Over	
(iv)	Proviso to Section 11(7) apply	
(v)	Change in Objects	
(vi)	New & Not Covered Above	<u>Provisionally</u> Register

New Law on Registration



Form Nos. 10A or 10AB, as the case may be, shall be furnished electronically

- (i) under digital signature, if the return of income is required to be furnished under digital signature;*
- (ii) through electronic verification code in a case not covered under clause (i).*

To Be Verified by the person authorised to verify return of income u/s 140, as applicable to the applicant.

New Law on Registration



1. Where a trust or Institution has existing registration under section 12A or 12AA, the prescribed Form and timeline for applying for registration is Form No. 10A within 3 months from the April 1, 2021.
2. Where trust or institution is registered under section 12AB and the period of the said registration is due to expire, the prescribed Form and timeline for applying application for registration is Form No. 10AB at least 6 months prior to expiry.

New Law on Registration



3. Where trust or institution has been provisionally registered u/s 12AB, prescribed Form and timeline for applying is Form No. 10AB at least 6 months prior to expiry of period of the provisional registration / of commencement of its activities, whichever is earlier.
4. Where registration of the trust has become inoperative under first proviso to Sec. 11(7). Form and timeline for applying is Form No. 10AB at least 6 months prior to the commencement of A.Y. from which the said registration is sought to be made operative.

New Law on Registration



5. Where trust or institution has adopted or under modifications of the objects which do not conform to the conditions of registration, the prescribed Form and timeline for applying for registration is Form No. 10AB within a period of 30 days from the date of the said adoption or modification.
6. Any other case (including provisional registration), Prescribed Form and timeline for applying for registration is Form No. 10A, at least 1 month prior to the commencement of the PY relevant to A.Y. from which the said registration is sought, and such trust or institution is registered under section 12AB.

Deduction for Donations



Section 80G

Prefilled Returns

Statement of Donations

Procedure for Approval

New Law on Eligibility

Forms are Applicable:

Section 10(23C)

Section 35

Section 80G



New Law on Eligibility



- (i) FORM NO. 3CF | (See rules 5C, 5D, 5E and 5F) | Application for registration or approval
- (ii) FORM NO. 10A | (See rule 2C or 5CA or 11AA or 17A) | Application for registration or provisional registration or intimation or approval or provisional approval
- (iii) FORM NO. 10AB | (See rule 2C or 11AA or 17A) | Application for registration or approval

New Law on Eligibility



(iv) FORM NO. 10AD | (See rule 2C or 11AA or 17A) | Order for registration or approval or rejection or cancellation

(v) FORM No. 10BD | (See rule 18AB) | [e-Form] | Statement of particulars to be filed by reporting person under section 80G(5)(viii) and clause (i) to sub-section (1A) of section 35

(vi) FORM NO. 10BE | (See rule 18AB) | Certificate of donation under section 80G (5)(ix) and under clause (ii) to sub-section (1A) of section 35

Issues



Participants may raise



Thank You

it was a c. v. chitale & co, chartered accountants presentation

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