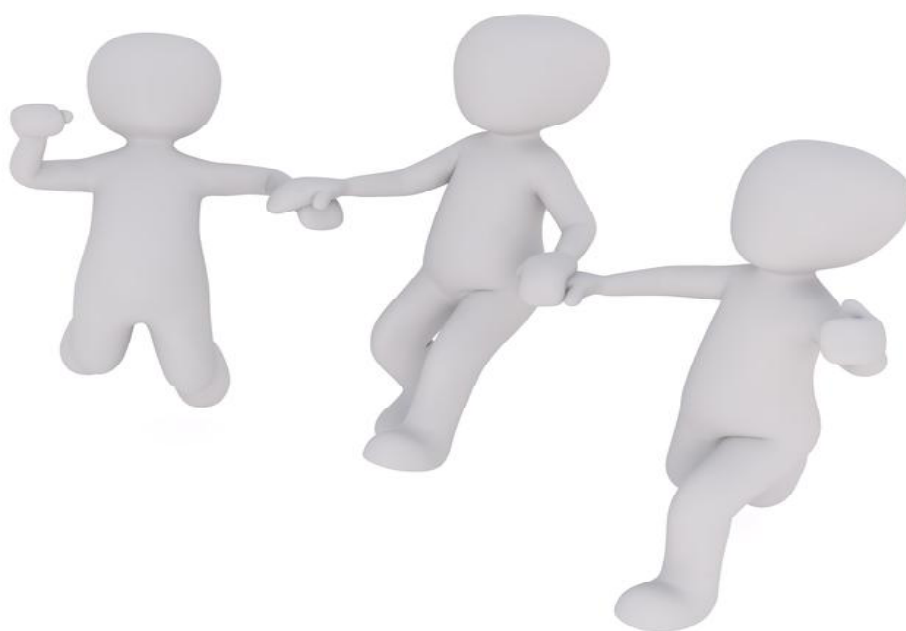


80G ISSUES

◆ Legal Series Vol. XV ◆ Issue 2

For private circulation only

OVERVIEW OF THE LAW PERTAINING TO SECTION 80G & FORM 10BD, 10BE



Standards & Norms

Resource support on NGO Governance, Accounting and Regulations



Authors* :

Adv. (Dr.) Manoj Fogla, Founder, SAGA LAW LLP

Dr. Sanjay Patra, Executive Director, FMSF

Suresh Kejriwal, Consultant

Sandeep Sharma, Director Program, FMSF

* The Authors can be contacted at mfogla@yahoo.com

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OVERVIEW OF THE 80G RELATED PROVISIONS

- 1.01** The deduction under section 80G is available for donation made to various specified funds and it covers donation made to any other fund or institution as covered by section 80G(2)(a)(iv).
- 1.02** Section 80G(5) provides that any institution or fund can be approved for the purpose of section 80G(2)(a)(iv), only if it is established in India for a charitable purpose and fulfils the following specified conditions:
- (a) Income derived by such fund or institution is exempt under section 11 or section 12 or section 10(23AA) or section 10(23C).
 - (b) The bye-laws shall not contain any provision for spending the income or assets of the organisation for purposes other than charitable purpose. However, under 80G(5B), it is provided that upto 5% of religious activity shall be permissible.
 - (c) The organization shall not be established for any particular religious community or caste. This condition will not apply to organizations established for scheduled tribes, scheduled castes, backward tribes, or for women and children.
 - (d) The organization shall maintain regular accounts of receipts and expenditure.
 - (e) The organisation should be properly registered under various forms of registration or should be a recognized university or an educational institution.
- 1.03** Section 80G is not applicable to donations in kind. Donations in the form of money only are eligible.
- 1.04** In the light of section 80G(5B), where it is provided that upto 5% of religious activity shall be permissible, an organisation can be charitable cum religious. Further, in the case of *CIT v. Dawoodi Bohara Jamat* [2014] 43 taxmann.com 243/222 Taxman 228 (Mag.) the Supreme Court of India also held that a trust carrying on

its objectives with dual purposes, i.e., charitable and religious purposes would not be denied registration under section 12AA.

- 1.05** The Finance Act, 2020 has posed an obligation to file a statement of donations by Non-Governmental Organizations ('NGO') in respect of donations received. Hence, by virtue of amendments by the Finance Act, 2020, deduction on account of donation under section 80G shall be allowed to the donor only on the basis of the statement filed by the donee trust or institution. The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 has deferred this requirement to furnish the statement or issue certificate of donations to 01-04-2021.
- 1.06** Any person donating more than Rs. 2,000/- in cash to a charitable organization shall not be eligible for the benefits under section 80G. Although there is no such bar on the NGOs to receive cash in excess of Rs. 2,000/-, the restriction imposed is only on donor i.e. the deduction of donation shall not be allowed if donation is made for more than Rs. 2,000/- in cash. It is also be noted that in such cases, NGO should not issue receipts which are certifying that donations are eligible for exemption u/s 80G.
- 1.07** A donor can get benefit on donations upto ten per cent of the gross total income (as reduced by any portion thereof on which income-tax is not payable under any provision of this Act and by any amount in respect of which the assessee is entitled to a deduction under any other provision of this Chapter). In other words, the maximum permissible qualifying amount under 80G shall be 10% of gross total income and further the deduction shall be limited to 50% of the qualifying amount unless the donation is made to specified funds eligible for 100% deduction.
- 1.08** Section 80G has been amended with effect from 1st April 2021 in respect of the requirements regarding approval, the period for which approval shall be granted, and the time within which the approval order has to be given by Principal Commissioner or Commissioner.

- 1.09** The category/circumstances for seeking approval can be classified in the following categories:
- (a) All Institutions approved under section 80G before 1st April 2021, i.e. all institutions approved under section 80G up to 31-03-2021.
 - (b) Provisional approval and the process of making the provisional approval into normal approval.
 - (c) Renewal of approval granted under new provisions of Section 80G where approval is due to expire.
- 1.10** All the existing approved entities need to apply for re-approval within three months from 1st April 2021 i.e. on or before 30th June 2021 (Extended to 31st March 2022) failing which registration granted under section 80G shall be withdrawn. No enquiry is proposed to be made and approvals shall be granted within a period of three months from the end of the month in which the application was made. The approval granted shall be valid for five years.
- 1.11** Provisional approval shall be granted for three years for new organisation and that too without any enquiry. However, in such cases application for normal approval to be made at least 6 months before the expiry of the period of the provisional approval or within 6 months of commencement of its activities, whichever is earlier. Normal approval shall be granted after such enquiry as provided in the act and the approval granted shall be valid for five years from the first of the assessment years for which it was provisionally registered.
- 1.12** The application for renewal of approval granted under amended act has to be made at least 6 months prior to expiry of the period of approval. The approval shall be granted after such enquiry as provided in the act and the approval granted shall be valid for five years.

SUMMARY OF NEW SCHEME FOR STATEMENT OF DONATION AND CERTIFICATE FOR DONATION

- 2.01** This is a major procedural shift made by Finance Act, 2020, now onwards the donor will find its entitlement to 80G only if the statement of donations is already uploaded against his PAN.

Finance Act, 2020 has inserted clauses (viii) and (ix) in section 80G(5) requiring trust or institution approved under section 80G to file a statement of donations received and also to issue the certificate to the donor. It has been further stated that deduction on account of donation under section 80G shall be allowed to the donor only on the basis of the statement filed by the donee trust or institution. Hence, if a statement of donations is not filed, the donor will not get a deduction for the donation under section 80G.

The Amendment Act, 2020 defers this requirement to furnish the statement of donation or issue a certificate of donations to 01-04-2021. Hence, donation received during the FY: 2021-22 shall be subject to new mechanism and therefore:

- a. Statement of particulars required to be furnished by reporting person shall be furnished in respect of each financial year, beginning with the financial year 2021-2022, in Form No. 10BD
- b. Form No. 10BD shall be furnished on or before the 31st May, immediately following the financial year in which the donation is received.
- c. The certificate referred to in sub-rule (6) in Form No 10BE is required to be furnished to the donor on or before the 31st May, immediately following the financial year in which the donation is received.

REQUIREMENT OF STATEMENT OF DONATION

- 3.01** **Section 80G(5)(viii)**- the institution or fund prepares such statement for such period as may be prescribed and deliver or cause to be delivered to the prescribed

income-tax authority or the person authorized by such authority such statement in such form and verified in such manner and setting forth such particulars and within such time as may be prescribed:

- 3.02** **Provided** that the institution or fund may also deliver to the said prescribed authority, a correction statement for rectification of any mistake or to add, delete or update the information furnished in the statement delivered under this sub-section in such form and verified in such manner as may be prescribed; and

REQUIREMENT OF CERTIFICATE OF DONATION

- 4.01** **Section 80G(5)(ix)** the institution or fund furnishes 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:

CLAIM OF 80G BENEFIT

- 5.01** **Explanation 2A of section 80G.**—For the removal of doubts, it is hereby declared that claim of the assessee for a deduction in respect of any donation made to an institution or fund to which the provisions of sub-section (5) apply, in the return of income for any assessment year filed by him, shall be allowed on the basis of information relating to said donation furnished by the institution or fund to the prescribed income-tax authority or the person authorized by such authority, subject to verification in accordance with the risk management strategy formulated by the Board from time to time.]
- 5.02** **80G(5A):** Where a deduction under this section is claimed and allowed for any assessment year in respect of any sum specified in sub-section (2), the sum in respect of which deduction is so allowed shall not qualify for deduction under any other provision of this Act for the same or any other assessment year.

BUDGET SPEECH AND MEMORANDUM 2020

6.01 While presenting the Union Budget for 2020-21 on 1st February 2020 the Finance Minister Nirmala Sitaraman acknowledged the role of charitable institutions in the society. Her budget speech for charitable organizations and new initiatives taken by the government is reproduced below-

Acknowledging the important role played by the charitable institutions in the society, the income of these institutions is fully exempt from taxation. Further, donation made to these institutions is also allowed as deduction in computing the taxable income of the donor.

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

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

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.

Memorandum: Filing of statement of donation by donee to cross-check claim of donation by donor It may further be mentioned that certain provisions of the Act provide that an exempt entity may accept donations or certain sum for utilisation towards their objects or activities in respect of which the payer, being the donor, gets deduction in computation of his income. At present, there is no reporting

obligation by the exempt entity receiving donation/ any sum in respect of such donation/ sum. With the advancement in technology, it is now feasible to standardise the process through which one-to-one matching between what is received by the exempt entity and what is claimed as deduction by the assessee. This standardisation may be similar to the provisions relating to the tax collection/ deduction at source, which already exist in the Act. Therefore, the entities receiving donation/ sum may be made to furnish a statement in respect thereof, and to issue a certificate to the donor/ payer and the claim for deduction to the donor/ payer may be allowed on that basis only. In order to 30 ensure proper filing of the statement, levy of a fee and penalty may also be provided in cases where there is failure to furnish the statement. Hence, it is proposed to amend relevant provisions of the Act to provide that,-

- (i) Similar to exemptions under clauses (1) and (23C), exemption under clause (46) of section 10 shall be allowed to an entity even if it is registered under section 12AA subject to the condition that the registration shall become inoperative. If the entity wishes to make it operative in the future, it will have to file an application and then it would not be entitled for deduction under clause (46) from the date on which the registration becomes operative.
- (ii) The registration under section 12AA would also become inoperative in case of an entity exempt under clause (23C) of section 10 as well, to have uniformity. The condition about making it operative again would also be similar to what is proposed for clause (46) of section 10.
- (iii) An entity approved, registered or notified under clause (23C) of section 10, section 12AA or section 35 of the Act, as the case may be, shall be required to apply for approval or registration or intimate regarding it being approved, as the case may be, and on doing so, the approval, registration or notification in respect of the entity shall be valid for a period not exceeding five previous years at one time calculated from 1st April, 2020.
- (iv) An entity already approved under section 80G shall also be required to apply for approval and on doing so, the approval, registration or notification

in respect of the entity shall be valid for a period not exceeding five years at one time.

- (v) Application for approval under section 80G shall be made to Principal Commissioner or Commissioner.
- (vi) An entity making fresh application for approval under clause (23C) of section 10, for registration under section 12AA, for approval under section 80G shall be provisionally approved or registered for three years on the basis of application without detailed enquiry even in the cases where activities of the entity are yet to begin and then it has to apply again for approval or registration which, if granted, shall be valid from the date of such provisional registration. The application of registration subsequent to provisional registration should be at least six months prior to expiry of provisional registration or within six months of start of activities, whichever is earlier.
- (vii) The application pending for approval, registration, as the case may be, shall be treated as application in accordance with the new provisions, wherever they are being provided for.
- (viii) Deduction under section 80G/ 80GGA to a donor shall be allowed only if a statement is furnished by the donee who shall be required to furnish a statement in respect of donations received and in the event of failure to do so, fee and penalty shall be levied.
- (ix) Similar to section 80G of the Act, deduction of cash donation under section 80GGA shall be restricted to Rs 2,000/- only. These amendments will take effect from 1st June, 2020

RELEVANT INCOME TAX RULES

- 7.01** The Central Board of Direct Taxes (CBDT) has notified the Income-tax (6th Amendment) Rules, 2021 on 26th March 2021 which shall come into force on the

1st day of April, 2021. New Rule 18AB has been inserted for furnishing of statement of particulars and certificate under clause (viii) and clause (ix) of sub-section (5) of section 80G or under sub-section (1A) of section 35.

SALIENT FEATURES OF THE RULE

- 8.01** The reporting person shall, while aggregating the amounts for determining the sums received for reporting in respect of any person, take into account all the donations of the same nature paid by that person during the financial year.
- 8.02** The value of the donation or the aggregated value of all the donations shall be proportionately attributed to all the persons, in a case where the donation is recorded in the name of more than one person, and where no proportion is specified by the donors, attribute equally to all the donors.
- 8.03** Form No. 10BD shall be furnished electronically under digital signature, if the return of income is required to be furnished under digital signature. In other cases, it shall be submitted through electronic verification code.
- 8.04** Form No. 10BD shall be verified by the person who is authorized to verify the return of income under section 140, as applicable to the assessee.
- 8.05** The reporting person shall furnish the certificate to the donor in Form No. 10BE specifying the amount of donation received during financial year from such donor.
- 8.06** The certificate is required to be furnished to the donor on or before the 31st May, immediately following the financial year in which the donation is received.
- 8.08** If there is any mistake in the aforesaid statement or any addition, deletion or updation is warranted in it, then the institution or fund may also deliver to the said prescribed authority, a correcting statement for rectification of the information furnished in the statement in prescribed form and verified in prescribed manner.

NOTES GIVEN BELOW THE FORM NO. 10BD

- 9.01** To read the instructions before filing the CSV,
- 9.02** Please convert the file to .csv before uploading.

- 9.03** Maximum number of rows that can be added in a CSV file is 25000, to add more records you need to file another Form 10BD.
- 9.04** Form 10BD is allowed to be filed multiple times for the same financial year.
- 9.05** The generation of Pre-Acknowledgement Numbers for manual issue of Form 10BE is available from F.Y 2022-23. If you are filing Form 10BD for F.Y 2021-22 you may leave the field 'Pre-Acknowledgement Number' blank in the CSV file uploaded.

FEES & PENALTIES

- 10.01** In case of delay in filing such statement or in furnishing certificate of donation a late fee of Rs. 200/- per day shall be applicable under newly inserted section 234G of the Income-tax Act.
- 10.02** Further, a penalty under section 271K, which shall not be less than Rs. 10,000/- and which may extend up to Rs. 1 lakh, shall be leviable if the trust or institution fails to file such statement or fails to furnish certificate of donation.

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 'ACCOUNTABILITY HOUSE', A-5, Sector 26, Noida-201 301
 Tel. : 91-120-4773200, website : www.fmsfindia.org
 e-mail : fmsf@fmsfindia.org

