

MAJOR CHANGES FOR NGOs IN BUDGET 2020



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INTRODUCTION

1.1.1 The Finance Bill 2020 has made far reaching changes pertaining to the registration and exemptions of charitable institutions. In this issue an overview of the major changes are discussed.

ALL EXISTING REGISTRATIONS TO BE REVALIDATED WITHIN 3 MONTHS

1.2.1 The Finance Bill 2020 has proposed sweeping changes with regard to the existing registrations under various sections of the Income Tax Act 1961. All the existing charitable and religious institutions are registered/approved under the following sections:

- Section 12A (organisations registered prior to 1996)
- Section 12AA
- Section 10(23C)
- Section 80G

Now they are required to apply for re-validation within three months from 1st June 2020. Registration so re-validated shall be valid only for 5 years. The application for the renewal of registration (after five years) needs to be submitted at least six months prior to the expiry of validity period.

1.2.2 The implications of the above amendment are as under :

- The Government will create a national register of all the charitable and religious institutions. Currently the registration is issued and recorded locally.
- The Income Tax Department shall issue an Unique Identification Number to all the charitable and religious institutions.
- The exercise of revalidation of all the charitable institutions will enable the Government to weed out all the inactive and defunct charitable institutions.
- The renewal of both 12A and 12AA, every five years, will provide an opportunity to withdraw the exemptions without going through the complicated cancellation provisions. It may be noted that an organisation

can be denied renewal even for violations under other laws as may be deemed material for the purpose of achieving its objectives. For instance if the renewal is denied under FCRA then one can expect that the renewal of registration under Income Tax laws may also be denied. In this context it may be noted that the phrase used is *“The law which are material for the purpose of achieving its objective”*, as per our understanding NGOs are subject to primarily three types of laws:

- Activity based laws like health license for running a hospital
- Operational laws like labour law
- Fiscal laws like FCRA for receiving foreign funds.

The amended law should primarily apply to the violation of activity based or fiscal law which has a direct effect on the activities, however, there is a need for clarity in this regard otherwise this provision could be misused and result in hardship to the NGOs.

REGISTRATION OF NEW ORGANISATIONS

1.3.1 The Finance Bill 2020 provides a provisional registration for three years for all new organisations applying for exemptions under various sections. The registration once granted shall be valid for three years from the Assessment Year from which the registration is sought. This provision seems to be towards rationalising the registration process. The organisations shall be entitled for provisional registration based on the documents and self declaration. Application for renewal of such new registration needs to be submitted at least six months prior to the expiry of validity period and registration so granted shall be valid for 5 years.

Additional issues under New Registration:

- As per the proposed provisions of registration, section 12A provides for time line of application of registration and section 12AB provides for process to be followed for granting registration as well as the period of validity of registration.
- Subsection (vi) of section 12AA provides that in cases of new registration, application shall be submitted, atleast one month prior to the commencement of the previous year relevant to the assessment year for which registration is

sought, meaning thereby new NGO will not be entitled to have the benefit of registration of section 12AB in the first year of operation.

SIMULTANEOUS BENEFIT UNDER TWO REGISTRATION WILL NOT BE ALLOWED

- 1.4.1** Under the prevailing law, an organisation registered under section 12AA can also avail approval under section 10(23C), thereby can have the option of availing tax exemptions under either of the two sections. The Finance Bill 2020 proposes that an organisation cannot simultaneously enjoy exemptions under two provisions. By amendment in Section 11 it is clarified that if the benefit of approval u/s.12A is opted for, then the other approval if any i.e. under section 10(23C), 10(46) shall become inoperative and vice-versa. Hence only one approval is effective at a time. It may be noted all organisation should apply for re-validation of either or 12A or 10(23C) or 10(46), otherwise if multiple application for re-validation are made then the 12A registration will become inoperative.
- 1.4.2** If anyone want to re-activate the other approval, then it can be done within six months prior to the commencement of the Assessment Year from which the said registration is sought to be operative and in such case the existing registration shall become inoperative. This provision shall apply to all existing and future institutions, for example all the existing institutions having registration under section 12A or 12AA or section 10(23C) or 10(46) shall have to opt for exemption either under section 11 or under 10.

AMENDMENT REGARDING AUDIT

- 1.5.1** Under the Section 12A(b) of the Income Tax Act there is a condition for audit in Form 10B & furnishing of the audit report along with return. However, there is no mention of the time limit by which audit report has to be obtained.
- 1.5.2** Now the Finance Bill 2020 has provided the time limit within which the audit report has to be obtained and the time limit so specified is in accordance with the specified date as per Sec. 44AB of the Income Tax Act, 1961, which provides :-

“specified date”, in relation to the accounts of the assessee of the previous year relevant to an assessment year, means date one month prior to [the due date for furnishing the return of income under sub-section (1) of section 139]”.

Hence it becomes mandatory that audit report needs to be obtained one month prior to due date i.e. before 30th September of every year, even if for some reason the filing of Audit Report is delayed. It is to be noted that due date is also proposed to be amended to 31st October, in place of 30th September.

AMENDMENT REGARDING SECTION 80G

- 1.6.1 Benefit to Donors:** The Finance Bill 2020 provides that the donee institution/fund has to submit the statement of donation received in such form & manner as may be prescribed & the benefit of 80G shall be available to donor on the basis of information relating to donation furnished by the corresponding institution/fund. This amendment is a welcome change and shall provide transparency and ease in availing the 80G benefit. Further the Income Tax Department can also maintain and track the 80G related transactions at the national level.
- 1.6.2 Validity & Re-Approvals:** Presently the approval u/s 80G is valid in perpetuity. The Finance Bill 2020 provides that all the existing 80G approvals needs to be revalidated and the application for the same should be submitted within three months from the date on which the proposed amendment come into force.
- 1.6.3** The re approvals will be valid for a period of 5 years and thereafter approval for 80G has to be again applied for atleast 6 months prior to the validity period.
- 1.6.4** New applications for approval under section 80G shall be approved only for a period of 3 years and thereafter approval for 80G needs to be re-applied atleast 6 months prior to the validity period. The subsequent approval shall be valid for five years.

EXPLANATORY NOTES IN MEMORANDUM TO FINANCE BILL 2020

Rationalisation of provisions relating to trust, institution and funds. Amendment of sub-section (7) of section 11 to allow entities holding registration under section 12A/12AA to apply for notification under clause (46) of section 10

Section 11 of the Act provides for grant of exemption in respect of income derived from property held under trust for charitable or religious purposes to the extent to which such income is applied or accumulated during the previous year for such purposes in accordance with the provisions contained in sections 11, 12, 12A, 12AA and 13 of the Act.

Sub-section (7) of section 11 of the Act, inserted by the Finance (No. 2) Act, 2014 with effect from 1st April, 2015, provides that where a trust or an institution has obtained registration under section 12AA [as it stood immediately before its proposed amendment] or under section 12A [as it stood immediately before its amendment by the Finance (No 2) Act, 1996] and said registration is in force for any previous year, then, exemption under section 10 [except under clauses (1) and (23C)] shall not be allowed.

This sub-section was inserted on the basis that the provisions contained in sections 11, 12, 12A, 12AA and 13 of the Act constitute a complete code and that once any trust or institution has voluntarily opted for it by obtaining registration required for exemption of income, it should comply with the conditions of such exemption and in case of violation of such condition, if its income or part thereof becomes ineligible for exemption, no other provision of the Act should operate so as to exclude such income or part thereof from total income and that whether income which needs to be applied or accumulated under section 11 of the Act should include income which is exempt under section 10 of the Act. It has been noticed that there is some anomaly by providing exclusion to institutions or fund registered under clause (23C) of section 10, but the same exclusion is not available to entities claiming exemption under clause (46) of section 10 which are established or constituted under a Central or State Act or by a Central or State Government. Such entities are, thus, not able to get notified under clause (46) of section 10 if they are holding registration under section 12A/12AA. The anomaly pointed out above, needs to be addressed. However, as the

provisions relating to charitable entities constitute a complete code and that once any trust or institution has voluntarily opted for it by obtaining the requisite registration, it flows that the conditions in relation thereto should be complied with and the option of switching at convenience should not be available. Accordingly, while request for exclusion of clause (46) may be acceded to for exemption thereunder even in those cases where registration under section 12AA or 12A remains in force, there should be only one mode of exemption available and also, that the switching may be allowed only once so that such switching is not done routinely and also it remains efficient to be administered.

Rationalising the process of registration of trusts, institutions, funds, university, hospital etc and approval in the case of association, university, college, institution or company etc

The present process of registration of trusts, institutions, funds, university, hospital etc under section 12AA or under sub-clauses (iv), (v), (vi) or (via) of clause (23C) of section 10, and approval of association, university, college, institution or company etc need improvement with the advent of technology and keeping in mind the practical issue of difficulty in obtaining registration/ approval/ notification before actually starting the activities.

It is also felt that the approval or registration or notification for exemption should also be for a limited period, say for a period not exceeding five years at one time, which would act as check to ensure that the conditions of approval or registration or notification are adhered to for want of continuance of exemption. This would in fact also be a reason for having a non-adversarial regime and not conducting roving inquiry in the affairs of the exempt entities on day to day basis, in general, as in any case they would be revisiting the concerned authorities for new registration before expiry of the period of exemption. This new process needs to be provided for both existing and new exempt entities.

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 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 NOTES TO THE FINANCE BILL 2020

Clause 7 of the Bill seeks to amend section 10 of the Income-tax Act relating to incomes not included in total income.

First proviso to clause (23C) of said section provides for application to be made in prescribed form and manner to the prescribed authority for exemption in respect of income of the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of said clause in a case where such income is applied or accumulated during the previous year for certain purposes in accordance with the relevant provisions.

It is proposed to substitute said proviso so as to provide that the exemption to such fund or trust or institution or any university or other educational institution or any hospital or other medical institution shall not be available unless it is approved under the proposed second proviso on an application made in the prescribed form and manner to the Principal Commissioner or Commissioner, for grant of approval where the fund or trust or institution or any university or other educational institution or any hospital or other medical institution is approved under the second proviso (as it stood before its amendment by the Finance Act, 2020), within three months from the date on which this clause has come into force; where the fund or trust or institution or any university or other educational institution or any hospital or other medical institution is approved and the period of such approval is set to expire, at least six months prior to expiry of said period; where the fund or trust or institution or any university or other educational institution or any hospital or other medical institution has been provisionally approved, at least six months prior to expiry of period of the provisional approval or within six months of commencement of its activities, whichever is earlier; in any other case, at least one month prior to commencement of the previous year relevant to the assessment year from which said registration is sought.

Second proviso to clause (23C) of said section thereof provides for the inquiry to be made by the prescribed authority before approving the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of said clause.

It is proposed to substitute the second proviso so as to provide that the Principal Commissioner or Commissioner, on receipt of an application made under the proposed first proviso, shall, where the application is under clause (i) of said proviso, pass an order in writing granting it approval for a period of five years; where the application is under clause (ii) or clause (iii) of said proviso, call for such documents or information from it or make such inquiries as he thinks necessary in order to satisfy himself about, the genuineness of activities of such fund or trust or institution or any university or other educational institution or any hospital or other medical institution 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 object; and after satisfying himself about the objects and the genuineness of its activities, under item (A), and compliance of the requirements under item (B), of sub-clause (a), pass an order in writing granting its approval for a period of five years; if he is not so satisfied, pass an order in writing rejecting such application and also cancelling its approval after affording it a reasonable opportunity of being heard; where the application is under clause (iv) of said proviso, pass an order in writing granting it approval provisionally for a period of three years from the assessment year from which the registration is sought, and send a copy of such order to the fund or trust or institution or any university or other educational institution or any hospital or other medical institution.

Eighth proviso to clause (23C) thereof, inter alia, provides for period for which a notification issued by Central Government under sub-clause (iv) or sub-clause (v) of said clause shall have effect.

It is proposed to substitute the eighth proviso so as to provide that the approval granted under the proposed second proviso shall apply in relation to the income of the fund or trust or institution or any university or other educational institution or any hospital or other medical institution, where the application is made under clause (i) of the first proviso, from the assessment year from which approval was earlier granted to it; where the application is made under clause (iii) of the first proviso, from the first of the assessment years for which it was provisionally approved; in any other case, from the assessment year immediately following the financial year in which such application is made.

Ninth proviso to clause (23C) of said section thereof, inter alia, provides for the period within which a notification under sub-clause (iv) or sub-clause (v) shall be issued or approval under sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) shall be granted or an order rejecting the application made in this behalf shall be passed.

It is proposed to substitute the ninth proviso so as to provide that the order under clause (i), sub-clause (b) of clause (ii) and clause (iii) of the proposed second proviso shall be passed, in such form and manner as may be prescribed, before expiry of period of three months, six months and one month respectively, calculated from the end of the month in which the application was received.

These amendments will take effect from 1st June, 2020.

The tenth proviso to the said clause provides that where the total income, of the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via), without giving effect to the provisions of the said sub-clauses, exceeds the maximum amount which is not chargeable to tax in any previous year, such trust or institution or university or other educational institution or hospital or other medical institution shall get its accounts audited in respect of that year by an accountant as defined in the Explanation below sub-section (2) of section 288 and furnish the report of such audit along with the return of income for the relevant assessment year.

It is proposed to amend the said proviso so as to provide that such trust or institution or university or other educational institution or hospital or other medical institution should get the accounts audited before the specified date referred to in section 44AB (i.e. one month prior to the due date for filing of return under sub-section (1) of section 139) and furnish the report of audit by that date.

This amendment will take effect from 1st April, 2020 and will, accordingly, apply in relation to the assessment year 2020-2021 and subsequent assessment years.

Sixteenth proviso to clause (23C) of said section thereof, inter alia, provides for the period within which application for exemption has to be made by the fund or trust or institution or any university or other educational institution or any hospital or other medical institution under the first proviso.

It is proposed to omit the said proviso.

It is further proposed to substitute the existing eighteenth proviso so as to provide that all applications made under the existing first proviso, pending before the Principal Commissioner or Commissioner, on which no order has been passed, shall be deemed

to be an application made under clause (iv) of the proposed first proviso on that date.

These amendments will take effect from 1st June, 2020.

Clause 9 of the Bill seeks to amend section 11 of the Income-tax Act relating to income from property held for charitable or religious purposes.

Sub-section (7) of said section provides that where a trust or an institution has been granted registration under clause (b) of sub-section (1) of section 12AA or has obtained registration at any time under section 12A [as it stood before its amendment by the Finance (No. 2) Act, 1996] and the said registration is in force for any previous year, then, nothing contained in section 10 [other than clause (1) and clause (23C) thereof] shall operate to exclude any income derived from the property held under trust from the total income of the person in receipt thereof for that previous year.

It is proposed to amend said sub-section so as to substitute the reference to “clause (b) of sub-section (1) of section 12AA” to “section 12AA, and section 12AB”.

It is further proposed to insert a proviso to said subsection so as to provide that the registration referred therein shall become inoperative from the date on which the trust or institution is approved under clause (23C), or is notified under clause (46) of section 10, as the case may be, or the date on which this proviso comes into force, whichever is later.

It is further proposed to insert another proviso to said sub-section so as to provide that the trust or institution, whose registration has become inoperative under the proposed first proviso, may apply to get its registration operative under proposed section 12AB subject to the condition that on doing so, the approval under clause (23C) or notification under clause (46) of section 10, as the case may be, to such trust or institution shall cease to have any effect from the date on which the said registration becomes operative and thereafter, it would not be entitled to exemption under the respective clause.

These amendments will take effect from 1st June, 2020.

Clause 10 of the Bill seeks to amend section 12A of the Income-tax Act relating to conditions for applicability of sections 11 and 12.

Sub-section (1) of said section provides for the conditions to be fulfilled by any trust or institution subject to which exemption under sections 11 and 12 shall be available to it.

It is proposed to insert a new clause (ac) to the said sub-section so as to provide, notwithstanding anything contained in clauses (a), (aa) and (ab) of the said subsection, with condition that the trust or institution is registered under the proposed section 12AB on an application made by the person in receipt of the income in the prescribed form and manner to the Principal Commissioner or Commissioner, for registration of the trust or institution; where the trust or institution is registered under section 12A [as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996)] or under section 12AA, within three months from the date on which this clause has come into force; where the trust or institution is registered under section 12AB and the period of said registration is set to expire, at least six months prior to expiry of said period; where the trust or institution has been provisionally registered under section 12AB, 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; where registration of the trust or institution has become inoperative due to proviso to sub-section (7) of section 11, at least six months prior to commencement of the assessment year from which said registration is sought to be made operative; where the trust or institution has adopted or undertaken modifications of the objects which do not conform to the conditions of registration, within a period of thirty days from the date of said adoption or modification, in any other case, at least one month prior to commencement of the previous year relevant to the assessment year from which said registration is sought.

This amendment will take effect from 1st June, 2020.

It is further proposed to consequentially amend clause (b) of sub-section (1) of the said section so as to provide that such trust or institution should get the accounts audited by the accountant as defined in Explanation below sub-section (2) of section 288 before the specified date referred to in section 44AB (i.e. one month prior to the due date for filing of return under sub-section (1) of section 139) and furnish the report of such audit by that date.

This amendment will take effect from 1st April, 2020 and will, accordingly, apply in relation to the assessment year 2020-2021 and subsequent assessment years.

Sub-section (2) of said section provides that an application has been made on or after the 1st day of June, 2007, 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.

It is proposed to insert first proviso to said sub-section so as to provide that the provisions of sections 11 and 12 shall apply to a trust or institution, where the application is made under sub-clause (i) of proposed clause (ac) of sub-section (1), from the assessment year from which such trust or institution was earlier granted registration; sub-clause (iii) of proposed clause (ac) of sub-section (1), from the first of the assessment years for which it was provisionally registered.

It is proposed to amend the existing first and third proviso to sub-section (2) thereof so as to make reference of proposed new section 12AB.

This amendment will take effect from 1st June, 2020.

Clause 11 of the Bill seeks to amend section 12AA of the Income-tax Act relating to procedure for registration.

It is proposed to insert a new sub-section (5) to said section so as to provide that nothing contained in said section shall apply on or after the 1st day of April, 2021.

This amendment will take effect from 1st June, 2020.

Clause 12 of the Bill seeks to insert a new section 12AB in the Income-tax Act relating to procedure for fresh registration.

Sub-section (1) of the proposed section provides that the Principal Commissioner or Commissioner, on receipt of an application made under the proposed clause (ac) of sub-section (1) of section 12A, shall send a copy of order passed in writing, to the trust or institution, where the application is under sub-clause (i) of the said clause, registering the trust or institution for a period of five years; where the application is under sub-clause (ii), the sub-clause (iii), sub-clause (iv) or sub-clause (v) of said clause,—

- (i) call for such documents or information from the trust or institution or making such inquiries as he thinks necessary in order to satisfy himself about,—
 - (A) the genuineness of activities of the trust or institution; and

- (B) the compliance of such requirements of any other law for the time being in force by the trust or institution as are material for the purpose of achieving its object; and
- (ii) after satisfying himself about the objects of the trust or institution and the genuineness of its activities, under item (A), and compliance of the requirements under item (B), of sub-clause (i),—
 - (A) registering the trust or institution for a period of five years;
 - (B) if he is not so satisfied, pass an order in writing rejecting such application and also cancelling the registration of such trust or institution after affording a reasonable opportunity of being heard;
 - (C) where the application is under subclause (vi) of the said clause, provisionally registering the trust or institution for a period of three years from the assessment year from which the registration is sought.

Sub-section (2) of the proposed section provides that all applications, pending before the Principal Commissioner or Commissioner on which no order has been passed under clause (b) of sub-section (1) of section 12AA before the date on which this section will come into force, shall be deemed to be an application made under proposed sub-clause (vi) of clause (ac) of sub-section (1) of section 12A on that date. Sub-section (3) of the proposed section provides that the order under clause (a), sub-clause (ii) of clause (b) and clause (c) of sub-section (1) shall be passed, in such form and manner as may be prescribed, before the expiry of the period of three months, six months and one month respectively, calculated from the end of the month in which the application was received.

Sub-section (4) of the proposed section provides that where registration of a trust or an institution has been granted under clause (a) or clause (b) of sub-section (1) and subsequently, the Principal Commissioner or Commissioner is satisfied 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 or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution after affording a reasonable opportunity of being heard.

Sub-section (5) of the proposed section provides that without prejudice to the provisions of sub-section (4), where registration of a trust or an institution has been granted under clause (a) or clause (b) of sub-section (1) and subsequently, it is noticed that,—

- (a) 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; or
- (b) the trust or institution has not complied with the requirement of any other law, as referred to in item (B) of sub-clause (i) of clause (b) of sub-section (1), 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, then, the Principal Commissioner or the Commissioner may, by an order in writing, after affording a reasonable opportunity of being heard, cancel the registration of such trust or institution.

This amendment will take effect from 1st June, 2020.

TEXT OF AMENDED SECTIONS UNDER FINANCE BILL 2020**Amendment of section 10**

7. In section 10 of the Income-tax Act,—

(I) in clause (23C),—

(A) with effect from the 1st day of June, 2020,—

(a) for the first and second provisos, the following provisos shall be substituted, namely:—

“Provided that the exemption to the fund or trust or institution or university or other educational institution or hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) under the respective sub-clauses shall not be available to it unless such fund or trust or institution or university or other educational institution or hospital or other medical institution makes an application in the prescribed form and manner to the Principal Commissioner or Commissioner, for grant of approval,—

- (i) where such fund or trust or institution or university or other educational institution or hospital or other medical institution is approved under the second proviso [as it stood immediately before its amendment by the Finance Act, 2020], within three months from the date on which this clause has come into force;
- (ii) where such fund or trust or institution or university or other educational institution or hospital or other medical institution is approved and the period of such approval is due to expire, at least six months prior to expiry of the said period;
- (iii) where such fund or trust or institution or university or other educational institution or hospital or other medical institution has been provisionally approved, at least six months prior to expiry of the period of the provisional approval or within six months of commencement of its activities, whichever is earlier;
- (iv) in any other case, at least one month prior to the commencement of the previous year relevant to the assessment year from which the said approval is sought,

and the said fund or trust or institution or university or other educational institution or hospital or other medical institution is approved under the second proviso:

Provided further that the Principal Commissioner or Commissioner, on receipt of an application made under the first proviso, shall,—

- (i) where the application is made under clause (i) of the said proviso, pass an order in writing granting approval to it for a period of five years;
- (ii) where the application is made under clause (ii) or clause (iii) of the said proviso,—
 - (a) call for such documents or information from it or make such inquiries as he thinks necessary in order to satisfy himself about-
 - (A) the genuineness of activities of such fund or trust or institution or university or other educational institution or hospital or other medical institution; and
 - (B) 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; and
 - (b) after satisfying himself about the objects and the genuineness of its activities under item (A), and compliance of the requirements under item (B), of sub-clause (a),—
 - (A) pass an order in writing granting approval to it for a period of five years;
 - (B) if he is not so satisfied, pass an order in writing rejecting such application and also cancelling its approval after affording it a reasonable opportunity of being heard;
- (iii) where the application is made under clause (iv) of the said proviso, pass an order in writing granting approval to it provisionally for a period of three years from the assessment year from which the registration is sought, and send a copy of such order to the fund or trust or institution or university or other educational institution or hospital or other medical institution:”;
- (b) for the eighth and ninth provisos, the following provisos shall be substituted, namely:—

“Provided also that any approval granted under the second proviso shall apply in relation to the income of the fund or trust or institution or

university or other educational institution or hospital or other medical institution,—

- (i) where the application is made under clause (i) of the first proviso, from the assessment year from which approval was earlier granted to it;
- (ii) where the application is made under clause (iii) of the first proviso, from the first of the assessment years for which it was provisionally approved;
- (iii) in any other case, from the assessment year immediately following the financial year in which such application is made:

Provided also that the order under clause (i), sub-clause (b) of clause (ii) and clause (iii) of the second proviso shall be passed, in such form and manner as may be prescribed, before expiry of the period of three months, six months and one month, respectively, calculated from the end of the month in which the application was received:";

- (B) in the tenth proviso, for the words and figures "section 288 and furnish along with the return of income for the relevant assessment year", the words, figures and letters "section 288 before the specified date referred to in section 44AB and furnish by that date" shall be substituted;
- (C) with effect from the 1st day of June, 2020,—
 - (a) the sixteenth proviso shall be omitted;
 - (b) for the eighteenth proviso, the following proviso shall be substituted, namely:—

"Provided also that all applications made under the first proviso [as it stood before its amendment by the Finance Act, 2020] pending before the Principal Commissioner or Commissioner, on which no order has been passed before the date on which the first proviso has come into force, shall be deemed to be an application made under clause (iv) of the first proviso on that date:";

Amendment of section 11.

- 9. In section 11 of the Income-tax Act, in sub-section (7), with effect from the 1st day of June, 2020,—
 - (a) for the words, brackets, letters and figures "under clause (b) of sub-

section (1) of section 12AA”, the words, figures and letters “under section 12AA or section 12AB” shall be substituted;

- (b) for the words, brackets, figures and letter “clause (1) and clause (23C)”, the words, brackets, figures and letter “clause (1), clause (23C) and clause (46)” shall be substituted;
- (c) the following provisos shall be inserted, namely:—

“Provided that such registration shall become inoperative from the date on which the trust or institution is approved under clause (23C) of section 10 or is notified under clause (46) of the said section, as the case may be, or the date on which this proviso has come into force, whichever is later:

Provided further that the trust or institution, whose registration has become inoperative under the first proviso, may apply to get its registration operative under section 12AB subject to the condition that on doing so, the approval under clause (23C) of section 10 or notification under clause (46) of the said section, as the case may be, to such trust or institution shall cease to have any effect from the date on which the said registration becomes operative and thereafter, it shall not be entitled to exemption under the respective clauses.”.

Amendment of section 12A.

10. In section 12A of the Income-tax Act,—

(I) in sub-section (1),—

(A) after clause (ab), the following clause shall be inserted with effect from the 1st day of June, 2020, namely:—

“(ac) notwithstanding anything contained in clauses (a) to (ab), the person in receipt of the income has made an application in the prescribed form and manner to the Principal Commissioner or Commissioner, for registration of the trust or institution,—

- (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] within three months from the date on which this clause has come into force;
- (ii) where the trust or institution is registered under section 12AB and

- the period of the said registration is due to expire, at least six months prior to expiry of the said period;
- (iii) where the trust or institution has been provisionally registered under section 12AB, 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;
 - (iv) where registration of the trust or institution has become inoperative due to the first proviso to sub-section (7) of section 11, at least six months prior to the commencement of the assessment year from which the said registration is sought to be made operative;
 - (v) where the trust or institution has adopted or undertaken modifications of the objects which do not conform to the conditions of registration, within a period of thirty days from the date of the said adoption or modification;
 - (vi) in any other case, at least one month prior to the commencement of the previous year relevant to the assessment year from which the said registration is sought, and such trust or institution is registered under section 12AB;”
- (B) in clause (b), for the words “and the person in receipt of the income furnishes along with the return of income for the relevant assessment year”, the words, figures and letters “before the specified date referred to in section 44AB and the person in receipt of the income furnishes by that date” shall be substituted;
- (II) in sub-section (2), with effect from the 1st day of June, 2020,—
- (A) in the first proviso, for the words “Provided that”, the following shall be substituted, namely:—

“Provided that the provisions of sections 11 and 12 shall apply to a trust or institution, where the application is made under—

 - (a) sub-clause (i) of clause (ac) of sub-section (1), from the assessment year from which such trust or institution was earlier granted registration;
 - (b) sub-clause (iii) of clause (ac) of sub-section (1), from the first of the assessment years for which it was provisionally registered: Provided further that”;
 - (B) in the second proviso, for the words “Provided further”, the words “Provided also” shall be substituted;

(C) in the first and third provisos, after the word, figures and letters “section 12AA”, the words, figures and letters “or section 12AB” shall be inserted.

Amendment of section 12AA.

11. In section 12AA of the Income-tax Act, after sub-section (4), the following sub-section shall be inserted with effect from the 1st day of June, 2020, namely:—

“(5) Nothing contained in this section shall apply on or after the 1st day of June, 2020.”

Insertion of new section 12AB.

Procedure for fresh registration

12. After section 12AA of the Income-tax Act, the following section shall be inserted with effect from the 1st day of June, 2020, namely:—

“12AB. (1) The Principal Commissioner or Commissioner, on receipt of an application made under clause (ac) of sub-section (1) of section 12A, shall,—

- (a) where the application is made under sub-clause (i) of the said clause, pass an order in writing registering the trust or institution for a period of five years;
- (b) where the application is made under sub-clause (ii) or sub-clause (iii) or sub-clause (iv) or sub-clause (v) of the said clause,—
 - (i) call for such documents or information from the trust or institution or make such inquiries as he thinks necessary in order to satisfy himself about—
 - (A) the genuineness of activities of the trust or institution; and
 - (B) the compliance of such requirements of any other law for the time being in force by the trust or institution as are material for the purpose of achieving its objects; and
 - (ii) after satisfying himself about the objects of the trust or institution and the genuineness of its activities under item (A), and compliance

- of the requirements under item (B), of sub-clause (i),—
- (A) pass an order in writing registering the trust or institution for a period of five years;
 - (B) if he is not so satisfied, pass an order in writing rejecting such application and also cancelling its registration after affording a reasonable opportunity of being heard;
- (c) where the application is made under sub-clause (vi) of the said clause, pass an order in writing provisionally registering the trust or institution for a period of three years from the assessment year from which the registration is sought, and send a copy of such order to the trust or institution.
- (2) All applications, pending before the Principal Commissioner or Commissioner on which no order has been passed under clause (b) of sub-section (1) of section 12AA before the date on which this section has come into force, shall be deemed to be an application made under sub-clause (vi) of clause (ac) of sub-section (1) of section 12A on that date.
- (3) The order under clause (a), sub-clause (ii) of clause (b) and clause (c), of sub-section (1) shall be passed, in such form and manner as may be prescribed, before expiry of the period of three months, six months and one month, respectively, calculated from the end of the month in which the application was received.
- (4) Where registration of a trust or an institution has been granted under clause (a) or clause (b) of sub-section (1) and subsequently, the Principal Commissioner or Commissioner is satisfied 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 or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution after affording a reasonable opportunity of being heard.
- (5) Without prejudice to the provisions of sub-section (4), where registration of a trust or an institution has been granted under clause (a) or clause (b) of sub-section (1) and subsequently, it is noticed that-
- (a) 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; or

- (b) the trust or institution has not complied with the requirement of any other law, as referred to in item (B) of sub-clause (i) of clause (b) of sub-section (1), 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, then, the Principal Commissioner or the Commissioner may, by an order in writing, after affording a reasonable opportunity of being heard, cancel the registration of such trust or institution.”.

Amendment of section 80G.

33. In section 80G of the Income-tax Act, with effect from the 1st day of June, 2020-

(i) in sub-section (5),—

(a) in clause (vi), for the words “approved by the Commissioner in accordance with the rules made in this behalf; and”, the words “approved by the Principal Commissioner or Commissioner;” shall be substituted;

(b) after sub-clause (vii), the following shall be inserted, namely:—

“(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 authorised 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:

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

(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:

Provided that the institution or fund referred to in clause (vi) shall make an application in the prescribed form and manner to the Principal Commissioner or Commissioner, for grant of approval,-

- (i) where the institution or fund is approved under clause (vi) [as it stood immediately before its amendment by the Finance Act, 2020], within three months from the date on which this proviso has come into force;
- (ii) where the institution or fund is approved and the period of such approval is due to expire, at least six months prior to expiry of the said period;
- (iii) where the institution or fund has been provisionally approved, at least six months prior to expiry of the period of the provisional approval or within six months of commencement of its activities, whichever is earlier;
- (iv) in any other case, at least one month prior to commencement of the previous year relevant to the assessment year from which the said approval is sought:

Provided further that the Principal Commissioner or Commissioner, on receipt of an application made under the first proviso, shall,-

- (i) where the application is made under clause (i) of the said proviso, pass an order in writing granting it approval for a period of five years;
- (ii) where the application is made under clause (ii) or clause (iii) of the said proviso,—
 - (a) call for such documents or information from it or make such inquiries as he thinks necessary in order to satisfy himself about—
 - (A) the genuineness of activities of such institution or fund; and
 - (B) the fulfilment of all the conditions laid down in clauses (i) to (v); and
 - (b) after satisfying himself about the genuineness of activities under item (A), and the fulfilment of all the conditions under item (B), of sub-clause (a),—

- (A) pass an order in writing granting it approval for a period of five years;
 - (B) if he is not so satisfied, pass an order in writing rejecting such application and also cancelling its approval after affording it a reasonable opportunity of being heard;
- (iii) where the application is made under clause (iv) of the said proviso, pass an order in writing granting it approval provisionally for a period of three years from the assessment year from which the registration is sought, and send a copy of such order to the institution or fund:

Provided also that the order under clause (i), sub-clause (b) of clause (ii) and clause (iii) of the first proviso shall be passed in such form and manner as may be prescribed, before expiry of the period of three months, six months and one month, respectively, calculated from the end of the month in which the application was received:

Provided also that the approval granted under the second proviso shall apply to an institution or fund, where the application is made under—

- (a) clause (i) of the first proviso, from the assessment year from which approval was earlier granted to such institution or fund;
 - (b) clause (iii) of the first proviso, from the first of the assessment years for which such institution or fund was provisionally approved;
 - (c) in any other case, from the assessment year immediately following the financial year in which such application is made.”;
- (ii) in sub-section (5D), after Explanation 2, the following Explanation shall be inserted, namely:—

“Explanation 2A.— 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) applies, 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 authorised by such authority, subject to

verification in accordance with the risk management strategy formulated by the Board from time to time.”;

- (iii) after sub-section (5D), the following sub-section shall be inserted, namely:–

“(5E) All applications, pending before the Commissioner on which no order has been passed under clause (vi) of sub-section (5) before the date on which this sub-section has come into force, shall be deemed to be applications made under clause (iv) of the first proviso to sub-section (5) on that date.”

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