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MAJOR AMENDMENTS FOR NPOs IN BUDGET 2019

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A joint initiative of fmsf VANI

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OVERVIEW OF THE KEY CHANGES FOR NPOS IN BUDGET 2019

1.1.1 The Finance (No. 2) Bill 2019 has brought some changes which will have a major effect on the charitable and religious organisations.

1.1.2 The provision relating to registration under section 12AA (the section under which registration for availing tax exemptions is granted to charitable and religious organisations) have been amended to provide extensive powers to The Commissioner of Income Tax (Exemptions) to reject an application for registration even if non-compliance or violation of some other law is found. The CIT(E) shall examine and satisfy himself on the compliance of the trust or institution to requirements of any other law which is material for the purpose of achieving its objects.

1.1.3 The above amendment shall have far reaching consequences as the CIT(E) has been empowered to look into compliances under other statute (which normally is not his/her mandate). For example, if an NPO is having more than 20 staff at the time of registration and has not been registered under labour laws, the CIT(E) may refuse to register the NGO U/S 12AA till labour laws are complied with. Another example would be if FCRA registration is not renewed for some reason, it may result in cancellation of 12AA registration as well.

1.1.4 The Finance (No. 2) Bill 2019 has also inserted a new section 194N to the Income Tax Act regarding Tax Deduction at Source (TDS) against cash withdrawal from bank account. The amended provision proposes a 2% TDS on cash withdrawal above Rs. 1 crore in a year. The limit of Rs.1.00 crore is on the basis of each Permanent Account Number (PAN) and not for each bank account. In other words, an organisation cannot withdraw more than Rs. 1 crore from all the bank accounts put together. It is not known how the banks will monitor the cash withdrawal in case of NGOs having bank accounts at various places in various banks. In any case, this provision will create challenges and hardship particularly in the cases of large NGOs where there are a number of branches and cash withdrawal is necessary to incur field expenses in remote areas.

1.1.5 Further, the Finance Minister has announced a path breaking proposal for the NPOs regarding accessing capital markets. This is just an announcement as of now. The law and provisions in this regard shall probably be announced in due course.

REGISTRATION AND CANCELLATION OF REGISTRATION U/S 12AA OF THE I TAX ACT,1961 OF THE TRUST OR INSTITUTION

1.2.1 The provision relating to registration under section 12AA (the section under which registration for availing tax exemptions is granted to charitable and religious organisations) have been amended to provide extensive power to The Commissioner of Income Tax (Exemptions) to reject an application for registration even if non-compliance or violation of some other law is found. The CIT(E) shall examine and satisfy himself on the compliance of the trust or institution to requirements of any other law which is material for the purpose of achieving its objects.

1.2.2 As per Proposed Finance (No.2) Bill, 2019 - Section 12AA of the Act prescribes for the manner of grating registration in case of trust or institution for the purpose of availing exemption in respect of its income under section 11 of the Act, subject to conditions contained under sections 11, 12, 12AA and 13.Section 12AA also provides for manner in which such registration can be cancelled. This section provides that cancellation of registration can be on two grounds:-

(a) The Principal Commissioner or the Commissioner is satisfied that activities of the exempt entity are not genuine or are not being carried out in accordance with its objects; and

(b) it is noticed that the activities of the exempt entity are being carried out in a manner that either whole or any part of its income would cease to be exempt.

In order to ensure that the trust or institution do not deviate from their objects, it is proposed to amend section 12AA of the Income-tax Act, so as to provide that,-

(i) at the time of granting the registration to a trust or institution, the Principal Commissioner or the Commissioner shall, inter alia, also satisfy himself about the compliance of the trust or institution to requirements of any other law which is material for the purpose of achieving its objects;

(ii) where a trust or an institution has been granted registration under clause (b) of sub-section (1) or has obtained registration at any time under section 12A and subsequently it is noticed that the trust or institution has violated requirements of any other law which was material for the purpose of achieving its objects, and the order, direction or decree, by whatever name called, holding that such violation has occurred, has either not been disputed or has attained finality, the Principal Commissioner or Commissioner may, by an order in writing, cancel the registration of such trust or institution after affording a reasonable opportunity of being heard.

1.2.3 The proposed amendment is as under:

In section 12AA of the Income-tax Act, with effect from the 1st day of September, 2019,—

(*I*) in sub-section (*1*),—

(*i*) for clause (*a*), the following clause shall be substituted, namely:—

"(*a*) call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about,—

(*i*) the genuineness of activities of the trust or institution; and

(*ii*) 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 may also make such inquiries as he may deem necessary in this behalf; and";

(*ii*) in clause (b), after the words "genuineness of its activities", the words, brackets, figures and letter "as required under sub-clause (i) of clause (a) and compliance of the requirements under sub-clause (ii) of the said clause" shall be inserted;

(*II*) in sub-section (4), for the portion beginning with the words "the activities of the trust or the institution" and ending with the words "cancel the registration of such trust or institution", the following shall be substituted, namely:—

"(*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 sub-clause (ii) of clause (a) 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, cancel the registration of such trust or institution".

1.2.4 The text of the existing section 12AA is provided in ***Anneuxre 1***. The proposed amendment shall have far reaching impact and consequences both at the time of granting registration and for cancellation of registration.

1.2.5 Normally applications for registration are made either at the time of incorporation of the organisation or sometimes after a gap of 3-4 years. As per the proposed amendment , at the time of granting registration , the CIT(E) shall examine and satisfy himself on the compliance of the trust or institution to requirements of any other law which is material for the purpose of achieving its objects meaning thereby if the trust is having more than 20 staff at the time of registration and has not been registered with labour laws, the CIT(E) may refuse to register the NGO U/S 12AA till compliance of labour laws are done or if it is submitted to the satisfaction of CIT Exemption that labour laws are not applicable to the concerned NGO.

1.2.6 Similarly the CIT(E) has been given the power to cancel the registration if it is found that the trust or institution has violated any other law which was material for the purpose of achieving its objects, and the order, direction or decree, by whatever name called, holding that such violation has occurred, has either not been disputed or has attained finality. It is very subjective and debatable to establish whether any violation was material for the purpose of achieving its objects.

1.2.7 Hence the proposed amendment gives subjective and extensive powers to the CIT(E) to be satisfied about the compliance or violation of compliance of any law which he/she thinks can be material for the organisation in achieving its objectives.

For example, on cancellation of FCRA registration, CIT(E) can resort to the proposed amended section and can issue a show-cause notice for cancellation of registration

U/S 12 AA of Income Tax Act whereas the fact remains that not being eligible to receive foreign fund may not be the reason which can be material for the NGO for the purpose of achieving its objectives. The concerned NGO can raise funds from local sources for implementing the program which is legally permissible.. However this may lead to unwarranted litigations.

TDS ON CASH WITHDRAWAL TO DISCOURAGE CASH TRANSACTION

1.3.1 The Finance (No. 2) Bill 2019 has also inserted a new section 194N to the Income Tax Act, 1061 regarding Tax Deduction at Source (TDS) against cash withdrawal from bank account.

1.3.2 As per Proposed Finance (No.2) Bill, 2019 - In order to further discourage cash transactions and move towards less cash economy, it is proposed to insert a new section 194N in the Act to provide for levy of TDS at the rate of two per cent on cash payments in excess of one crore rupees in aggregate made during the year, by a banking company or cooperative bank or post office, to any person from an account maintained by the recipient.

1.3.3 It is proposed to exempt payment made to certain recipients, such as the Government, banking company, cooperative society engaged in carrying on the business of banking, post office, banking correspondents and white label ATM operators, who are involved in the handling of substantial amounts of cash as a part of their business operation, from the application of this provision. It is proposed to empower the Central Government to exempt other recipients, through a notification in the official Gazette in consultation with the Reserve Bank of India.

1.3.4 The amended provision proposes a 2% TDS on cash withdrawal above Rs. 1 crore in a year. The limit of Rs.1.00 crore is on the basis of each Permanent Account Number (PAN) and not for each bank account. In other words, an organisation cannot withdraw more than Rs. 1 crore from all the bank accounts put together. It is not known how the banks will monitor the cash withdrawal in case of NGOs having bank accounts at various places in different banks. In any case, this provision will create challenges and hardship, particularly, in the cases of large NGOs where there are a number of branches and cash withdrawal is necessary to incur field expenses in remote areas.

PROPOSED LAW FOR NGOs ACCESING STOCK MARKETS

1.4.1 Further, the Finance Minister has announced a path breaking proposal for the NPOs regarding accessing capital markets.

> *"It is time to take our capital markets closer to the masses and meet various social welfare objectives related to inclusive growth and financial inclusion. I propose to initiate steps towards creating an electronic fund raising platform – a social stock exchange - under the regulatory ambit of Securities and Exchange Board of India (SEBI) for listing social enterprises and voluntary organizations working for the realization of a social welfare objective so that they can raise capital as equity, debt or as units like a mutual fund."*

This is just an announcement the law and provisions in this regard shall be declared in times to come.

Annexure 1

TEXT OF SECTION 12AA OF THE INCOME TAX ACT 1961

Procedure for registration.

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

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

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

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

  (ii) shall, if he is not so satisfied, pass an order in writing refusing to register the trust or institution, and a copy of such order shall be sent to the applicant :

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

[(1A) All applications, pending before the 25[Principal Chief Commissioner or] Chief Commissioner on which no order has been passed under clause (b) of sub-section (1) before the 1st day of June, 1999, shall stand transferred on that day to the [Principal Commissioner or] Commissioner and the [Principal Commissioner or] Commissioner may proceed with such applications under that sub-section from the stage at which they were on that day.]

(2) Every order granting or refusing registration under clause (b) of sub-section (1) shall be passed before the expiry of six months from the end of the month in which the application was received under clause (a) [or clause (aa) [or clause (ab)] of sub-section (1)] of section 12A.]

[(3) Where a trust or an institution has been granted registration under clause (b) of sub-section (1) [or has obtained registration at any time under section 12A [as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996)]] 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:

Provided that no order under this sub-section shall be passed unless such trust or institution has been given a reasonable opportunity of being heard.]

[(4) Without prejudice to the provisions of sub-section (3), where a trust or an institution has been granted registration under clause (b) of sub-section (1) or has obtained registration at any time under section 12A [as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996)] and subsequently it is noticed that the activities of the trust or the institution are being carried out in a manner that the provisions of sections 11 and 12 do not apply to exclude either whole or any part of the income of such trust or institution due to operation of sub-section (1) of section 13, then, the Principal Commissioner or the Commissioner may by an order in writing cancel the registration of such trust or institution:

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

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