

Exemption U/s. 11 & 10(23C) Charitable/Religious Trusts

An Analysis of Proposed Amendments

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Introduction: The Finance Bill, 2020 has proposed to make substantial changes regarding provisions for granting exemptions to the charitable / religious trusts, institutions etc. U/s. 11 of the Income Tax Act, 1961 (Act). The substantial amendments are also proposed in respect of exemption U/s.10(23C) which are granted to the trusts, institutions, universities, educational institutions, hospitals, other medical institutions etc.

Under the new regime, the amendments are proposed in section 10(23C), section 11, section 12A, section 12AA. A new section 12AB is also proposed to be introduced. All these amendments are proposed to be made w.e.f. 01st June, 2020.

In this article an attempt has been made to have an overview of the proposed changes.

1. New Provisions / Procedure For Registration / Approval

- i. Amendment of section 10
- ii. Amendment of section 11
- iii. Amendment of section 12A
- iv. Amendment of section 12AA
- v. Insertion of new section 12AB

The registration to the charitable / religious trust, institutions etc. is presently given u/s. 12AA of the Income Tax Act ("Act"). Now, w.e.f. 01st June, 2020 it is proposed to make this section ineffective and to give registration under new section 12AB.

For institutions etc. approved under clauses (iv), (v), (vi) and (via) of section 10(23C), new provisions / procedure for approval has been

proposed, but the same is by way of proposed amendments in the section 10(23C) itself.

2. New Registration / Approval For Limited Period Of 5 Years Only

Presently, the registration U/s. 12AA and approval U/s. 10(23C) are given without any expiry period (though may be cancelled in specific circumstances). Now, under new provisions these are proposed to be given only for the limited period of 5 years (without any discretion in the hands of the authorities for any period less than 5 years etc.). On expiry of the aforesaid period the registration / approval may be re obtained.

3. Classification Of Applicants For Registration / Approval In Four Categories

The proposed amendments classifies the cases of applicants for approval / registration in to four category i.e., (i) already registered / approved under the existing law (ii) those whose registration / approval under new law is expired in 5 years (iii) those who have been given provisional registration under new law (for 3 years) and (iv) any other cases i.e., obviously fresh registration / approval applicants under new law. All applications under old law which will be pending as on the date of coming in to force of the amendment will be treated as fresh applications filed under the new law.

4. Existing Registered / Approved Entities Also Required To Re Obtain Registration / Approval

These cases are dealt with in clause 7(1)(A)(a) & clause 10(1)(A) and other related clauses of Finance Bill. The sub clause (i) of clause (ac) of sub section (1) of amended section 12A and clause (i) of first proviso to amended section 10(23C) are relevant. The institutions etc. which are already registered under existing section 12AA or earlier section 12A /

approved under existing provisions of section 10(23C) will also be required to obtain fresh registration / approval under new section 12AB / amended section 10(23C).

The application for re obtaining the approval / registration will have to be given within the period of three months from the date of coming in to force of the amendment. On receipt of the application, the PCIT / CIT will pass an order for registration / approval for the period of 5 years. The new approval / registration will be applicable from the assessment year from which the approval / registration was originally granted under the existing provisions. The order for registration / approval in such cases will be required to be passed within 3 months from the end of the month in which the application will be filed.

5. Relevant Extract From Memorandum Explaining Clauses

The relevant extract explaining the intention behind the amendment and scope of amendment is as under:

“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.** (Emphasis supplied by us)”

6. Renewal Of Registration /Approval After Expiry Of 5 Years

The application for re obtaining the registration / approval will have to be given at least 6 months prior to the expiry of the registration / approval. The PCIT / CIT will have to make the necessary enquiries and to pass order for granting or rejecting the registration / approval. The order for registration / approval is required to be passed within 6 months from the end of the month in which the application is filed. The renewed registration / approval will be applicable from assessment year immediately following the financial year in which such application is made.

The author personally feels that the applicability of renewed approval / registration has been associated with the financial year in which the application has been made. This may create some practical problems. For example, if registration is given from assessment year 2021-22 to 2025-26 (i.e., financial year 2024-25), the registration will expire on 31st March, 2025. Now, the application for renewal will have to be made in financial year 2024-25 itself. The fresh registration will have to be granted from the assessment year 2025-26 for which the institution will be already registered / approved.

7. New Provisions For Provisional Registration / Approval

Under the existing provisions, there were no provisions relating to the provisional registration / approval. Either the application is rejected or accepted and full / final registration is granted. Now the amendments propose to give the approval U/s. 10(23C) / registration U/s. 12AB on provisional basis. The provisional approval may be granted for the period of 3 years (without any discretion in the hands of the authorities for any period less than 3 years etc.). The first time fresh applicants will not be directly given full / final registration but will be granted only provisional approval / registration. Later on, full / final registration / approval may be granted following the prescribed procedure.

8. Procedure For Fresh First Time Applicants

The proposed provisions regarding first time applicants are contained in clause 7(1)(A)(a) and clause 10(1)(A) and other related clauses of Finance Bill. These are covered in “any other cases” mentioned in the amended provisions. The sub clause (vi) of clause (ac) of sub section (1) of amended section 12A and clause (iv) of first proviso to amended section 10(23C) are relevant.

The application for fresh registration / approval is to be made at least one month prior to the commencement of the previous year relevant to the assessment year from which said approval / registration is sought. For example, if the exemption is sought for the income from financial year 2021-22 the application will have to be made at least one month before 1st April, 2021 i.e., in March 2021 or prior.

In case of fresh first time applicants, the PCIT / CIT is required to give provisional approval / registration for three years and to send the copy of order to the applicant. No requirement for any detailed enquiry etc. is mentioned like in other cases of approval / registration. The requirement for detailed enquiry has been mentioned only regarding application for full / final registration / approval to provisionally registered / approved entity. The provisional registration is to be given from the assessment year from which the registration was sought. The order for registration / approval in such cases will be required to be passed within a months from the end of the month in which the application will be filed.

9. Procedure For Conversion Of Provisional Registration To Full / Final Registration

These cases are dealt with in clause 7(1)(A)(a) and clause 10(1)(A) and other related clauses of the Finance Bill. The provisionally registered institutions etc. will have to apply for full / final approval at least 6

months prior to the expiry of the provisional registration or within 6 months of commencement of activities which is earlier. In case the final approval / registration is granted the same will be from the assessment year from which the provisional approval / registration was granted. The order for registration / approval in such cases will be required to be passed within 6 months from the end of the month in which the application will be filed.

The “commencement / non commencement of activities” has remained a disputed basis for rejection of application for registration / approval under the existing law. Therefore, it appears that under the new law, the genuine institution may not be rejected approval / registration (though provisional) for want of commencement of activities.

10. Fresh Registration / Approval To Be Applied Much Earlier

Under the existing provisions, the application for registration U/s. 12AA can be made at any time during the financial year from which the exemption is required. For example, if the exemption is required from the income of financial year 2018-19, the application could have been made at any time between 01st April, 2018 to 31st March, 2019, even on the last day of the financial year i.e., on 31st March, 2019. In case the registration is granted the same will be applicable to the income of the whole financial year 2018-19.

Similarly, for getting approval for exemption U/s. 10(23C) in respect of income from any financial year, the application is to be made at any time before the 30th September next from the end of the financial year i.e., for exemption of income from the financial year 2018-19, the application had to be made at any time up to 30th September, 2019.

Now, under the proposed provisions, the fresh applicants (first time applicants) will have to make application for registration / approval much

earlier i.e., at least one month prior to the commencement of the financial year from which exemption is required. The approval / registration will be granted from such financial year.

(Note : it appears that there is some drafting error in the proposed amendment. The language used for prescribing time limit for making application is “(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, “. The language used for grant of registration is “(iii) in any other case, from the assessment year immediately following **the financial year in which such application is made:**” (emphasis supplied by us) For example if the registration / approval is sought for the financial year 2021-22 (assessment year 2022-23) then application will have to be made in the financial year 2020-21. Now, registration will be granted from the assessment year following the financial year in which the application is made i.e., in this case from the assessment year 2021-22 or financial year 2020-21 whereas the application has been made from the financial year 2021-22 (assessment year 2022-23).

11. Simultaneous Registration For Exemption under Section 11 etc and Approval For Section 10(23C) Exemption Now Not Permissible

The proposed amendment to section 11 provides that if the institution is registered for exemption U/s. 11 etc. as well as approved U/s. 10(23C) / notified U/s. 10(46) then the above registration shall become inoperative from the date of coming in to force of the amendment. If in future, an institution which is registered U/s. 12AA / 12AB also gets approval U/s. 10(23C) or become notified U/s. 10(46) after amendment, then also in such case the registration U/s. 12AA / 12AB shall become inoperative from the date of such approval / notification.

The proposed amendments gives an option to the institution to get its registration u/s. 12AA / 12AB operative by making application for that.

However, in such circumstances he will not be entitled to get benefit of section 10(23C) approval / 10(46) notification. The procedure for making registration operative again is given in the amended provisions.

The crux of the above amendment is that at a time an institution can take benefit of either section 12AA / 12AB or of section 10(23C) and 10(46).

12. Due Date Of Filing Of Income Tax Return Extended To 31st October

The due date for filing of the Income Tax Return for such institutions have also been extended to 31st October from 30th September.

13. Relevant Clauses Of Finance Bill

These are mentioned hereunder for ready reference :

i. 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.”;

ii. 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.”.

iii. 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.

iv. 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.”.

v. Insertion of new section 12AB

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.”.

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