“Registration u/s 12A- New Procedure under Income Tax Act”

In India, Trusts are set up for the social causes and are approved by the Income Tax Department. The legal framework in India recognizes activities including "relief of the poor, education, medical relief, preserving monuments and environment, and the advancement of any other object of general public utility" as charitable purposes. They are eligible not only for exemption but the donors to such trusts can also claim deduction of the amount of donation to such recognised trusts from their taxable income. However, there have been cases when the benefits provided to such organisations have been misused and in order to curb this, Government have been trying to bring in changes/ amendments to the way such trusts are subjected to tax.

Against this backdrop, the new registration regime brought in by Finance Act, 2020 by replacing Sec. 12AA with new Sec. 12AB. That the new provisions have removed the concept of perpetuity and have provided that the registration of even existing organizations registered u/s 12A and 12AA would be renewable after 5 years. The important amendments in the manner and time limit of registration of charitable trusts, its validity u/s 12AB, online procedure etc. It also clarifies about the verification procedure of Form No. 10A/ 10AB and the documents which are required for registration along with it. It clarifies that on non-registration under the new provision would not amount to cancellation of registration but the registration earlier granted would merely become inoperative on the expiry of the time period.

“Gone of the days for bogus entities trying to make personal profits through bogus entities under the guise of charitable organizations”.

“Registration u/s 12A - New Procedure under Income Tax Act”

Introduction

Charity or philanthropy has always been virtue of the mankind. In the Indian tax jurisprudence, the entities engaged in charitable activities have always enjoyed benefits in the form of exemptions and deductions in one form or the other.

Under the Provisions of Sec 12A/12AA of Income Tax Act, Charitable & Religious Trusts and Institutions are required to obtain registration under section 12A/12AA of the Income Tax Act, 1961 (hereinafter called 'Act'), In order to claim the benefit u/s 11 of the Income tax Act that the income of the said organization be excluded from total income as defined u/s 2(45) of the Income Tax Act. Prior to section 12AA coming into force, such trusts were required to obtain registration under section 12A. The registration so obtained under the above sections is a one-time registration and is valid for perpetuity unless and until revoked by the issuing authority.

The process as laid down by the above sections has been in vogue from many years and a large number of charitable and religious organizations have obtained registration under the act and have been enjoying the benefits under the act for quite some time and at times the benefits so provided have also been misused by some organizations. To curb the misuse, Government has been bringing about many changes to the way the organizations are subject to tax and in the process has brought out amendment to the way such charitable/religious organizations are registered with Income Tax authorities by making changes to Sec 11(7) and by introducing a new Sec 12AB in Finance Act 2020.

Also, the Government has no comprehensive data of all entities registered under the IT Act claiming exemptions under various sections of Income tax Act, 1961 and therefore to have a complete and authenticated data brought various amendments into the statute regarding registrations and approvals to such institutions/trusts. Similar amendments are also brought in for sections 10(23C) (vi), 80G & 35AC for grant of registration/approval under the said sections. Also, to claim deductions by the donors under section 80G and 35AC certain statutory obligations also imposed on such recognized institutions/trusts.

The Amendments so brought out have changed the procedure with respect to registration/re-registration in substantial manner which are briefly discussed below.

Analysis of New Registration regime

Previously, Registrations granted under section 12AA or section 12A were perpetual in nature unless cancelled by the Principal CIT or CIT ('Competent authority') under the provisions of sub section (3) & (4) of section 12AA. New provisions introduced by the Finance Act, 2020 have removed the concept of perpetuity and have provided that the registration of even existing organizations registered u/s 12A and 12AA of the Income Tax Act would be renewable after 5 years.

Important amendments in the matter of registration of charitable trusts etc. are discussed hereunder:

S.No	Type	Details
1	**Already registered Trusts etc.-** *(a)* **section 12A(1)(ac)(i)**	It has been provided under section 12A (1)(ac)(i) read with section 12AB of the Act that the trusts etc. registered under section 12A or 12AA, have to apply for fresh registration by filing such form online within a period of three months from the date of coming into force of Sec 12AB. Compliance date starts on & from 1.04.2021 as described above. It means that hither-to-fore registered charitable trusts etc. which were

registered under section 12A or 12AA would have to apply for fresh registration under section 12AB within three months from 1.04.2021 viz. on or before 30.06.2021 failing which the registration granted earlier would cease to operate. The form prescribed for the above is **Form 10A**

(*b*) The process of re-registration provided under section 12A(1)(ac)(i) read with section 12AB(1)(a) would not involve any enquiry to be undertaken on the part of the competent authority and fresh registration would be granted in an automatic manner **within a period of 3 months from the end of the month in which such application of the registration is received by the competent authority**. Such fresh registration would be effective for every **5 years**. Clause (a) of first proviso to Section 12A(2) says that the provisions of section 11 & 12 would apply from the assessment year from which such trust was earlier granted registration which means the five assessment years would begin from A.Y. 2022-23. At the time of renewal after 5 years, applications would have to be made for registration in future at least 6 months prior to the expiry of such period as per under section 12A(1)(ac)(ii).

(*c*) The amended provision speaks for renewal or re-registration in those cases where such trusts etc. are registered under section 12A or section 12AA. It does not seem to cover such trusts etc. which are deemed to be registered in view of the decision of Hon'ble Supreme Court in the case of CIT vs. Society for the Promotion of Education Adventure Sports & Conservation of Environment due to non-disposal of registration application within the prescribed time period. This position is further clear from the language of sub section (2) of section 12AB according to which all applications pending on which no order under section 12AA(1)(b) was passed, would be treated as applications under the residuary clause viz. section 12A(1)(ac)(vi).

(*d*) There may be cases where registration applications filed earlier under section 12AA was rejected but on first appeal preferred by such trusts etc., and Tribunal might have remitted the matter of registration back to the file of the competent authority to decide afresh but no fresh order has been passed in this regard by the competent authority. All applications pending on which no order under section 12AA(1)(b) was passed

			after the set aside order of the Tribunal, would be treated as applications under the residuary clause viz. section 12A(1)(ac)(vi) read with section 12AB(2). In any case such applications should be deemed to be pending under section 12AB(2) and would be granted provisional registration for 3 years within one month from the said date 01.04.2021. Since, these trusts may already be undertaking charitable activities, such trusts may have to apply for final registration under section 12A(1)(ac)(iii) within 6 months from 01.04.2021 by taking that date as the date of commencement of charitable activities. In such cases, enquiry would be conducted by the competent authority as detailed in subsequent paragraphs. However, if considerable time, say more than six months since the order of the Tribunal, has elapsed, such trusts etc. may treat themselves as deemed registered due to non-disposal of the application in view of the decision of Hon'ble Supreme Court (supra) and may instead apply for registration under section 12A(1)(ac)(i).
		(*e*)	There may be such case also where appeal is pending against the rejection of registration application filed under section 12AA. In such a situation, the trust ought to wait for the outcome of the appeal and also in our considered opinion, ought to apply for fresh registration under section 12A(1)(ac)(vi) as a measure of abundant caution.
2	**Pending applications-section 12AB(2) read with section 12A(1)(ac)(vi)**	(*a*)	Next category of charitable trusts etc. would include such trusts etc., as envisaged under section 12AB(2), whose applications seeking registration are pending up to 01.04.2021. It would mean that those applications seeking registration under section 12AA filed on which no order was passed under section 12AA granting or refusing registration, would be treated applications made under the residuary sub-clause (vi) of clause (ac) of sub section (1) of section 12A on that date.
		(*b*)	Section 12AB(1)(c) read with section 12AB(3) provides that in respect of such type of applications covered under section 12A(1)(ac)(vi), provisional registration shall be granted for 3 years from the assessment year from which the registration was sought, by passing an order in writing within a period of one month from the end of the month in which application was received.

			In respect of all pending applications, provisional registration in such cases would be granted from A.Y. 2021-22 for three assessment years. On such applications also, no enquiry would be made by the competent authority and provisional registration would be granted for 3 years as mentioned in section 12AB(1)(c) and certificate of provisional registration would be issued within one month from the end of the month in which such applications are received. In respect of pending applications, no fresh applications need to be filed and hence commencement date viz. 01.04.2020 may be taken as the relevant date for passing the order granting provisional registration.
3	**Fresh Registration for the first time- section 12A(1)(ac)(vi)**	(*a*)	Charitable trusts etc. which seek to avail the registration for the first time under the new registration regime of section 12AB would have to apply for registration at least one month prior to the commencement of the previous year relevant to the assessment year from which the registration is sought, as prescribed under sub clause (vi) of clause (ac) of sub section (1) of section 12A. Such trusts etc. would be given provisional registration by passing an order in writing with a period of one month from the end of the month in which application was received (as prescribed in sub section (3) of section 12AB) and such provisional registration would be valid for 3 years from the assessment year from which the registration is sought. No enquiry would be made by the competent authority while granting provisional registration as is clear from the provision of section 12AB(1)(c).
		(*b*)	All new trusts etc. would be given provisional registration whether they have commenced charitable activities or not. If these trusts have not commenced charitable activities, they would continue to hold provisional registration for 3 years. No enquiry would be made in such cases even as to purported charitable objects.
		(*c*)	But, if such trusts start or commence the charitable activities, they would have to apply for regular registration within a period of 6 months from the date of such commencement as provided under section 12A(1)(ac)(iii). Enquiry would then be made by the competent authority as to genuineness of activities, as to the objects and the compliance to requirements of any other law material for achieving its objectives. Thereafter, order would be passed giving the regular

			registration or rejecting & cancelling such provisional registration after giving opportunity of hearing to the trusts. Detailed discussion on this aspect has been made later on also in this article.
4	**Provisional to Regular registration-section 12A(1)(ac)(iii)**	(*a*)	When provisional registration had already been granted under section 12AB(1)(c), such charitable trusts etc. would have to apply for regular registration, as prescribed under section 12A(1)(ac)(iii), prior to 6 months before the expiry of the said provisional registration or within 6 months from the date of commencement of its activities whichever is earlier.
		(*b*)	Upon receipt of such application, competent authority shall call for such documents or information or make such enquiries to satisfy that the activities & the objects of the trust are genuine & the trust is complying with the requirement of any other law applicable to such trusts which are material for the purpose of achieving its objects. The competent authority would thereafter pass the order either granting registration or rejecting such application and cancelling the registration within a period of six months from the end of the month in which application seeking regular registration was received. Opportunity of hearing is required to be provided in case application is rejected or registration is cancelled. In case registration is granted, it shall be for a period of 5 years as provided in section 12AB(1)(b). In this case, period of 5 years would start from the first of the assessment years for which it was provisionally registered, as provided in sub clause (b) of the proviso to section 12A(2).
5	**Revival of Inoperable Registration under section 12AA or 12A – Section 12A(1)(ac)(iv)**	(*a*)	Two Provisos added by the Finance Act, 2020 to sub section (7) of section 11 provide that if a trust enjoys the registration under section 12A or 12AA and is also approved under section 10(23C) or notified under section 10(46), registration under section 12A or 12AA would become inoperative interalia from the date of the present amendment viz. on and from 01.04.2021. Such trust may re-apply for registration under section 12AB, and such application needs to be made before the expiry of the period of 6 months from the beginning of the assessment year from which such registration is sought to be made operative. Upon receipt of such application, competent authority may undertake enquiry. Process of enquiry, extent of enquiry, its outcome and period within which the

			order is to be passed would be identical as discussed in the preceding paragraph (Section 12AB(1)(b) read with section 12AB (3)).
		(*b*)	Once registration under section 12AB is revived, the approval under section 10(23C) or notification under section 10(46) would cease to have any effect from the date on which the said registration becomes operative.
6	**Registration in case of change in objects-Section 12A(1)(ac)(v)**	(*a*)	If a Charitable trusts etc., has undertaken the change in its objects clause not conforming the conditions of registration already granted, it would have to apply for registration within a period of 30 days from the date of said modification, as prescribed under section 12A(1)(ac)(v). Upon receipt of such application, enquiry may be made by the competent authority. Process of enquiry, scope of enquiry, outcome and period within which registration would be rejected or granted would be identical as discussed in the preceding paragraph (Section 12AB(1)(b) read with section 12AB(3)).
7	**Fresh Registration on expiry of registration under section 12AB-Section 12A(1)(ac)(ii)**	(*a*)	Charitable trusts etc. which are once registered under section 12AB would have to seek renewal of registration by making a fresh application to be made on or before six months prior to the expiry of the registration under section 12AB. Such trusts may be trusts which were earlier registered under section 12A or 12AA and were granted automatic registration under section 12AB and such automatic registration granted under section 12AB is going to expire. Such trusts may be trusts which were given final registration in place of provisional registration under section 12AB & such registrations have come up for renewal under section 12AB. Such trusts may be trusts which was given registration under section 12AB on seeking revival of inoperative registration due to the operation of two provisos to section 11(7) or which was given registration under section 12AB after modified object was adopted.
		(*b*)	All these trusts etc. would have to make application to the competent authority seeking renewal of registration as prescribed under section 12A(1)(ac)(ii). Upon receipt of such application, competent authority shall call for such documents or information or make such enquiries to satisfy that the activities & the objects of the trust are genuine & the trust is complying with the requirement of any other law

applicable to such trusts which are material for the purpose of achieving its objects. The competent authority would thereafter pass the order either granting registration or rejecting such application and cancelling the registration with a period of six months from the end of the month in which application seeking renewal of registration was received. Opportunity of hearing is required to be provided in case application is rejected or registration is cancelled. In case registration is granted, it shall be for 5 years. In this case, period of 5 years would start from the date when earlier registration granted under section 12AB expires.

(c) Almost similar amendments have been made with slight variations here and there in the matter of approval under section 10(23C) & section 80G.

New Registration process for charitable or religious trusts under section 12A/12AB

Every trust who intends to claim benefit u/s 11 & 12 shall make application in Form No. 10A or 10AB, as the case may be, to PCIT or CIT for registration of trust. The procedure for registration was earlier specified in section 12AA. However, section 12AA has been withdrawn now and section 12AB has now been inserted for making effective the registration procedure of trusts. Thus, all trusts which were earlier registered u/s 12A or 12AA shall now have to obtain fresh registration u/s 12AB.

Time limit for registration under section 12A(1)(ac) and section 12(AB)

Sub-clause of clause (ac) of section 12A(1)	**Category of Entity**	**Time limit for filing application for registration**	**Applicable Form**	**Time limit for passing order**
(i)	Trusts or societies already registered u/s 12A or 12AA	**Within 3 months from 1st April 2021**	Form 10A	**Within 3 months** from the end of the month in which the application is received
(ii)	Trusts or institutions which are registered under section 12AB	At least 6 months before the expiry of the said period	Form 10AB	**Within 6 months** from the end of

	and the period of the said registration is due to expire			the month in which the application was received
(iii)	New trusts or institutions which have been granted provisional registration under section 12AB **(Trusts opting for provisional to final registration for 5 years)**	At least 6 months before the expiry of the provisional registration or within 6 months of commencement of its activities, whichever is earlier	Form 10AB	**Within 6 months** from the end of the month in which the application was received
(iv)	Trusts or institutions whose registration has become inoperative due to first proviso to section 11(7) of the Act. **Registration u/s 12A or 12AA shall become inoperative from the date on which the trust or institution is granted registration u/s 10(23C)**	At least 6months before the commencement of the assessment year from which the said registration is sought to be made operative	Form 10AB	**Within 6 months** from the end of the month in which the application was received
(v)	Trusts or institutions who has adopted or undertaken modifications of the objects which do not conform the conditions of registration	Within a period of 30 days from the date of adoption or modification	Form 10AB	**Within 6 months** from the end of the month in which the application was received
(vi)	In any other case (including fresh provisional registration)	At least 1 month before commencement of the previous year relevant to assessment year from which the said registration is sought	Form 10A	**Within 1 month** from the end of the month in which the application is received

Validity period of registration under section 12AB?

In case of trusts or institutions which are already registered u/s 12AA shall apply for registration u/s 12AB online by 30-06-2021 in Form 10A. The validity of registration u/s 12AB shall be for 5 years. However, provisional registration shall be granted for a period of 3 years.

For this purpose, CBDT has issued Notification No. 19/2021 dated 26th March 2021 which makes it mandatory for all the trusts/ societies/institutions registered under section 12A and 80G to obtain fresh registration.

Online Procedure of registration under section 12AB

Step-1: Log in to Income Tax India E-Filing Portal using to login credentials and password.

Step-2: Navigate to "Income Tax Forms" under E-File tab and select Form 10A/ 10AB, as the case may be.

Step-3: Select the option "Prepare and Submit online" to fill requisite details in the form.

Step-4: Attach the requisite document along with Form 10A/10AB.

Step-5: Submit the form using digital signatures or EVC.

Step-6: On receipt of application in Form No. 10A/10AB, the PCIT or CIT shall process the application within the prescribed time limit: -

- In case the applicant is already registered u/s 12AA or in case of provisional registration, where Form No. 10A has been submitted by the applicant: - Order granting registration shall be granted in writing in Form No. 10AC. A **16-digit alphanumeric Unique Registration Number (URN)** shall be allotted on successful registration.
- In cases where Form No. 10AB has been filed, order granting registration or rejection or cancellation shall be in Form No. 10AD.

Is digital signature compulsory for filing Form No. 10A/10AB

- Form No. 10A/10AB is required to be digitally signed, only where the Income Tax Return of the Trust/institution is required to be furnished with digital signature.
- In other cases, the forms may be submitted with Electronic Verification Code (EVC)

Verification of Form 10A/10AB

Form 10A/10AB shall be verified by the person authorized to verify the return of income of trust or institution as given in Sec 140 of the Income Tax Act.

Documents required along with Form No. 10A or 10AB.

Following is the list of documents needed to be submitted along with Form No. 10A/10AB:

1. Where the trust/ institution is created, or established under an instrument, self -certified copy of such instrument creating or establishing the trust/ institution.

2. Where the trust/institution is created or established, otherwise than under an instrument, self-certified copy of the document evidencing the creation or establishment of the trust/institution.

3. Self-certified copy of registration with Registrar of Companies or Registrar of Firms or societies or Registrar of Public Trusts, as the case may be.

4. Self-certified copy of registration under FCRA, if the applicant is registered under such Act.

5. Self-certified copy of existing order of registration under section 12A or 12AA or 12AB, or 10(23C) as the case may be.

6. Self-certified copy of order of rejection of application for grant of registration under section 12A or 12AA or 12AB, 10(23C) as the case may be if any.

7. In case of existing entities, copies of annual accounts for the period not exceeding 3 years immediately preceding the year in which the application is made.

8. Where the income of the entity includes profits and gains of business as per the provisions of sub-section (4A) of section 11, copies of annual accounts and audit report u/s 44AB for 3 years immediately preceding the year in which the said application is made.

9. Self-certified copy of the documents evidencing adoption or modification of the objects.

10. Notes on the activities of the applicant trust or institution

11. If registered on DARPAN Portal, then details of such registration

Additional Documents:

1. If PAN/Aadhar available- PAN and Aadhar of all authors/ settlors/ trustees/ Members of Governing Council/ Members of societies/ Shareholders holding not less than 5% shares 2. If PAN/ Aadhar not available: - Voter ID or Passport or Driving License of the above persons.

New Registration process under section 10(23C), 80G for charitable trusts

Similar amendment in registration/ renewal procedure has also been made in section **10(23C), 80G**. Thus, the existing trusts/ institutions will now have to apply for fresh registration under section **10(23C), 80G** similar to the same manner as applicable in section 12AB. Such application shall be made through **Form No. 10A or 10AB**, as the case may be.

Also an important change which has been made is that trusts or institutions who are registered u/s 80G shall now have to furnish a statement containing details of donations received during the year in **Form No. 10BD** in the prescribed manner. This Form is to be e-filed before 31, May of each year. Further, the trust or institution shall issue a certificate of donation to the donor in **Form No. 10BE**.

For registration **u/s 35AC**, the applicant has to make application in "**form 3CF**"

Cancellation of Registration granted under section 12AB (1)

Registration (other than the provisional registration) granted under section 12AB(1) may be cancelled by the competent authority in the following situations but after affording reasonable opportunity of hearing:

1. Where the activities of the trusts etc. are not genuine or
2. Where the activities of the trusts etc. are not being carried out in accordance with the objects or
3. Where the activities of the trust are being carried out in such a manner that the provisions of section 13(1) are attracted or
4. Where the trusts etc. have not complied with any requirement of any other law as was material for achieving its objects & the order upholding this non-compliance was either not disputed or has attained finality.

In fact, provisions as to the power to cancel the registration already granted under section 12AA or section 12A were already there under sub section (3) & (4) of section 12AA which have also been enacted as sub section (4) & (5) of new section 12AB. There is no material difference between the law contained under section 12AA and now contained under section 12AB in this regard except that a trust etc. could have proved in the old regime that there was a reasonable cause for the activities to be carried out in the manner so as to be hit by section 13(1). Such defense which was there in section 12AA(4) has been removed under the new section 12AB(5), the effect of which would be that such defense would no longer be available to the trusts etc. Competent authority would simply look into as to whether conditions of cancellation do exist in a given case or not and if they do exist, give an opportunity of being heard to the trust in respect of such default before making adjudication on the aspect of cancellation of the registration.

Question that used to be much agitated in the past that such cancellation would take effect prospectively or retrospectively has become redundant in view of the existence of section 115TD on the statute which seeks interalia to tax the accreted income upon the cancellation of the registration. In case of cancellation of registration, the accreted income based interalia on the fair market value of the assets would be taxed on Maximum Marginal Rate.

Will Provisions of u/s 115TD be attracted when registration under section 12AA or 12AB becomes inoperative?

Section 115TD of the Act seeks to tax the accreted income in case of charitable trusts etc. registered under section 12AA or 12AB when such trust has converted into any form which is not eligible for grant of registration under section 12AA or 12AB. In such a situation, such charitable trusts etc. are liable to pay tax on accreted income as on the specified date at maximum marginal rate. The accreted income has to be computed on the basis of fair market value of the total assets of such trusts etc. as on the specified date as reduced by the total liability computed in accordance with the method of valuation as prescribed under Rule 17CB.

Sub section (3) of section 115TD provides that a charitable trust shall be treated to have been converted into any form not eligible for registration under section 12AA or 12AB in a previous year if registration granted under section 12AA or 12AB has been cancelled or in case such trust has undertaken modification of the objects which are not in conformity of the conditions of registration and the trust has not applied registration under section 12AA or 12AB or having applied, such application seeking registration has been rejected.

Under the new scheme of registration introduced by the Finance Act, 2020, there are comprehensive provisions enacted for filing application seeking registration and grant of registration in various situations as provided in section 12A(1)(ac) read with section 12AB. To be little bit more elaborative, an already registered trusts etc. under the old section 12A or 12AA may choose not to go in for registration under section 12AB. Trusts etc. already registered under section 12AB may not seek re-registration. Charitable trusts etc. provisionally registered under section 12AB(1)(c) may not go in for seeking regular registration. Two provisos to section 11(7) have also been inserted by the Finance Act, 2020.

Bare reading of these new provisions would show that if a trust does not seek registration or re-registration, such non-seeking registration or re-registration would not amount to cancellation of registration & the registration earlier granted would merely become inoperative on the expiry of the time period. Similarly, as per the proviso to section 11(7) also, registration under section 12AA would become inoperative in certain situation. Registration turning inoperative is different from cancellation of registration. Registration can be cancelled under section 12AB (4) & (5) of the Act by an order to be passed by the competent authority upon fulfilment of certain conditions. Inoperativeness of registration is not envisaged in the present scheme of the Act as cancellation of registration as given in section 12AB. Non- seeking of registration and the registration becoming inoperative cannot be covered either under section 115TD(1) or section 115TD(3). In such situations, applicability of section 115TD seeking to tax the accreted income may not be possible for the tax department. Blanket inapplicability of section 115TD in such circumstances seems to be a legislative lapse amenable to be corrected in due course.

Conclusion

With the introduction of new Section 12AB, the tax authority has brought about a tic tonic shift in the process of registration and monitoring of Charitable organizations. The intent of the legislature appears to limit the tax exemptions only to charitable organizations which are conducting charitable acts more actively and not existing for the namesake. Gone of the days for bogus entities trying to make personal profits through bogus entities under the guise of charitable organizations.