FEBRUARY 2020

BUDGET ANALYSIS

A COMPREHENSIVE ANALYSIS OF THE BUDGET FOR NGOS

Southern Accountability & Governance Alliance

Author:

Dr. Manoj Fogla

Anjani Kumar Sharma

0 2

saga

CSR
& Charity Consultants for South East Asia

ABOUT SAGA

Saga provides robust legal support, accompaniment and technical solutions for charitable organizations, companies, and foundations to deliver impactful social initiatives, leveraging the strengths of diverse stakeholders in the social sector. Saga is an initiative of Dr. Manoj Fogla, a pioneer of development and charity laws in South East Asia.

We have accompanied many organizations toward credible practices. We also disseminate knowledge regarding FCRA Laws, Income Tax Laws on Charity, CSR law, theories, frameworks, best practices, and impact assessment. Our conferences and capacity building workshops focus on building capacities of organizations, thereby empowering our clients to make informed decisions that are legally compliant while implementing projects and programs. Saga's team consists of Chartered Accountants and lawyers, experts to train professionals and social sector leaders in understanding the laws, regulations, and compliances.

The Union Budget 2020, has proposed some critical amendments that will have an extensive and far-reaching impact on the charitable organizations.The proposed changes are discussed below.

BUDGET AT A GLANCE

I. All registrations under section 12AA shall cease to exist unless an application for revalidation is made within three months from 1st June 2020.

II. All approvals under section 10(23C) shall cease to exist unless an application for revalidation is made within three months from 1st June 2020.

III. Approval under section 80G shall cease to exist unless an application for revalidation is made within three months from 1st June 2020.

IV. As explained above all the existing organizations registered/approved under section 12AA/10(23C)/80G are required to revalidate their existing registration within 3 months with effect from 1st Day of June 2020 and revalidation will be for 5 years only effective from 1st April 2020 onwards.

V. New organization desiring for registration/approval under section 12AA/10(23C)/80G will be given provisional registration for 3 years initially.

VI. Organizations have to choose betweeneither registration u/s 12AB or approval under section 10(23C). Hitherto the organizations were allowed to have benefits (registration/approval) under both the sections simultaneously.

VII. Now onwards, the donee organization has to furnish a periodical statement of donation received in the manner to be prescribed for any amount of donation received, in order to give benefits to the donor u/s 80G.

A. ALL REGISTRATIONS UNDER SECTION 12AA/10(23C) AND APPROVAL UNDER SECTION 80G SHALL CEASE TO EXIST WITH EFFECT FROM JUNE 2020 AND THE REGISTERED ORGANIZATIONS NEED TO APPLY FOR REVALIDATION OF EXISTING REGISTRATIONS/APPROVALS.

➢ All the existing charitable and religious institutions, that are registered/approved under the various sectionsas mentioned above are required to re-validate their registrations online within 3 months from 1st June 2020.

➢ After revalidation, the registered organizations will only be granted registration for a period of 5 years effective from 1st April 2020.

➢ The organization has to reapply for renewal of the registration atleast six months prior to the expiry of the validity period (i.e. Five Years).

➢ It is worth mentioning that under the prevailing law, all the registration under the above-mentioned sections were perpetual. But with the changes introduced, now such registrations will be for only 5 yearssubject to renewals.

B. REGISTRATION OF NEW ORGANIZATION UNDER SECTION 12AB/10(23C)/80G.

➢ Any new organization applying for registration under various sections will be initially granted a provisional registration for three years based on the documents and self-declarations.

➢ After obtaining the provisional registration, the organization has to reapply, at least six months prior to the expiry of period of the provisional registration or within six months of commencement of its activities, whichever is earlier and thereafter on the satisfaction of the officer, registration will be granted for next five years.

➢ This provision came into force because many organizations faced difficulty to obtain registration initially due to a lack of activities for which the registration was sought. In order to remove the hardship of the organization, the amendment was made to provide initial registration for 3 years and thereafter subject to renewal.

C. BENEFIT OF ONLY ONE REGISTRATION WILL BE ALLOWED TO THE ORGANIZATION

➢ Under the current law, an organization can get registration/approval and avail the benefits under both 10(23C) and section 11 read with section 12AA. In other words, the organization had an option of availing tax exemptions under either of the two sections.

➢ After the proposed amendment, an organization cannot enjoy exemptions under two provisions at the same time. This has been clarified by introducing an amendment in Section 11 of the Income Tax Act. Henceforth if an organization opts for the benefit under section 12A,then it cannot enjoy the approval or benefit under other sections such as 10(23C) or 10(46) and vice-versa.

➢ It is worth mentioning that, the existing organization having registration under section 12AA and approval under section 10(23C) while filing for revalidation of the registration needs to apply for only one registration/approval to avail the exemption.

➢ If the organization wants 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.

D. AUDIT REPORT OF A REGISTERED ORGANIZATION

➢ All registered organizations are required to get their accounts audited and furnish the audit report in Form 10B as per Section12A(b)of the Income Tax Act under the existing law, however, it does not mention any time limit within which the audit report has to be obtained.

➢An amendment in this respect has been introduced in Finance Bill 2020 specifying the time limit within which the audit report has to be obtained. The time limit has to be in accordance with the date specified as per section 44AB of the Income Tax Act, 1961. The said section is reproduced as under:

“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 section139]”.

➢Therefore, now it is mandatory to obtain the audit report one month prior to the due date of filing the Income Tax Return i.e.before 30th September of every year. Be that as it may, even if for some reason if the filing of the audit report is delayed, it will still be required to obtain the report one month prior to the due date. It is to be noted that the due date is also proposed to be amended to 31st October, instead of 30th September.

E. FURNISHING OF STATEMENT FOR THE DONATION RECEIVED UNDER 80G BY THE DONEE ORGANISATION

➢ Under the prevailing law, the donee organizations were not required to furnish the details of all the donors from whom the donations under 80G were received during the year for which the benefit under section 80G was provided to donors.

➢ After, the proposed amendment, any registered organization receiving donation has to submit the statement of donation received in such form & manner as may be prescribed & the benefit of 80G shall be available to the donor based on information relating to donation furnished by the corresponding organization.

F. PENALTIES FOR NON-FILING OF REPORT UNDER SECTION 80G

➢ The Finance Bill 2020 has introduced two new sections vide which a penalty can be imposed on organizations approved under 80G if such an organization fails to comply with the furnishing of statement/certificate in the manner and time as prescribed under the section.

➢ A penalty up-to Rupees one lakh can be imposed on an organization approved under 80G for non-compliance under section 271K. The section is reproduced below:

“271K. Without prejudice to the provisions of this Act, the Assessing Officer may direct that a sum, not less than ten thousand rupees but which may extend to one lakh rupees shall be paid by way of penalty by––
(i) the research association, university, college or other institution referred to in clause (ii) or clause (iii) or the company referred to in clause (iia), of sub-section (1) of section 35, if it fails to deliver or cause to be delivered a statement within the time prescribed under clause (i), or furnish a certificate prescribed under clause (ii) of sub-section (1A) of that section; or
(ii) the institution or fund, if it fails to deliver or cause to be delivered a statement within the time prescribed under clause (viii) of sub-section (5) of section 80G, or furnish a certificate prescribed under clause (ix) of the said sub-section.”

➢A penalty of Rupees two hundred per day can be imposed under section 234G of the Act. The section is reproduced below:

"234G. (1) Without prejudice to the provisions of this Act, where,— (a) the research association, university, college or other institution referred to in clause (ii) or clause (iii) or the company referred to in clause (iia) of sub-section (1) of section 35 fails to deliver or cause to be delivered a statement within the time prescribed under clause (i), or furnish a certificate prescribed under clause (ii) of sub-section (1A) of that section; or (b) the institution or fund fails to deliver or cause to be delivered a statement within the time prescribed under clause (viii) of sub-section (5) of section 80G, or furnish a certificate prescribed under clause (ix) of the said sub-section, it shall be liable to pay, by way of fee, a sum of two hundred rupees for every day during which the failure continues."

G. STATUS OF ORGANIZATIONS WHOSE APPLICATIONS ARE CURRENTLY UNDER PROCESS

➢ As per the proposed amendment, all the applications currently pending for the registration will be processed under the new regime.

➢ 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.

H. OTHER AMENDMENTS

➢ If there is any modification in the objective of the organization on the basis of which the registration was obtained or revalidation of the existing registration was done, then an organization within thirty days from the date of the said adoption or modification has to submit an application to the Principal Commissioner or Commissioner of Income Tax.

K. TIMELINES FOR DISPOSING THE REGISTRATION APPLICATIONS

➢ All registered organizationØ Existing organization applying for revalidation -
Before the expiry of three months calculated from the end of the month in which the application was received.

➢ Organizations applying for renewal after the block of 5 years, converting provisional registration into main registration, opting registration in other section i.e. having registration u/s 12AB and opting for 10(23C), organization had modified the objects after obtaining the registration and informed the same to the department –
Before the expiry of six months calculated from the end of the month in which the application was received.

➢Provisional Registration of new organization- Before the expiry of One month calculated from the end of the month in which the application was received.

In the case of revalidation of an existing registration, the organization is not required to submit any documents. The order will be passed on the basis of an application made.

Whereas, in other cases, the organization may be called for documents and information and the officer can make inquiries about the genuineness of the activities, compliances of the laws, etc. carried out by the organization. On satisfaction of the same registration will be granted.

K. IMPACT AND CONSEQUENCES OF PROPOSED AMENDMENT

➢ Proposed amendment in the Income Tax Act,is introduced to bring more transparency in charitable and religious institutions.

➢ The amendment of online registration of NGOs periodically is made to regulate the sector and to create a database at the National level.

➢ All the organizations' post-registration and revalidation will be issued a Unique Identification Number by the Income Tax Department.

➢ Periodic renewal of the registration will provide an opportunity to withdraw the exemptions thus replacing the cancellation provision under the current law. It may be noted that clubbed with faceless assessments and faceless appeals this may result in a rise in litigations.

CONTACT US

FOR FEEDBACK OR CLARIFICATIONS

ANJANIKUMAR@SAGACSR.COM
ADMIN@SAGACSR.COM