

# Registration under section 12AB

## 4.1 SUMMARY OF THE CHAPTER

- (i) Section 12A(1) 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. One of the conditions is that the trust or institution is registered under section 12AB [Section 12A(1)(ac)].
- (ii) The Finance Act, 2020 has made changes leading to complete overhaul in the registration process of charitable and religious organisations. The procedure for registration of every organisation under the new scheme shall be completely electronic under which a unique registration number (URN) shall be allotted.
- (iii) As per the present scheme of registration effective from 1st October, 2020<sup>1</sup>, the registrations can be divided into following categories:
  - (a) Existing trusts/institutions registered under section 12A/12AA need to be re-registered under section 12AB.
  - (b) Provisional registrations and the conversion of provisional registration into a normal registration.
  - (c) Renewal of Registration granted under section 12AB:
    - i. Registration granted under section 12AB (other than provisional registrations).
    - ii. Re-registration for confirming the modification of object clause.
    - iii. Registration to be made operative if it becomes inoperative due to approval under section 10(23C)/10(46).
- (iv) The validity of the registration granted under section 12AB shall be for five years except in the case of provisional registration which

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1. As per press release dated 9-5-2020, the new procedure for registration, approval, etc. of certain entities has been deferred to 1-10-2020 which was effective from 1-6-2020.

shall be valid for three years. All registrations made under section 12AB are required to be renewed as specified under new scheme of registration.

- (v) All the existing registered entities need to apply for re-registration within three months from 1st October, 2020 *i.e.* on or before 31st December 2020. No enquiry is proposed to be made and registration shall be granted within a period of three months from the end of the month in which the application was made. The registration granted shall be valid for five years.
- (vi) Provisional Registration shall be granted for three years for new organisations and that too without any enquiry. However, in such cases application for normal registration needs to be made at least 6 months before the expiry of the period of the provisional registration or within 6 months of commencement of its activities, whichever is earlier. Normal registration shall be granted after such enquiry as provided in the act and the registration granted shall be valid for five years from the first of the assessment years for which it was provisionally registered. In other words, a provisional registration cannot remain effective once the activity commences and therefore, the provisional registration is actually not available for 3 years.
- (vii) The Finance Act, 2020 prescribes that all pending applications for registration shall be considered as applications under new section 12AB and hence, applicants making such applications are not required to apply again. However, such applications shall be granted provisional registration and technically will not be eligible for exemptions for the year in which the application was made as explained below.
- (viii) The application for provisional registration has to be made one month prior to the end of the year preceding the year for which exemptions are sought. For example, if an organization applies before 28th February of 2020 then it will be eligible for tax benefit for the assessment year 2021-22 corresponding to the previous year 2020-21. Also, all the existing applications under section 12AA shall be treated as applications under the new law under section 12A(1)(ac)(vi) and such organizations shall not be eligible for the benefit of previous year 2019-20. These organisations may have to resort to the proviso to section 12A(2) for claiming retrospective exemptions.
- (ix) The application for renewal of registration granted under amended act to be made at least 6 months prior to expiry of period of registration and registration shall be granted after such enquiry as provided in the act and the Registration granted shall be valid for five years.
- (x) Section 12AB requires that every trust or institution which is already registered under section 12A/12AA is required to apply again within

the specified time line and in case such application is not made, then, by implication, benefit of sections 11 and 12 shall not be available from financial year 2020-21.

- (xi) The law does not provide for submitting the delayed application and therefore in cases, where application could not be submitted by 31st December, 2020, such organisation shall be deemed to have surrendered their registration and forfeited their right to claim the applicability of sections 11 & 12. Therefore, such organisations shall be taxed as an normal assessee and five heads of income of shall apply.
- (xii) As per section 12AB, application for new registration has to be made at least one month prior to the commencement of the previous year relevant to the assessment year from which the said registration is sought. Hence, it is implied that the NGO has to wait for a year to avail the benefit of sections 11 and 12.
- (xiii) The Finance Act 2020 provides that an organisation cannot simultaneously enjoy approval under two provisions. By amendment in section 11, it is clarified that the registration under section 12AA/12AB shall be inoperative from the date on which the trust or institution has approved under clause (23C) or is notified under clause (46) of section 10 of the Income-tax Act.
- (xiv) NGOs holding both 10(23C) approval and 12AA registration, need to choose one for revalidation from 1st October, 2020. If any NGO applies for both [10(23C) and 12AA], then registration under section 12AB if granted shall become inoperative.
- (xv) The Finance Act, 2020 provides that an organisation cannot simultaneously enjoy approval under two provisions. By amendment in section 11(7), it is clarified that the registration under section 12AA/12AB shall be inoperative from the date on which the trust or institution has got an approval under clause (23C) of section 10 or is notified under clause (46) of section 10 of the Income-tax Act.
- (xvi) It is to be noted that no similar provision of approval becoming inoperative is made under section 10(23C)/10(46) of the Income-tax Act. Therefore, holding two approvals at time shall make the registration under section 12AA inoperative and not *vice versa*.
- (xvii) If the application for registration under the Act is rejected then the aggrieved organisation can appeal against such order to the Appellate Tribunal under the provisions of section 253.
- (xviii) The Finance Act, 2020 replaced section 12AA with section 12AB, but the registration procedure and power and scope of verification/examination remains similar. Therefore, all the available case laws pertaining to section 12AA may also apply to registration under the new section 12AB.

- (xix) The registration under section 12AA/12AB is no longer retrospective. However, a protection has been provided under proviso to section 12A(2) wherein all open assessment will be provided tax exemptions even for earlier years.

## 4.2 REGISTRATION REQUIRED FOR AVAILING EXEMPTIONS

The income of trust would not be exempt under section 11 unless it has obtained registration under section 12AB. Section 12A(1) 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. One of the conditions is that the trust or institution is registered under section 12AB [Section 12A(1)(ac)].

A new section 12AB has been inserted with effect from 1st October, 2020 dealing with the procedure of registration. Earlier, trusts or institutions were registered under section 12AA or under section 12A [as it stood before its amendment by the Finance (No. 2) Act, 1996].

This section was originally introduced by the Finance Act, 2020 effective from 1-6-2020. However, due to the unprecedented economic crisis, the government issued a press release on 9-5-2020 to defer the implementation of the new procedure for approval/registration/notification to 1-10-2020.

### **NEW PROCEDURE FOR REGISTRATION, APPROVAL, ETC., OF CERTAIN ENTITIES DEFERRED TO 1-10-2020**

#### **PRESS RELEASE, DATED 9-5-2020**

In view of the unprecedented humanitarian and economic crisis, the CBDT has decided that the implementation of new procedure for approval/registration/notification of certain entities shall be deferred to 1st October, 2020. Accordingly, the entities approved/registered/notified under sections 10(23C), 12AA, 35 and 80G of the Income-tax Act, 1961 ('the Act') would be required to file intimation within three months from 1st October, 2020, *i.e.*, by 31st December, 2020. Further, the amended procedure for approval/registration/notification of new entities shall also apply from 1st October, 2020.

The necessary legislative amendments in this regard shall be proposed in due course.

Various representations were received in the finance ministry expressing concerns over the implementation of the new procedure from 1st June, 2020 due to the outbreak of novel corona virus (COVID-19) and consequent lockdown. There have been a number of requests to defer the applicability of the new procedure.

It may be noted that the Finance Act, 2020 rationalized the procedure relating to approval/registration/notification of certain entities referred to in sections 10(23C), 12AA, 35 and 80G of the Act, with effect from 1st June, 2020. As per the new procedure, the entities already approved/registered/notified under these sections would be required to file intimation within three months, *i.e.*, by 31st August, 2020. Further, the procedure for approval/registration/notification of new entities has also been rationalized with effect from 1st June, 2020.

#### **4.2-1 Registration is Mandatory**

Registration under section 12A is a mandatory pre-condition to avail income-tax exemptions. Income of trust would not be exempt unless it has obtained registration under section 12A. In *New Life in Christ Evangelistic Association v. CIT* [2000] 111 Taxman 16 (Mad.), it was observed that without section 12A registration, benefits under sections 11 and 12 of the Act were not available.

#### **4.2-2 Mere registration not entitles exemption**

Section 12A provides the pre-conditions for availing exemptions under the Act. It has to be understood that registration is mandatory for availing exemptions but mere registration does not entitle the organisation to claim exemptions. Exemptions are available subject to various other conditions as are specified in the Act. In the case of *CIT v. Red Rose School* [2007] 163 Taxman 19 (All.), it was held that registration under section 12AA does not necessarily entitle the assessee to get the income excluded from the income of the previous year for the purpose of determination of tax liability. It only entitles the assessee to claim such exemptions which otherwise could not be claimed in the absence of registration.

#### **4.2-3 Conditions of Registration are to be satisfied**

In *CIT v. U.P. Forest Corpn.* [1998] 97 Taxman 259 (SC), it was held that an organisation has to get itself registered in order to avail the exemption under section 12 but whether the income of the institution can be regarded as being held for charitable purpose, requires investigation of facts and the High Court cannot, in writ proceedings, grant exemption to the assessee under section 11. In *M. Visvesvaraya Industrial Research & Development Centre v. ITAT* [2001] 116 Taxman 760 (Bom.), it was held that before a trust can claim exemption, it has to satisfy the pre-condition of registration. Further, registration in itself does not confer any right to exemptions.

#### 4.2-4 Registration is a condition precedent for availing exemptions

In the case of *U.P. Forest Corporation v. Dy. CIT* [2007] 165 Taxman 533 the Supreme Court observed that a conjoint reading of sections 11, 12 and 12A makes it clear that registration under section 12A is a condition precedent for availing of benefit under sections 11 and 12. Unless and until an institution is registered under section 12A, it cannot claim the benefit of section 11(1)(a). Keeping in view the fact that the assessee had not been granted registration under section 12A, it was not entitled to claim exemption from payment of tax under sections 11(1)(a) and 12.

#### 4.3 RETROSPECTIVE BENEFIT OF SECTION 12AA/12AB

The registration under 12AA/12AB is no longer retrospective. However, a protection has been provided under proviso to section 12A(2) wherein all trusts or institutions having open assessments will be provided tax exemptions even for earlier years.

*Applicability of benefit of registration for back years:* The proviso to section 12A(2) provides as under:

**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 where registration has been granted to the trust or institution under section 12AA “or section 12AB”, then, the provisions of sections 11 and 12 shall apply in respect of any income derived from property held under trust of any assessment year preceding the aforesaid assessment year, for which assessment proceedings are pending before the Assessing Officer as on the date of such registration and the objects and activities of such trust or institution remain the same for such preceding assessment year:

**Provided also** that no action under section 147 shall be taken by the Assessing Officer in case of such trust or institution for any assessment year preceding the aforesaid assessment year only for non-registration of such trust or institution for the said assessment year:

**Provided also** that provisions contained in the first and second provisos shall not apply in case of any trust or institution which was refused registration or the registration granted to it was cancelled at any time under section 12AA “or section 12AB”.

The ITAT Amritsar Bench in the case of *Punjab Educational Society v. ITO* [2017] 88 taxmann.com 113/[2018] 168 ITD 109 (Asr. - Trib.) held that first proviso to section 12A(2) inserted by the Finance (No. 2) Act, 2014 with effect from 1-10-2014, has to be applied retrospectively. In this case, the assessee educational institution had filed its return of income and claimed that it

was registered under section 12AA(1)(b)(i) with the competent authority, with effect from Assessment Year 2012-13, therefore, it being a charitable society which was running an educational institution, could not be denied exemption for the reason that its gross receipts had exceeded ₹ 1 crore in Assessment Year 2011-12. It was further averred that as the assessee society had applied its income purely for the accomplishment of its objects as per section 11(5), therefore, its income could not be subjected to tax.

#### **4.4 OVERVIEW OF NEW SCHEME OF REGISTRATION UNDER SECTION 12AB W.E.F. 1ST OCTOBER, 2020**

- (i) The Finance Act, 2020 has made changes leading to complete overhaul in the registration process of charitable and religious organisations. The procedure for registration of every organisation under the new scheme shall be completely electronic under a centralised database.
- (ii) The Income-tax Department shall issue a National Unique Registration Number to all the charitable and religious institutions and thereby creating a National Database of exempt entities.
- (iii) One of the conditions to claim exemption under sections 11 and 12 was to obtain a registration under section 12A/12AA.
- (iv) Finance Act, 2020 inserted a new section 12AB, dealing with fresh registrations effecting from 1st October, 2020.
- (v) As per the present scheme of registration effecting from 1st October, 2020, the registrations can be divided into following categories:
  - (a) Existing trusts/institutions registered under section 12A/12AA needs to be re-registered under section 12AB.
  - (b) Provisional registrations and the process of converting the provisional registration into a normal registration.
  - (c) Renewal of Registration granted under section 12AB:
    - i. Registration granted under section 12AB (other than provisional registrations)
    - ii. Re-registration for confirming the modification of object clause.
    - iii. Registration to be made operative if it becomes inoperative due to approval under section 10(23C)/10(46).
- (vi) The validity of the registration granted under section 12AB shall be for five years except in the case of provisional registration which shall be valid for three years. All registration granted under section 12AB shall be subject to renewal as specified under new scheme of registration. The text of sections 12A, 12AA and 12AB is reproduced as under:

“12A. *Conditions for applicability of sections 11 and 12* - (1) The provisions of section 11 and section 12 shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely:—

- (a) the person in receipt of the income has made an application for registration of the trust or institution in the prescribed form and in the prescribed manner to the Principal Commissioner or Commissioner before the 1st day of July, 1973, or before the expiry of a period of one year from the date of the creation of the trust or the establishment of the institution, whichever is later and such trust or institution is registered under section 12AA :

**Provided** that where an application for registration of the trust or institution is made after the expiry of the period aforesaid, the provisions of sections 11 and 12 shall apply in relation to the income of such trust or institution,—

- (i) from the date of the creation of the trust or the establishment of the institution if the Principal Commissioner or Commissioner is, for reasons to be recorded in writing, satisfied that the person in receipt of the income was prevented from making the application before the expiry of the period aforesaid for sufficient reasons;
- (ii) from the 1st day of the financial year in which the application is made, if the Principal Commissioner or Commissioner is not so satisfied:

**Provided further** that the provisions of this clause shall not apply in relation to any application made on or after the 1st day of June, 2007;

- (aa) the person in receipt of the income has made an application for registration of the trust or institution on or after the 1st day of June, 2007 in the prescribed form and manner to the Principal Commissioner or Commissioner and such trust or institution is registered under section 12AA;
- (ab) the person in receipt of the income has made an application for registration of the trust or institution, in a case where a trust or an institution has been granted registration under 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 (33 of 1996), and, subsequently, it has adopted or undertaken modifications of the objects which do not conform to the conditions of registration, in the prescribed form and manner, within a period of thirty days from the date of said adoption or modification, to the Principal Commissioner or Commissioner and such trust or institution is registered under section 12AA;
- (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 (33 of 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 operative 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) where the total income of the trust or institution as computed under this Act without giving effect to the provisions of section 11 and section 12 exceeds the maximum amount which is not chargeable to income-tax in any previous year, the accounts of the trust or institution for that year have been audited by an accountant as defined in the *Explanation* below sub-section (2) of section 288 before the specified date referred to in section 44AB and the person in receipt of the income furnishes by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed;
- (ba) the person in receipt of the income has furnished the return of income for the previous year in accordance with the provisions of sub-section (4A) of section 139, within the time allowed under that section.
- (c) [\*\*\*]

(2) Where 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:

**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 where registration has been granted to the trust or institution under section 12AA or section 12AB, then, the provisions of sections 11 and 12 shall apply in respect of any income derived from property held under trust of any assessment year preceding the aforesaid assessment year, for which assessment proceedings are pending before the Assessing Officer as on the date of such registration and the objects and activities of such trust or institution remain the same for such preceding assessment year:

**Provided also** that no action under section 147 shall be taken by the Assessing Officer in case of such trust or institution for any assessment year preceding the aforesaid assessment year only for non-registration of such trust or institution for the said assessment year:

**Provided also** that provisions contained in the first and second proviso shall not apply in case of any trust or institution which was refused registration or the registration granted to it was cancelled at any time under section 12AA or section 12AB.

12AA. *Procedure for registration* - (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,—
  - (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
- (b) after satisfying himself about the objects of the trust or institution and the genuineness of its activities as required under sub-clause (i) of clause (a) and compliance of the requirements under sub-clause (ii) of the said clause, 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 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.