Practical aspects in Formation and Registration of Charitable and Religious Trusts

CA. Prasanth Srinivas

Coverage

- Basics
- Choice of the exemption sections and Requirements under Income Tax Law
- Amendments brought in by Finance Acts 2020, 2022, 2023 & 2024 having bearing on registration
- Amendments in Finance Bill 2025

BASICS

Type of Entity / Registration under parent law / PAN

Type of entity (beneficiaries shall be public)

- Charitable (Section 2(15)
- Religious (not defined)
- Religious and Charitable (not the other way round)

- It shall be non profit organization (NPO)

Type of Entity / Registration under parent law / PAN

- After formation, register the entity under the parent law – Trust Act, Societies Act, Companies Act etc. and obtain PAN and open Bank Account. So many model trust deeds are available in books / internet. Customize as per needs. Ensure **mandatory clauses** are there.
- Let the founder bring money for registration expenses and for opening bank account and start some small activity.
- Then think of Income Tax registration

Choice of the entity

- Public Charitable or Public Religious Trust
  - Trust deed shall be registered under Indian Trust Act with sub-registrar
  - There shall be a settlor, trustee and beneficiary
  - Stamp duty depends on the value of trust property at the time of registration
  - No requirement to file members' list accounts etc.
- Declared religious trust
  - Declaration by the head of religious order
  - Case laws are there that it need not require registration
  - Better to have written bye-laws / rules & regulations

Choice of the entity

- Registered Society
  - MoA and R&R shall be Registered with the Society Registrar.
  - There shall be minimum number of people prescribed under the Societies Registration Act of 1860 or the parallel State Act.
  - Registration fee is nominal
  - Annual filing of accounts, resolutions, governing body list etc. required.
- Section 8 Company
  - MoA and R&R shall be Registered with the RoC
  - There shall be minimum number of people prescribed under the CA 2013
  - Follow the procedures and pay the prescribed registration fee
  - Annual filing of accounts, resolutions, governing body list etc. required. Strict compliance regimen is there

Choice of the exemption sections and Requirements under Income Tax Law

Overview

- History from 1973 – 12A – 12AA – 12B
- Misuse led to tightening of the noose.
- Computation and assessment of trusts is distinct from that of a business entity. For e.g., trust can c/f income, claim capital expenses, capital receipts are taxable etc.
- Exemption sections requiring registration, procedures, etc. separately dealt with
- Registering authority is CIT / PCIT

Exemption provisions requiring registration / approval

- Section 10 (23 C) : The undermentioned sub-items are inoperative from 01.10.2024 – FA 2024
  - 10(23C)(iv) – Approved charitable trust
  - 10(23C)(v) – Public religious or religious / charitable trust
  - 10(23C)(vi) – University / Educational Institutions
  - 10(23C)(via) – Hospital / Medical institutions

  registration not required vis-à-vis clauses i – iii aaaa, iii ab and iii ac (Government funded), iii ad and iii ae (less than 5 crore).
- Section 11 (subject to S.12, 12A, 12 AA, 12 AB and 13)
- Section 80 G (sub-sec 2 (a) (iv) r.w.sub sec 5)

Types of Registration

- Re-registration of old registration
- Registration of an unregistered trust
- Regularisation of provisional registration
- Renewal of regular registration

Re-registration of old registration

- Amendment in Finance Act 2020 requires existing registered entities to get re-registered within the stipulated time, which got extended till 30.09.2023 and further till 30.06.2024. From 01.10.2024 – Case to case condonation is the only remedy.
- Prescribed Form – Form 10 A
- Selecting the appropriate code and giving the prescribed particulars and attachments is the key
- Straight through processing
- CIT Certificate in Form 10 AC (within 3 months)
- Valid for a period of 5 years

Registration of an unregistered trust

- Situation 1 – where activities are yet to commence – w.e.f. 01.10.2023
  - Apply for provisional registration
  - Prescribed Form – Form 10 A
  - Selecting the appropriate code and giving the prescribed particulars and attachments is the key
  - Straight through processing
  - CIT Certificate in Form 10 AC (within 1 month)
  - Valid for a maximum period of 3 years

Registration of an unregistered trust

- Situation 2 – where activities have already commenced – w.e.f. 01.10.2023
  - Apply for regular registration (80G-anomaly-elsewhere)
  - Prescribed Form – Form 10 AB
  - Selecting the appropriate code and giving the prescribed particulars and attachments is the key
  - Detailed two way scrutiny / inspection
  - CIT Certificate in Form 10 AD (within 6 months)
  - Valid for 5 years
  - In case of rejection by CIT, two remedies are
    - Rectification if there are apparent mistakes or
    - Appeal before ITAT

Unintended anomaly –Section 80G(5)

(*vi*) in relation to donations made after the 31st day of March, 1992, the institution or fund is for the time being approved by the Principal Commissioner or Commissioner;

Provided that the institution or fund referred to in clause (*vi*) shall make an application in the prescribed form and manner to the Principal Commissioner or Commissioner, for grant of approval,—

(*i*) where the institution or fund is approved under clause (*vi*) [as it stood immediately before its amendment by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020], within three months from the 1st day of April, 2021; **(Re-approval of entities approved under old provision)**

(ii) where the institution or fund is approved and the period of such approval is due to expire, at least six months prior to expiry of the said period; **(Renewal of approval under the new provision)**

(iii) where the institution or fund 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; **(regularization of provisional approval)**

(iv) in any other case, where activities of the institution or fund have— **(i.e. approval sought for the first time)**

(A) **not commenced**, at least one month prior to the commencement of the previous year relevant to the assessment year from which the said approval is sought; **(provisional)**

(B) **commenced** ~~and where no income or part thereof of the said institution or fund has been excluded from the total income on account of applicability of sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10 or section 11 or section 12 for any previous year ending on or before the date of such application~~, at any time after the commencement of such activities:] **struck off portion deleted by FB 2024 wef 01.10.2024**

Regularisation of provisional registration

- Apply for regular registration either
  - Within 6 months from the date of commencement of activities OR
  - Within 6 months prior to the expiry of the prescribed three years

  WHICHEVER IS EARLIER
- Prescribed Form – Form 10 AB
- Selecting the appropriate code and giving the prescribed particulars and attachments is the key
- Detailed two way scrutiny / inspection
- CIT Certificate in Form 10 AD (within 6 months)
- Valid for 5 years
- In case of rejection by CIT, two remedies are
  - Rectification if there are apparent mistakes or
  - Appeal before ITAT

Circular No. 07/2024 dated 25.04.2024

CBDT extends due date for filing Form 10A/10AB upto 30th June, 2024

The Central Board of Direct Taxes (CBDT), has issued Circular No. 07/2024 dated 25.04.2024 further extending the due date for filing Form 10A/ Form 10AB under the Income-tax Act, 1961 (the 'Act') upto 30th June, 2024.

CBDT had earlier extended the due date for filing Form 10A/ Form 10AB by trusts, institutions and funds multiple times to mitigate genuine hardships of the taxpayers. The last such extension was made by Circular No. 06/2023 extending the date to 30.09.2023.

Considering the representations received by CBDT requesting for further extension of due date for filing of such Forms beyond the last extended date of 30.09.2023, and with a view to avoid genuine hardships to taxpayers, CBDT has extended the due date of filing Form 10A/ Form 10AB upto 30th June, 2024, in respect of certain provisions of section 10(23C)/ section 12A/ section 80G/ and section 35 of the Act.

CBDT further clarifies that, if any such existing trust, institution or fund had failed to file Form 10A for AY 2022-23 within the extended due date, and subsequently, applied for provisional registration as a new entity and received Form 10AC, can also now avail this opportunity to surrender the said Form 10AC and apply for registration for AY 2022-23 as an existing trust, institution or fund, in Form 10A till 30th June 2024.

It is also clarified that those trusts, institutions or funds whose applications for re-registration were rejected solely on the grounds of late filing or filing under wrong section code, may also submit fresh application in Form 10AB within the aforesaid extended deadline of 30th June, 2024.

The applications as per Form 10A/ Form 10AB shall be filed electronically through the e-filing portal of Income Tax Department. The Circular No. 07/2024 is available on www.incometaxindia.gov.in

****

NB/VM/KMN

Sri Nrisimha Priya Charitable Trust vs. Central Board of Direct Taxes
[2024] 161 taxmann.com 209 (Madras)

Facts of the Case

The petitioner, a charitable trust, was granted provisional approval under section 80G(5) by filing Form No. 10A. Subsequently, the petitioner applied for regular approval by filing Form No. 10AB. The application was filed beyond the due date as per the provisions of section 80G(5).

The Central Board of Direct Taxes (CBDT) issued a circular 6/2023 extending the due date for filing Form No. 10AB for re registration of existing approval under section 80G(5) only and not for regularizing provisional approval.

The petitioners filed a writ petition before the Madras High Court challenging the CBDT's circular.

High Court Held

The High Court held that when the impugned circular was issued, the CBDT stated that the reason was to mitigate genuine hardship faced by the trusts in the digital filing of the respective forms. It was essential to note that the only reason shown for exercising the powers was that these trusts faced hardship since they could not apply on time.

No discrimination or differentiation was made between the existing trusts and the new trusts at the first instance when the circular was issued. When the reason stated by the Board was to mitigate genuine hardship, no reason whatsoever is mentioned to omit “the clause (i) of the first proviso to sub-section (5) of Section 80G of the Act” in respect of the new trusts applying under Form No. 10AB alone.

There is no reason whatsoever to leave out the new trusts with respect to approval under Section 80G alone. The differential treatment is not based on any substantial distinction that is real and pertinent to the object of the circular. The discrimination is artificial.

The relevant paragraph only reiterated the eligibility of dedication and the amendments made to Section 115TD of the Finance Act, 2023. Thus, the impugned clause of the circular was declared illegitimate, arbitrary, and ultra vires the Constitution of India.

Renewal of regular registration

- Apply for regular regn's renewal within 6 months prior to the expiry of the prescribed five years
- Prescribed Form – Form 10 AB
- Selecting the appropriate code and giving the prescribed particulars and attachments is the key
- Detailed two way scrutiny / inspection
- Many old trusts may not be having mandatory clauses.
- CIT Certificate in Form 10 AD (within 6 months)
- Valid for 5 years
- In case of rejection by CIT, two remedies are
  - Rectification if there are apparent mistakes or
  - Appeal before ITAT

Procedures / conditions for registration

- These are elaborately dealt with in sections 10 (23C), 12 AA and 12 AB and 80 G, which are summarized below
- CIT may call for documents / information and make enquiries to satisfy
  - Genuineness of the activities of the trust and
  - Compliance of requirements of any other law which is material for the purpose of achieving its objects
- CIT shall give reasonable opportunity of being heard
- Outcome can be grant of registration or rejection of the application

CITs power to cancel registration

- Grounds
  - CIT has noticed one or more specified violations
  - AO has made a reference to CIT u.s. 143(3) 2nd proviso
  - Case selected by risk management strategy of CBDT
- After hearing CIT may or may not cancel the registration
- Specified violations
  - Income applied other than for objects
  - Income derived from non-incidental business
  - Non-maintenance of books for incidental business

CITs power to cancel registration

- Specified violations (contd…)
  - Income applied for private religious purposes
  - Charitable trust applying income for the benefit of any religious community or caste
  - Activities are not genuine
  - Violation of conditions subject to which registration was granted
  - Material violation of provisions of allied laws
  - Registration or re-registration obtained in straight through cases, where the application was not complete or where it contained false or incorrect particulars.

Conditions vis-à-vis 80 G (5)

- Income shall be exempt u.s. 11 or 10 (23C) or 10 (23AA). Some officers insist filing of return as proof of claiming the exemption.
- When there is business
  - Maintain books
  - Don’t use donations in business. Give undertaking to this effect to the donors.
- Trust deed shall contain a provision that funds shall not be transferred for purposes other than charitable purposes.
- Trust shall not be for the benefit of any religious community or caste.

Conditions vis-à-vis 80 G (5)

- Maintain regular accounts for receipts and expenditure.
- Prescribed constitution of the trust shall be
  - public charitable trust
  - Registered society
  - Section 8 / 25 company
  - Government approved or government sponsored institution
- Commissioner shall conduct such enquiry and call for details to ensure genuineness and compliance of the above conditions

Enquiry by CIT – mandatory clauses

1. Amendment clause

Any amendment to the Trust Deed / Memorandum of Association / Bye –laws will be carried out only with the **prior approval** of the Commissioner of Income Tax having jurisdiction.

Enquiry by CIT – mandatory clauses

2. Dissolution clause

In the event of dissolution / winding of the Trust / Society / Institution / Organization, the assets remaining as on the date of dissolution shall, under no circumstances, be distributed among the trustees/ members of the Managing Committee / Governing body but the same shall be transferred to another Charitable Trust / Society whose objects are similar to those of this Trust / Society and which is registered u/s. 12AA / 80 G of Income Tax Act at the time of transfer or shall be vested with the Government

Enquiry by CIT – mandatory clauses

3. Investment clause

The funds of the Trust / Society / Association / Institution will be invested strictly in accordance with provisions of section 11(5) r.w.s. 13 (1)(d) of the Income Tax Act.

Enquiry by CIT – mandatory clauses

4. Irrevocable nature clause

The Trust / Society / Institution / Organisation formed / constituted shall be irrevocable.

5. Area of operation clause

The objects / activities of the Trust / Society / Institution / Organization shall be carried out only in India

Enquiry by CIT – mandatory clauses

6. Effect of amendment clause

If powers to effect amendment to the Trust Deed / Memorandum of Association / Bye laws have been given the Trustees / Office bearers, it would not be extended to altering the basic character of the Trust / Society / Institution / Organization and further, no such amendments which may prove to be repugnant to the provisions of section 2(15), 11, 12, 13 and 80G of the Income Tax Act, shall be made.

Enquiry by CIT – mandatory clauses

7. Accounts and audit clause

The accounts of the Trust / Society / Institution / Organization shall be regularly maintained and every year, the accounts shall be closed by 31st March and the same shall be audited by a qualified Chartered Accountant.

8. Beneficiary clause

The benefits of the Trust / Society / Institution / Organization is open to all, irrespective of caste, religion creed, sex etc.

Enquiry by CIT – mandatory clauses

9. Use of income and funds clause

The income and the funds of the Trust / Society / Institution / Organization will solely be utilized for the objects and no portion of it will be utilized for payment to the Trustees / Members / Office bearers by way of profit / dividend / interest etc.

Issues – remuneration / reimbursement to trustee or interest on money borrowed from trustee

Enquiry by CIT – mandatory clauses

10. Business clause

- If the Trust / Society / Institution / Organization **do not intend to run any business**, it may please be provided by way of amendment to the Trust Deed/Memorandum of Association/Bye- laws that it will not function in the nature of conducting any business activity and not for the purpose of profits.
- In case the Trust/Society Institution/Organization **intend to run any business**, then it may be specified that it will satisfy the conditions stipulated in Section 11(4) and proviso to Section 80G(5)(1)of the Income tax Act, 1961.

Enquiry by CIT – Other requirements

- Copy of Trust deed / MoA and Rules – original for verification and return *if in vernacular, English translation*
- Registration certificate issued by registering authority
- Form 10 AC / Form 10 AD *(as the case may be, wherever applicable)*
- Notes on Activities with evidences
- Details and evidence for purchase of assets
- Details of corpus donation received
- Last 3 years ITR, audited receipt and payment A/c, Income and Expenditure A/c, Balance Sheet with Audit Report in Form No.10B
- Copy of PAN and Bank Account(s) of the trust.

Enquiry by CIT – Other requirements

- Name & address of the Founders / Trustees / Members / Office bearers of the trust / institution and proof thereof for communication
- Founder / Trustees / Members / Office bearers present occupation and their approximate annual income, whether he or she is an income tax assessee, if so, PAN and address and acknowledgement number else any other ID Proof in support of his / her genuineness
- Copy of adhaar of trustee / Secretary of Society
- Details of the Beneficiaries of the trust / Institution / Society

Enquiry by CIT – Other requirements

- Details of movable & immovable assets held by the trust / institution / Society.
- NOC from the premises owner or rental agreement, in case premises are not owned by the trust / Society.
- Declaration that no part of the Trust / Society / Non Profit Company enures directly or indirectly for the benefit of a person specified u/s. 13(3) of the Income tax Act 1961.
- An undertaking that there will be no infringement to the 1st proviso to section 2 (15) of the Income Tax Act 1961. - object of general public utility
- Donation list

Analysis of Form 10 AC (12 A, 10 (23C) & 80G cases)

- 10AC applies in re-registration of old registration and new provisional registration
- Unique Registration Number to be quoted in ITR 7, Form 10 B etc
- **Critical conditions**
  - Amendment or alteration to the objects / rules and regulations - prior approval of the CIT
  - Conversion of trust attracts exit tax u.s. 115TD
  - Registration alone does not guarantee exemption. Other conditions to be complied with
  - A public notice of the activities carried on / to be carried on and the intended beneficiaries shall be duly displayed at the Registered Office
  - Registered office not to be changed without prior approval
  - No asset shall be transferred without the knowledge of CIT to anyone
  - All the Public Money including Corpus shall be routed through a Bank Account whose number shall be communicated to CIT

Analysis of Form 10 AD (12 A, 10 (23C) & 80G cases)

- 10AD applies for all registrations other than those in previous slide
- Unique Registration Number to be quoted in ITR 7, Form 10 B etc
- Nature of trust – i.e. charitable or religious - is stated
- **Critical conditions**
  - Amendment or alteration to the objects / rules and regulations - prior approval of the CIT
  - Conversion of trust attracts exit tax u.s. 115TD
  - Registration alone does not guarantee exemption. Other conditions to be complied with
  - A public notice of the activities carried on / to be carried on and the intended beneficiaries shall be duly displayed at the Registered Office
  - Registered office not to be changed without prior approval
  - No asset shall be transferred without the knowledge of CIT to anyone
  - All the Public Money including Corpus shall be routed through a Bank Account whose number shall be communicated to CIT
  - Change in trustees to be informed to CIT (80 G Cases)

Amendments brought in by Finance Acts 2020, 2022, 2023 & 2024 having bearing on registration

Finance Act 2020

- Provisions regarding re-registration, provisional registration, regularisation of provisional registration etc. introduced in Sections 10(23C), 12AB & 80G. Cut off date got extended up to 31.03.2022 – Discussed elsewhere. **Time limit got further extended to 25.11.2022. Again extended to 30.09.2023 and further extended to 30.06.2024 and now condonation on a case to case basis.**

FA : 2022 – Withdrawal of registration/approval provisions revamped

- The provisions dealing with withdrawal of the registration/approval of a trust / institution have been revamped.

- Notably, the new provisions enumerate certain 'specified violations' that will lead to a withdrawal of the registration / approval — amongst them is having a business that is not incidental to the attainment of its objectives, material non-compliances in other legislations, etc.

FA 2023 - Omission of certain provisions relating to dating back of exemption

Section: Regimes 1 & 2	Clause of FB: 8	Effective date: 01.04.2023

Discussion

- **Section 12A(2):** ***Once registered under section 12AA or 12AB, exemption shall be available to the trust from the assessment year relevant to the financial year in which application for registration was made.***
- **Section 12A(2) 2nd proviso** – ***Once registration is granted u/s 12AA or 12AB, that status quo should be applied in all pending assessments of earlier years.***
- **Section 12A(2) 3rd proviso** - ***Once registration is granted u/s 12AA or 12AB, earlier year's assessments should not be reopened just because the trust was not registered in those years***
- **Section 12A(2) 4th proviso** – ***Trust will not get any immunity if registration is cancelled or application for registration is rejected***

Proposal

- **Second and third provisos are taken away – i.e. henceforth there is no immunity vis-à-vis earlier years for an already existing trust that applies for registration for the first time.**
- **Fourth proviso is also omitted.**

FA 2023 - Regarding provisional / regular registration / approval

Section: Regimes 1 & 2 & 80G	Clause of FB: 5,8,9,40	Effective date: 01.10.2023

Discussion

Situation 1 :

- **Trusts or institutions formed or incorporated during the previous year are not able to get exemption in the year of formation because they are required to apply for registration or approval at least one month before the previous year for which exemption is sought and registration would be granted from next AY.**

Situation 2

- **Trusts / Institutions, where activities have already commenced, are required to apply for two registrations / approvals (i.e. provisional and regular) simultaneously.**

Proposal

In Situation 1

- **Henceforth, the trusts / institutions shall be allowed to make application for provisional registration / approval before the commencement of activities and they get exemption from that AY.**

In Situation 2

- **The trusts / institutions that have already commenced their activities, shall make application for regular approval / registration (i.e. provisional can be skipped). IT authorities' powers are also spelt out.**

Please see notification amending Rules 2C, 11AA and Forms 10A & 10AB to give effect to the above amendment. There are minute changes in Forms 10B and 10BB also vide this notification (i.e. reporting 269SS cases) – Notification GSR 457E dated 23.06.2023 -
https://incometaxindia.gov.in/communications/notification/notification-45-2023.pdf

FA 2023 - Violations vis-à-vis the new registration / approval regime

Section: Regimes 1 & 2 & 80G	Clause of FB: 5 & 9	Effective date: 01.04.2023

Discussion

- **The process of granting provisional approval / registration for new trust and the re-registration / re-approval of already registered / approved trusts / institutions are automated.**
- **Application is filed in the portal and provisional approval / registration or re-approval / re-registration in such cases is granted in an automated manner without verification.**

Proposal

- **In many cases it is found that applications are defective, not complete and contain incorrect particulars**
- **Therefore, proposal is made to empower CIT / PCIT to cancel the registration / approval when application referred to above is incomplete or it contains false or incorrect information.**

FA 2023 - Trusts / Institutions not filing application in certain cases

Section: Regimes 1 & 2	Clause of FB: 57	Effective date: AY 2023-24

Discussion

- **Certain existing registered / approved trusts have not made application for re-registration or re approval**
- **Certain provisionally registered / approved trusts have not made application for regular registration**
- **Likely scenario in future – A trust registered / approved for 5 years may not apply for re registration or re approval**
- **Section 115TD provides for levy of exit tax on accreted income when a charitable trust gets converted to a non charitable trust in the manner laid down in the Act.**
- **By not applying for regular registration / approval or re registration or re approval the trust gets and easy route to exit without payment of exit tax.**

Proposal

- **Amendment is proposed in Section 115TD**
- **If the trust fails to make application for re registration or re approval or regular registration or regular approval within the stipulated time, it shall be deemed to have been converted into any form that is not eligible for registration or approval. It will attract exit tax.**
- **Time limits for re-registration etc. are extended upto 30.09.2023 (refer Circular 6 /2023)**
- **Procedural part and definition part are also amended.**

Limited merger of Section 10(23C) into Sections 11 to 13

Effective Date: 01.10.2024	Clause of FB: 4, 6 & 9

- **Existing provision**

  Many provisions in Section 10(23C)(iv)(v)(vi) & (via) are almost identical to Sections 11 to 13. Year to year amendments are made to synchronize both. Now they are proposed to be integrated to avoid duplication and to bring simplicity.

- **Proposal**
  - Applications seeking approval or provisional approval u/s 10(23C)(iv), (v), (vi) or (via) filed on or after 01.10.2024 shall not be considered.
  - Applications filed under these sub-clauses before 01.10.2024, and which are pending would be processed and considered under those provisions itself.
  - Approved trusts, funds or institutions would continue to get the benefit of exemption, as per the provisions of 10(23C)(iv), (v), (vi) or (via), till the validity of the said approval.
  - They would be eligible to apply for registration, subsequently, under sections 11 to 13. Amendments have accordingly been proposed in section 12A.
  - Certain eligible modes of investment, specified in clause (b) of third proviso to S 10(23C) shall be protected in the second regime, by way of amendment in section 13.

Condonation of delay in filing application for registration (S 12A proviso)

Effective Date: 01.10.2024	Clause of FB: 6

- **Existing provision**

  A trust seeking registration under section 12AB must apply for registration / renewal etc. within the timelines specified in clause (ac) of sub-section (1) of section 12A. Failing which, it may lose exemption, it may be subject to exit tax u/s 115TD etc.

- **Proposal**

  It is proposed that the Principal Commissioner/ Commissioner may be enabled to condone the delay in filing application and treat such application as filed within time. The delay may be condoned if he considers that there is a reasonable cause for the same.

  THE CONDONATION MENU IS ACTIVATED IN THE PORTAL (17/4/2025)

Correcting Anomaly in proviso – clause iv(B) to Section 80G(5)

Effective Date: 01.10.2024	Clause of FB: 26

- **Existing provision**

  Vide amendment effective from 01.10.2023, a trust, which had claimed exemption u/s 10(23C) or Section 11, could not make an application for approval u/s 80G. If applied, CITs rejected the applications. This was an unintended anomaly.

- **Proposal**

  Clause B referred to above is proposed to be amended so that trusts that have claimed exemption u/s 10(23C) or 11 could also apply for approval u/s 80G. ***However this should have been proposed wef 01.10.2023 instead of 01.10.2024.***

Rationalizing timelines for disposing off applications u/s 12AB / 80G

Effective Date: 01.10.2024	Clause of FB: 7 & 26

- **Existing provision**

  In both cases, applications are to be disposed off by the PCIT/CIT within 6 months from the end of the month in which they are filed.

- **Proposal**

  For better administration and monitoring, it is proposed to rationalise timelines for disposing applications made by trusts or funds or institutions to **six months from the end of the quarter in which the application was received.**

Merger of a trust covered u/s 10(23C) with one u/s 11 & vice versa

Effective Date: 01.10.2024	Clause of FB: 7 & 26

- **Existing provision**

  When a trust or institution which is approved / registered under the first or second regime, as the case may merges with another approved / registered entity under either regime, it may attract the provisions of Chapter XII-EB, relating exit tax in certain circumstances.

- **Proposal**

  It is proposed that conditions under which the said merger shall not attract provisions of Chapter XII-EB, may be prescribed, to provide greater clarity and certainty to taxpayers. **A new section 12AC is proposed to be inserted** for this purpose.

Amendments relating to Charitable Trusts in Finance Bill 2025

Charitable Trusts - Registration

Effective date: 01.04.2025	Clause of FB: 7

Present Provision

•Section 12AB grants:

- 5-year registration for trusts/institutions.
- 3-year provisional registration if activities haven't commenced at the time of application.

• Within the stipulated time the trust must reapply for registration.

Proposed Change to give relief to small trusts

•To extend registration's validity from 5 years to 10 years to:

- Trusts/institutions that apply u/s 12A(1)(ac) - (i) to (v) **AND** *(clause vi not covered – i.e., Fresh registrations or fresh provisional registrations shall be continue to be valid for 5 / 3 years)*
- Whose total income **does not exceed ₹5 crores** (before applying Sections 11 & 12) **in each of the two preceding years**.

Issues:

- **Not clear if the registration that expires in AY: 2026-27 will get extension of 5 years or should we apply afresh and new registration will be valid for 10 years?**
- **Section 80G – no corresponding amendment seen**

Charitable Trusts – Registration – Finance Bill extract

Effective date: 01.04.2025	Clause of FB: 7

7. In section 12AB of the Income-tax Act,— Amendment of section 12AB.

(*a*) in sub-section (*1*), the following proviso shall be inserted, namely:—

'Provided that where an application is made under sub-clauses (*i*) to (*v*) of the said clause, and the total income of such trust or institution, without giving effect to the provisions of sections 11 and 12, does not exceed rupees five crores during each of the two previous years, preceding the previous year in which such application is made, the provisions of this sub-section shall have effect as if for the words "five years", the words "ten years" had been substituted.';

Charitable Trusts – Registration – Memorandum extract

Effective date: 01.04.2025	Clause of FB: 7

III. Period of registration of smaller trusts or institutions

Section 12AB provides registration of trust or institution for a period of 5 years or provisional registration (where activities have not commenced at the time of filing application for registration) for a period of 3 years. At the expiry of such registration or provisional registration, or in case of provisional registration, if the activities of the trust or institution have commenced, the trust or institution is required to make application for further registration.

2. It has been noted that applying for registration after every 5 years, increases the compliance burden for trusts or institutions, especially for the smaller trusts or institutions.

3. To reduce the compliance burden for the smaller trusts or institutions, it is proposed to increase the period of validity of registration of trust or institution from 5 years to 10 years, in cases where the trust or institution made an application under sub-clause (i) to (v) of the clause (ac) of sub-section (1) of section 12A, and the total income of such trust or institution, without giving effect to the provisions of sections 11 and 12, does not exceed Rs. 5 crores during each of the two previous year, preceding to the previous year in which such application is made.

4. These amendments will take effect from the 1st day of April, 2025.

[Clause 7]

Charitable Trusts – Registration – Press Report – Times of India

Effective date: 01.04.2025 | **Clause of FB: 7**



SUNDAY TIMES OF INDIA, CHENNAI
FEBRUARY 2, 2025

FM charitable to trusts; registration tenure is doubled

Times TOI

For the first time in years, the Budget provisions have made life easier for charitable trusts and institutions. For instance, the period of validity of registration of a trust (registration is essential to claim tax exemption) has been extended from the current five years to 10 years. However, this applies only to smaller trusts with income below Rs 5 crore. Second, minor errors in the registration application will not result in deregistration of the trust. This is a significant development as deregistration meant that the fair market value of the assets of a trust becomes chargeable to tax. In Metro cities, trusts such as those engaged in education or medical have significant assets like land or buildings, and an 'exit tax' on deregistration was suicidal.

But reading between the lines is crucial. Gautam Nayak, tax partner at CNK & Associates, states, "When trusts have income (before exemption) of less than Rs 5 crore in each of the two years preceding the year of making application for renewal, registration will be granted for 10 years. This will apply to cases where application is made after March 31, 2025, and will not apply to provisional registration of new trusts, where registration is granted for 3 years. Small trusts whose approval was valid till Mar 31, 2026, will still have to make an application for renewal by Sept 30, 2025, but the renewal granted to them will then be for 10 years."

He adds that trusts would have to reapply every five years for approval under 80G. Only if the trust is approved can donors get a tax benefit (albeit under the old regime).

"The reason for cancellation of a registration by the commissioner would now only be in a case of false or incorrect information – the mere fact that the application was incomplete cannot be a ground for cancellation (which has significant adverse consequences of a heavy tax liability on the fair market value of assets of the trust)," adds Nayak.

Currently, a benefit provided to 'specified persons' by charitable trusts can result in loss of exemption to the extent of the benefit provided. The list of specified persons included a substantial contributor (a person who had made aggregate donations of more than Rs 50,000 since the inception of the trust), his relatives and concerns in which he held a substantial interest.

Minor errors will no longer lead to deregistration, preventing high tax on trust assets

"This ridiculously low limit of Rs 50,000 had remained unchanged for 40 years since 1985, and trusts found it impossible to identify or obtain details of such donors, their relatives and concerns. The limit is now being changed to Rs 1 lakh for donations during the year, or aggregate of Rs 10 lakh since inception. Further, relatives or concerns of such donors are excluded from the list of specified persons. While this will provide much-needed relief to trusts in maintaining records, the retention of period of aggregation of donations from inception of the trust will still be problematic for trusts which are several decades old," concludes Nayak.

But reading between the lines is crucial. Gautam Nayak, tax partner at CNK & Associates, states, "When trusts have income (before exemption) of less than Rs 5 crore in each of the two years preceding the year of making application for renewal, registration will be granted for 10 years. This will apply to cases where application is made after March 31, 2025, and will not apply to provisional registration of new trusts, where registration is granted for 3 years. Small trusts whose approval was valid till Mar 31, 2026, will still have to make an application for renewal by Sept 30, 2025, but the renewal granted to them will then be for 10 years."

He adds that trusts would have to reapply every five years for approval under 80G. Only if the trust is approved can donors get a tax benefit

Charitable Trusts – Cancellation of Registration – relaxation of 'specified violation'

Effective date: 01.04.2025	Clause of FB: 7

Present Provision

•Section 12AB(4) allows the Department to **cancel registration** of trusts/institutions if they find **one or more specified violations** during any previous year.

•**Specified violation** includes cases where: The **application under Section 12A(1)(ac) is incomplete or contains false or incorrect information**.

•As a result, **minor defaults**, such as **incomplete applications**, can lead to cancellation of registration, making trusts/institutions liable for tax on accreted income under Chapter XII-EB.

Proposed Change

•Amend the Explanation to Section 12AB(4) to **exclude incomplete applications** from being considered a "specified violation" for the purpose of cancellation of registration.

Charitable Trusts – Specified Persons – Section 13 (3) - Rationalized

Effective date: 01.04.2025	Clause of FB: 8

Present Provision

•**Section 13** disallows the benefits of Section 11 and 12 (tax exemption) if the income or property of a trust/institution is used for the benefit of certain persons, as specified in **Section 13(3).**

•**Persons specified under Section 13(3)** inter alia include:

- Any **person making a substantial contribution** to the trust/institution **(any person whose total contribution to the trust up to the end of the relevant previous year exceeds ₹50,000)**. *(see note below)*
- **Relatives** of such person.
- **Concerns** in which such person have substantial interest.

Note

1. ***Limit of Rs. 5,000 was fixed by Taxation Laws Amendment Act 1975***
2. ***Total contribution from the date of creation or establishment of the trust to be reckoned (CBDT Circular 204 / 1976)***
3. ***Limit enhanced to Rs. 25,000 by Taxation Laws Amendment Act 1984***
4. ***Limit enhanced to Rs. 50,000 by Finance Act 1994***

Charitable Trusts – Specified Persons – Section 13 (3) - Rationalized – Contd…

Effective date: 01.04.2025	Clause of FB: 8

Proposed Changes

1. Increase contribution limit for substantial contributors:

- **Total contribution to the trust during the previous year exceeds ₹1 lakh or**
- **The Aggregate contribution up to the end of the relevant previous year exceeds ₹10 lakh**.

2. Exclusion of relatives:

Relatives of persons meeting the above criteria will no longer be included in the specified persons list under Section 13(3).

3. Exclusion of concerns:

Any concern where such a person has substantial interest will no longer be included in the specified persons list under Section 13(3).

Why the Change?

- *Simplifies compliance by raising the threshold for substantial contributions.*
- *Reduces administrative burden of disclosing information about relatives and concerns.*

Recent caselaws

CIT(E) may consider the application on merits despite errors in selection the section codes

Sriramajayam Educational Trust vs. CIT(E) (ITAT Chennai)
Rotary Charity Trust vs. CIT(E) (ITAT Mumbai)
Snehatheeram Charitable Trust vs. CIT (Kerala HC)

Registration of Trusts is based on proposed activities and not based on actual activities. Application cannot be rejected stating activity is not commenced.

CIT(E) vs. International Health Care and Research Institute (Supreme Court)

Registration of trust u/s 12A of Income Tax cannot be rejected due to delay occured to approve amendment in Memorandum and Bye Laws: Kerala HC

taxscan.in (copy of order awaited)

For your valuable views

Thank You

Additional reference – Handbook of ICAI on Registration of Charitable and Religious Institutions

Article on section codes also separately kept