

LATEST AMENDMENTS IN **PROVISIONS OF TRUST** **UNDER INCOME TAX ACT**

Varis Isani

Advocate – Ahmedabad

advocateisani@gmail.com

Amendments and Respective Time Limits at a Glance²

S. No	Type of Case	Sections Invoked	Time Period for Application	Time Period for passing Order by Pr. CIT/CIT	Validity of Registration	Type of Registration	Severity of Verification of Documents
1	Already Registered Entities before 01.06.2020	10(23C) 12A/12AA 80G(5) 12AB	01.06.2020 to 31.08.2020	3 Months from end of the month of receipt of application	5 Years	Normal	Less
2	Entities which have already filed application but order has not been received before 01.06.2020	10(23C) 12A/12AA 80G(5) 12AB	No New Application to be Filed	Upto 31.07.2020. i.e. within one month from the end of the month in which application is filed.	3 Years	Provisional	Less
3	Newly Incorporated Entities / Entities seeking Registration on or after 01.06.2020	10(23C) 12AB 80G(5)	1 Month prior to commencement of Previous Year relevant to Assessment Year from which registration is sought.	One month from the end of the month of receipt of application	3 Years	Provisional	Less

Important Time Limits at a Glance..

S. No	Type of Case	Sections Invoked	Time Period for Application	Time Period for passing Order by Pr. CIT/CIT	Validity of Registration	Type of Registration	Severity of Verification of Documents
4	Trusts or Institution which were Provisionally Registered (S. No. 2 & 3 above)	10(23C) 12AB 80G(5)	6 Months before Expiry or within 6 months of Commencement of Activities	6 Months from the end of the month of receipt of application	5 Years	Normal	More
5	Trusts or Institutions Registered (Normal) after 01.06.2020 and their Period of Registration is about to Expire (S. No. 1 & 4 above)	10(23C) 12AB 80G(5)	6 Months before Expiry Period	6 Months from the end of the month of receipt of application	5 Years	Normal	More
6	Change in Objects (S. No. 1 to 5 above)	12AB	Within 30 Days of such change	6 Months from the end of the month of receipt of application	5 Years	Normal	More

For Newly Incorporated Entities / Entities seeking Fresh Registration after 01.06.2020

S. No	Particulars	Amendment
1	Application	To be filed after incorporation of entity
2	Time Period for Filing Application	Such Trust or Institution shall file an application one Month prior to the commencement of the Previous Year relevant to the Assessment Year from which registration/benefit is sought. (Section 12A(1)(ac)(vi)) (Section 10(23C)(Proviso 1)(Clause iv))
3	Time Period for Passing of Order by Principal Commissioner or Commissioner	Within 1 month from the end of the month in which the application was received. (Section 12AB(3)) (Section 10(23C)(Proviso 9))
4	Type of Registration	Provisional
5	Validity of Registration	The Principal Commissioner or the Commissioner shall pass an order in writing registering the trust or institution for a period of three years (Section 12AB(1)(c)) (Section 10(23C)(Proviso 2)(Clause iii))
6	Severity of Verification of Documents	Less

Where Trust Established in FY 19-20 but No Application was made in the said FY /Previous Year

Sr. No.	Particulars	Amendments
1	Application	Trusts or Institution had been incorporated during FY 2019-20 and no application was filed during FY 2019-20 relevant for AY 2020-21. Henceforth, no exemption shall be available for AY 2020-21. However, if the Assessee wishes to avail benefit of exemption for AY 2021-22, it is advised to apply for registration before 30.06.2020. (Assuming no registration is granted upto 01.06.2020)
2	Time Period for Filing Application	It is recommended to file an application before 01.06.2020. (Section 12AB(1)(c)) (Section 10(23C)(Proviso 18))
3	Time Period for Passing of Order by Principal Commissioner or Commissioner	The Order shall be passed Upto 31st July 2020 i.e one month from the end of the month the application is deemed to have been received. (Section 12AB(3)) (Section 10(23C)(Proviso 9))
4	Type of Registration	Provisional
5	Validity of Registration	The Principal Commissioner or the Commissioner shall <i>pass an</i> order in writing registering the trust or institution for a period of three years (Section 12AB(1)(c)) (Section 10(23C)(Proviso 2)(Clause iii))
6	Severity of Verification of	Less

Trusts or Institution incorporated during FY 2020-21 upto 30.06.2020 and has commenced its activities .

S. No	Particulars	Amendment
1	Application	Trusts or Institution which have been incorporated during FY 2020- 21 upto 30.06.2020 and have commenced its activities .
2	Time Period for Filing Application	<p>In such a case, it is suggested to file application before 01.06.2020 and attain provisional registration after 01.06.2020. (Section 12AB(1)(c)) (Section 10(23C)(Proviso 18))</p> <p>Since the Assessee has commenced its activities, it shall file application for Normal Registration within 6months of commencement of its activities. (Section 12A(1)(ac)(iii)) (Section 10(23C)(Proviso 1)(Clause iii))</p>
3	TimePeriodfor Passing of Order by Principal Commissioner or Commissioner	<p>Order for Provisional Registration shall be passed upto 31.07.2020.</p> <p>Thereafter, order for Normal Registration shall be passed within 6 Months from the end of the month of receipt of application (Section 12AB(3)) (Section 10(23C)(Proviso 9))</p>
4	Type of Registration	Provisional for the First Application & Normal for the Second Application.

Trusts or Institution incorporated during FY 2020-21 upto 30.06.2020 and has commenced its activities .

S. No	Particulars	Amendment
5	Validity of Registration	<p>Provisional Registration shall be valid upto 3 Years from the grant of Registration. (Section 12AB(1)(c)) (Section 10(23C)(Proviso 2)(Clause ii))</p> <p>Normal Registration shall be granted for a period of 5years. (Section 12AB(1)(b)) (Section 10(23C)(Proviso 2)(Clause ii))</p>
6	Severity of Verification of Documents	<p>Less for Provisional Registration and More for Normal Registration</p>

Basis	Trust regd under existing law	Trust whose regn expired within 5 years (new prov)	Provisional regn under new provn	Other cases
Application to be made for registration	Within three months from the Commencement of the new provisions i.e. June 01, 2020.	At least Six months prior to the expiry of the registration.	Within Six Months from the commencement of activities or six months prior to the expiry of provisional registration , whichever is earlier.	At least one month prior to the commencement of the previous year relevant to the assessment year for which approval is sought.

Basis	Trust regd under existing law	Trust whose regn expired within 5 years (new prov)	Provisional regn under new provn	Other cases
Order to be passed	Commissioner or Principle Commissioner shall pass an order in writing granting approval for five years	Commissioner or Principle Commissioner shall pass an order in writing granting approval for five years after verifying the genuineness of the activities and objects by calling for any document as, he may deem fit.	Commissioner or Principle Commissioner shall pass an order in writing granting approval for five years after verifying the genuineness of the activities and objects by calling for any document as, he may deem fit.	Commissioner or Principle Commissioner shall grant in writing the provisional registration for three years and send a copy of such order to the Charitable/religious trusts institutions etc.

Basis	Trust regd under existing law	Trust whose regn expired within 5 years (new prov)	Provisional regn under new provn	Other cases
Income on which new provisions and registration shall apply	Assessment year from which approval was earlier granted to it	Immediately following the financial year in which such application is made	From the first of the assessment years for which provisional registration granted.	Immediately following the financial year in which such application is made

Basis	Trust regd under existing law	Trust whose regn expired within 5 years (new prov)	Provisional regn under new provn	Other cases
Time period in which order shall be passed	Within three months, respectively, calculated from the end of the month in which the application was received	Within six months, respectively, calculated from the end of the month in which the application was received	Within six months, respectively, calculated from the end of the month in which the application was received	Within one months, respectively, calculated from the end of the month in which the application was received

Basis	Trust regd under existing law	Trust whose regn expired within 5 years (new prov)	Provisional regn under new provn	Other cases
Application to be made for 80G	Within three months from the Commencement of the new provisions i.e. 1st June, 2020.	Atleast Six months prior to the expiry of the registration.	Within Six Months from the commencement of activities or six months prior to the expiry of provisional registration, whichever is earlier.	Atleast one month prior to the commencement of the previous year relevant to the assessment year for which approval is sought.

DUE DATE OF FILING OF RETURN AND AUDIT REPORT

- The audit report in Form No. 10B/10BB has to be filed one month prior to the due date of filing of return of income under Section 139(1) of the Act.
- The due date u/s 139(1) of the Act, as amended by Finance Act, 2020 is 31st October of the AY, accordingly the cut off date for furnishing audit report in Form No. 10B/10BB now stands to be 30th September of the AY. [w.e.f. AY 2020-21 and onwards]

Remarks

1. It may not be possible for a Trust or an Institution to make an application one month before the commencement of Previous Year. For eg. If a Trust is **Incorporated in July 2020** and receives donation during the Financial Year (Previous Year) 2020-21, then it should have made an application in the month of February 2020 i.e. One month prior to the commencement of the Previous Year relevant to Assessment Year from which registration is sought which is not possible. It appears to be a **Drafting Error** and apparently it should have been one month prior to the commencement of the **Assessment Year**.
2. This shall mean technically that **no benefit can be sought for the First Year of Incorporation**.
3. The said **Registration can be obtained even before commencement of Activities of the Trust or Institution**.

Re-registration u/s 12AB for all Trust & NGO

- All the charitable trusts, section 8 companies, NGO's etc need to register again with the Income Tax Authority within 3 months from 1st June 2020. All such existing charitable trusts/institutions to apply for re-registration of 12A (w.e.f. 1st June 2020). It has been stated that all existing trusts or institutions which are registered under Section 12A or under Section 12AA of the Income Tax Act, shall be mandatorily required to make new application and such trust or institution should obtain registration under section 12AB. Such application has to be done within 3 months commencing from 1st June 2020. Registration shall be granted by the Principal Commissioner by passing an order within a period of three months from the end of the month in which the application was received and such registration shall be valid for a period of 5 years.

Re-registration u/s 12AB for all Trust & NGO

- If such application is not made then already granted earlier registration shall stand cancelled on the expiry of 3 months i.e. 31st August, 2020. If the registration gets cancelled then, such trust or institution shall not be eligible for claiming exemption in respect of its income under section 11 of the Act. It may be noted that as per section 115TD of the Act, such trust or institution shall be required to pay tax on the aggregate fair market value of the total assets of the trust or the institution as on 31st August, 2020 which exceeds the total liability of such trust on that date. The tax payable on such value shall be at the maximum marginal rate. Further, now onwards a trust or institution will be required to apply for re-registration at least six months prior to the expiry of the period of registration of 5 years.

Re-Approval u/s 80G for all Trust & NGO

- All the trusts and NGO's which already have 80G approval need to get it afresh within 3 months from 1st June 2020. In short, approval under Section 80G has to be obtained afresh w.e.f. 1st June 2020. It is provided that all existing trusts or institutions which have obtained approval u/s 80G of the Income Tax Act shall be mandatorily required to make new application and such trust or institution should obtain approval u/s 80G afresh. Such application is to be done within 3 months commencing from 1st June 2020. Such new approval u/s 80G shall not be for perpetuity but for a period of 5 years only and has to be applied again at least 6 months prior to the expiry of the period of registration.

All Donations reporting by Income Tax Authorities

- Donors will get deduction only based on return filed by trusts, NGO's . It means that it will be almost similar to like 26AS TDS credit. There is an obligation on Trust or Institution to file Annual Statement of Donation w.e.f. 1st June 2020. Every trust or institution approved under section 80G to file statement of donation received and also to issue the certificate to the donor. Deduction to Donor u/s 80G can be allowed only on the basis of the statement filed by the donee trust or institution. Most important, in case of delay in filing such statement a late fee of Rs.200 per day shall be applicable along with Penalty of Rs. 10,000 to Rs 100,000/-

Re-registration if any of the objects is changed

- If your trust or NGO has changed its objects then also it need to re apply for Income Tax Registration. Such application for re-registration to be made within 30 days in the case of modification of the object w.e.f. 1st June 2020. Where the trust or institution has adopted or undertaken modification of its objects which do not conform to the conditions on the basis of which registration was granted earlier, then such trust or institution need to apply afresh for registration within a period of 30 days from the date of said adoption or modification.

Power of Commissioner to cancel your Trust Registration

- Powers have been given to Commissioner of Income Tax w.e.f. 1st June 2020 to cancel trust registration, if the activities are not on accordance with the objects of the trust. Where the activities of the trust are not genuine or not being carried out in accordance with the objects of the trust or where the trust is not eligible for exemption under section 11 or section 12 in view of the violation of section 13(1) of the Income Tax Act or the trust or institution has not complied with the requirement of any other law for the time being enforced, then commissioner can cancel the registration of the trust. It may be noted that as per section 115TD of the Act, such trust or institution shall be required to pay tax on the aggregate fair market value of the total assets of the trust or the institution as on 31st August, 2020 which exceeds the total liability of such trust on that date. The tax payable on such value shall be at the maximum marginal rate. Further, now onwards a trust or institution will be required to apply for re-registration at least six months prior to the expiry of the period of registration of 5 years.

Key points to be noticed under new provisions

- In case, if a charitable/religious trusts/ institution etc. get itself registered under Section 10(23C) or 10(46) then the registration under Section 12AB shall stand inoperative, whereas if the charitable/religious trusts institution etc. apply again for registration under Section 12AB then the registration under Section 10(23C) or 10(46) shall stand inoperative.
- Application for registration under Section 12AB shall be made to the Commissioner or Principle Commissioner of the Income tax.
- Further, the process for getting registered under Section 12AA and Section 10(23C) is same as discussed in the above table.
- Registration under Section 12AA shall stand inoperative w.e.f. June 01, 2020.

Key points to be noticed under new provisions

- For B and C category of trusts the Commissioner or Principle Commissioner of Income tax shall reject the application in case, they are not satisfied with the genuineness and compliances of the objects, after providing the reasonable opportunity of being heard.
- In case of modification or alteration in the objects of the charitable/religious trusts institution etc., the charitable/religious trusts institution etc. shall file the application for registration with the modified and altered objects under the new provisions of law within 30 days from the day of modification of objects.
- All applications pending under Section 12AA before the Commissioner or Principle Commissioner and for application for which no order has been passed, shall deemed to be applications pending under Section 12AB.
- Further, in case where Commissioner or Principle Commissioner is satisfied that the charitable/religious trusts institution etc. have not complied with the objects mentioned or any other law, shall cancel the registration of charitable/religious trusts institution etc. after providing the reasonable opportunity of being heard.

Amendments under section 80G

- The Charitable/religious trusts institution etc. shall file an application before the Commissioner or Principle Commissioner within the prescribed time limits to sought registration under Section 80G. Procedure and time limit to file an application for registration under Section 80G is same as the procedure for registration under Section 12AB.
- Further, the Charitable/religious trusts institution etc. shall file a statement of receipts of donation to the prescribed Income tax authority in the prescribed time.
- Further, the charitable/religious trusts institution etc. shall furnish to the donor, a certificate specifying the amount of donation in such manner, containing such particulars and within such time from the date of receipt of donation, as may be prescribed. Furthermore, the donor shall be provided the deduction under 80G directly in the return of income on the basis of the prescribed statements

Amendments under section 80G

- Clause 34 of Finance bill, 2020 has specified that no deduction shall be allowed to the donor under Section 80GGA in respect, of donation exceeding amount of Rs. 2,000/- unless donation is paid in any mode other than cash.

Furnishing of statements and certificate

- Charitable/religious trusts institution etc. shall furnish the following statements: –
- Statement as prescribed under Section 35(1) to the prescribed Income tax authority or furnishing certificate as prescribed under clause (ii) of Section 35(1A)
- Statement for receipt of donation under Section 80G to the prescribed Income tax authority or furnishing certificate as prescribed under clause (ix) of sub section 5 of Section 80G.
- In case of failure to file the above statements the Charitable/religious trusts institution etc. shall be levied the fees of Rs. 200/- for each day during which the failure continues for delay in filing such statements. (Sec. 234G)
- Further, the Assessing office may levy penalty of amount not less than Rs. 10,000/- which may be extended to an amount of Rs. 1,00,000/- for failure to file the statement (Sec. 271K)

Amendments under section 115TD

- After the introduction of Section 12AB, nothing contained in Section 12AA shall be applicable to the trust or institution registered under Section 12AA. Hence in order to make the provisions of Section 115TD applicable Clause 33 of the Finance Bill, 2020 have substituted the word, figures and letters “under section 12AA” with the words, figures and letters “under section 12AA or section 12AB” in Section 115TD which shall be effective from June 01,2020.

AMENDMENTS MADE TO SECTION 10(23C) TO REMOVE CONFLICTING PROVISIONS

Corpus donations received by Section 10(23C) institutions will be exempt from tax

If institutions, registered under section 12AA, receive any income in the form of voluntary contributions with a specific direction that it should form part of the corpus of the trust or institution, it shall not be included in the total income of such trust or institution.

However, no such specific exemption was available to entities registered under section 10(23C).

Hence, it was always a matter of litigation, compelling the institutions coming within the scope of section 10(23C) to apply even their corpus donations for getting the benefit of exemption.

This was prejudicial to them because they cannot build up the corpus fund in the absence of specific exemption available to them.

The Finance Act, 2020 inserted an Explanation to the Third Proviso to Section 10(23C) to clarify that the corpus donations shall not form part of the income of such institutions.

It has been provided that any corpus donations received by such fund or institution or any university or other educational institution or any hospital or other medical institution, shall not be included in the income of such entities.

Hence, institutions or funds availing exemption under section 10(23C) now specifically get the exclusion from the requirement of mandatory application of income in respect of ‘corpus donations’.

This amendment brings exemption available to institutions registered under section 10(23C), for the corpus donations, at par with exemption available to trusts or institutions registered under section 12A/12AA/12AB.

Corpus donation not to be considered as an application of Income

As per extant provisions, entities registered under section 12A/12AA are provided with the benefit of exemption in respect of corpus donations.

Any contribution by a charitable or religious trust to any other trust registered under Section 12AA, with a specific direction that it shall form part of the corpus of recipient trust is not considered as an application of income for the donor trust.

A similar provision is contained in the Twelfth Proviso to Section 10(23C) that any contribution by fund or trust or institution or any university or other educational institution or any hospital or other medical institution [as referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of Section 10(23C)], with a specific direction to the trust or institution registered under section 12AA that it shall form part of the corpus of recipient trust, consequently, it shall not be treated as application of income for the donor.

Currently, this restriction was only in respect of corpus donations made to entities registered under section 12AA.

The Finance Act, 2020 provides that the corpus donations shall not form part of the income of the funds or institutions availing the benefit of section 10(23C).

A consequential amendment has also been made that corpus donations by one such entity to another entity shall not be treated as application of income.

In other words, the corpus donation by fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub clause (via) to another such fund shall not be considered as an application of income.

This has been done to ensure that these institutes do not avail the dual benefit, i.e., exemption of income as well as the application of income.

NO DEDUCTION OF CORPUS DONATIONS MADE TO SECTION 10(23C) APPROVED INSTITUTIONS [Section 11].

Income derived from property held under trust, wholly for charitable or religious purpose, is exempt from tax to the extent such income is applied to such purposes in India.

Where any such income is accumulated or set apart for application to such purposes in India, the income so accumulated or set apart is also exempt to the extent it is not in excess of 15% of the income from such property.

However, the donations by a charitable institution to another trust are considered as an application of income except the donation made with a specific direction that it shall form part of the corpus of the donee.

At present, any contribution by a charitable or religious trust registered under section 12AA to any other trust registered under Section 12AA, with a specific direction that it shall form part of corpus of recipient trust shall not be treated as application of income for the donor trust.

The Finance Act, 2020 provides that any corpus donation made by trust or institution registered under section 12AA to any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of section 10(23C) shall not be treated as an application of income.

In view of this amendment, corpus donation given by a Section 12AA registered institution to section 10(23C) approved institution will not be treated as an application of income.

This amendment has been introduced so that these institutions do not avail the dual benefit of exemption as the corpus donations received by institutions approved under section 10(23C) shall not be treated as an income in their hands.

Example, A charitable institution approved under section 12AA has an income of Rs. 5 Lakh during the year. It applied income for charitable purposes to the tune of Rs. 3.75 Lakhs.

It also made corpus donation of Rs. 50,000 to an educational institution approved under section 10(23C).

- The income in such case, before and after amendment shall be computed as under:

Particulars	Before Amendments (Rs.)	After Amendments (Rs.)
Income	500000	500000
Less : Application of Income	375000	375000
Less : Corpus Donation	50000	0
Less : 15% Exemption	75000	75000
Taxable Income	NIL	50000

Implications

- The new provisions may make false claims for deductions under Section 80G etc. more difficult. But these impose heavy additional compliance burden on the entities in the not-for-profit sector. Large institutions may have the wherewithal to make these compliances, but most small charities will find it extremely difficult to comply with these. The power being vested in Commissioners to cancel registrations/ approvals for violation of any other law other than Income Tax law is wide and unregulated. It will be open to misuse and litigation. Denial of deduction under Section 80G to eligible donors on account of default on the part of the exempt entity to file its 'statement of donations' will be unfair.

- Proposal to ask for all the existing trust/institution to get afresh registration will be cumbersome and even some of the deserving trust/institution may denied the registration considering the small window for tax department to approve or reject. Further, timeline of new trust/institution to apply one month prior to commencement of the previous year can be avoided and can be amended to apply one month prior to commencement of proposed charitable activity.
- Proposed time limit to allot the registration by the Income tax department is a welcome move. Further, aligning the list of donee detail similar to withholding tax compliance will help reduce the tax leakage. Though on down side this will increase the compliance cost for the trust/institution.

FAQ'S

- **Q: Do I need to take fresh registration even though my trust is already being registered with Sec 12AA?**
- Yes, All the existing charitable and religious institutions already registered under Section 12A (trusts and institutions registered prior to 1996), Section 12AA (trusts and institutions registered after 1996), Section 10(23C) and Section 80G will be required to re-apply to the income tax authorities to revalidate their existing registrations u/s 12AB. Moreover, as of now registration once granted u/s 12AA continues unless and otherwise cancelled by the authority. But in proposed regime after processing the application, trust or institution's registration is given for the limited period of 5 years. On expiry of the aforesaid period the approval may be re-obtained.

FAQ'S

- **Q: What about the application already pending with the commissioner?**
- All applications pending under Section 12AA,10(23C), and 80G before the Commissioner or Principle Commissioner and for application for which no order has been passed, shall deemed to be applications pending under Section 12AB. Moreover, entities making fresh application for registration under Sections 10 (23C), 12AB, or 80G of the Act shall have to apply within one month prior to the commencement of the year from which such registrationis sought. Such entities will be first granted a provisional approval for 3 years based on information in their application without detailed enquiry.

FAQ'S

- **Q: What is the provisional registration?**
- As stated above, newly established trusts and institutions applying to income tax for registration for the very first time will be given provisional registration for 3 years. Once granted, the provisional registration shall be valid for three years from the Assessment Year from which the registration is sought. Thereafter, application to be made for registration within 6 Months from the commencement of activities or 6 months prior to the expiry of provisional registration, whichever is earlier which will be valid for 5 years.

FAQ'S

- **Q: From when the approval is need to be taken to claim the exemption?**
- Under the existing provisions, the application for registration u/s. 12AA or 10(23C) can be made at any time during the financial year from which the exemption is required. The registration is granted will be applicable to the income of the whole financial year 2018-19 even if the application made on the last day of the financial year i.e., on 31st March, 2019. Now, under the proposed provisions, the fresh applicants (first time applicants) will have to make application for registration at least 1 month prior to the commencement of the financial year from which exemption is required.

FAQ'S

- **Q: What is the time limit to obtain registration under new provision?**
- **Q: What if trust or institution has undertaken any modification in object which do not confirms to the condition of registration?**
- In such case trust or institution has to apply for registration within 30 Days from the adoption of said modification in the object.

FAQ'S

- **Q: Can trust or institution opt for both 12AA or 10(23C) after these amendments?**
- Currently, several hospitals, schools and colleges are registered simultaneously under section 10(23C) and 12AA. Often, if exemption is denied under 10(23C), the institution seeks cover under the backup registration under 12AA. Charitable trusts and intuitions currently registered under both 10(23C) and 12AA will now be required to decide whether they prefer to apply for revalidation or renewal of either the registration u/s 10(23C) or 12AA, not both. Therefore, one can continue either 12AA or 10(23C)

FAQ'S

- **Q: Is there any change in Section 80G?**
- The trusts institution etc. shall file an application before the Commissioner or Principle Commissioner within the prescribed time limits to sought registration under Section 80G. Procedure and time limit is same as the procedure for registration under Section 12AB.

FAQ'S

- **Q: Any additional compliance to be made?**
- Every charitable trust or institution registered u/s 80G shall be required to submit a statement of donations received in such form & manner as may be prescribed & the benefit of 80G shall be available to donors on the basis of information relating to donation furnished by the corresponding charitable trust or institution only. In case of delays in filing of these statements the exempt entity will be liable to pay a Fee of Rs 200/- (Sec. 234G) per day of delay. The default will be further punishable by penalty varying between Rs 10,000/- to Rs. 100,000/- (Sec. 271K)

CHARITABLE PURPOSE U/S. 2(15)



CHARITABLE PURPOSE INCLUDES

- Relief of the poor
- Education
- Yoga (as per amendment made by Finance Act 2015)
- Medical Relief
- Preservation of Environment (including watersheds, forests and wildlife)
- Preservation of Monuments or places of object of artistic or historic interest
- The advancement of any other object of general public utility

PROVIDED THAT

- The advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business for a cess or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless- `

AND

- (i) Such activity is undertaken in the course of actual carrying out of such advancement of any other object of generally public utility;

- (ii) the aggregate receipts from such activity or activities during the previous years, **do not exceed twenty per cent of the total receipts** of the trust or institution undertaking such activity or

SOURCES OF INCOME OF THE TRUST

INCOME FROM PROPERTY HELD UNDER THE TRUST

CAPITAL GAINS [SEC. 11(1A)]

**Other Incomes
e.g. Rental,
Interest,
Relating to
activities
etc**

**Voluntary
Contribution (Sec.
12)**

**Services made
available free of
Cost or at
Concessional
Rate to persons
specified u/s. 13**

**Donation other than
anonymous donation**

**Anonymous donation
[Sec.115BBC]**

DONATION OTHER THAN ANONYMOUS DONATION

- **NORMAL DONATION**

- **DONATION FORMING
PART OF CORPUS**

- The corpus donation received by registered trust is exempt under section 11(1)(d). The section 12 also excludes corpus donation as income derived from property held under trust.

CAPIAL GAIN TAXABILITY

Illustration 1 – Showing treatment of capital gains

The following illustration clarifies the treatment of capital gain under section 11(1A).

The computation of capital gain deemed to have been applied for the purposes of section 11(1)(a) is as under:

Cost of the Assets		40000Rs.	
Sales Proceeds / Net Consideration		100000Rs.	
Re-Investment in Capital Assets		(i)	80000Rs.
		(ii)	100000Rs.
(i)	(ii)	(iii)	(iv)
(i)	Net Consideration	100000	100000
(ii)	Cost of the Asset	40000	40000
(iii)	Capital Gains	60000	60000
(iv)	Investment in New Asset	80000	100000
(v)	Capital Gains deemed to have been applied for charitable purposes (iii) – (v) (Excess of Investment over Cost)	40000	60000
(vi)	Shortfall in re-investment (i) – (iv)	20000	NIL

Section 11 (Income from Property held for Charitable or Religious purposes)

- **The deemed application to the extent of 15% shall be calculated on the net Income from such property.**

Charitable receipts (A)	50,00,000
Corpus donation Sec. 11(1)(d)	10,00,000
Incidental Expenses (B)	40,00,000
Voluntary donation 2(24)(iia)	5,00,000
Dividend Income from mutual funds	1,00,000
Agriculture Income	60,000
Net Income after incidental expenses (A-B)	10,00,000
Voluntary donation	5,00,000
Dividend Income from mutual funds	1,00,000
Income from property held under trust (Sec. 12)	16,00,000
Deemed deduction @ 15 % * 1600000 [Sec. 11(1)(a)]	90,000

This provision is applicable upto **31-03-2020.**

- Furthermore the corpus donation is not to be considered for calculation of 15% and is exempt as per section 11(1)(d) and also refer sec. 2(24)(iia), The agricultural income u/s. 10(1) and 10 (46) are only exempt for trust as per sec. 11(7) and all the other incomes falling u/s. 10 are taxable in the hands of trust.

- **Note :1 :**

- However, the accumulated amounts are required to be spent by the institution on its own and it cannot be given by way of donations (corpus or otherwise) to any trust registered u/s. 12AA or any other institution claiming exemption u/s. 10 (23C).

- **Note : 2 :**

- The charitable trust is not allowed to apply its income by making donation to non charitable trust.

- **Note : 3 :**

- There were two routes available to the assessee engaged in educational / hospitals institutions that to opt exemption u/s. 10 (23C) (vi) / 10 (23C) (via) or to seek registration u/s. 12A. In both the routes, there is a difference as per table given below.

Upto 31.03.2020

Particulars	10 (23C)(iv)(v)(vi)(vi-A)	11/12
Return	139(4A)	139(4C)
Corpus Donation Received	Taxable	Exempt 11(1)(d)
Deemed application of amount not received or any other reason (Sec. 11(1)(a) read with Explanation 1)	Not Allowed	Allowed i.e. Not expended due to Reason that amount was not received or any other reason
Application in respect of Corpus Donation Paid to Registered trust under section 12AA	Application not allowed as per 12 th proviso as per amendment made by Finance Act 2017	Application not allowed as per explanation 2 to section 11 as per amendment made by Finance Act 2017
Application in respect Corpus Donation Paid to Approved trust under 10(23C)	Allowed because Income in hands of Recipient	Allowed because Income in hands of Recipient
Registration	1 st & 2 nd Proviso to section 10 (23C)	12AA
Assessment	The approval granted can be withdrawn if the AO intimate to the CIT to withdraw the exemption. The AO can't himself withdraw the same	AO can independently deny. Exemption under this section during assessment proceedings.
Audit	10BB	10B
Tax on accretion Sec. 115TD	Not Applicable	Applicable

Finance Act 2020

Assessee can either obtain registration u/s. 12AB or obtain approval u/s. 10(23C), but he cannot adopt both as per proviso to Sec. 11(7)

<u>Sr. No.</u>	<u>Particulars</u>	<u>10(23C)(iv)(v)(vi)(vi-A)</u>	<u>11</u>
1	Return	139(4A)	139(4C)
2	Corpus Donation Received	Exempt as per Explanation added in 3 rd proviso to section 10 (23C)	Exempt 11(1)(d)
3	Deemed application of amount not received or any other reason	Not allowed	Allowed
4	Application in respect of corpus Donation paid to Registered Trust under Section 12AA	Not allowed as per 12 th proviso as per amendment made by Finance Act, 2017	Not allowed as per Explanation 2 to Section 11 as per amendment made by Finance Act, 2017
5	Application in respect corpus donation paid to approved trust under section 10(23C)	Application not allowed as per 12 th proviso as per amendment made by Finance Act, 2020	Application not allowed as per amendment made by Finance Act, 2020 in explanation 8.
6	Registration	1 st & 2 nd Proviso to Section 10 (23C) as substituted by Finance Act, 2020	12A(1)(ac) and 12AB
7	Assessment	The approval granted can be withdrawn if the AO intimate to the CIT to withdraw the exemption. The AO can't himself withdraw the same	AO can independently deny exemption under this section during assessment proceedings.
8	Audit	10BB	10B
9	Tax on accretion u/s. 115TD	Not applicable	Applicable
10	Tenure	5 Years	5 Years

JUDGEMENTS

Charitable Purpose u/s. 2(15)

- ❑ 2020(1) TMI 565 (Gujarat High Court) The CIT (E) vs. Baroda Cricket Association
- ❑ 2019 (11) TMI 35 (Director of Income Tax Exemption vs. Gujarat Cricket Association)
- ❑ Queen's Educational Society vs. CIT 2015 (3) TMI 619-Supreme Court
- ❑ CBDT Circular No. 21 dated 27.05.2016
- ❑ Dawn Educational Charitable Trust v. Commissioner of Income Tax [2014(910)TMI-911-SC Order]
- ❑ Ahmedabad Rana Caste Association 1971 (9) TMI 8-Supreme Court
- ❑ 2002 (12) TMI 8 – Supreme Court (Director of Income Tax V. Bharat Diamond Bourse
- ❑ CIT vs. FICCI – 1981 (4) TMI 9 – Supreme Court
- ❑ 2020 (3) TMI 694-SC Order Commissioner of Income Tax, (Exemption) Delhi v. Delhi Bureau of Text Books
- ❑ Institute of Chartered Accountants of India vs. Director General of Income Tax (Exemptions), Delhi

- ❑ 2018 (11) TMI 653 – SC Order Director of Income Tax (Exemptions) v. Delhi Public Schools Society
- ❑ Commissioner of Income Tax (Exemptions) v. Pratham Institute for Literacy Education & Vocational Training
- ❑ 2019 (6) TMI 583 – ITAT Chandigarh M/s. Jiwan Dass Kartar Singh Charitable Trust Versus The CIT (E) Chandigarh
- ❑ 2020 (3) TMI 496 – (ITAT Vishakhapatnam) (ITO Exemptions) , Guntur vs. M/s. Hosanna Ministries
- ❑ 2008 (7) TMI 984 – ITAT Chennai (Pentafour Software Employees Versus ACIT
- ❑ 2011 (1) TMI 1320 – ITAT Delhi (Income Tax Officer (Exemptions), Trust Ward II, Delhi versus Smt. Basanti Devi & Shri Chakhan Lal Garg Education Trust

CORPUS DONATION :-

- ❑ CIT v Sri Durga Nimishambha Trust 2011 (9) TMI 576 – Karnataka High Court
- ❑ Asst. CIT vs. Thanthi Trust 2001 (1) TMI 80 – Supreme Court
- ❑ DIT vs. Bharat Diamond Bourse 2002 (12) TMI 8 – Supreme Court

SECTION – 10 (23C) :-

- ❑ Param Hans Swami Bharti Mission Versus Assistant Commissioner of Income-Tax, Rewari (2013(1) TMI 496-ITAT Delhi)
- ❑ Shri Jawahar Shikshan Avam Prashikshan Sansthan Vs. Madrasa E Bhakhiyath Us Salihath Arabic College (2014 (8) TMI 565-Madras High Court)
- ❑ Assistant Commissioner of Income Tax, Circle-1, Alwar, Vs. M/s. Public Rose Shiksha Samiti (2015 (9) TMI 129-ITAT Jaipur)
- ❑ Gujarat State Co-Operative Union vs. CIT [1992 (2) TMI 74-Gujart High Court]

MISCELLANEOUS ISSUES :-

- ❑ 2018 (4) TMI 1622-Commissioner of Income Tax (Exemption) New Delhi Vs. Subros Educational Society.
- ❑ Commissioner of Income Tax and Another vs. Children's Educational Society (2013(7) TMI 519-Karnataka High Court)
- ❑ St. Mary's English Medium School Society versus Income Tax Officer (Exemptions) Guntur (2020(2) TMI 1139-ITAT Vishakhapatnam)
- ❑ Deputy Commissioner of Income Tax -2(1), Bhopal Versus M/s. Ayushmati Education and Social Society (2018(11) TMI 633- ITAT Indore)
- ❑ M/s. Public Education Society versus The Deputy Director of Income Tax (Exemptions) Circle-17(2), Bengaluru (2016(12) TMI 680-ITAT Bangalore)

THANK YOU.