

# **NEW PROVISIONS FOR CHARITABLE TRUSTS/INSTITUTIONS**

## **FINANCE ACT - 2020**

### **-The main changes at a glance are as under -**

- 1) The income tax registration commonly known as 12A / 12AA Registration, 80G Certificate and 10(23C) approval under sub sections- iv, v, vi, & via.  
Earlier the registration, 80G certificate and approval u/s. 10(23C) were perpetual. Now with this amendment the validity period will be restricted for 5 Years. And it is to be renewed there after every 5 years. The re-registration is not subjected to scrutiny however the renewal thereafter will be subject to the scrutiny.
- 2) The provisions of section 12A/AA will not be applicable w.e.f. 1.04.2021 and is replaced by new section 12AB.
- 3) All existing 12A/12AA registered trusts and having 80G certificate and trusts / institutions having approval u/s 10(23C) have to reapply for re-registration under new section 12AB and as per amended rules to this effect issued on by CBDT notification dated 26<sup>th</sup> march, 2021 (G.S.R. 212E).
- 4) The Director of Income-tax (CPC) and CIT (Exemptions) Bangalore are authorized as per CBDT notification dated 1<sup>st</sup> April, 2021 (S.O. 1443 (E)) for the purposes of receiving application a provisional registration or registration or provisional approval or approval or intimation or passing orders and to issue Unique Registration Number.

- 5) The application for registration is to be done online on Income-tax portal to CPC (with own Income-tax ID and Password) for the fresh certificate within 3 months from the effective date of the amendments that is from 1<sup>st</sup> April, 2021. It means every trust should apply in fresh for re-registration by 30<sup>th</sup> June, 2021.
- 6) All pending applications as on 1-4-2021 will be treated as filed under new section 12AB and the provisions of sec 12AB will apply accordingly.
- 7) The new system has been incorporated for provisional registration / provisional 80G / Provisional 10(23C) approval. All such applications for new registration as per sec 12AB, will initially get provisional registration for a period of **Three years** and thereafter if the CPC / CIT (Exemptions) Bangalore is satisfied with the activities of the trust will grant regular registration for next 5 years.
- 8) The prescribed time for filing of application for regular registration as per sec 12AB for the cases granted provisional registration is –
  - a. 6 months prior to date of expiry of provisional registration, or
  - b. Within 6 months of commencement of the activities.whichever is earlier.
- 9) As per the new provisions the pending applications as on 01-04-2021 will be treated as filed under new section 12AB and the application for new provisional registration attract the new provisions and accordingly the effective year of the provisional registration will be granted as under –

As per sec. 12A (ac) (vi) - in any other case (the application for provisional registration) at least one month prior to commencement of the previous year relevant to the assessment year from which the said registration is sought. For example -

- a) If the application is made on or before 29-02-2021 then the trust will get provisional registration from A Y 2022-23 and,
- b) If the application is made after 29<sup>th</sup> February 2021, including applied in March 2021, the trust will get provisional registration with effect from A Y 2023-24 and

As per this provision if you see the dates no new trust will get provisional registration in its first year of incorporation. Therefore care is to be taken during the first year for the activities conducted otherwise it will be tax levied as AOP.

**10)** There is amendment in Sec. 11(7) it says that the trusts claiming exemption u/s 10(23C) (sub section iv, v, vi, via) will be now not entitled to have exemption u/s 11 available for being having registration u/s 12A / 12AA or under new sec.12AB.

As per first proviso such registration will become inoperative from the date on which the trust or institution is approved under clause 10(23C) of Section 10 or is notified under Sec. 10(46) as the case may be or the date on which this proviso has come into force whichever is later.

As per second proviso that the trust or institution whose registration has become inoperative under the 1<sup>st</sup> proviso may apply to get its registration operative u/s. 12AB subject to condition that on doing so, the approval u/s. 10(23C) or notification under 10(46) as the case may be to such trust or institution shall cease to have any effect from the date on which the

said registration becomes operative and thereafter it shall not be entitled to exemption under the respective clauses.

If any trust or institution wants to re-activate its exemption u/s 11 then it can be done within six months prior to the commencement of the Assessment Year from which they said registration is sought to be operative and in such case the existing approval u/s 10(23C) shall become inoperative. This provision shall apply to all existing and future institutions, for example all the existing institutions having registration under section 12A or 12AA or section 10(23C) except sub section (iii) or 10(46) shall have to opt for exemption either under section 11 or under section 10.

### **11) Modification in the objects**

In case there are modifications in the objects of the trust which are adopted by the trust and are not confirming to the conditions objects then such trust shall make an application for re registration u/s 12AB within 30 days from the date of said adoption of such changes. An order in respect of such re registration shall be made within 1 months from end of the month in which such application is made provided the Pr. DIT, (CPC) or CIT (Exemptions) Bangalore is satisfied in respect of such changes and genuineness of the activities of such trust and its compliance with other laws and regulations.

**SUMMARY OF AMENDMENTS IN RELATION TO 12AB & 80G**

<b>Sr. no.</b>	<b>Instances</b>	<b>Time limit for application</b>	<b>Time limit for grant of order and validity of registration</b>	<b>Calling Documents</b>
1.	Already registered u/s 12A/12AA Required to get registered u/s 12AB & 80G	Within 3 months from 1 <sup>st</sup> April 2021 (i.e. 01-04-2021 to 30-06-2021)	3 months from the end of month in which application is made. Registration will be valid for 5 years. From the original registration year up to FY 2025-26.	No documents to be called for satisfying the genuineness and to see compliance of other laws
2.	In any other cases Including Provisional registration & Provisional 80G	At least 1 month before the commencement of previous year relevant to the AY from which registration is sought	Within 1 month from the end of month in which application is made. In these cases, a provisional order is granted for a period of 3 years from AY from which registration is sought.	No documents to be called for satisfying the genuineness and to see compliance of other laws
3.	Renewal of registration granted u/s 12AB & grant of 80G certificate	At least 6 months prior to expiry of the existing registration	Order will be passed within 6 months from the end of month in which application is made.	The registering authority will Call the documents and evidence for the genuineness of the activities of the trust and to see about the non compliance of other law.

4.	Renewal of provisional registration	Within 6 months prior to expiry of validity or within 6 months from the commencement of the activities	Order will be passed within 6 months from the end of month in which application is made.	The registering authority will Call the documents and evidence for the genuineness of the activities of the trust and to see about the non compliance of provisions of other law
5.	Registration of Trust becomes inoperative because of 1 <sup>st</sup> proviso to Sec 11(7) (i.e. registration u/s 10(23C) / 10(46) is approved and hence 12AA becomes inoperative)	At least 6 months prior to commencement of AY from which registration is sought to be made operative	Order will be passed within 6 months. The trust or institution shall cease to have any effect from the date on which the said registration becomes operative and thereafter it shall not be entitled to exemption under the u/s. 10(23C) / 10(46)	The registering authority will Call the documents and evidence for the genuineness of the activities of the trust and to see about the non compliance of provisions of other law.
6.	Change in objects or adoption of new objects of trust which do not confirm to conditions of registration	Within a period of 30 days from date of adoption or modification	Within 1 month from the end of month in which application is made	The registering authority has to satisfy about the objects of the trust which are charitable and allowable for registration.

## OTHER AMENDMENTS

- 1) The applicable audit report in form 10B is to be uploaded one month before the due date of filing of return. Now the due date for the filing of the return is changed from 30<sup>th</sup> September to 31<sup>st</sup> October.
- 2) All the trusts have to issue a certificate to all the donors containing the prescribed details.
- 3) All the trusts have to file a statement with Income tax department for the donations received by them during the year in prescribed form, within the prescribed time and providing all the prescribed information.  
This statement can be revised to correct any mistake.  
The donors will get deductions according to the said statement filed by the donee trust.  
(This system is similar to form 26AS for the TDS and TCS)
- 4) There is penalty provision for not filing of the said statement under new section 271K of minimum Rs 10,000/- and maximum up to Rs.1,00,000/- and will be liable to pay late fee for not filing the statement in time that is – Lower of Rs. 200/- per day or up to the amount for which reporting was to be made.

**AMENDMENTS CARRIED OUTR BY THE FINANCE ACT – 2021**

**1) Amendments in section 10(23) ( C )**

Under the existing provisions Institutions, funds, university, Other educational institutions, any Hospital or other medical institutions are exempted u/s 10(23) (C) with certain conditions. The organizations which are solely for the purpose of education and for hospital and other medical institutions are exempted under sub section (iiiad) & (iii ae) if their total receipts are less than 1 Crore. Now it is proposed to increase this limit of total receipts to 5 Crore.

The earlier limit was fixed in the year 1990 now the limit is increased to straight 5 Crores after 30 years.

After sub clause (iii ae) an explanation is added which says that the exemption under these clauses (iii ad & iii ae) shall not apply, if the aggregate of annual receipts of the person from such educational and medical institutions, exceed five crore rupees. Earlier this limit was considered as per each institution but now is restricted to per organization. For example if a trust is running more than one school or hospital then under the earlier provisions the limit was considered for each school or hospital i.e. if the receipts of each institution is less than 1 crore than for any number of institutions it was exempted but now it is to be considered on the basis of total receipts of the trust not to be seen as per each institution. This change may not be advantageous to few organizations but most of the organizations will be benefited by this welcome provision.

**2) CORPUS DONATIONS –**

The corpus donations received by trusts having exemption u/s 10(23)(C)

As per third proviso to clause (23C) of section 10 the donations in the form of voluntary contributions made with the specific direction that they shall form part of the corpus.



Some organizations spent money out of corpus donations and claim both the deductions, one exemption for corpus donations received and another as application of income for spending. This was resulting in to double deductions. So now Govt. wants to plug this double deduction. There is similar situation arise in case of spending out of loans and borrowed funds.

Now in such a case where the money is spent out of corpus donations or out of borrowed funds will not be considered application of income in the year in which it is spent as per amendment in 3<sup>rd</sup> proviso to section 10(23) (C).

It further says in the case of corpus spending when it is invested or deposited back in one or more forms or modes specified in section 11(5) as specifically maintained for such corpus from the income of the previous, such amount shall be allowed as application of income in the previous year in which it is deposited back to corpus to the extent of such deposit or investment.

Similarly in the case spending is out of loans and borrowings when it is repaid out of the income of the previous year, such repayment shall be allowed as application in the previous year in which it is repaid to the extent of such repayment.

That the corpus donations shall be invested or deposited in one or more of the forms or modes specified in Section 11(5) and maintain specifically for such corpus.

Now it is said that there should be earmarked corpus investments. Now question arises is it applicable to those corpus funds which are spent for the objects of the trust and re deposited back to claim the application of income in that year or it applies for all corpus donations including the earlier ones?

The memorandum explaining the proposed changes says –

To insure that there is no double counting while calculating application or accumulation, it has been proposed that -

“Voluntary contributions made with a specific direction that it shall form part of the corpus shall be invested or deposited in one or more forms or modes specified in section 11(5) maintain specifically for such corpuses.”

Therefore as per the wordings of memorandum it applies only for those corpus funds which are spent and re deposited as corpus in any subsequent year or years to claim the application of income.

One more question arises that as per section 11(5) even the investments in immovable property are also permitted. In such a case how to segregate it if the corpus donations are added to existing assets? The only outcome in such a case seems to be that such investments are continuously to be reflected in the balance sheet accordingly. However in such a case if it is re-invested in immovable property and it is not allowed as application of income earlier then can depreciation on such assets be claimed? As per section 11(6) it says that the depreciation will be allowed where the asset is not claimed as application of income hence in this situation the depreciation can be claimed on such assets.

Another question arises that after the re –investment it is to be hold for how long? There is no clarity so far about it.

However it is desirable for good governance for every trust should maintain as matching principle of corpus Fund and its investments.

- 3) In the fourteenth proviso after the words 12AA “or section 12 AB” shall be inserted. It was remained to be added in the last budget where new procedure for the registration under section 12AB was introduced.

4) **EXCESS SPENDING (DEFICIT) NOT ALLOWED TO BE ADJUSTED**

After twentieth proviso new explanation -2 is inserted. It says for the purpose of this clause, it is clarified that the calculation of the income required to be applied or accumulated during the previous year shall be made without any set off or deduction or allowance of any excess application of any of the preceding year.

This amendment is brought to reverse the Supreme Court decision in the case of **Subros Education Society**.

5) **Amendments in Section – 11**

1) **CORPUS DONATIONS**

Section 11 (1) (d) provides that voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution shall not be included in the total income.

Similar provisions as stated above for the section 10 (23) (C) is also provided for the trusts having 12A/12AA/12AB registration and claiming exemption u/s 11. That the amount spent out of the corpus donations will not be allowed as an application of the income in the year of spending. However it will be allowed in the year in which the income of the trust is invested or deposited back in one or more forms or modes specified in section 11(5) maintained specifically for such corpus shall be allowed in that year to the extent such deposit or investment.

And the similar provisions are also provided for the money spent out of loans and borrowings. That it will not be allowed as application of income, in which the borrowed funds are utilized for the application of income, shall not be allowed as application of income in that year. However it will be allowed as application of income in the year in which such loan and borrowings are repaid to the extent of such repayment.

2) EXCESS SPENDING (DEFICIT) NOT ALLOWED TO BE ADJUSTED

Explanation 5 inserted similar to inserted with section 10 (23) (C), which says that for the purpose of this sub section, it is hereby clarified that the calculation of the income required to be applied or accumulated during the previous year shall be made without any set off or deduction or allowance of any excess application of any of the year preceding the previous year. In short the deficit of the earlier years now will not be allowed to be set off with the current year's income.

- 3) There are two small additions of section 12AB with section 12AA in sub section (2) and in clause (d) of sub section (3).

ALL these provisions are applicable with effect from 1<sup>st</sup> April, 2022 and therefore will be applicable from A.Y. 2022-23. (F Y 2021-22)

**PROCEDURE FOR INCOME TAX RE-REGISTRATION AND RE-  
APPROVAL OF 80G & 10(23C)**

( For better understanding the word in place of re-registration should be considered revalidation )

The CBDT has issued a notification on 26.03.2021 to made new rules further to amend the IT rules 1962. These rules be called Income-tax (6<sup>th</sup> Amendment Rules, 2021) and came into force on 1<sup>st</sup> day of April, 2021. The said notification substituted rule 2C & 11AA and amendment in rule 5C and 5F and inserted rule 5CA. CBDT has prescribed various forms for the purpose of registration or provisional registration or intimation or approval or provisional approval.

**A) The prescribed time limit and the applicable forms are as under-**

Sr. No.	Trusts having Registration/Exemp under/ or section	Prescribed Form	Time limit	Remark
1	12A or 12AA	Form 10A	Within 3 months from April 1, 2021 (By 30 <sup>th</sup> June)	A separate list is given for documents required to be attached.
2	Section 12AB (For renewal after 5 every years)	Form 10AB	At least 6 months prior to expiry of validity period.	----do----
3	provisionally registered under section 12AB	Form 10AB	At least 6 months prior to expiry of period of the provisional registration or within 6 months of commencement of its activities, whichever is earlier.	---do---

4	where registration of the trust or institution has become inoperative due to the first proviso to sub-section (7) of section 11	Form 10AB	at least 6 months prior to the commencement of the assessment year from which said registration is sought to be made operative	Registration u/s 12A or 12AA shall become inoperative from the date on which the trust or institution is approved under clause (23C) of section 10
5	where trust or institution has adopted or undertaken modifications of the objects which do not conform to the conditions of registration	Form 10AB	within a period of 30 days from the date of the said adoption or modification	The adoption to be implemented after the approval by the respective authority.
6	In any other case (incl. provisional registration)	Form 10A	at least 1 month prior to the commencement of the previous year relevant to the assessment year from which said registration is sought	Pending application as on 01.04.2021 will fall under new provisions. Such trust or institution shall be provisionally registered under section 12AB

### **STEPS TO FILE FORM**

- 1) Visit [www.incometaxindiaefiling.gov.in](http://www.incometaxindiaefiling.gov.in)
- 2) Login using the user ID and password
- 3) Go to e-file – Income tax forms
- 4) Select Form 10A from the dropdown menu of Form Name and click continue.  
(FORM 10AB IS NOT YET AVAILABLE )
- 5) On the landing page, you will find 3 tabs.
  - a) Instructions –This tab has general instructions for filing the details.
  - b) Form 10A – Fill the required information.
  - c) Verification – Fill the details in verification tab.
- 6) Attached required documents.
- 7) The form has to be submitted with a digital signature if ITR is required to be filed under digital signature or through EVC, in other cases.

### **B – ISSUE OF ORDERS**

- i) Order for registration or provisional registration is to be issued in form 10AC.
- ii) Order for registration or approval or rejection or cancelation is to be issued in form 10AD.

C – STATEMENT OF PARTICULARS TO BE FILED IN FORM 10BD AS PER  
RULE 18AB

Following points to be noted

- 1) Reporting period is to be given as per the financial year.
- 2) At unique identification number i.e. PAN or Aadhar number is to be mentioned along with given ID code ( For PAN – 01 & for Aadhar -02)  
If the applicant has got PAN or Aadhar no then it is mandatory to mention.
- 3) In case if PAN or Aadhar is not there you can file –
  - i) Identification number of the country where the person resides(03)
  - ii) Passport Number (04)
  - iii) Election photo identification number (05)
  - iv) Driving License number (06) or
  - v) Ration card number (07)
- 4) Section code is to be mentioned 80G or 35(I) iia, ii, iii.
- 5) Donation type to be mention Corpus or Specific Grant or Other.
- 6) Mode of receipt cash or kind or electronic modes including  
account payee cheque / draft and Others.
- 7) Pr. DIT (System) or DIT (system) shall formulate and lay down procedure as to single or multiple forms 10BD. Presently it says multiple forms may be filed and correction statement can also be filed
- 8) Address and contact details of reporting person is to be given as per latest ITR filed which will be displayed. However option is available for the change.
- 9) The statement is to be signed digitally if the ITR is required to be filed so or through electronic verification code.
- 10) The form is to be verified by the person who is authorized to verify return.



11) The donor will get deduction as per the statement filed by the donee trust. ( Just like 26AS)

12) The form 10BD is to be filed on or before 31<sup>st</sup> May for the immediately following the financial year in which donation is received. This procedure will be with effect from F Y 2021-22.

13) There is penalty provision u/s 271K for not filing or late filing of the statement minimum of Rs 10,000/- and maximum up to Rs.1,00,000/- and will be liable to pay late fee for not filing the statement in time that is – Lower of Rs. 200/- per day or up to the amount for which reporting was to be made.

**C)- CERTIFICATE OF DONATION IS TO BE ISSUED IN FROM 10BE**

1) The reporting person shall furnish to the donor a certificate specifying the amount of donation received from such donor beginning with F Y 2021-22.

2) The pr. DGIT (systems) or DGIT (systems) shall lay down procedure for furnishing form 10BE for the purposes of generation and down load of certificate .

3) The certificate to the donor is required to be furnished on or before 31<sup>st</sup> May immediately following the F Y in which donation is received.

**Following significant Changes that took place as a result of new forms notified:-**

1) Now applicants need to provide details of registration on DARPAN Portal or under FCRA Act or any provision of Income-tax Act.

- 2) Applicants need to confirm if they have filed an Income Tax Return of the last assessment year for which the filing date is expired.
- 3) The existing form 10A for registration is replaced by new forms 10A and Form 10AB, as the case may be.
- 4) Earlier form 10G for 80G certificate has been withdrawn and the same can be applied now with Form 10A or 10AB as the case may be.
- 5) Form no -56 is omitted
- 6) Applicants need to provide details of Income & Expenditure of Religious Activity is to be given in following format-

Sr. No.	Previous year	Total Income	Expenditure of religious nature	Percentage to Total Income
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- 7) Applicants need to provide details regarding assets and liabilities **as on date of application**, specifically corpus fund, other funds / reserve and surplus, Long – term liabilities, Other Liabilities, Land & Building, Other Fixed assets, investments / deposits u/s. 11(5) and other than 11(5) and other assets. This information is to be provided amount in Rupees.
- 8) Income details – Income details required for 3 previous years immediately preceding the previous year in which application is made i.e. for FY 2018-19 to FY 2020-21. The income is to be given in following format -

Year	Grants received from Central or State Government	Grants received from companies under corporate social responsibilities	Other specific grants	Other income	Total
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➤ **Documents required for filing application with form 10A and 10AB (As the case may be):**

**A) COMMON DOCUMENTS**

- 1) Self certified copy of Trust Deed or MOA & AOA, as the case may be, or any other instrument evidencing the creation or establishment.
- 2) a) In case of Trust self certified **copy of registration certificate with** Charity Commissioner.  
  
c) In Case of Society self certified **copy of registration certificate with** Charity Commissioner and registration certificate under society.  
  
d) In case of Company self-certified copy of certificate of incorporation with Registrar of Companies.
- 3) Self certified **copy of registration under Foreign Contribution (Regulation) Act, 2010** (FCRA), if the applicant is registered under such Act;
- 4) Self certified copy of certificate of registration under section 12A/12AA or order for approval under section 10(23) or both as the case may be.
- 5) Self certified copy of the rejection of application u/s 12AA, 80G and/or for grant of approval under section 10(23C), if any.
- 6) Self certified copies of accounts for F.Y. 2018-19 To F Y 2020-21, required if return is not filed for which the time limit is expired.
- 7) Note on the activities of the applicant trust/institutions duly signed and the details of activities presently taken up.

**B) Other specific documents ,as the case may be**

8) Where an undertaking is by the entity as per the provisions of sub-section (4) of section 11 and/ or where the income of the entity includes profits and gains of business as per the provisions of sub-section (4A) of section 11, self-certified copies of the annual accounts and report of audit as per the provisions of section 44AB of three years immediately preceding the year in which the said application is made;

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**ISSUES**

- 1) **What shall be consequences of not making application for re registration by existing trust by 30-06-2021 ?**
- 2) **Can re registration application for registration u/s 12AB and approval u/s 80G be made through one form ?**
- 3) **Whether DIT/ CIT has power to call for other documents or evidence to grant re registration ?**
- 4) **What will happen if the application is incomplete or complete documents are not filed ?**
- 5) **What will happen if copy of 12a/12AA registration or 80G certificate is not available ?**
- 6) **Can CIT cancel or reject the application for re registration filed by 30-06-2021 ?**
- 7) **Can the CIT grant conditional registration in form 10AC or 10AD as the case may be ?**
- 8) **Is it mandatory to submit audit report under section 44AB for incidental business activity ?**
- 9) **Can NGO claim the benefit of exemption u/s 10(23C) and section 11 & 12 together ?**

- 10) What is the registration number and registering authority for a trust ?
- 11) What should we write under point 6 of the form regarding whether trust is irrevocable ?  
Is this point to be filed for society or company ?
- 12) What is the date of provisional registration ? And from which year the benefit of exemption shall be available ?
- 13) What is the status of applications pending as on 1-4-2021 ?
- 14) Education and Medical institutions having annual receipts of less than 5 crore or having more than 50% of Govt. grants having 12A/12AA registration, do these organizations need to apply for re registration by 30-06- 2021 ?

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