

*Fire Chat on New Provisions
under I.T.Act 1961 for
Charitable-Trusts
(Sections 12AB and 80G)*

How fair are these provisions?

As a practitioner with so many years of experience, do you really think this law was required?

Will it not add more burden to small trusts?

Could the law-makers not select the turnover of the trusts to which this law could apply?

Shouldn't this law be equally applicable to organization registered under section 13 of the Act, 1961?

Why are the political parties not required to be re-tested and re-checked?

They were formed more than 3 decades ago.

Reregistration and Fresh Registration u/s 12AB of the Income Tax Act, 1961

- When should a charitable trust seek registration under section 12AB: immediately after set up, after commencing activities (even if formed many years ago).
- Can the registration be granted for less than 5 years?
- What is the meaning of provisional registration? It is applicable to which kinds of trusts?
- What are the consequences of non-registration u/s 12AB? Is this law not harsh? Beyond that, especially during COVID 19 a world pandemic?

- While the registration is asking for documents to be self-attested, will signature of any one trustee be sufficient, do we require the trust to put their rubber stamp too?
- What is the time from when 5 years will be counted? Will it be from the date of application or from the passing or receipt of registration certificate u/s 12AB?
- Applicant is required to provide any one of the document as applicable:
 - where the applicant is created or established, under an instrument, self-certified copy of such instrument creating or establishing the applicant
 - where the applicant is created or established, otherwise than under an instrument, self-certified copy of the document evidencing the creation or establishment of the applicant.
- a. What is the difference between the i. and ii. Above
- b. How can the applicant proceed ahead since CPC reflects an error if any attachment is missing?

- E verification by applicants:

If	Then/BUT
DSC- available	Can EVC still be used ?
DSC – not available, EVC – issues	What is the re course available?
DSC – mandatory under rule 12 of IT Rules, 1961 for e filing ITR returns/Form 10B – audit report	Whether DSC mandatory for application under section 12AB

- Can the application be totally reject if the form is not filled with all the information or the applicant has forgotten to fill some part of the form knowingly or unknowingly?
Once registration is completed there is any further compliances to be met? Any anticipation?

- In case of change in trustees/address of the trust, there is a requirement to notify the charity commissioner in change report.

For eg: During course of application u/s 12AB, a trustee dies, change report has to be filed with charity, does the application get affected? In case the application is processed and registration under new law is granted, whether reapplication is required?

- In case of those trusts who presently have two exemptions under section 12AA and section 10(23C), what will happen to those? How are they supposed to re-register and how? Whether switch is possible?
- What happens to income received u/s 10(23C) between date of receipt and date of granting of registration under section 12AB (since 10(23C) would become inoperative)?

- Let us say, there is university exempt u/s 10(23C)(vi), as per Finance Act, 2021 the New threshold to avail exemption is Rs. 5 crores. Will this mean that even though re or fresh registration is granted to such organization and that when they cross Rs. 5 crores they will become taxable?
- Interplay between sections 12AB, 10(23C) and 80G?
- A trust has parked the unspent donation u/s 11(5) in specified modes. This amount is required to be utilized upto five years from 31.3.2021. What will happen to those trusts such a trust which claimed exemption u/s 11 it was not granted re registration?

- Where the trust has held business undertaking u/s 11(4) of the Act, and such an applicant has been in existence during any year or years prior to the financial year in which the application for registration is made, self-certified copies of the annual accounts of such business undertaking relating to such prior year or years (not being more than three years immediately preceding the year in which the said application is made) for which such accounts have been made up and self-certified copy of the report of audit as per the provisions of section 44AB for such period;- **What is the recourse available during the on going curfew and lockdown when the trust offices are unable to collate this information?**

- Until the registration is granted what happens to donation received between 1.4.21-30.6.21. Will they be still considered exempt? What about the donations received after the application is made until granted or rejected?
- In case the application is rejected, will the donations prior to that date from 1.4.21 be allowed as deduction u/s 80G to the donors? **How?**
- **“Section 12AA(5) Nothing contained in this section shall apply on or after the 1st day of June, 2020”**
Do we conclude that all trusts registered under this section and not applying for renewal will lose exemption forever? Are there any provisions for condonation of delay in application? What is the procedure?

- For those trusts which are awaiting the response to their application under section 12AA and 80G before 1.4.21, what will occur to them due to the new law?
- The new law requires the trust to renew the registrations every 5 years. Will this ease the process of questioning during assessment proceedings?
- Will the assessing officer accept the sanctity of the registration under 12AB and allow exemptions?
- Can the rejected application u/s 12AB be appealed to CIT Appeals and ITAT?

- What are the possible reasons for which registration can be cancelled or application be rejected? What may not be considered genuine activities by a charitable trust? **HOW TO PROVE genuineness online?**
- Can registration be cancelled retrospectively?
- For those trusts now registered under 12AB and also applicable to section 44AB – what will be the due date for audit for Form 10B and Form 3CD?

Registration and deduction u/s 80G

- What happens to trusts only having 12AA under the erstwhile provision but now wanting to apply for 80G registration?
- What can happen if Form 10A/10AB will be rejected for lack of information for section 12AB but gets accepted for section 80G?
- Can registration under sec.80G still be granted without granting registration under sec. 12AB? Will the applicant receive rejection for application for 80G as well?
- What is the time limit under which re application can be made for registration when registration is rejected? What is the solution available to trust when registration is cancelled?

- If, at any point of time, it is noticed that form 10A has not been duly filled in by not providing, fully or partly, or by providing false or incorrect information or documents required to be provided under sub-rule (1) or (2) or by not complying with the requirements of sub-rule (3) or (4), the Principal Commissioner or Commissioner, as referred to in sub-rule (5), after giving an opportunity of being heard, may cancel the approval granted in Form No. 10AC and Unique Registration Number (URN), issued under sub-rule (5), and such approval or such Unique Registration Number (URN) shall be deemed to have never been granted or issued. – **Will there be Video conference and how will the assessee prove the defects right?**

- In case the trust forgets to mention the details of any donor under Form 10BD, will it mean the donor will never be able to claim the deduction?

Will this be against natural justice due to some compliance burden of the trust that donor shall suffer? The fact is that the trust will claim exemption as a matter of fact on that donation if registration is granted and active, but the donor cannot claim the deduction.

- Will this not create issues of faith and trust in the trust by general public? And affect the donation receivable in the future?
- Does the trust need to give detail of every donation received or aggregate is allowed?

- What are the ways in which Form 10BD needs to be verified?
- How will the bigger trusts say Tata Trust handle this compliance on some particular day i.e. 31.5.2022. Can the Form 10BD be still e-filed for the trusts not applicable to file their returns with DSC under rule 12 of the IT Rules 1962?
- How will CPC/ITD verify donations received against the Donations claimed as deductions by donors versus income reported as exempt by the trusts?
- In case of mismatches, will the above not give rise to multiple cases of scrutiny and challenging the functions of the genuine trusts?

- What is the penalty for issuance of certificate under Form 10BE to donors after 31st May?

Is it fair to have the same due date i.e. 31.5.2022 for Form 10BD and Form 10BE? How can trusts issue form 10BE when they are filing Form 10BD on 31.5.2022?

- Whether furnishing inaccurate or error some details in Form 10BD can attract penalty under section 271AA and 271AAD (not maintaining documents – false entry in books respectively).
- Is the trust required to issue donation receipts when it is supposed to issue Form 10BE now?

Charity is injurious unless it helps the recipient to become independent of it. – John D Rockefeller Jr.

