

# TAX FLASH NEWS

28 March 2021

## **CBDT notifies rules for registration, approval and compliance by educational institutions, funds, trusts, hospitals, etc.**

The Finance Act, 2020 made substantial amendments for granting exemptions to the charitable/religious trusts, institutions etc. The new regime amended various provisions like Sections 10(23C), 11, 12A, 12AA, 35 and 80G of the Income-tax Act, 1961 (the Act) and inserted a new Section 12AB for charitable or religious institution. Even the existing charitable institutions are required to apply for fresh registration under the new provisions of Section 12AB. All the existing charitable trust or institutions registered under Sections 12A, 12AA, 10(23C) and 80G need to be registered under the new provisions to claim exemption under the Act.

Subsequently, due to COVID-19 pandemic, the Central Board of Direct taxes (CBDT) deferred the implementation of the new procedure for approval/registration/notification of certain entities to 1 October 2020. Accordingly, the entities approved/registered/notified under Section 10(23C), 12AA, 35 and 80G of the Act would be required to file an application within 3 months from 1 October 2020, i.e. by 31 December 2020. However, no legislative amendments were carried out till then.

The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 has further extended the new registration and other procedure under various provisions i.e. Section 10(23C), 12A, 12AB, Section 35, and Section 80G to be made applicable from the financial year 2021-22, i.e. 1 April 2021.

Recently, CBDT has issued a Notification<sup>1</sup> amending Income-tax Rules, 1962 (the Rules) and the procedure and Forms with respect to compliance/registration/approvals of educational institutions, funds, trusts, hospitals, etc. The new Forms introduced are to be filed electronically with digital signature.

### **CBDT Notification**

#### **Registration/approvals for the entities seeking approval / approved/ registered/ notified under Section 10(23C), 12A, and 80G**

An application for approval under the relevant provisions of Section 10(23C)<sup>2</sup>, institution of fund under Section 80G, application for registration of charitable or religious trusts etc. under Section 12A shall be made:

- In Form No. 10A - (i) in case where the trust or institution, etc., is registered under the existing rules within three months from 1 April 2021 or (ii) in case of newly established charitable institutions, at least one month prior to the commencement of the previous year relevant to the assessment year from which the said registration is sought, or
- Form No. 10AB in any other cases.

The same forms shall be applicable for registrations under Section 10(23C), 12AB and 80G.

The application shall be accompanied by the following documents, as required by Form Nos. 10A or 10AB, as the case may be –

- 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 registration with Registrar of Companies or Registrar of Firms and Societies or Registrar of Public Trusts, as the case may be.

<sup>2</sup> for the grant of approval of a fund or trust or institution, or university or other educational institution or any hospital or other medical institution

<sup>1</sup> Notification No. 19/2021, dated 26 March 2021

- Self-certified copy of registration with Registrar of Companies or Registrar of Firms and Societies or Registrar of Public Trusts, as the case may be.
- Self-certified copy of registration under Foreign Contribution (Regulation) Act, 2010 if the applicant is registered under such Act.
- Self-certified copy of existing order granting approval under Section 10(23C), , Section 80G, registration under Section 12A or Section 12AA or Section 12AB, as the case may be.
- Self-certified copy of order of rejection of application for grant of approval under Section 10(23C), Section 80G, for grant of registration under Section 12A or Section 12AA or section 12AB, as the case may be, if any.
- Where the 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 the applicant 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.
- Where a business undertaking is held by the applicant as per the provisions of Section 11(4)<sup>3</sup> and the 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 tax audit report as per the provisions of Section 44AB for such period.
- Where the income of the applicant includes profits and gains of business as per the provisions of Section 11(4A)<sup>4</sup> and the 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 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.

- Self-certified copy of the documents evidencing adoption or modification of the objects.
- Note on the activities of the applicant.
- Form Nos. 10A or 10AB, as the case may be, shall be furnished electronically under digital signature, if the return of income is required to be furnished under digital signature. However, in any other cases through electronic verification code.
- Form Nos. 10A or 10AB, as the case may be, shall be verified by the person who is authorised to verify the return of income under Section 140 of the Act.
- On receipt of an application in Form No. 10A, the Principal Commissioner or Commissioner, authorised by the CBDT shall pass an order in writing granting registration in Form No.10AC and issue a sixteen-digit alphanumeric Unique Registration Number (URN) to the applicants.
- In case of an application made in Form No. 10AB, the order of approval or rejection or cancellation shall be in Form No. 10AD and in case if the approval is granted, sixteen-digit alphanumeric number Unique Registration Number (URN) shall be issued.
- If it is noticed that Form No. 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 Principal Commissioner or Commissioner, after giving an opportunity of being heard, may cancel the registration in Form No. 10AC.
- In case of an application made under the relevant provisions during previous year beginning on 1 April 2021, the provisional registration shall be effective from the assessment year beginning on 1 April 2022.
- The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, shall lay down the data structure, standards and procedure of furnishing and verification of Form No. 10A or 10AB as the case may be.

<sup>3</sup> For the purposes of this section 'property held under trust' includes a business undertaking so held, and where a claim is made that the income of any such undertaking shall not be included in the total income of the persons in receipt thereof, the Assessing Officer shall have power to determine the income of such undertaking in accordance with the provisions of this Act relating to assessment; and where any income so determined is in excess of the income as shown in the accounts of the undertaking, such excess shall be deemed to be applied to purposes other than charitable or religious purposes.

<sup>4</sup> Section 11(4A) of the Act provides sub-section (1) or sub-section (2) or sub-section (3) or sub-section (3A) shall not apply in relation to any income of a trust or an institution, being profits and gains of business, unless the business is incidental to the attainment of the objectives of the trust or, as the case may be, institution, and separate books of account are maintained by such trust or institution in respect of such business.

## Amendments with respect to expenditure on scientific research

The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 with effect from 1 April 2021 amended the provision of Section 35 stating that the research association, university, college or other institution or the company makes an intimation in such form and manner, as may be prescribed, to the prescribed income-tax authority within 3 months from the date on which this proviso has come into force, and subject to such intimation the notification shall be valid for a period of 5 consecutive assessment years beginning with the assessment year commencing on or after the 1 April 2022.

In view of such amendment, CBDT amended Rules and Forms with respect to the expenditure on scientific research which are as follows:

- Under the existing the rule, Form No. 3CF-I/ Form No. 3CF-II/Form No. 3CF-III for application for registration/approval to be filed in duplicate. However, the amended rule introduces new Form No. 3CF for registration/approval instead of existing Form No. 3CF-I/ Form No. 3CF-II/Form No. 3CF-III.
- Form No. 3CF shall be furnished electronically under digital signature, if the return of income is required to be furnished under digital signature or through electronic verification code in other cases.
- Form No. 3CF shall be verified by the person who is authorised to verify the return of income under Section 140, as applicable to the applicant.
- The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be lay down the form, data structure, standards and procedure of furnishing and verification of Form No. 3CF.

## Furnishing of statement of particulars and certificate under Section 80G or under Section 35(1A) of the Act

New rule for furnishing of statement of particulars and certificate under Section 80G or Section 35(1A) of the Act has been introduced. The prescribed procedure are as follows:

- The statement of particulars required to be furnished by any research association, university, college or other institution or company or fund under Section 80G(5)(viii) or under Section 35(1A)(i) shall be furnished in respect of each financial year, beginning with the financial year 2021-2022, in Form No. 10BD and shall be verified in the manner indicated therein.

- The reporting person, shall, while aggregating the amounts for determining the sums received for reporting in respect of any person –
  - Take into account all the donations of the same nature paid by that person during the financial year; and
  - Proportionately attribute the value of the donation or the aggregated value of all the donations to all the persons, in a case where the donation is recorded in the name of more than one person and where no proportion is specified by the donors, attribute equally to all the donors.
- Form No. 10DB shall be furnished electronically, under digital signature, if the return of income is required to be furnished under digital signature. However, in any other cases through electronic verification code.
- Form No. 10BD shall be verified by the person who is authorised to verify the return of income under Section 140, as applicable to the taxpayer.
- The reporting person shall furnish the certificate as referred to in Section 80G(5)(ix) or in Section 35(1A)(ii), to the donor in Form No. 10 BE specifying the amount of donation received during financial year from such donor, beginning with the financial year 2021-2022.
- The certificate is required to be furnished to the donor on or before the 31 May, immediately following the financial year in which the donation is received.
- Form No. 10BD shall be furnished on or before the 31 May, immediately following the financial year in which the donation is received.

## Our comments

The replacement of erstwhile tax exemption regime which was for perpetuity with a five-year registration signifies the government's intent to further regulate the not-for-profit sector.

The Forms issued by the authorities for a fresh registration or renewal are quite detailed and require significant information to be submitted by all charitable institutions seeking approvals under Section 12AB, 35, 80G or 10(23C) of the Act. The Commissioner has authority to review the file in detail in cases of complete registrations (i.e. non-provisional), or renewals of such registrations. Considering the level of details being requested at the application stage even in case of provisional registration and re-registration one cannot rule out inquiries being undertaken in these cases as well.

The introduction of standardized forms for issue of donation receipts should streamline the process to claim tax exemptions by donors. However, the compliance burden on an already over-burdened sector may be challenging to adopt and likely to require significant improvements to their internal systems and processes.

It is also important that all charitable institutions are geared up and fully compliant with the regulations of the Income-tax Act, 1961 as well as other regulations before seeking to file tax exemption approvals.



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