



Date: 26th November, 2021

Ms. Nirmala Sitharaman
The Hon'ble Finance Minister
Government of India

Shri J.B Mohapatra
The Chairman,
Central Board of Direct Taxes,
New Delhi

Respected Sir/ Madam,

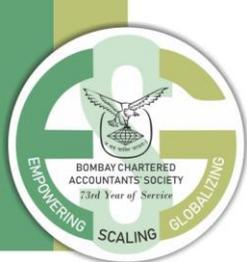
Subject: A representation in regard to the conditions set out in various orders of registration granted to Charitable institutions in response to applications preferred under section 12A(1)(ac) and the first proviso to section 10(23C) of the Income Tax Act 1961

Background

By the Taxation And Other Laws (Relaxation And Amendment Of Certain Provisions) Act 2020, all Charitable institutions are required to make applications for registration under section 12A(1)(ac) if they seek to claim an exemption under section 11, or in terms of the first proviso to sec 10(23C), if they seek to claim an exemption under section 10(23C)(iv), (v),(vi) or (via). These applications are required to be made by both newly formed Charitable institutions as well as those who were enjoying registration prior to the enactment referred to above.

The procedure for dealing with the said applications is contained in section 12AB and the second proviso to section 10(23C). The procedure dealing with the manner in which such registration is to be granted is contained in rule 17A or rule 2C, and the form prescribed is form 10A or 10AB. On receipt of the application, the Commissioner is empowered to grant/reject the registration by an order which is to be issued in either form 10AC or 10AD.

The time for furnishing the applications above mentioned has for a variety of reasons been extended to 31st March 2022. The purpose of requiring all charitable institutions, whether new or existing ones was to allot a unique registration number (URN). This, we presume, was to



ensure a proper identification of such institutions, and facilitate verifications of their affairs/conduct should the need arise.

Issues arising out of the orders being passed by the Commissioner/s in response to the above applications

On account of the logistic and technical issues being faced by applicants, many Charitable institutions eligible for exemption and therefore requiring registration have not been able to file/furnish the said applications. The due date for filing of the applications has been graciously extended by you from 30th June 2021 to 31st March 2022. Those who have been able to file their applications have promptly received their registration certificates in either form 10AC or 10AD.

The provisions of the Income Tax Act 1961, and the rules prescribed there under authorise the Commissioner to make an enquiry if the institution is not already registered under the old provisions and either grant or refuse registration. In case of existing institutions which are registered earlier, the rules require grant of registration without any enquiry. Neither the statutory provisions nor the rules authorise the Commissioner to issue an order granting provisional registration or registration with conditions. Many existing Charitable institutions, have received a Certificate of Registration, which states that it is a Provisional Registration certificate, and imposing a number of conditions, many of them extremely onerous and virtually impossible to comply with. These charitable institutions are represented by our members, and as a public body, we felt it appropriate to make a representation to your honour to bring this to your notice and seek your help in resolving these issues.

The Certificate in Form 10AC states that it is a Provisional Registration Certificate. Neither the Act, nor the rules has this concept of Provisional Registration for institutions which were already registered earlier under sections 12 A or 12AA. Under rule 17A(7), the concept of provisional registration applies to new institutions, seeking approval for the first time, who are granted registration without any enquiry for a period of up to 3 years. The notified form states





that it is an order of registration or provisional registration. For existing already registered institutions, rule 17A(5) refers to grant of registration, and not provisional registration. Such grant of provisional registration to institutions already registered earlier is an incorrect practice being followed, and needs to be corrected, both in cases where such certificate has already been issued, and for issue of certificate in future.

The conditions sought to be imposed are neither authorised by the statutory provisions or the rules prescribed thereunder. An illustrative list is as under

- (a) As and when there is a move to amend or alter the objects/rules and regulations of the applicant, prior approval of the Commissioner of Income Tax shall be sought along with the draft of the amended deed and no such amendment shall be effected until and unless the approval is accorded.
- (b) In the event of dissolution, surplus and assets shall be given to an organization, which has similar objects and no part of the same will go directly or indirectly to anybody specified in section 13(3) of the Income Tax Act, 1961.
- (c) The Trust/ Society/ Non Profit Company shall maintain accounts regularly and shall get these accounts audited in accordance with the provisions of the section 12A(1)(b) of the Income Tax Act, 1961. Separate accounts in respect of each activity as specified in Trust Deed/ Memorandum of Association shall be maintained. A copy of such account shall be submitted to the Assessing Officer. A public notice of the activities carried on/ to be carried on and the target group(s) (intended beneficiaries) shall be duly displayed at the Registered/ Designated Office of the Organisation.
- (d) No asset shall be transferred without the knowledge of Jurisdictional Commissioner of Income Tax to anyone, including to any Trust/ Society/ Non Profit Company etc.



(e) All the Public Money so received including for Corpus or any contribution shall be routed through a Bank Account whose number shall be communicated to Office of the Jurisdictional Commissioner of Income Tax.

Apart from the fact that these conditions are well beyond the mandate of the statutory provisions or the rules prescribed thereunder, they are extremely onerous making compliance virtually impossible.

1. The condition at (a) requires the Charitable institution to inform the Commissioner of any “move” to amend objects “rules/regulations”. The amendment is subject to such prior approval being accorded.

Firstly there is already in force section 12A(1)(ab) which requires the institution to apply for a fresh registration should there be an amendment to the objects which does not conform to the conditions of the original registration. With that provision existing, such a requirement requiring prior permission of the Commissioner is wholly unnecessary. Secondly, the manner of seeking such permission, and the timeframe for approval is not prescribed at all. The experience is that the administrative burden of the offices of the Commissioner is so large that they are unable to deal with their various responsibilities as of date. Entrusting an additional and wholly unnecessary burden is uncalled for. Secondly, the condition is to seek prior permission even for “rules/regulations”. An institution may require to amend its rules and regulations for administrative convenience. For example, an institution may seek to empower its office bearer to sign cheques with differing limits. Seeking prior permission in regard to such changes will stifle the operations of the organisation and will create unnecessary hurdles in achieving its charitable objects. Thirdly, most states already have a separate trust legislation, which requires permission from the state authorities. This will meet



the purpose of there being reasonable control over undesirable amendments to rules and regulations. We therefore submit that this condition should be totally deleted.

2. The condition at (b) is also uncalled for. The law already mandates through the provision of chapter XII-EB, that trusts who on dissolution do not transfer the assets to institutions with similar objects, would suffer tax on accreted income. This in itself is a strong enough disincentive to ensuring compliance. An additional condition is wholly unnecessary.
3. The third condition at (c) is in regard to the maintenance of accounts separately for each activity. The compliance thereof is virtually impossible. There may be multiple activities that an institution carries on which are complementary to each other. To require a trust to maintain separate accounts for each activity is far too onerous and does not serve any purpose whatsoever. It must be borne in mind that the exemption is in regard to application of income and not revenue earned. Further there is already in existence a provision in terms of section 11(4A), where, accounts in respect of a business incidental to the objectives of the trust, has to be maintained separately. No further condition is required. In fact if this condition is allowed to remain, then there will be many controversies because the term “activity” will be interpreted differently by different officials. There seems to be no logical reason for the said condition. The requirement to publish or display the activities carried on and the target groups is also unnecessary. The department is already armed with enough powers to verify as to whether the objects of the institution which is registered are being complied with in letter and spirit. Putting forth the burden of displaying the activities as well as the target groups would also serve no purpose whatsoever.



4. The condition at (d) requiring the intimation to the Commissioner of transfer of any asset is impossible to comply with. Any “asset” would include even the bank balance of the institution. In such a case, every expenditure or payment would result in the bank balance(asset) being transferred. If the Commissioner has to be informed of every payment, it would mean that a summary of all transactions would have to be intimated to the Commissioner on a daily basis. Assuming that this is to be restricted to investments, even then in the case of large trusts, these investments would also be undergoing a change very frequently. This imposes an unnecessary compliance burden on the trusts and serves no purpose whatsoever.
5. The condition at (e) requiring intimation of the bank account through which public money and corporate donations are routed is also unnecessary. As far as corpus is concerned, the new amendment by the Finance Act 2021 already mandates that the institution is required to invest the same separately in terms of investments maintained specifically for that purpose. Thus, that financial discipline is already provided for by the law. In large trusts having presence all over India, bank accounts may keep on being opened and money collected. In any event, the details of donations are already required to be submitted by a charitable institution in the context of section 80G. An additional administrative burden, without any corresponding benefit to the revenue, is also uncalled for.

We respectfully submit that the conditions sought to be imposed are totally misconceived, go beyond the scope of the law, and would create untold administrative burden on Charitable institutions, hampering their activities severely. We entirely appreciate the intent that institutions which enjoy a tax exemption should be compliant with the law and should pursue their charitable objectives in accordance with their charter. The revenue is already armed with enough powers to verify the accounts and record of erring institutions and bring them to book, as well as take deterrent measures.



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In the endeavour to carry out this objective, the conditions sought to be imposed in the orders granting registration under section 12A, will create possibility of harassment of genuine trusts and place hurdles in their activities.

In light of our above representation, we request your honour to do the following

- (a) immediately instruct the officers issuing orders of registration under section 12A, to desist from prescribing the conditions of the nature illustrated above.
- (b) In regard to the orders that have already been issued, an omnibus circular be issued to provide that the conditions included therein will not be effective

We hope that our representation will receive your kind consideration and the requisite action be taken at the earliest. We will be willing to meet your good self, or the concerned officials in order to clarify your concerns in this regard.

Thank you

Yours sincerely

for **Bombay Chartered accountants Society**

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