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India: India Union Budget 2020 - Changes in The Provisions Relating to Educational Institutes, Hospitals, Trusts, etc., Engaged in Public Charitable or Research Activities

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1. Current Position:

Currently the income of public charitable trusts and not-for-profit organisations, engaged in public charitable activities and registered with Income Tax department under Sections 12A or 12AA of the Income Tax Act, 1961 (the Act), is exempt if the same is applied to the objects of the trust or accumulated for doing so. This is subject to certain conditions. Further, if these entities are also registered under Section 80G of the Act then persons making donations to such entities are also eligible for deduction against their taxable income.

Similarly, educational institutions, universities, hospitals, other medical institutions, funds, and trusts etc. granted approvals under Section 10(23C) of the Act enjoy full exemption of their income.

Further, under Section 35 of the Act businesses can claim deductions in respect of expenditure incurred by them on scientific research, and donations made by them to Institutions, Universities, Colleges, Research Associations engaged in scientific research, research in social sciences, and statistical research etc. which are approved and notified under Section 35 of the Act.

All the above entities (hereinafter referred to as 'exempt entities') are by law required to obtain PAN and file their annual returns of income giving particulars of their accounts.

2. Proposed changes effective from 1st June 2020:

i. All existing registrations, approvals, etc. granted to exempt entities under Sections 10(23C), 12AA, and 80G, or notifications under Section 35 of the Act would become inoperative from 1st June 2020.

ii. Exempt entities which were already approved, registered or notified under Section 10(23C), or 12AA or 35 shall have to apply afresh within 3 months (i.e., by

31.08.2020) for approval or registration etc. On their doing so the approvals etc. shall be made valid for five years from 1st April 2020.

iii. Entities already approved under Section 80G of the Act shall also have to apply for fresh approvals, whereupon the approval granted to them shall be made valid for five years.

iv. All pending applications under the current provisions of Sections 10(23C), 12AA, 35 and 80G shall be deemed to have been made under the new provisions and shall be processed according to the new procedure.

v. Henceforth entities making fresh application for registration/ approval 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 registration/ approval etc. is sought. Such entities will be first granted a *provisional approval* for three years based on information in their application without detailed enquiry.

vi. Exempt entities granted provisional approval will then have to make application of regular registration at least six months prior to the expiry of the provisional registration or within six months of start of their activities, whichever is earlier.

vii. In the case of applications for grant of regular registration/ approvals etc. under Sections 10(23C), 12AB and 80G the Commissioner will have power to call for documents and make necessary inquiries to satisfy himself about - (a) the genuineness of activities of the applicant trust or institution or university or hospital or institution etc.; and (b) compliance by it with such requirements of any other law in force as are relevant for achieving the objectives of the applicant. On being satisfied about the objects of the applicant entity, the genuineness of its activities, and its compliance with the requirements of the other laws applicable to it the Commissioner may grant approval to it for five years. If the Commissioner is not so satisfied, he may reject the application and cancel its approval after giving a reasonable opportunity of being heard. An appeal will lie to Tribunal against orders rejecting grant of registration or cancelling the registration.

viii. Applications for renewal of regular registrations/ approvals will have to be filed six months prior to expiry of existing registration/ approval.

ix. In case subsequent to grant of registrations/ approvals it is found that the activities of the exempt entity are not being carried out in accordance with the provisions of the Act or that it has not complied with requirements of any other applicable law,

order, direction, or decree, etc. and such non-compliance has attained finality, the Commissioner may cancel the registration after giving a reasonable opportunity of being heard.

x. All exempt entities registered under Section 35 or 80G of the Act will have to file periodic 'statement of donations' received by them giving prescribed particulars of the donors, electronically.

xi. Deductions under Sections 80G and 80GGA of the Act to donors to the exempt entities will be granted only on the basis of such 'statement of donations' filed by them. In case of delays in filing of these statements the exempt entity will be liable to pay a Fee of Rs 250/- per day of delay. The default will be further punishable by penalty varying between Rs 10,000/- to Rs. 100,000/-

3. 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.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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