

OVERVIEW OF 12AB REGISTRATION

The Finance Act, 2020 has made comprehensive alterations regarding the provisions related to Trusts and NGOs holding exemption u/s 11 or u/s 12 of the Income Tax Act, 1961. The amendments in the Finance Act are regarding with the following agendas, which are as follows: -

- Registration procedure of all the existing registered trusts under section 12AB,
- Renewal of registration,
- Approval for deduction u/s 80G and,
- Preparing the statement of donations received to the Income Tax Authorities are some of the noted ones.

As per the amendment, to continue availing exemption under section 10 or 11, all the existing charitable and religious institutions registered under the following Sections 12A, Section 12AA, Section 10(23C), Section 80G are mandatorily required to change to section 12AB for fresh registration.

Note- *The new provisions will come into effect from 1st June 2020, as a result of which every trust or institution which are already in existence will have to mandatory renew the certificate granted under section 12A, 12AA, 80G, or section 35 to change it to section 12AB for fresh registration with the time duration of 3 months which is 31st August 2020 (Now Extended up to 31st March, 2022O).*

However, in the case of new Trusts or Institutions, they will have to apply for registration under section 12AB of the Income Tax Act, 1961.

APPROPRIATE AUTHORITY FOR APPLICATION & TIMELINE FOR REGISTRATION

The application shall be made online by Filing Form 10A along with the required documents to the Commissioner or Principal Commissioner who shall pass an order granting approval or rejection within three months from date of commencement of new provisions, i.e., by 31st August 2020.

Further, in case where Commissioner or Principal Commissioner is satisfied that the charitable/religious trusts institution etc. have not complied with the objects mentioned or any other law, shall cancel the registration of charitable/religious trusts institution etc. after providing the reasonable opportunity of being heard.

Similarly, there are different time limits under different categories which can be summarized below: -

Circumstances.	Timeline for filing of application
Where Trusts has adopted or modified the objects	Within 30 days from the date of such adoption / modification of objects
Trust obtained subsequent registration u/s 12AB	At least 6 months prior to date of expiry
Where registration of Trust has become inoperative due to Section 11(7) of the Act	6 months prior to commencement of the AY from which said registration is sought to be made operative
Existing Trusts registered u/s 12A or Section 12AA of the Act	On or before 30th June 2021

Trusts provisionally registered u/s 12AB of the Act	Earlier of the Following 6 months prior to the date of expiry; or Within 6 months of commencement of activities.
Any other case (including new registration)	At least 1 month prior to the commencement of FY, thereby a provisional registration shall be granted for a period of three years.

In order to claim exemption, a charitable or religious trust or institution, including an NGO, should make an application to the Principal Commissioner of Income Tax or Commissioner of Income Tax online in Form 10A. The registration under Section 12A and 80G are also mandatory when the organisations intend to receive or receive any grant or assistance from the Central Government or State Government.

VALIDITY OF REGISTRATION

The registration granted under section 12AB remains valid for 5 years. However, in the case of Provisional registration, it shall be valid for 3 years. All the registration granted under section 12AB shall be subject to renewal as determined under the new scheme of registration.

DOCUMENTS REQUIRED FOR REGISTRATION

- In case of a company- Certificate of Incorporation and MOA.
- Copy of PAN Card of Trust.
- In case of a trust-Trust deed (2 self-attested copies by the Managing Trustee)

- In the case of rented property, NOC from the Landlord is required.
- To address Proof-Utility Bill Copy i.e. Electricity Bill, Water Bill, House Tax, etc. for the owned property.
- Proof of welfare activity carried out by the trusts. Also, the progress report of the same for the last 2 years or since inception.
- Books of Accounts, Balance Sheet, Income Tax return of the last 3 years or since inception (If any).
- Particulars of Donors with their Id and Address Proof.
- Particulars of Governing body or members of the trust/Institution.

CONSEQUENCES IN CASE OF FAILURE TO GET REGISTERED U/S 12AB

The Income Tax Act has provided the procedure and time limit for migrating to the new registration scheme u/s 12AB for an existing registered trust. Nowhere in the act it is stated that migration is mandatory. There is no direct express provision in the statute which states that the migration to section 12AB is mandatory. It is further provided in amended section 12A that in order to claim exemption u/s 11 and u/s 12, a trust must be registered u/s 12AB. Thus, if a trust is not registered u/s 12AB, it cannot avail exemption u/s 11 and u/s 12. In case a trust does not migrate to section 12AB, it will be attracted by section 115TD i.e., Exit Tax.