

Direct Taxes

Budget 2025 : Changes proposed for Charitable Trust

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Introduction

A ray of hope in the 2025 budget for charitable trusts or societies or companies steams from the fact that the finance minister has recognized that there is a high compliance burden for smaller trusts. The recognition of such a difficulty is a battle half won, for all the associations and trusts who were sending representations for simplification from many years. The budget of 2025 for the first time gives relief to the charitable trusts or societies or companies by simplifying the compliance for smaller trust. (reference to trust in the article includes societies or companies doing charitable activity in that form)

I. Extending the period of registration for Small Trusts.

1. The Finance Act 2020 provided for re-registration of all charitable trusts. This exercise was important as the department did not have a listing of registrations granted. The government gave a long rope and extended the date repeatedly till June 2024(circular 7 of 2024 dated 25th April 2024). The trust were thereafter allowed to apply for condonation of delay in filling to the Commissioner exemption or Principal Commissioner from 1st October 2024. This amendment gave an opportunity to any trust who had missed filling the application for registration, due to any reason. The clause (ii) to section 12A(1)(ac) require trust to re-register after the expiry of the period of five years or three years (in case of provisional registration).

2. This application is to be made atleast six months prior to the date on which the registration is to expire. Section 12AB provides procedure for registration of trust after the application for registration is received by the Commissioner exemption or Principal Commissioner. The section provides that the Commissioner exemption or Principal Commissioner would call for details required to prove the genuineness of the trust and compliance with any other law.

3. The Commissioner exemption or Principal Commissioner is allowed to give registration for a period of five years. The renewal every five years for a small trust would be burdensome and hence the finance minister has amended the section 12AB.

Amendment to Section 12AB

4. The budget adds proviso to section 12AB(1), to extend the period of registration from five years to ten years. The proviso allows the Commissioner exemption or Principal Commissioner to give registration for ten years to trusts whose total income without giving impact the exemption under section 11 and 12, does not exceed rupees five crores in previous two years prior to the filling of the application for renewal of registration. **This would apply from 1st April 2025 (A Y 2025-26).**

5. The new trust who apply for registration would get registration only for five years if the data for two years is not available prior to the application for registration.

Issues/ Question?

6. There is a common question in the minds of all stake holders of smaller trusts, which is that *“do the smaller trusts who are to renew their registration which is expiring on 31st March 2026 and application required to be made on or before 30th September 2025 require to apply for registration or the date of their registration is extended by this amendment”?*

7. The reading of provisions makes it clear that the extension of time from five years to ten years would be granted after the application is made to the Commissioner exemption or Principal Commissioner of Exemption for renewal. Thus all trusts whose registration are expiring on 31st March 2026 will have to make an application to the on or before 30th September and then while granting the renewal the Commissioner exemption or Principal Commissioner will grant registration for ten years.

8. This will lead to the thousands of small trusts who had been given registration for five years in 2021-22 to go for re-registration. This is likely to create a huge stress on the department resources which are already stressed and are taking up the application only in the fourth or fifth or in some cases sixth month after application is filed for disposal. Section 12AB(3) provides the Commissioner exemption or Principal Commissioner, time up to six months for granting registration or rejecting the same. This approach of the department to take up application on the fag end of the time barring period leads to a situation where trust are not able to submit the details in time and the application being rejected leading to avoidable litigation.

9. A representation needs to be made that the small trusts whose registration is due to expire on 31st march 2026 be extended for a further period of five years as per the amended proviso, or alternatively small trusts who are due for renewal be allowed to file the application and a standard questionnaire be issued by the department which can be issued immediately for the trust to prepare and file. This proactive step will help in giving enough time to the trusts to prepare details and submit well in time.

10. The charitable trusts currently face a difficulty due to the notices for details being issued in the fag end of the time barring period and then a show cause notice being issued only when a few days to reply due to time barring. The small trusts who have minimum resources and have only a part time accountant, find it extremely difficult to submit details in time. This leads to the rejection of registration and a round of litigation where in the rejection is set aside back to the Commissioner exemption or Principal Commissioner to give enough opportunity to submit details.

11. The trusts face rejection of application in certain jurisdictions, where the trusts have objects which are religious in nature or objects to spend money outside India. The trust needs to have the object if it wants to spend money on religious objects as per the provisions of law (upto 5% for religious objects and spend money outside India with permission of government).

12. The Commissioner exemption or Principal Commissioner assumes that the trust will not follow the Income Tax Law laid down as per the Income Tax Act of 1961 and hence rejects application based on the assumption that the trust will spend money above the limit and hence cannot be granted certificate under section 80G. The rejection of registration even though the law allows spending 5% of the receipts for religious purpose, is an issue which is raised by certain Commissioner exemption or Principal Commissioner on random basis inspite of earlier registrations and history of not spending on religious objects. The new trusts are ready to give an undertaking that they will not spend more than 5% of the revenue on religious activity but the applications are being rejected on the pretext that there would be no control over whether a trust has spend the money on religious activity. The Income Tax Act 1961 in its wisdom has trusted the assessee to not spend more than 5% if it takes registration under section 80G, such trust and liberty given by legislature should not be taken away by the executives who implement the law.

13. The Rajasthan High Court in the case of MISHRILAL GORDHANLAL BATRA CHARITABLE TRUST vs. UNION OF INDIA & ANR 307 ITR 221 has considered this issue and has allowed registration to charitable religious trust.

14. However the trustees should be cautious in drafting the trust deed and include a clause to state that the trust while spending for any religious objects will abide by the provisions of the Income Tax law and will not violate the Income Tax Act. It is to be pointed out that the assumption always has to be that the tax paying identity will abide by the law and to assume otherwise without any basis or evidence is incorrect interpretations. However, this commitment to abide by the law in the trust deed would help the trust to make its case strong to get registration under section 80G.

II. Simplification in Compliance.

15. Section 13 provides a list of cases where the exemptions under section 11 are not to apply. The section provides list of specified persons who cannot take benefit from the charitable trust. The said specified person include trustees, managers, substantial contributors, etc who have fiduciary relationship and are not allowed to take any benefit from the trust.

16. The clause (c) of subsection (1) of section 13 provides for no exemption for amounts spent for the benefits of specified persons listed in section 13(3).

17. The section 13(3) in clause (b) provides that any person whose total contribution up to the end of the relevant previous year exceeds fifty thousand rupees from the date of incorporation of trust is a specified person. This created lot of difficulty as the amount of rupees fifty thousand was a small amount and the list of such person would increase and become voluminous over the period of time.

18. Similarly in clause (d) of section 13(3) requires the disclosure of details of relatives of such a person contributing more than rupees 50,000/- and clause (e) of section 13(3) required disclosure of any concern in which such person held substantial interest.

19. This was practically very difficult and in some cases impossible as the donor may not disclose such details. Representation were made over the years to the Finance Ministry for the difficulties faced by trusts in providing such details.

Amendment to section 13(3).

1. The budget 2025 addresses this difficulty by increasing the limit of contribution. The subclause (b) is amended, the person contributing Rs 1,00,000/- or more during the previous year and contributing Rs 10,00,000/- or more since the incorporation of the trust are to be treated as specified person. The budget further omits the clause (d) and (e) thus removing the relatives and the concerns in which such person has substantial interest from list of specified person. This will greatly reduce the compliance burden and help the trusts in avoiding confrontation with the donors who generally refuse to give any such details. This would apply from 1st April 2025 (A Y 2025-26).

III. Removal of difficulty:- Amendment to clause (g) of explanation to Section 12AB(4)

Section 12AB(4) gives power to the Commissioner exemption or Principal Commissioner to cancel the registration in case of specified violation. The explanation to the section defines what is specified violation. The clause (g) of the said definition included "the application referred to in clause (ac) of sub-section (1) of section 12A is not complete or it contains false or incorrect information". This clause allowed the Commissioner exemption or Principal Commissioner to reject or cancel the registration even if the application "is not complete". This gave power to reject the application or cancel the registration based on venial faults or small errors.

The budget 2025 amends the clause (g) and removes the term "is not complete or it". Thus giving the trusts a fair chance to rectify the incomplete form and to not get the application rejected or get the number cancelled for venial fault.

Conclusion

The amendments will help the smaller trusts in compliance and is a step in the right direction. The increase in the substantial contribution limit and the removal of the relatives and the firms where the specified person has substantial interest is a big help. These disclosures were really impossible to comply in view of the fact that the donors would generally refuse to give details or on being pushed, refuse the donation itself. The amendment to remove the power to reject the application or cancel the number for venial default is a big step in right direction. The finance minister needs to be complimented for the amendment which was long overdue.

[Source : AIFTP Journal-February, 2025]