

REGISTRATION OF TRUSTS OR INSTITUTIONS UNDER INCOME TAX ACT

Any organization operating for charitable purposes must be registered under the Income Tax Act to qualify for income tax exemption. According to Section 12A(1), a trust must be registered under the Act to benefit from the exemptions provided under Section 11. If the trust is not registered, its gross income will be taxed without any allowance for legitimate charitable expenditures. Therefore, registration under the Income Tax Act is essential and inevitable for obtaining tax exemptions.

Registration before and after 31/3/2021.

Before 31-3-2021

Sub sections a, aa, ab of Section 12(A)(1) insists that the trusts should follow the registration procedures specified by sections 12A and 12AA to get themselves registered under the act.

As per these provisions:-

1. After careful scrutiny and due verifications of the application in the prescribed form and connected records, the commissioner of income tax will pass order registering such trust.
2. The registration will be permanent from the date the trust was established, as long as its objectives and activities remain consistent with those at the time of registration. Otherwise, it will be effective from the first day of the previous year in which the registration was granted.
3. The registration remains valid indefinitely unless it is revoked by the Commissioner of Income Tax for valid reasons.

After 31-3-2021

Sub sections a, aa or ab were made redundant by introducing a new sub section (ac) to section 12A(1).

As per this provision:-

1. The registrations granted for perpetuity were dislodged and made to apply for renewal to get registration which will be renewed every five years on fresh application made before expiry of such five year life time.
2. The trusts seeking fresh registration shall apply for provisional registration which will be available for three years.
3. Provisionally registered Trusts shall apply for permanent one within six months either from starting of its charitable activities or before expiry of the three year period.
4. Registration provided will be effective from the first date of previous year in which the required application is made following the conditions prescribed.

Eligible institutions to be registered

The organisations or institutions dedicated to social cause are to be in any one of forms such as:-

S.No	INSTITUTION NATURE	GOVERNING ACT
1	Society	Societies act-(enacted by respective state governments)
2	Trust	Trust act
3	Company (section 8)	Companies act 2013

The legal entities Society, Trust or Company will be created as per the provisions of the respective acts.

Those entities to be considered as a Public charitable institution the following conditions should be adhered: -

1. The objects of the entities should be in line with the activities envisaged in section 2(15) of income tax act.
2. The beneficiaries should be at large without any discriminations on caste, religion, colour, community or similar factors.
3. Activities should be within INDIA.
4. Institution should be irrevocable.
5. The entity should be registered under section 12AB of Income Tax Act.

REGISTRATION UNDER SECTION 12AB OF INCOME TAX ACT.

1. Until 31/03/2021 registration was granted subject to the procedures laid down by section 12AA.
2. After 31/3/2020, section 12(A)(1) (ac), introduced new procedures prescribed under section 12AB.

Sub section (1) of section 12A provides that the provisions of [section 11](#) and [section 12](#) shall not apply in relation to the income of any trust or institution unless the conditions stipulated by this section are fulfilled. These conditions provide the procedures to be followed under section 12AB

After 31/3/2020, section 12(A)(1) (ac), introduced new procedures prescribed under section 12AB. Forms 10A and 10AB were introduced to be applied by the trusts depending upon the prevailing registration status of such trust.

Section 12(A)(1)(ac)

This section empowers:-

The charitable trusts to make application for registration to the commissioner of income tax, following procedures laid down in section 12AB, within stipulated time frame specified according to the prevailing registration status of such trusts.

Section 12AB

This section empowers:-

1. The commissioner of income tax act to conduct scrutiny of the application made by the trusts.
2. If satisfied, the commissioner will pass order:-
 - a. Granting registration, either provisional or permanent or
 - b. Rejecting the application
 - c. Within the time frame stipulated for respective orders.

Rule 17A

This suggests which form (either 10A or 10AB) with respect to the conditions envisaged by the clauses of section 12A(1)(ac) and the time line suggested by the section 12AB.

FORMS 10A AND 10AB.

1. Form 10A and form 10AB were introduced for making application for registration of the trusts or institutions.
2. The applicant Trust or Institution, applying for registration, requires to select the appropriate form that suits to the prevailing registration status of that applicant.
3. While filling these forms the applicant is required to opt the applicable codes that suits to the status of the applicant prevailed as on the date of application. The said codes are numbers assigned by the respective forms to denote a specific situation of the applicant Trust.
4. The duly filled appropriate forms prescribed depending on the status of the Trust or institution must be filed within the time limit stipulated for that status.

Forms prescribed according to the clauses of section 12A (1) (ac) and rule 17A

1. RULE 17A.-APPLICATION FOR REGISTRATION OF CHARITABLE OR RELIGIOUS TRUST.

17A. (1). *An application under sub-clause (i) or sub-clause (ii) or sub-clause (iii) or sub-clause (iv) or sub-clause (v) or sub-clause (vi) of clause (ac) of sub-section (1) of section 12A for registration of a charitable or religious trust or institution (hereinafter referred to as 'the applicant') shall be made in the following Form, namely: -*

- a) **Form No. 10A** in case of application under **sub-clause (i) or item (A) of sub-clause (vi) of clause (ac) of sub-section (1) of section 12A** to the Principal Commissioner or Commissioner authorised by the Board; or
- b) **Form No. 10AB** in case of application under **sub-clause (ii) or (iii) or (iv) or (v) or item (B) of sub-clause (vi) of clause (ac) of sub-section (1) of section 12A** to the Principal Commissioner or Commissioner under the said clause.

Situation and time limit provided by sub clauses of section 12(A)(1)(ac) read with rule 17A.

SECTION 12A (1) (ac)[referred to in Rule 17A]:- *[suggests the time line within which the Trust should make application according to the registration status prevailing at the time of application]*

As per section 12A(1)(ac) an application in the prescribed form and manner to the Principal Commissioner or Commissioner, for registration of the trust or institution shall be made:-

- (i)** *where the trust or institution is registered under section 12A or under 12AA within three months from the first day of April, 2021;*
- (ii)** *where the trust or institution is registered under section 12AB and the period of the said registration or approval as the case may be, is due to expire, at least six months prior to expiry of the said period;*
- (iii)** *where the trust or institution has been provisionally registered under section 12AB at least six months prior to expiry of period of the provisional registration or provisional approval as the case may be or within six months of commencement of its activities, whichever is earlier;*

- (iv) where registration of the trust or institution has become inoperative due to the first proviso to sub-section (7) of section 11, at least six months prior to the commencement of the assessment year from which the said registration is sought to be made operative;
- (v) where the trust or institution has adopted or undertaken modifications of the objects which do not conform to the conditions of registration, within a period of thirty days from the date of the said adoption or modification;
- (vi) in any other case, where activities of the trust or institution have—
- (A) not commenced, at least one month prior to the commencement of the previous year relevant to the assessment year from which the said registration is sought;
- (B) commenced and no income or part thereof of the said trust or institution has been excluded from the total income on account of applicability of section 11 or section 12, for any previous year ending on or before the date of such application, at any time after the commencement of such activities,

Provided that where the application is filed beyond the time allowed in sub-clauses (i) to (vi), the Principal Commissioner or Commissioner may, if he considers that there is a reasonable cause for delay in filing the application, condone such delay and such application shall be deemed to have been filed within time.

FORM 10A

The clauses that stipulate filing of application in Form 10A and respective codes that should be opted while filling the said form.

S.NO	CODE	APPLICABLE CLAUSE
1	1	Sub-clause (i) of clause (ac) of sub-section (1) of section 12A
2	2	Item (A) of sub-clause (vi) of clause (ac) of sub-section (1) of section 12A

Sub clauses of (ac) of sub-section (1) of section 12A		Remarks
Clause (i)	where the trust or institution is registered under section 12A [as it stood immediately before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996)] or under section 12AA [as it stood immediately before its amendment by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (38 of 2020)], within three months from the first day of October, 2024;	Trust already registered before 1-4-2021 and got registration for life. The Code that should be selected CODE 1.
Item (A) of sub-clause (vi) of clause (ac) of sub-section (1) of section 12A	in any other case, where activities of the institution or fund have— not commenced, at least one month prior to the commencement of the previous year relevant to the assessment year from which the said registration is sought;	Application by trusts already created but yet to start its activities. The Code that should be selected CODE 2

Form 10AB

The clauses that stipulate filing of application in Form 10AB and respective codes that should be opted while filling the said form.

S.NO	CODE	APPLICABLE CLAUSE
1	1	Sub-clause (ii) of clause (ac) of sub-section (1) of section 12A
2	2	Sub-clause (iii) of clause (ac) of sub-section (1) of section 12A
3	3	Sub-clause (iv) of clause (ac) of sub-section (1) of section 12A
4	4	Sub-clause (v) of clause (ac) of sub-section (1) of section 12A
5	4A	Item (B) of sub-clause (vi) of clause (ac) of sub-section (1) of section 12A

Sub clauses of (ac) of sub-section (1) of section 12A		Remarks
Clause (ii)	where the trust or institution is registered under section 12AB “or approved under sub-clause (iv) or sub-clause (v) or subclause (vi) or sub-clause (via) of clause (23C) of section 10” and the period of the said registration or approval as the case may be is due to expire, at least six months prior to expiry of the said period;	Permanently approved after 1-4-21 to be renewed after 5 years. The Code that should be selected CODE - 01
Clause (iii)	where the trust or institution has been provisionally registered under section 12AB , at least six months prior to expiry of period of the provisional registration or provisional approval as the case may be or within six months of commencement of its activities, whichever is earlier;	At the expiry of provisional approval granted for 3 years The Code that should be selected CODE - 02
Clause (iv)	where registration of the trust or institution has become inoperative due to the first proviso to sub-section (7) of section 11, at least six months prior to the commencement of the assessment year from which the said registration is sought to be made operative;	At least six months prior to the commencement of the assessment year from which the said registration is sought to be made operative. (avoiding dual registration under section 10(23C) and 12AA/AB) The Code that should be selected CODE – 03
Clause (v)	where the trust or institution has adopted or undertaken modifications of the objects which do not conform to the conditions of registration, within a period of thirty days from the date of the said adoption or modification;	within a period of thirty days from the date of the said adoption or modification; The Code that should be selected CODE – 04
Item (B) of sub-clause (vi) of clause (ac) of sub-section (1) of section 12A	commenced and no income or part thereof of the said trust or institution has been excluded from the total income on account of applicability of sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10 , or section 11 or section 12 , for any previous year ending on or before the date of such application, at any time after the commencement of such activities	Trust just created and commenced activities but exemption under sections 10(23C) or 11 or 12 were not claimed after the creation of the trust. The Code that should be selected CODE – 4A

Required documents to be attached along with application for registration under section 12AB

The following documents are required to be attached:

- i.* where the applicant is created, is established, under an instrument, self- certified copy of the instrument;
- ii.* where the applicant is created, is established, otherwise than under an instrument, self-certified copy of the document evidencing the creation of the applicant;
- iii.* 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;
- iv.* self-certified copy of registration under Foreign Contribution (Regulation) Act, 2010 (42 of 2010), if the applicant is registered under such Act;
- v.* self-certified copy of existing order granting registration or approval under section 12A or section 12AA or section 12AB or clause (23C) of section 10 or section 80G of the Income-tax Act, as the case may be;
- vi.* self-certified copy of order of rejection of application for grant of registration under section 12A or section 12AA or section 12AB or clause (23C) of section 10 or section 80G of the Income-tax Act, as the case may be, if any;
- vii.* 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;
- viii.* where a business undertaking is held by the applicant as per the provisions of sub-section (4) of section 11 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 report of audit as per the provisions of section 44AB for such period in case where section code is other than 13 or 14 in row number 2;
- ix.* where the income of the applicant includes profits and gains of business as per the provisions of sub-section (4A) of section 11 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 in case where section code is other than 13 or 14 in row number 2;
- x.* self-certified copy of the documents evidencing adoption or modification of the objects in case where section code is 4 in row number 2; and
- xi.* note on the activities of the trust or institution or fund.

In conclusion, registering a trust under Section 12AB of the Income Tax Act is a crucial step for organizations seeking to establish credibility and secure tax benefits. By complying with these regulations, trusts can ensure greater transparency and accountability, fostering trust among donors and stakeholders. It is essential for trusts to understand the requirements and processes involved in registration to maximize the advantages and fulfil their charitable objectives effectively.