



CPA CONNECT



Volume 1, Issue 9 | 24

Dated: 25th June, 2024

Dear Partner,

Warm Greetings!

In this article, we are going to discuss the Condition subject to which regular 12A registration is granted by the Income Tax Department. In this issue we will cover the last Six of the following 11 conditions subject to which the regular registration is granted to the organization.

- Any income derived from property held under trust, wholly or in part for charitable or religious purposes, shall not be applied, other than for the objects of the trust or institution.
- The trust or institution shall not have income from profits and gains of business which is not incidental to the attainment of its objectives.
- Separate books of account shall be maintained by such trust or institution in respect of the business, which is incidental to the attainment of its objectives.
- The trust or institution shall not apply any part of its income from the property held under a trust for private religious purposes, which does not ensure for the benefit of the public.
- The trust or institution established for charitable purposes created or established after the commencement of this Act, shall not apply any part of its income for the benefit of any particular religious community or caste.
- No non-genuine activity shall be carried out by the trust or institution.
- No such activity shall be carried on by the trust or institution which is not in accordance with all or any of the conditions subject to which it was registered.
- The trust or institution shall comply with the requirement of any other law, as referred to in item (B) of sub-clause (i) of clause (b) of sub-section (1) of section 12AB.
- Where the trust or institution is required to furnish an application for registration under sub-clause (ii) of clause (ac) of sub-section (1) of section 12A the said trust or institution shall furnish such application within the time allowed under that clause.

- Where the trust or institution has adopted or undertaken modifications of the objects which do not conform to the conditions of registration, the trust or institution shall make an application in the prescribed form and manner to the Principal Commissioner or Commissioner, for registration of the trust or institution, within a period of thirty days from the date of the said adoption or modification.
- The applicant shall comply with the provisions of the Income Tax Act, 1961 read with Income Tax Rules, 1962.

In case you would like to access the previous issues on this topic, please click [here](#).

Condition subject to which regular 12A registration is granted **(For orders passed under clause (a) of sub-section (1) of section 12AB)**

Introduction

In order to claim exemptions under section 11 & 12 of Income Tax Act, 1961, it is mandatory for all NGOs to get registration under section 12A of the act. "It is important to note here that notwithstanding the fact that trust, society and section 8 companies are registered as per their respective acts, the registration under section 12A is necessary to claim exemption under Income Tax Act. The organization is required to make an application in the respective form (form 10A or Form 10AB) to the Income tax department and On receipt of application, the order for regular registration or rejection or cancellation of registration is passed. In case if the registration is granted, the same is subject to the conditions which we have analyzed in the article. The same can also be found in the Registration certificate issue to the organization or in Circular No. 11 of 2022 dated 03rd June, 2022.

Implication in case of Non compliance of the Condition

The Income Tax Department can withdraw the registration order if it is later found that the applicant's activities are not genuine or do not comply with the conditions under which the registration was granted. This withdrawal can be applied retrospectively from the initial date of registration. Consequently, the organization's income will be subject to a tax rate of 30% from the date the registration is withdrawn.

Analysis of the Conditions

6) No non-genuine activity shall be carried out by the trust or institution.

Analysis: The statement asserts that a trust or institution must refrain from engaging in any non-genuine activities. It depicts that the trust or institution is prohibited from conducting activities that are not authentic, legitimate, or in alignment with its stated objectives and purposes.

Examples:

Non-Genuine Activity: A trust engaging in fraudulent activities, such as misusing funds for personal gain, conducting sham transactions, or any activities that do not align with its stated charitable or religious purposes.

The prohibition against non-genuine activities ensures that trusts and institutions operate with integrity, authenticity, and in alignment with their stated purposes. It supports regulatory compliance, sustains public trust, and enhances the credibility of the organization

7) No such activity shall be carried on by the trust or institution which is not in accordance with all or any of the conditions subject to which it was registered.

Analysis:

a) No Such Activity: Prohibits any activity that does not comply with specific conditions.

b) Trust or Institution: Refers to an organization established for charitable, religious, or other specified purposes as defined by its registration documents and governing laws.

c) Not in Accordance with Conditions subject to which it was registered: The trust or institution must comply with the specific terms, conditions, and requirements that were agreed upon at the time of the trust's or institution's registration. Any deviation from these conditions is not allowed.

Examples:

Allowed: A trust registered to provide educational services conducts after-school programs, scholarship initiatives, and literacy campaigns, all in line with its registration conditions.

Not Allowed: A trust registered for educational purposes uses its funds for unrelated business ventures or activities not specified in its registration conditions.

8) The trust or institution shall comply with the requirement of any other law, as referred to in item (B) of sub-clause (i) of clause (b) of sub-section (1) of section 12AB.

Analysis: The statement mandates that a trust or institution must adhere to the provisions of any other legislation specified in item (B) of sub-clause (i) of clause (b) of sub-section (1) of section 12AB i.e. compliance of such requirements of any other law for the time being in force by the trust or institution as are material for the purpose of achieving its objects.

It depicts that in case there is any non-compliance with respect to the provisions of any law applicable to the organization (such as Income tax, labour laws, FCRA, GST) will have an impact on the registration of the organization.

9) Where the trust or institution is required to furnish an application for registration under sub-clause (ii) of clause (ac) of sub-section (1) of section 12A the said trust or institution shall furnish such application within the time allowed under that clause.

Analysis: Section 12(1)(ac)(ii) provides that where the trust or institution is registered under section 12AB and the period of the said registration is due to expire, the organization shall apply for registration within six months prior to expiry of the said period. Therefore, if a trust or institution is required to submit an application for registration as per the conditions specified in sub-clause (ii) of clause (ac) of sub-section (1) of section 12A, it must do so within six months prior to expiry of the registration under section 12AB.

10) Where the trust or institution has adopted or undertaken modifications of the objects which do not conform to the conditions of registration, the trust or institution shall make an application in the prescribed form and manner to the Principal Commissioner or Commissioner, for registration of the trust or institution, within a period of thirty days from the date of the said adoption or modification.

Analysis: The statement outlines that if a trust or institution adopts or modifies its objectives in a manner that deviates from the conditions of its registration, it must submit an application to the Principal Commissioner or Commissioner for registration within thirty days from the date of such adoption or modification.

Here's an analysis of its components and implications:

a) Adoption or Modification of Objects: Refers to the act of establishing or altering the core objectives and purposes of the trust or institution.

b) Non-Conformance to Registration Conditions: Indicates that the adopted or modified objectives do not align with the conditions specified during the organization's registration process.

c) Application to Principal Commissioner or Commissioner: Requires the submission of a formal request to the Principal Commissioner or Commissioner for registration or re-registration.

d) Prescribed Form and Manner: The application must adhere to the prescribed format (Form 10AB of the Income Tax Act) and follow the procedure outlined by regulatory guidelines.

For Instance, if a trust has adopted or undertaken modifications of its objects, it must amend its Trust Deed by filing a supplementary Trust Deed. Once this supplementary deed is registered with the registrar, the organization should apply to the Principal Commissioner or Commissioner of Income Tax for registration within 30 days.

Examples:

a) Expansion of Objectives: A charitable trust decides to broaden its scope by including additional charitable activities not covered in its original registration. It must submit an application for registration of the modified objectives within thirty days.

b) Change in Focus: An educational institution plans to shift its focus from primary education to vocational training. It must seek approval for the modification of its objectives to align with the new focus area.

11) The applicant shall comply with the provisions of the Income Tax Act, 1961 read with Income Tax Rules, 1962

Analysis:

a) Compliance Requirement: Requires the applicant to follow and fulfill the obligations outlined in the Income Tax Act of 1961.

b) Read with Income Tax Rules, 1962: Specifies that compliance with the Income Tax Act must be supplemented by adherence to the rules established in the Income Tax Rules of 1962.

In the meantime, if you have any question on the above, feel free to get back to me/us and we will respond to it.