

# 80G REGISTRATION & COMPLIANCES

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## ANALYSING INCOME TAX RULES 2021



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## INTRODUCTION

- 1.01** Section 80G allows a deduction for the donation made to certain funds and institution. The deduction for such donation is allowed to the donor only if donee fund or institution is approved by the Principal Commissioner or Commissioner of Income Tax (PCIT/CIT), and fulfils other conditions. Hitherto, the institution or fund had to be approved by the CIT in accordance with the rules made in this behalf. Such approval was valid for perpetuity till it was withdrawn/cancelled.
- 1.02** With effect from 01-06-2020, the Finance Act, 2020 has amended the procedure relating to approval under section 80G. Subsequently, due to the crisis caused by COVID-19, the CBDT announced to deferrment of the implementation of the new procedure for registration under the aforesaid sections. Accordingly, the date of enforcement of the new procedure introduced by the Finance Act, 2020 would be defective from 01-04-2021.
- 1.03** 80G registration is no longer permanent and shall be valid for 5 years subject to renewal.
- 1.04** Form 10A is required to be filed for the renewal of 80G registration as on 01.04.2021 and Form 10AB is required to be filed for renewal at the end of five years. The procedure of filing Form 10A and Form 10AB has been discussed separately in another issue. In this issue we shall discuss the various other compliances pertaining to 80G.

## REQUIREMENT TO FILE STATEMENT OF DONATION

### AND TO ISSUE CERTIFICATE TO DONORS

- 2.01** With effect from financial year 2021-22, the institutions notified under section 35 or approved under Section 80G are required to file a statement of donation

received and also to issue the certificate to the donor. Deduction on account of the donation shall be allowed to the donor only on the basis of the statement filed by the donee trust or institution. Hence, if a statement is not filed, the donor will not get a deduction for the donation.

**2.02** In case of delay in filing such statement, a late fee of Rs. 200 per day shall be applicable under newly inserted Section 234G of the Income-tax Act. Further, a penalty under Section 271K, which shall not be less than Rs. 10,000 and which may extend up to Rs. 1 lakh, shall be leviable if the trust or institution fails to file such statement or fails to issue a certificate of donation.

**2.03** The Income Tax (6th Amendment) Rules, 2021 has inserted new Rule 18AB for Furnishing of Statement of particulars and certificate under clause (viii) and clause (ix) of section 80G(5) or under section 35(1A).

**2.04** *Form for filing*

Statement of particulars required to be furnished by the reporting person shall be furnished in respect of each financial year, beginning with the financial year 2021-2022, in Form No. 10BD.

**2.05** *Aggregation of Amount*

The reporting person shall, while aggregating the amounts for determining the sums received for reporting in respect of any person take into account all the donations of the same nature paid by that person during the financial year. The donations shall be proportionately attributed to the value of the donation or the aggregated value of all the donations to all the persons, in a case where the donation is recorded in the name of more than one person and where no proportion is specified by the donors, attribute equally to all the donors.

**2.06** *Certificate to Donor*

The reporting person shall furnish the certificate to the donor in Form No. 10BE specifying the amount of donation received during financial year from such donor.

**2.07 Date of filing and Issuing Certificate**

The certificate of donation in Form 10BE is required to be furnished to the donor on or before the 31st May, immediately following the financial year in which the donation is received.

Statement of donation in Form No. 10BD shall be furnished on or before the 31st May, immediately following the financial year in which the donation is received.

**EXPENDITURE ON RELIGIOUS ACTIVITY**

**3.01** Form 10A and 10AB have a category of charitable cum religious organisation which settles the confusion of whether an organisation can be both charitable as well as religious simultaneously. The Forms separately require reporting of expenditure on religious activities which will be considered for eligibility of 80G registration.

**3.02** Normally the religious trusts are not allowed to be approved under section 80G. However, Section 80G(5B) allows for a charitable organisation to have a religious activity not exceeding 5% of the total income in that previous year. It provides as under:

*“Notwithstanding anything contained in clause (ii) of sub-section (5) and Explanation 3, an institution or fund which incurs expenditure, during any previous year, which is of a religious nature for an amount not exceeding five per cent of its total income in that previous year shall be deemed to be an institution or fund to which the provisions of this section apply. [80G(5B)]”*

**3.03** As Section 80G(5B) provides that upto 5% of religious activity shall be permissible and therefore to that extent an organisation can be charitable cum religious.

**3.04** The details of religious activities are to be filled in Point No. 21 of Form 10A. This point is only to be filled for approval under Clause (iv) of first proviso to section

80G(5) i.e. If the applicant is applying for provisional approval then point number 21a and 21b are to be filled.

- 3.05** Similarly, Point 27 of Form 10AB has asked for the details of religious expenditure, this has to be filled if the institution is applying for re-approval after expiry for 5 years or converting provisional approval into normal approval.
- 3.06** Hence the organisations having 80G approval and going for revalidation of this approval should ensure that they are complied with under section 80G(5B) before making such application for revalidation.

## STATEMENT OF DONATION

- 4.01** The Finance Act, 2020 inserted *Clause (viii) and (ix)* in Section 80G(5) requiring trust or institution approved under section 80G to file a statement of donation received and also to issue the certificate to the donor. It has been further stated that deduction on account of the donation under section 80G shall be allowed to the donor only on the basis of the statement filed by the donee trust or institution. Hence, if a statement is not filed, the donor will not get a deduction for the donation.
- 4.02** In case of delay in filing such statement, a late fee of Rs. 200 per day shall be applicable under newly inserted Section 234G of the Income-tax Act. Further, a penalty under Section 271K, which shall not be less than Rs. 10,000 and which may extend up to Rs. 1 lakh, shall be leviable if the trust or institution fails to file such statement or fails to issue a certificate of donation.
- 4.03** ***Due date of filing Statement and Issuing Certificate***  
The newly inserted Rule 18AB provides that the statement in Form 10BD shall be filed on or before the 31<sup>st</sup> May, immediately following the financial year in which the donation is received. The donee is also required to issue the certificate in Form

10BE which is also required to be issued on or before the 31<sup>st</sup> May, immediately following the financial year in which the donation is received.

#### **4.04 Filing of Correction Statement**

There could be any inadvertent mistake while filing the statement of donations. It could be name, and PAN of donor or the amount of donation. Rule 18AB doesn't provide for the filing of correction statement in any inadvertent mistake by the reporting entity.

#### **4.05 Filing of NIL Statement of Donations**

The question may arise if there is no donation received by an entity which is approved under Section 80G, whether it is required to submit nil statement of donations for that period?

Rule 18AB doesn't contain any provision to clarify whether reporting entity is required to submit NIL statement of donation.

## **DEDUCTION TO DONOR**

**5.01** The trusts or institutions which have been granted perpetuity of approval under section 80G are required to make an application again under the amended provision of section 80G.

**5.02** If your NGO is existing on 1st April 2021 and already approved under Section 80G, then you will be required to make an application again. The application for approval in all such cases has to be made in Form 10A within 3 months from the date on which the new provisions shall come into force *i.e.* application has to be filed on or before 30<sup>th</sup> June 2021. The application for the registration in Form 10A shall be made to the PCIT OR CIT authorized by the CBDT.

Now, the question arises if an organisation collects donation but does not apply for renewal or if approval application is cancelled.

**5.03** The new notified Rules and Forms do not propose quarterly uploading of 80G related data of donation received and donation certificate to be issued. In such circumstances the donors will not be able to claim 80G benefit against donation given to organisations between 1st April 2021 to 30<sup>th</sup> June 2021 if such organisation loses its registration.

**5.04** This appears to be harsh as the donor should not be penalised by subsequent actions of the donee, when the donee clearly had the approval under section 80G on the date of the donation and loses the registration on a subsequent date.

For the purpose of section 35CCA it has been held in various cases that even if the approval is withdrawn retrospectively, deduction allowed before withdrawal cannot be withdrawn in regular assessment or re-assessment or by way of revision under section 263.

**5.05** In the case of *RamdassManeklal Gandhi v. UOI [2000] 108 Taxman 590 (Bom.)* it was held that it is well-settled law that assessee is entitled to rely upon certificate granted to an institution under section 35CCA for claiming deduction under that section, which was valid and subsisting when donation was made to it, there was no escapement of income of assessee on account of allowance of said deduction.

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