

## **INCOME TAX - REGISTRATION PROCEDURE**

### **INTRODUCTION**

Income tax was first introduced in India in 1860. In those days income related with charitable purposes were totally exempt from tax. Over the years the Income Tax Act underwent radical changes, basically to ensure that such exemptions are not misused by unscrupulous elements. Currently extensive exemptions are still available to NGOs but a host of regulatory provisions have been incorporated in the act, which are to be adhered to, in order to claim exemptions.

### **APPLICATION FOR REGISTRATION**

In order to claim exemption, an NGO should make an application to the Commissioner of Income Tax for registration of the NGO. Such application is to be made in Form 10A. The following documents are required to be submitted :

- i) Form 10A (**Annexure 1 Form 10A.pdf**)
- ii) The original instrument under which the NGO is established, or the Bye Laws & Memorandum of Association evidencing the creation of the NGO should be enclosed.
- iii) Two copies of the Accounts of 3 previous years should be enclosed. Where the NGO was not in existence in any of three prior years, copies of the accounts of lesser no. of years may be submitted.

### **TIME LIMIT FOR MAKING AN APPLICATION**

The application for registration should be made **before expiry of one year from the date of creation of the NGO**. NGOs which make a delayed application are allowed exemption with effect from the 1st day of the financial year in which application is made. However the Commissioner of Income Tax has the power to condone the delay in submitting the application.

### **THE AUTHORITY TO WHOM APPLICATION IS TO BE MADE**

The application is to be submitted Income Tax - Registration Procedure to the Commissioner of Income Tax in whose area the NGO is located. However, in respect of the four metropolitan cities of Calcutta, Chennai, Delhi & Mumbai, the applications are to be made to the Director of Income Tax (Exemption).

### **GRANTING & REFUSAL**

The Commissioner of Income Tax, on receipt of an application for registration of an NGO, shall call for such documents or information, as he thinks necessary. While

processing such application, the concerned authority normally concentrates on the genuineness of the NGO. Once the genuineness of the activities & creation is established, then it is incumbent upon the authority to pass an order in writing, registering the NGO.

### **OPPORTUNITY OF BEING HEARD**

The Commissioner of Income Tax has the power to reject an application for registration. It may be noted that such powers cannot be used arbitrarily without substantiating adequate reasons for such rejection. Under the current laws it is statutorily required that, an opportunity of being heard should be provided to the applicant, before rejection of any application.

### **CAN WE APPEAL AGAINST REJECTION**

Under the provisions of Section 253 of the Income Tax Act an appeal can be made to the Income Tax Appellate Tribunal against an order rejecting the application for registration. Under such circumstances if an NGO sincerely believes that an unjust order has been awarded against it, then it can file an appeal.

### **TIME LIMIT FOR PASSING THE ORDER**

Under income tax laws the order for either granting or refusing registration shall have to be passed within six months from the end of the month in which the application was made.

### **WHAT IF NO ORDER IS PASSED WITHIN THE TIME LIMIT**

Here it is worthwhile to note that, both FCRA and Income Tax laws in India are vague and ambiguous in this regard. Ironically it has been clearly mentioned in the Income Tax Act that an order has to be passed within 6 months but nothing has been mentioned about the fate of the application if it is not cleared within 6 months. Some sort of amendment is required in this regard. A deeming provision for automatic registration may not be a bad idea. Under FCRA Laws if an NGO applies for prior permission to receive Foreign Funds and if the application is not processed within 90 days, the application is deemed to have been automatically granted. But as far as registration is concerned both Income Tax Act & FCRA are silent.

### **CAN REGISTRATION ONCE GRANTED BE CANCELLED**

The Finance Act, 2004 has inserted a new sub-section to section 12AA. By virtue of this newly inserted sub-section 3, the Commissioner with effect from 1st day of October, 2004 shall have the power to cancel the registration, if he or she is satisfied that the activities of such trust/institution are not genuine or are not being carried out in accordance with the objects of the Trust or Institution. Before such cancellation, the

Commissioner has to provide a reasonable opportunity of being heard and an order in writing has to be passed for such cancellation.

### **CONDONATION OF DELAY**

The application for registration should be made within one year from the date of creation of Trust. If application is filed after the period as said, then the Chief Commissioner or Commissioner can condone the delay after satisfying himself that sufficient reasons exist for delay. If condonation of delay has not been granted by the Commissioner, then the Trust or Institution would be eligible for exemption from the first day of the financial year in which the application is filed.

The power empowering the authority concerned to condone the delay, in case of Trust or Institution who makes an application before the expiry of one year from the date of creation of the Trust or the establishment of the Institution, whichever is later, still remains as it was before, as such authority concerned have power under the circumstances to condone the delay, after satisfying the reasons for delay and for reasons recorded in writing.

## **INCOME TAX – REGISTRATION U/S 80G**

### **INTRODUCTION**

An NGO can avail income tax exemption by getting itself registered and complying with certain other formalities, but such registration does not provide any benefit to the persons making donations. The Income Tax Act has certain provisions which offer tax benefits to the "donors". All NGO's should avail the advantage of these provisions to attract potential donors. Section 80G is one of such sections.

### **REGISTRATION UNDER SECTION 80G**

If an NGO gets itself registered under section 80G then the person or the organisation making a donation to the NGO will get a deduction of 50% from his/its taxable income. The NGO has to apply in Form No. 10G As per Annexure (**Annexure 2 Form 10G.pdf**) to the Commissioner of Income Tax for such registration. Normally this approval is granted for 2-3 years.

## **DOCUMENTS TO BE FILLED WITH FORM 10G**

The application form should be sent in triplicate to the Commissioner of Income Tax alongwith the following documents :

- i) Copy of income tax registration certificate.
- ii) Detail of activities since its inception or last three years whichever is less
- iii) Copies of audited accounts of the institution/NGO since its inception or last 3 years whichever is less.

## **CONDITIONS TO BE FULFILLED UNDER SECTION 80G**

For approval under section 80G the following conditions are to be fulfilled :

- i) The NGO should not have any income which are not exempted, such as business income. If, the NGO has business income then it should maintain separate books of accounts and should not divert donations received for the purpose of such business.
- ii) The bylaws or objectives of the NGOs should not contain any provision for spending the income or assets of the NGO for purposes other than charitable.
- iii) The NGO is not working for the benefit of particular religious community or caste.
- iv) The NGO maintains regular accounts of its receipts & expenditures.
- v) The NGO is properly registered under the Societies Registration Act 1860 or under any law corresponding to that act or is registered under section 25 of the Companies Act 1956.

## **EXTENT OF BENEFIT**

There is ceiling limit upto which the benefit is allowable to the donor. If the amount of deduction to a charitable organisation or trust is more than 10% of the Gross Total Income computed under the Act (as reduced by income on which income-tax is not payable under any provision of this Act and by any amount in respect of which the assessee is entitled to a deduction under any other provision of this Chapter), then the amount in excess of 10% of Gross Total Income shall not qualify for deduction under section 80G.

In other words, while computing the total income of an assessee and for arriving at the deductible amount under section 80G, first the aggregate of the sums donated has to be found out. Then 50 per cent of such donations has to be found out and it should be limited to 10 per cent of the gross total income. If such amount is more than 10 per cent of the gross total income, the excess will have to be ignored.