



Representation before Ministry of Corporate Affairs

Subject: Inclusion of Approval u/s 10(23C)(vi) and 10(23C)(via) of the Income Tax Act in Rule 4(1) of the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021 as an alternative to mandatory registration under section 12A of the Income Tax Act for CSR funding.

Respected Sir,

The Ministry of Corporate Affairs has amended the Companies (Corporate Social Responsibility Policy) Rules, 2014 vide notification dated 22nd January, 2021. The amended rules are called as the **Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021**.

Rule 4(1) of the said rule inter-alia provides that-

“4. CSR Implementation. – (1) The Board shall ensure that the CSR activities are undertaken by the company itself or through -

- (a) a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80 G of the Income Tax Act, 1961 (43 of 1961), established by the company, either singly or along with any other company, or
- (b) a company established under section 8 of the Act or a registered trust or a registered society, established by the Central Government or State Government; or
- (c) any entity established under an Act of Parliament or a State legislature; or
- (d) **a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80G of the Income Tax Act, 1961, and having an established track record of at least three years in undertaking similar activities.**

Thus, the company liable to contribute to corporate social responsibility may opt to undertake the activities itself or through other entities as approved under rule 4 of the above rules.

Clause (d) of the said rule requires that these approved entities must have mandatory registration under sec. 12A as well as sec. 80G of the Income Tax Act, 1961 for acting as an implementing agency to carry out activities under Corporate Social Responsibility and to receive funding.

The intention of the Central Government has been echoed in **General Circular No. 14/2021 dated 25.08.2021** issued by the Ministry of Corporate Affairs which contains Frequently Asked Questions (FAQs) on Corporate Social Responsibility. At sr. no. 5.3 the FAQ and its answer read as:



Whether all three types of entities – a company established under section 8 of the Act, or a registered public trust, or a registered society, are required to have income-tax registration u/s 12A as well as 80G of the Income Tax Act, 1961?

Yes, as per rule 4(1) all three types of entities – a company established under section 8 of the Act, or a registered public trust, or a registered society are required to have income-tax registration u/s 12A as well as 80G of the Income Tax Act, 1961 to act as implementing agency, except for any entities established by Central or State Government.

Thus, it is amply clear that the implementing agency, if it is a sec. 8 company or a registered trust or a registered society, it has to be registered u/s 12A and sec. 80G of the Income Tax Act, 1961 to receive CSR funding.

This has created hardships for such entities which are not registered under sec. 12A and sec. 80G of the Income Tax Act but nevertheless are approved under section 10(23C) of the Income Tax Act, especially those approved under clause (vi) and (via).

Clause (vi) of section 10(23C) of the Income Tax Act exempts income of any university or educational institution existing solely for educational purposes and not for purposes of profit which are approved by the principal commissioner or commissioner.

Clause (via) of section 10(23C) of the Income Tax Act exempts income of any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness, etc. and existing solely for philanthropic purposes and not for purposes of profit and which are approved by the principal commissioner or commissioner.

The issue has gained particular significance post amendment in Income Tax Act w.e.f. 1st June, 2020. Finance Act, 2020 has inserted two provisos to sec. 11(7) w.e.f. 1st June, 2020. Section 11(7) and these two provisos read as under:

Where a trust or an institution has been granted registration under section 12AA or section 12AB] or has obtained registration at any time under section 12A as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996) and the said registration is in force for any previous year, then, nothing contained in section 10 [other than clause (1), clause (23C) and clause (46)] thereof] shall operate to exclude any income derived from the property held under trust from the total income of the person in receipt thereof for that previous year:



Provided that such registration shall become inoperative from the date on which the trust or institution is approved under clause (23C) of section 10 or is notified under clause (46) of the said section, as the case may be, or the date on which this proviso has come into force, whichever is later:

Provided further that the trust or institution, whose registration has become inoperative under the first proviso, may apply to get its registration operative⁴²[under section 12AA]⁴³[or section 12AB] subject to the condition that on doing so, the approval under clause (23C) of section 10 or notification under clause (46) of the said section, as the case may be, to such trust or institution shall cease to have any effect from the date on which the said registration becomes operative and thereafter, it shall not be entitled to exemption under the respective clauses.

The effect of section 11(7) is as under:

After the insertion of the two provisos by Finance Act 2020 with effect from 1st June 2020, once an institution is approved under section 10(23C) or notified under section 10(46), then the registration under section 12A/12AA/12AB shall become inoperative. {1st proviso to section 11(7)}. The educational institutions / hospitals recognised under section 10(23C), are otherwise on par with institutions, under section 12A, and are doing laudable work in the education or medical field.

Once Sec. 12A registration becomes inoperative by virtue of the above proviso, it is not entitled to receive CSR funding on a literal reading of the rules and circular issued by the Ministry of Corporate Affairs which in all probability was not intended.

This has caused genuine hardships to the above entities which enjoy approval under sec. 10(23C) but by virtue of section 11(7) of the Income Tax Act, they lose registration under section 12A/12AA or section 12AB. The two set of sections viz. section 10(23C) on one hand and section 12A are pari-materia as would be evident from the amendments made by the Finance Act, 2022 wherein all the provisions of section 10(23C) and section 12A are brought at par in all material aspects. **Further, it is important to take note of the fact that both approval under section 10(23C) and section 12A are granted by the same income tax authority i.e. Commissioner of income tax (Exemption).** Prior to amendment by Finance Act, 2020 generally these entities would have both approval u/s 10(23C) and registration under sec. 12A, but post amendment the entities have to give up registration under sec. 12A if they intend to continue to enjoy the approval under sec. 10(23C).

Thus, to insist on mandatory registration under section 12A would mean that the entities enjoying approval under section 10(23C) would be deprived of the CSR funding when the intention is to permit those entities which in addition to the supervision of their registration authority have also been subjected to control by the income tax authorities. Since the entities enjoying approval under sec. 10(23C) satisfy this mandate, there is no reason why these entities should not enjoy the status of implementing agencies for CSR funding.





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Therefore, the ministry is requested to consider the genuine difficulties and unintended consequences of omission of the wordings “or approved under clause (vi) and (via) of section 10(23C)” in rule 4(1) and supplement the provisions with the same.

Therefore, rule 4(1) should be amended to read as follows:

4. CSR Implementation. – (1) The Board shall ensure that the CSR activities are undertaken by the company itself or through -

- (a) a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A **or approved under clause (vi) and (via) of section 10(23C)** and 80 G of the Income Tax Act, 1961 (43 of 1961), established by the company, either singly or along with any other company, or
- (b) a company established under section 8 of the Act or a registered trust or a registered society, established by the Central Government or State Government; or
- (c) any entity established under an Act of Parliament or a State legislature; or
- (d) a company established under section 8 of the Act, or a registered public trust or a registered society, **registered under section 12A or approved under clause (vi) or clause (via) of section 10(23C)** *and 80G of the Income Tax Act, 1961, and having an established track record of at least three years in undertaking similar activities.

Suggested change:

To rectify the unintended error by amending the rule 4(1) as recommended above and clarifying that institutions approved under clause (vi) or clause (via) of section 10(23C) are eligible to take CSR funding.

With Warm Regards,

Yours sincerely,

For Bombay Chartered Accountants' Society

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