XX February 2020

The Finance Minister Ministry of Finance Government of India New Delhi 110001

Dear Nirmala Sitharaman ji,

We are writing this letter to give our views on some of the clauses of the Finance Bill, 2020 which will adversely affect the not-for-profit sector and as a result weaken the work on poverty alleviation and other charitable causes.

Firstly we welcome your proposal as indicated in your Budget speech ‘to allot a Unique Registration Number to each charitable institution’. This will help in collating a country-wide database of all registered organisations.

We bring to your attention following proposals which we consider would adversely impact functioning of non-profit organisations in India. These proposals, if implemented, will increase administrative compliance manifold both at Government level and at assesse level, create an extremely difficult environment for voluntary organisations and will create hurdles in achievement of SDGs as also delivery of services to the poor and the needy. These proposals are:

1. Immediate revalidation of registration under section 12A or 12AA (between June 2020 and January 2021) and renewal every five years.
2. Immediate revalidation of section 80G certificate immediately (between June 2020 and January 2021) and renewal every five years.
3. Report on details of each donation, including donors’ PAN numbers, to be allowed deduction under section 80G.

We identify some of the key implications of these proposals:

# Section 12AA Revalidation & Periodic Renewal

A large number of non-profit organisations are registered under section 12A/12AA. This allows them protection from income tax, as long as they file Tax Return. All tax returns must be filed online and many are subjected to scrutiny under CASS (Computer Assisted Scrutiny Selection). It is our experience that most large charities are covered under scrutiny. Any organisation that does not comply with the conditions of exemption is disallowed the exemption for the year. If there is continuing non-compliance, 12A/12AA registration can be revoked. *With effect from 2019, this can also be revoked for non-compliance under any other law.*

We understand that in case of any non-compliance of current tax provisions, an organisation would need to be examined if its tax exemption status should continue. However, it does not seem fair to subject all organisations, who are otherwise complying with all current provisions, to similar scrutiny.

If 12A/12AA registration is revoked for any reason, it has enormous financial implications for the organisation. Its assets, including land and buildings, are valued at market prices, and liabilities deducted. The net worth could become the basis of taxability. The market value of land owned by many old institutions has increased enormously. Many schools, temples, churches, hospitals, will not be able to settle this demand without selling off their land and buildings. They will just cease to function, creating huge hardships and disruption on such entities.

With imminent revalidation and periodic renewal of 12A/12AA, many non-profit organisations operating in the interior will likely end up losing their 12A/12AA simply because they were not aware or failed to provide the necessary documents. This could result in prolonged litigation and possible denudation of the religious and charitable landscape. The impact on public at large cannot be visualised at this stage but will be enormous, possibly traumatic.

The renewal process itself will be drain on the government machinery. Though it would be for the Government to assess viability of getting all the organisations’ 12A assessed in one go, considering there are only 7 Director (Exemption) offices, the enormous burden that it would put on already thin resources could result in arbitrariness, if not extraneous demands, while examining the 12A/12AA registrations.

***Our Proposal:*** *Considering the existing mechanism of registration and compulsory filing of annual tax return by such entities, where every non-profit organisation’s genuineness of its charitable activities is examined, this provision appears entirely unnecessary and should be withdrawn. Present mechanism[[1]](#footnote-2) introduced last year, provide the government sufficient oversight over misuse or non-compliance of the charity exemptions. In case of continuous default in filing of Income Tax returns, the Govt may consider such provision like cancellation.*

# Revalidation and renewal under Section 80G

We understand that only less than one lakh non-profit organisations are approved under section 80G. Government has always encouraged wealthy to donate to social causes, this is also recognised in the National Voluntary Policy as approved by Government of India. This is an important pillar of Indian philanthropy.

We understand that the Government would like to ensure that only genuine donations are provided tax benefits. The Government has already tightened rules for individual donations by restricting cash donations to Rs. 2000/-. There would be only a few organisations that may be resorting to malpractice in donations. Budget estimates show that annual loss of revenue on account of 80G deductions is Rs 3,784 crores[[2]](#footnote-3). Even assuming that 20% of this leakage is due to fake donation receipts, the cost of the exchequer would be around Rs 750 crores. This would be much less than the administrative cost of revalidation and periodic renewal of 80G. In any case, there is every likelihood that the fake charities will again enter the fold and continue bleeding the exchequer.

***Our Proposal:*** *It is proposed, that the Income Tax authorities thoroughly examine the genuineness of charitable organisations at the time of assessment. This would be most effective and efficient way. In any case, Government has already brought proposal of matching donations between donor & donee. This would further put curb on any incorrect section 80G claims by individuals.*

*Therefore, it is submitted that this provision will not yield any benefits and will merely increase paperwork both for the Tax Department and the organisations. Our plea is that the proposal should therefore be withdrawn.*

# Donor’s PAN for 80G Deduction

There is also a proposal requiring charities to submit annual returns giving details of each donor, including PAN of each donor. The Department will match the deductions claimed by donors against this return. If the donations do not, the donor will be denied a deduction.

In principle, this appears to be a welcome and more effective alternative to the periodic renewal of 80G approval. However, there are a number of practical issues. Firstly, the provision does not exempt online donations or donations made through crossed account payee cheques, where the transactions can easily be validated. Secondly, it does not offer a floor limit for the tabulation. The listing and providing of all donations from Rupee 1 upwards will be a humongous task. Many of them will not even be able to undertake this and would be forced to opt out of 80G altogether. Thirdly, online donations will be affected as most donors do not always carry or remember their PAN. Some are also averse to sharing it online. All this will affect hundreds of thousands of organisations across India and reduce self-dependence of non- profit organisations on Indian funds as also the propensity to give to charity.

***Our Proposal:*** *It is submitted that the proposal for uploading and internal matching of donations may be modified to apply only to donations more than Rs. 10,000 each, whether made in cash or by cheque/bank transfer.*

It is further mentioned that the proposals also have resulted in unintentional adverse consequences for recently registered or a new entity.

# Unintended consequences for new entities

*Recently registered Entities*

There is also a proposal requiring charities to submit annual returns giving detail **recently registered entities to apply for renewal again, but why ?** It may be noted that the above requirements are applicable even to those charitable organizations, which may have obtained these registrations even a day before these provisions become effective. Such organizations will have to go through the entire process all over again. Seems that such organizations are victim of some oversight in drafting of provisions otherwise, it is not clear exactly what new information authorities will consider / process, which they have not already processed.

*New Entities*

Further as per new proposals, now an entity for having to register under newly proposed S.12AB or S.80G will need to apply at least one month prior to the beginning of the previous year, for which registration is sought. In case an entity which is formed in month of March’2020, cannot undertake activities till next financial year, i.e. April 2021, as any exemption / S.80G registration that it applies will not be applicable till commencement of previous year 2021-22. It will not be able to avail tax exemption till such period.

We believe government would have never intended to have such impractical consequences, which do not add any value to the processes and enhances hardships to newly registered charitable entities.

***Our Proposal:*** *It is submitted that these unintended drafting errors may be looked into and proposal for uploading and internal matching of donations may be modified to apply only to donations more than Rs. 10,000 each, whether made in cash or by cheque/bank transfer.*

These amendments proposed by the Finance Bill, 2020 are also not in line with the National Voluntary Policy as adopted by the Atal Bihari Vajpayee’s Government after consultations with the sector which is now the official policy of Government of India. It specifically suggests that Government will simplify and streamline tax provisions. The budget proposals mentioned above will not be in line with ‘Ease of Business’ for charities which would be spending disproportionate amount of time in ensuring tax compliances. We also must not forget that it impacts not only large charities but all the 2.17 lakh non-profit organisations.

In view of above, we request that the tax proposals mentioned above should be put in abeyance and in light of existing rigorous assessment processes which are in any case undertaken by most charitable organisations.

Sincerely,

XXX (Name of the Officer)

XXXX (name of the Organisation)

1. S.12A(1)(ba) of Income Tax Act 1961 [↑](#footnote-ref-2)
2. <https://www.indiabudget.gov.in/doc/rec/annex7.pdf> [↑](#footnote-ref-3)