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CBDT Prescribes Conditions for Merger of Registered NPOs Under the Income Tax Act, 2025

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The concept of merger of registered non-profit organisations (NPOs) under income-tax law was introduced by the Finance (No. 2) Act, 2024, through the insertion of Section 12AC in the erstwhile Income Tax Act, 1961 (IT Act, 1961). The provision permitted a registered NPO to merge with another registered NPO having the same or similar objects, subject to the fulfilment of prescribed conditions (Conditions), which were yet to be notified. With the enactment of the Income Tax Act, 2025, (IT Act, 2025), Section 12AC has been correspondingly incorporated as Section 354A. Notably, non-compliant mergers could trigger *exit tax* implications (tax levied on an NPO on the excess of its assets' fair value over its liabilities) for the NPOs.

The Central Board of Direct Taxes (CBDT) has prescribed the Conditions through the introduction of a new rule (Rule 189A) and a new form (Form No. 112A) under the Income Tax Rules, 2026 (IT Rules, 2026), vide Notification No. 139/2026 dated 30 October 2026 (Notification). The Notification operationalises these merger provisions by prescribing the eligibility conditions, the tax consequences that the merged entity must assume, and the reporting requirements for such mergers.

Conditions Prescribed for Merger of NPOs

Rule 189A prescribes several conditions that must be satisfied for the merger of NPOs:

(a) Parity of registration status: An NPO holding regular registration under Section 332 of the IT Act, 2025 cannot merge with an NPO holding only provisional registration, and vice versa.

(b) No undisputed outstanding demand: The merging NPO must not have any outstanding tax demand unless such demand is under appeal before an appellate authority. Where an appeal is pending, the merged NPO will be required to discharge the outstanding demand once the appeal attains finality.

(c) Lock-in of objects: The Notification also imposes a restriction on the amendment of the objects of the merged registered NPO. The objects cannot be amended for a period of five years from the end of the financial year in which the merger takes place. This restriction is particularly relevant for NPOs undertaking a merger as part of a broader restructuring or consolidation of charitable activities.

(d) Transfer of assets and liabilities: From an operational perspective, the merger must result in the transfer of all assets and liabilities of the merging NPO to the merged NPO from the date of merger.

(e) No benefit to related persons: The merger must not result in any direct or indirect benefit to any related person[1] of either NPO.

(f) Continuity of obligations: A significant aspect of Rule 189A is the continuity of tax-related obligations following the merger. All obligations of the merging NPO (such as those relating to the application of income, payment of tax, etc.) are required to be assumed and fulfilled by the merged NPO.

[1] *Related person includes (i) the author or the founder of the registered NPO; (ii) any person whose total contribution to such registered NPO, during the tax year exceeds INR 1 lakh; (iii) where such author, founder, or person is a Hindu Undivided Family (HUF), a member of that HUF; (iv) any trustee or manager of the registered NPO; (v) any relative of the persons mentioned above in (i), (iii) or (iv); (vi) any concern (company, firm, etc.) in which any of the above person has a substantial interest. [Substantial interest means person owning at least 20% voting power (in case of company) and at least 20% profit share (in case of any other concern)]*

(g) Tax proceedings: The Notification further provides that any assessment, reassessment or other proceeding made or initiated in respect of the merging NPO will be deemed to have been made or initiated in respect of the merged NPO.

Reporting Mechanism

The Notification also introduces a reporting mechanism through Form No. 112A. The merged NPO is required to electronically intimate the jurisdictional Principal Commissioner of Income Tax or the Commissioner of Income Tax within one month from the end of month in which the merger takes effect. The form requires, inter alia: (i) declarations regarding the assumption and fulfilment of the obligations of the merging NPO; (ii) an undertaking by the merged NPO that it will not claim depreciation on assets whose acquisition cost has already been claimed as application of income by the merging NPO; (iii) submission of trust deeds and registration certificates of both NPOs, resolutions approving the merger, and audited accounts of both NPOs as on the date of merger and for the financial year immediately preceding the financial year in which the merger takes place; and (iv) the reasons for undertaking the merger.

Comments

The Notification provides a much-awaited framework for the consolidation of registered NPOs, particularly for those groups that were seeking to rationalise multiple entities pursuing the same or similar charitable objects. Such consolidation may facilitate a reduction in administrative and compliance costs, pooling of resources and streamlining of governance.

The Conditions prescribed require careful consideration before implementating such consolidation steps, especially the one which restricts the ability of merged NPO to amend its objects for a period of five years. The continuity of tax-related obligations also assumes considerable significance, as the merged NPO effectively steps into the shoes of the merging NPO.

NPOs contemplating a merger should undertake comprehensive tax and legal due diligence, assess the implications of the Conditions, and evaluate whether the merger could result in any benefit to related persons. The merger documentation, including trust deeds, governing body resolutions and merger agreements, should also be structured carefully to address the prescribed Conditions and ensure continuity of tax-related obligations.

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