

# NON PROFIT ORGANISATIONS : SPECIFIC EMPHASIS ON 12A & 80G

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COMMITTEE OF ICAI

SKY HIGH SYMPOSIUM - 30

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- The concept of Charity is most important.
- The benefit of Charity should go to the public

- Charitable Purpose is defined as an altruistic thought and action which brings the objects together for the benefit of others.
- Charitable purpose includes relief of the poor, education, yoga, medical relief, preservations of environment and preservation of monuments or places or objects of artistic or historic interests and the advancement of any other general public utility.

FOR THIS, THE CONCEPT OF  
NPO GOT INTRODUCED...

A Nonprofit Organization (NPO) is also known as

- Non-business Entity
- Not-for-profit Organization or
- Non Profit Institution

## MEANING OF NPO

- The organizations which do not run with the motive to earn Profits from their business.
- They run for Charitable purpose.
- To promote Culture, Education, Health, Religious activities etc.
- E.g.: Schools, Colleges, Public Hospitals

➤ The key aspects of nonprofits are

- Accountability
- Trustworthiness
- Honesty and
- Openness to every person who has invested time, money, and faith  
into the organization

➤ Nonprofit organizations are accountable to the donors, founders, volunteers, program recipients and the public community

## NONPROFIT VS NOT-FOR-PROFIT

- Nonprofit and not-for-profit are terms that are used similarly but do not mean the same.
- Nonprofit organizations typically operate at a loss and rely heavily on donors to continue operation.
- Not-for-profit is a broad term for organizations that do not generate profit for their owners.
- E.g.: If you're seeking to form an organization for a simple, recreational purpose, a not-for-profit may be right for you; but if your goals are more ambitious, centered on the advancement of a social cause and public benefit, a nonprofit may be a more suitable choice.



Forms of NGO/NPO's,  
Laws & Regulatory Bodies

## **APPLICABLE FORMS**

- Trust
- Society
- Sec.8 Company (Companies Act 2013)
- Autonomous Body functioning with Government Aid

## **APPLICABLE LAWS**

- Societies Registration Act, 1860
- Indian Trust Act, 1882
- Companies Act, 2013
- Income Tax Act, 1961
- Foreign Contribution (Regulation) Act, 2010
- Format of Accounts prescribed by MOF, GOI

## **REGULATORY BODIES**

- Accounting Standards applicable prescribed by ICAI
- Indian Government Accounting Standards (IGAS)
- Indian Government Financial Reporting Standards (IGFRS)
- International Public Sector Accounting Standards (IPSAS)
- Accounting for Local Bodies

## Governing Principles in selection of forms of NPOs depend upon

- Size
- Legal requirement
- Initial Cost
- Recurring Cost
- Compliances required
- Corporate Structure
- Number of persons required to continue
- Trend
- Global appearance
- Advantages & Disadvantages
- Characteristics
- Activities

# TRUST

- A Trust can be constituted by a simple deed of declaration.
- This deed of declaration is made as per the wishes of Author of the Trust for Accomplishments of the objects of the Trust.
- Trust deed to be registered with the Jurisdictional Registrar.
- Trusts can be Charitable, Religious or both
- Charitable, Religious and Charitable cum Religious Trusts are entitled for Registration under section 12A. However Religious Trusts are not entitled for registration under section 80G.

# **SOCIETY**

- It is an association of Persons who come together by mutual consent to act jointly for a common purpose.
- Any seven or more persons by subscribing their names to Memorandum of Association and filing certain documents with Registrar of Societies Act 1860 can get the society Registered.
- Certificate issued by the Registrar is an evidence of the Registration of the Society.

## **Section 8 Company**

- This can be formed as a One Person Company or Association of Persons, but has in its objects the promotion of commerce, arts, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other project.
- Profits to be applied for only promoting these objects.
- Intends to prohibit the payment of any dividend to its members



TAXATION OF NPOS UNDER THE  
PROVISIONS OF INCOME TAX, 1961

- NPOs are generally exempt from the income tax. This has been done mainly to encourage the charities for the under privileged sections of the society in the overall interest of the country.
- NPOs are considered as more effective and efficient in promoting welfare of the society.
- The provisions of the Income Tax Act, 1961 govern taxation of Cooperatives and NPO Sectors.

## ✓ **Registration of NPOs U/s 12 A**

Under the New registration regime brought in by Finance Act, 2020, concept of perpetuity has been done away with

i.e. “All the existing Charitable Trusts or Institutions registered under Section 12A, Section 12AA and Section 80G of the Income Tax Act will have to apply afresh for registration under the new provisions of sections 12AB on or after 1<sup>st</sup> April 2021 till 31<sup>st</sup> March 2022.

✓ **Registration with the Commissioner of Income Tax**

The NPO must get itself registered with the CIT for getting the benefits of Income Tax exemption.

Application for registration is filed in Form No.10A with the Commissioner of Income Tax.

## ✓ **Filing of Form 10A**

- The new rules and forms will be applicable from 01.04.2021.
- All Charitable trusts and institutions already registered u/s 12A/12AA/80G should apply for reapproval/revalidation
- File Form no 10A before 31<sup>st</sup> March 2022.
- The renewed registration will be valid for a period of five years i.e. 31.3.2026.
- Before the expiry of six month i.e. 30.9.2025 to be applied in Form no 10AB. However, in the case of Provisional registration, it shall be valid for 3 years.

✓ **Registration u/s 12AB**

- Renewal of Registration u/s 12AA/10(23)C/35 for every 5 years.
- Renewal of Registration u/s 80G for every 5 year.
- Benefit u/s 12AA/10(23)C/10(46) cannot be claimed simultaneously.
- A new unique identification number to be allotted for all NPOs u/s 12AA, 80G, 10(23C) and 35.

✓ **Form 10AB**

- Conversion of provisional registration into regular registration.
- Renewal of registration/approval after five years.
- Activating inoperative registration under section 10(23C)/10(46).
- Re-registration for modification of objects for entities registered u/s 12

## ✓ **Due dates**

- Conversion of provisional registration into regular registration :  
Before 6 Months of Expiry or 6 Months from commencement of activities whichever is earlier.
- Renewal of registration/approval after five years : Before 6 Months of Expiry
- Re-registration for modification of objects for entities registered under section 12AB : Within 30 Days from such modification



## ✓ **For applying 80G**

- Form-10G has been done away with.
- Similar amendment in registration/ renewal procedure has also been made in section 80G. Thus, the existing trusts/ institutions will now have to apply for fresh registration under sub section (5) of section 80G in the same manner as applicable in section 12AB.
- Such application shall be made through Form No. 10A or 10AB as may be applicable to the institution

✓ **Form 10AC**

- Registration will be granted by the Commissioner from the previous year in which the application is made
- Order for registration /provisional registration/approval/provisional approval
- A unique registration number 16 digit alphanumeric number

## ✓ **Due Date for filing of Audit Reports**

- ❑ Audit Report U/S 12A(1)(b) of the Income Tax Act, 1961, Form No. 10B, in the case of charitable or religious trusts or institutions is to be filed 1 month before the due date for filing ITR u/s 139(1)
- ❑ Audit Report u/s 10(23C) of the Income Tax Act, 1961, Form No. 10BB, in case of any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or subclause (vi) or sub-clause (via) of Section 10(23C) is to be filed 1 month before the due date for filing ITR u/s 139(1)

## ✓ **Conditions for Exemption u/s 11**

- The creation of the Trust/Institutions must be wholly for the Charitable or religious purpose.
- Trust to be registered u/s 12AA/12AB as the case may be.
- It should not be created for the benefit of particular community or caste.
- The creation of trust should not be for carrying on business for profit.
- Trust property settled under Trust and Income not to be covered under section 60 to 63.

✓ **Contd..**

- The objective of the Trust to be Charitable as per Section 2(15) of the Income Tax Act, 1961.
- Income to be utilized for the Charitable purpose in India.
- There should be no violation of Section 13.
- Profit cannot be distributed among beneficiaries. Audit u/s 12A(1)(b) trust /institution if turnover exceed 2.5 lakhs before claim sec 11 and 12.
- Form 10B filled before the filing of the return of income.

✓ **Contd..**

- The trust or institution should be either wholly for charitable purpose or wholly for religious purpose. Trusts / institutions created partly for charitable and partly for religious purpose shall not be eligible to beneficial provisions of 11.
- Further, where an trust / institution is formed with its predominant object being both charitable and non-charitable, the said trust / institution again will not be eligible to beneficial provisions of 11.
- The organization must spend 85% of its income in any financial year on the objects of the organization

✓ **Contd..**

- Surplus income may be accumulated for specific projects for a period ranging from 1 to 5 years.
- The funds of the organization must be deposited as specified in section 11(5) of the Income Tax Act.
- No part of the income or property of the organization may be used or applied directly or indirectly for the benefit of the founder, trustee, relative of the founder or trustee or a person who has contributed in excess of ₹ 50,000 to the organization in a financial year.

❑ **Contd..**

- ❑ The organization must file its annual income tax return timely and the income must be applied or accumulated in India.
- ❑ However, trust income may be applied outside India to promote international causes in which India has an interest, without being subject to income tax.



## ✓ **Application of Fund/ Income**

- As per the section 11(1), at least 85% of income should be applied during the Previous year for the purpose of Trust/ Institutions.
- Statement to be furnished towards accumulation or setting apart of income by a charitable or religious trust or institution or association towards specific purpose, if 85% amount is not applied due to following reasons

*(Online, before the due date of filing the return w.e.f 01.04.2016) :*

- ❖ Income due but not received in the previous year - File Form no 9A
- ❖ Any other reason - File Form no10

## ✓ **Meaning of Application of Fund**

- ❖ Revenue Expenditure
- ❖ Purchase of Fixed Assets - Any Loan taken against Fixed Assets
- ❖ Repayment of Loan
- ❖ Payment of any Taxes
- ❖ Voluntary donation to other trust

## ✓ **Section 11**

Subject to the provisions of Section 60 to 63 the following income shall not be included in the total income of the previous year of the person in receipt of the income-

- Income derived from the property held under trust wholly for charitable or religious purpose.
- Application of Income in India.
- Accumulation of Income not exceeding 15% of Income

## ✓ **Meaning of Corpus Donation**

- ❑ According to section 11(1)(d) any voluntary contribution received by a trust created wholly for charitable or religious purpose with a specific direction that they shall form part of the corpus of the trust, shall not be included in the total income u/s 11
- ❑ To claim a donation as a corpus donation, a written document with a specific direction from the donor should be obtain. The recipient organization has no right to treat a donation as a corpus donation.

✓ **Contd...**

- ❑ A Corpus donation is not required to be spent in a same year it can be accumulated and Form no. 10 is not required to be submitted in the Income Tax department.
- ❑ The Corpus donation to be kept in 11(5).
- ❑ Limit of 85% is not applicable in Corpus Donation.

✓ **Contd..**

- ❑ The Finance Act 2021 had provided that Corpus donation should remain invested in a manner and in the form as provided under section 11(5). If not, to that extent, deemed to have been applied and to that extent could not be claimed as application. If invested subsequently in prescribed mode under section 11(5) then, during that year can be claimed as application.

## ✓ **Anonymous Donation**

- ❑ In order to tax unaccounted money being contributed to charitable institutions by way of anonymous donations, a new section 115BBC has been inserted so as to provide that any income by way of anonymous donation of the following entities shall be included in the total income and taxed at the rate of 30%.
  - ❑ Any trust or institution referred to in section 11 (other than religious trust).

✓ **Contd..**

- ❑ Any university or other educational institution referred to in section 10 23(c)(iii ad) and (vi) i.e. its annual receipts is less than or more than ₹ 1 Crore.
- ❑ Any hospital or other institution referred to in section 10 (23C) (iii ae) and (via) i.e. its annual receipts is less than or more than ₹ 1 Crore.
- ❑ Any fund or institution referred to in section 10(23C)(iv).
- ❑ Any trust or institution referred to in section 10 (23C)(v).



✓ **Investments/ Deposits in the modes specified U/s 11(5)**

➤ A charitable trust or institution shall not be allowed exemption u/s 11 or 12, if any part of its funds are not invested or deposited in the modes or forms specified u/s 11(5), or any shares in a company (other than shares in a public sector company or shares prescribed u/s 11(5)(xii), that is in a depository company) are held by the trust/institution. As per sec 11(5) only the following investments and deposits are permitted:

- ❖ Investment in saving certificates and other securities or certificates issued by Central Govt. under the small saving schemes of the Govt.
- ❖ Deposit in any account with post office saving bank.

✓ **Contd..**

- ❖ Deposit in any account with a scheduled bank or co-operative bank.
- ❖ Investment in units of UTI
- ❖ Investment in any securities issued by Central or State Government
- ❖ Investment in any Debentures issues by any Company or Corporation  
where both principle and interest are guaranteed by the Central or State  
Government
- ❖ Investment or deposit in any public sector company
- ❖ Investment in immovable property
- ❖ Deposit with IDBI

## ✓ **Section 80G**

- A facility available in the Income Tax Act which allows taxpayers to claim deductions for various contributions made as donations.
- The deduction under the Act is available for contributions made to the specified relief funds and charitable institutions.
- A list of donation received to be submitted online for claiming 80G by the Donor

## ✓ **Form 10BD**

Statement of particulars of donation received by donor to be filed yearly on or before 31st may beginning with the financial year 2021-2022.

- Unique identification number of donor
- ID code of donor
- Section code 80G/35
- Name of donor
- Address of donor
- Donation type - corpus/specific/other
- Mode of receipt- cash/kind/electronic/other.

## ✓ **Form 10BE**

Certificate of donation under Sec 80 G(5)(ix) and Sec 35(1A)

## ✓ **Section 80GGA**

- Deduction in respect of certain donations for Scientific Research or Rural Development.
- Research Association or University, College or other Institution for: Scientific Research & Social Science or Statistical Research
- Association or Institution for Rural Development & Conservation of Natural Resources or for afforestation PSU or Local Authority or an Association or Institution approved by the National Committee for carrying out any eligible project.

✓ **Section 80GGC**

Sum contributed to Political Party or Electoral Trust is allowed as deduction (*subject to conditions*)

Deduction of total amount paid through any mode other than cash

## ✓ ITR- 7 Relevant sections

- **139(4A)** – Income derived from Property held under Trust wholly / in part for charitable or religious purposes.
- **139(4B)** – Chief Executive Officer of every Political Party.
- **139(4C)** – Various entities like Research Association, News Agency, etc. mentioned in Section 10.
- **139(4D)** – University, College or other Institution referred in Section 35.

✓ **Cessation /Conversion in to noncharitable trust**

- Section 115TD to 115TF have been inserted w.e.f. 01.06.2016.
- This section provides for levy of additional income tax in case of conversion into or merger with, any non- charitable form or on transfer of assets of a charitable organization on its dissolution to a non-charitable institution.



## ✓ **Meaning of Accreted Income**

- ❖ Accreted income shall be amount of aggregate of fair market value of total assets as reduced by the liability as on the specified date (i.e., the date of conversion, merger or dissolution )
- ❖ Mode of valuation to be notified

## ✓ **Time of accreted income**

The accretion in income (accreted income) of the trust or institution shall be taxable on –

- ❖ Conversion of trust or institution into a form of non-registered under section 12 AA ; or

✓ **Contd..**

- ❖ Merger into an entity not having similar objects and which is not registered under section 12 AA; or
- ❖ Non – distribution of assets on dissolution to any charitable institution registered under section 12AA or approved under section 10(23C) within a period of 12 months for dissolution

## ✓ **Deemed conversion**

For the above purpose, a trust or institution shall be deemed to have been converted into any from (not eligible for registration under section 12AA ) in a previous year, if

- The registration granted to it under section 12AA has been cancelled ; or
- It has modified its objects and not applied for fresh registration (or fresh registration application has been rejected).

## ✓ **Recent changes in the Budget**

- Corpus Donation by one entity to another entity shall not be consider as application of income from current year income.[ *Sec 11(1)* ]
- Modification in objectives, A fresh application to be filed with in 30 days. [*Sec 12A (1)(ab)* ].
- Explanation 3 in sub section 11(1) – Payment exceeding of ₹10000/- not to be treated as application of fund u/s Section 40A(3).
- Section 40A(3A) also says that any liability cannot be paid in cash above ₹ 10000/-

✓ **Contd..**

- Provisions of TDS now will also applicable to NPO
- If the return of income is not filed within time, exemption may be cancelled [*Sec 12A (1)(ba)*]
- Cash Donation exceeding ₹ 2000 not eligible exemption u/s 80G.
- Sec 56(2)(X) - Property or money received by any person for inadequate consideration exceeding ₹ 50000 to be income of the recipient .

*Thank you*

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