

Important Aspects of Charitable Trust & New Provisions for Registration



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“The best way to find oneself is to lose yourself in the service of others”

- Mahatma Gandhi.

charity, volunteerism, welfare and development were living concepts even when formal means of organizations were absent.

-Mahatma Gandhi.

Why Trust & Society

- India Has long history of civil society based in concept of Daana (Donation) and Sewa (service) and has long established tradition of charitable engagements
- As per Bhagwat Geeta Shloka 18.6- Lord Krishna says 'Act of sacrifice, Charity & penance not to be given up, but should be performed. Indeed sacrifice, charity & penance purify even the great souls.
- Further, No matter how strong and self sufficient a government is but always needed help as well as collaboration from civilized society & charitable organizations to carry on work for upliftment of the society.
- Traditionally civilized society, as per their respective caste and customs performed the act of charity, but in unorganized manner, therefore to get these group organized various Trust and Societies Acts were enacted at National as well as State Level.

VOLUNTEERISM

- ❑ Involvement of oneself into community services with one's own free will (Voluntarily)
- ❑ Volunteerism helped in penetrating advantages of education, services, facilities, opportunities and modern techniques to the remote parts of India.
- ❑ It has created hopes in the lives of people.
- ❑ Actions taken due to free will are more effective and efficient.

- ❑ **“Be the change you wish to see in the world”**
- Mahatma Gandhi

DEVELOPMENT

- ❑ It is a state of well being
- ❑ It is a process of change.
- ❑ Synonymous to Economic Growth, Social Upliftment, Political Changes, Modernization, Improvement in quality of life, justice, sustainability, freedom.
- ❑ In General, it is the capacity of the state to increase its human resource with the aim of achieving higher outcome of production for satisfaction of basic need of majority of its citizens and empowering them to make demands to their government.

History and Background of NGO in India

- Initially took the form of Charity, Philanthropy, Construction of temples, dharmashalas, shramdaan, annadaan, vastradaan, gyaan daan.
- Took a Concrete form with the appearance of Swami Vivekananda and setting up of Ramkrishna Mission. The mission is providing services in the field of education, health, relief etc.

CONSTITUTIONAL FRAME WORK

Introduction Charity is a concurrent subject under the 7th schedule, List III, Item 28, of the Constitution of India, which means that both the central and the state governments are competent to legislate on this subject. In practice, charity is primarily considered a state subject although presently there are both Central and state statutes which govern the non-profit sector. There is no single central legislation laying down the law of charity. Instead there are three separate laws for non-profit registration or incorporation. Charity may take the form of a trust, an endowment, a society or a non-profit company. For the purpose there are two Central enactments; otherwise there are state enactments.

LEGISLATIONS IN INDIA

- ▶ The Indian Trust Act, 1882
- ▶ The Charitable and Religious Trust Act, 1920
- ▶ The Religious Endowment Act, 1863
- ▶ The Charitable Endowment Act, 1890
- ▶ The Societies Registration Act, 1860
- ▶ The Income Tax Act, 1961
- ▶ The Companies Act, 2013
- ▶ The Foreign Contributions Regulations Act, 2010
- ▶ The Bombay Public Trust Act, 1950
(State legislatures)

Comparison among Trust, Society & Section 25 Company

Points of Differences	Trust	Society	Section 25 Company Section 8 Company
Statute / Legislation	Relevant State Trust Act or Indian Trust Act, 1882	Societies Registration Act, 1860	The Companies Act, 1956 The Companies Act, 2013
Jurisdiction	Deputy Registrar/Charity commissioner	Registrar of societies (charity commissioner in Maharashtra).	Registrar of companies
Registration	As trust	As Society In Gujarat, both as a society and as a trust	As a company u/s 25 or u/s. 8 of the Indian Companies Act.
Registration Document	Trust deed	Memorandum of association and rules and regulations	Memorandum and articles of association. and regulations
Stamp Duty	Trust deed to be executed on non-judicial stamp paper, vary from state to state	No stamp paper required for memorandum of association and rules and regulations.	No stamp paper required for memorandum and articles of association.
Members Required	Minimum – two trustees. No upper limit.	Minimum – seven managing committee members. No upper limit.	Minimum two .No upper limit.
Board of Management	Trustees / Board of Trustees	Governing body or council/managing or executive committee	Board of directors/ Managing committee
Mode of Succession on Board of management	Appointment or Election	Appointment or Election by members of the general body	Election by members of the general body

Meaning of 'Trust'

- ❑ A trust is a relationship in which
- ❑ a person or entity (the trustee) holds legal title
- ❑ to certain property (the trust property or trust corpus), but is bound by a fiduciary duty to exercise that legal control
- ❑ for the benefit of one or more individuals or organizations (the beneficiary), who hold 'beneficial' or 'equitable' title.
- ❑ The trust is governed by the terms of the (usually) written trust agreement and local law.
- ❑ The entity (one or more individuals, a partnership or a corporation) that creates the trust is called the settlor.

REVALIDATION OF

REGISTRATION

U/S. 80G OF INCOME TAX ACT, 1961

Separate 10A form to be filled for revalidation of 12AB/10(23C)/80G

The finance Act,2020 has brought the requirement of revalidation of existing registrations under 12AB/80G/10(23C). In continuation to this the CBDT has notified the Income-tax (6th Amendment) Rules, 2021. These rules came into force from the 1st day of April, 2021 In these rules, the CBDT has notified new rules and forms to be filled in for revalidation of the existing registrations. Form 10A has been notified for making application for revalidation or provisional registration of 12AB/80G/10(23C). Kindly note that even though the form number is the same, the applicant organization needs to fill in separate forms for each revalidation under each section. For example, if the applicant organization has to apply for revalidation of 12AB and 80G, then separate(two) applications in the same form need to be filed

Section 80G allows a deduction for the donation made to certain funds and institution. The deduction for such donation is allowed to the donor only if donee fund or institution is approved by the Principal Commissioner or Commissioner of Income Tax (PCIT/CIT), and fulfils other conditions. Hitherto, the institution or fund had to be approved by the CIT in accordance with the rules made in this behalf. Such approval was valid for perpetuity till it was withdrawn/cancelled.

REQUIREMENT TO FILE STATEMENT OF DONATION AND TO ISSUE CERTIFICATE TO DONORS

- ▶ With effect from 01-06-2020, the Finance Act, 2020 has amended the procedure relating to approval under section 80G. Subsequently, due to the crisis caused by COVID-19, the CBDT announced to deferment of the implementation of the new procedure for registration under the aforesaid sections. Accordingly, the date of enforcement of the new procedure introduced by the Finance Act, 2020 would be defective from 01-04-2021.

- ▶ 80G registration is no longer permanent and shall be valid for 5 years subject to renewal.

- ▶ Form 10A is required to be filed for the renewal of 80G registration as on 01.04.2021 and Form 10AB is required to be filed for renewal at the end of five years. The procedure of filing Form 10A and Form 10AB has been discussed separately in another issue. In this issue we shall discuss the various other compliances pertaining to 80G.

- ▶ With effect from financial year 2021-22, the institutions notified under section 35 or approved under Section 80G are required to file a statement of donation from 1st April 2021 80G REGISTRATION & COMPLIANCES received and also to issue the certificate to the donor. Deduction on account of the donation shall be allowed to the donor only on the basis of the statement filed by the donee trust or institution. Hence, if a statement is not filed, the donor will not get a deduction for the donation.

- ▶ In case of delay in filing such statement, a late fee of Rs. 200 per day shall be applicable under newly inserted Section 234G of the Income-tax Act. Further, a penalty under Section 271K, which shall not be less than Rs. 10,000 and which may extend up to Rs. 1 lakh, shall be leviable if the trust or institution fails to file such statement or fails to issue a certificate of donation.

- ▶ The Income Tax (6th Amendment) Rules, 2021 has inserted new Rule 18AB for Furnishing of Statement of particulars and certificate under clause (viii) and clause (ix) of section 80G(5) or under section 35(1A).

- ▶ Form for filing Statement of particulars required to be furnished by the reporting person shall be furnished in respect of each financial year, beginning with the financial year 2021- 2022, in Form No. 10BD.

- ▶ Aggregation of Amount The reporting person shall, while aggregating the amounts for determining the sums received for reporting in respect of any person take into account all the donations of the same nature paid by that person during the financial year. The donations shall be proportionately attributed to the value of the donation or the aggregated value of all the donations to all the persons, in a case where the donation is recorded in the name of more than one person and where no proportion is specified by the donors, attribute equally to all the donors.

- ▶ Certificate to Donor The reporting person shall furnish the certificate to the donor in Form No. 10BE specifying the amount of donation received during financial year from such donor.

- ▶ **Date of filing and Issuing Certificate** The certificate of donation in Form 10BE is required to be furnished to the donor on or before the 31st May, immediately following the financial year in which the donation is received. Statement of donation in Form No. 10BD shall be furnished on or before the 31st May, immediately following the financial year in which the donation is received.

EXPENDITURE ON RELIGIOUS ACTIVITY

- ▶ 1 Form 10A and 10AB have a category of charitable cum religious organisation which settles the confusion of whether an organisation can be both charitable as well as religious simultaneously. The Forms separately require reporting of expenditure on religious activities which will be considered for eligibility of 80G registration.

- ▶ Normally the religious trusts are not allowed to be approved under section 80G. However, Section 80G(5B) allows for a charitable organisation to have a religious activity not exceeding 5% of the total income in that previous year. It provides as under:

“Notwithstanding anything contained in clause (ii) of sub-section (5) and Explanation 3, an institution or fund which incurs expenditure, during any previous year, which is of a religious nature for an amount not exceeding five per cent of its total income in that previous year shall be deemed to be an institution or fund to which the provisions of this section apply.
[80G(5B)]

- ▶ As Section 80G(5B) provides that up to 5% of religious activity shall be permissible and therefore to that extent an organisation can be charitable cum religious.

- ▶ The details of religious activities are to be filled in Point No. 21 of Form 10A. This point is only to be filled for approval under Clause (iv) of first proviso to section 80G REGISTRATION & COMPLIANCES 80G(5) i.e. If the applicant is applying for provisional approval then point number 21a and 21b are to be filled.

- ▶ Similarly, Point 27 of Form 10AB has asked for the details of religious expenditure, this has to be filled if the institution is applying for re-approval after expiry for 5 years or converting provisional approval into normal approval.

▶ Hence the organisations having 80G approval and going for revalidation of this approval should ensure that they are complied with under section 80G(5B) before making such application for revalidation.

STATEMENT OF DONATION

- ▶ The Finance Act, 2020 inserted Clause (viii) and (ix) in Section 80G(5) requiring trust or institution approved under section 80G to file a statement of donation received and also to issue the certificate to the donor. It has been further stated that deduction on account of the donation under section 80G shall be allowed to the donor only on the basis of the statement filed by the donee trust or institution. Hence, if a statement is not filed, the donor will not get a deduction for the donation.

- ▶ In case of delay in filing such statement, a late fee of Rs. 200 per day shall be applicable under newly inserted Section 234G of the Income-tax Act. Further, a penalty under Section 271K, which shall not be less than Rs. 10,000 and which may extend up to Rs. 1 lakh, shall be liveable if the trust or institution fails to file such statement or fails to issue a certificate of donation.

- ▶ The newly inserted Rule 18AB provides that the statement in Form 10BD shall be filed on or before the 31st May, immediately following the financial year in which the donation is received. The donee is also required to issue the certificate in FORM 10BE which is also required to be issued on or before the 31st May, immediately following the financial year in which the donation is received.

Filing of Correction Statement

There could be any inadvertent mistake while filing the statement of donations. It could be name, and PAN of donor or the amount of donation. Rule 18AB doesn't provide for the filing of correction statement in any inadvertent mistake by the reporting entity.

Filing of NIL Statement of Donations

The question may arise if there is no donation received by an entity which is approved under Section 80G, whether it is required to submit nil statement of donations for that period?

Rule 18AB doesn't contain any provision to clarify whether reporting entity is required to submit NIL statement of donation.

DEDUCTION TO DONOR

- ▶ The trusts or institutions which have been granted perpetuity of approval under section 80G are required to make an application again under the amended provision of section 80G.

- ▶ If your NGO is existing on 1st April 2021 and already approved under Section 80G, then you will be required to make an application again. The application for approval in all such cases has to be made in Form 10A within 3 months from the date on which the new provisions shall come into force i.e. application has to be filed on or before 30th June 2021. The application for the registration in Form 10A shall be made to the PCIT OR CIT authorized by the CBDT.

Now, the question arises if an organisation collects donation but does not apply for renewal or if approval application is cancelled.

- ▶ The new notified Rules and Forms do not propose quarterly uploading of 80G related data of donation received and donation certificate to be issued. In such circumstances the donors will not be able to claim 80G benefit against donation given to organisations between 1st April 2021 to 30th June 2021 if such organisation loses its registration.

- ▶ This appears to be harsh as the donor should not be penalised by subsequent actions of the donee, when the donee clearly had the approval under section 80G on the date of the donation and loses the registration on a subsequent date.

For the purpose of section 35CCA it has been held in various cases that even if the approval is withdrawn retrospectively, deduction allowed before withdrawal cannot be withdrawn in regular assessment or re-assessment or by way of revision under section 263.

- ▶ In the case of Ramdass Maneklal Gandhi v. UOI [2000] 108 Taxman 590 (Bom.) it was held that it is well-settled law that Assessee is entitled to rely upon certificate granted to an institution under section 35CCA for claiming deduction under that section, which was valid and subsisting when donation was made to it, there was no escapement of income of Assessee on account of allowance of said deduction.

SECTIONS IN FORM 10A

Particulars	Point No.,	Remarks
Incorporation / Constitutional detail	1 to 6	
Other Registrations	7 to 8	
Details of Key Persons	9	
Assets and Liabilities	10 to 19	Not required to be filled in if Return for F.Y. 19-20 has been furnished
Religious Activities	21	To be filled only in case of application for provisional approval under section 80G

TYPE OF REGISTRAION/APPROVAL & SELECTION OF CODE

INCOME TAX

SECTION 10(23C) Approval Cases

Sec. 10 (23C) (iv)
Charitable institution of national Importance

Sec.10(23C) (V)
Religious Institution for Public Religious Purpose or Religious cum Charitable Trust.

Sec.10(23C) (Vi)
Educational Inst. Receipt >5.00 Crore

Sec.10 (23C) (via)
Medical Institution receipt >5.00 Crore.

SECTION -11
Subject to registration u/s 12 AA/12 AB

Donation Subject to approval u/s **80 G.**

Revalidation by existing Regd Org Form 10 A

Code 3

Code 4

Code 5

Code 6

Code 1

Code 11

Provisional Regd. Form 10 A

Code 7

Code 8

Code 9

Code 10

Code 2

Code 12

Relevant Definitions:

Trust

- ▶ “Trust” is nowhere defined in the Income-tax Act or the Bombay Public Trusts Act. It is defined as under in section 3 of the Indian Trusts Act, 1882.
- ▶ *“A trust is an obligation annexed to the ownership of property and arising out of a confidence reposed in and accepted by the owner or declared and accepted by him for the benefit of another or of another and the owner”*

Trust / Legal obligation:

As per Explanation 1 to section 13 and Explanation to clause (iia) of section 2(24) of the Income-tax Act trust includes any other legal obligation.

Charitable Purpose

- (a) relief of the poor,
- (b) education,
- (c) yoga,
- (d) medical relief,
- (e) preservation of environment (including water sheds, forests and wild life)
- (f) preservation of monuments or places or objects of artistic or historic interest and
- (g) Advancement of any other object of general public utility

Relevant Definitions:

Religious Purpose

Religious purpose is not defined in the Income-tax Act.

Common Parlance Meaning: It includes advancement, support or propagation of a religion and its tenets, worship of idols and performance of religious festivals. Religion has its roots in faith and doctrine conducive to spiritual well being. The rights and ceremonies are performed at a certain time and in a certain manner.

Instruments creating / evidencing the public trust

Instruments creating a public trust:

- ▶ 1. Trust deed
- ▶ 2. A Will declaring the trust

Instruments evidencing the establishment of a trust / society/ company/ others.

1. Constitution passed by the members of a sangh / general body.
2. A copy of Schedule-1 (an extract from the public trust register i.e. PTR) from the office of state public trust's office in the absence of trust deed or constitution or a will declaring the trust or any other instrument. Such trusts were registered in the year 1952 and thereafter by the office of charity commissioner as well as registered by the commissioner of income tax u/s 12A(a)/12AA of Income-tax Act on the basis of attributes/characteristic of the public trust.
3. Memorandum of Association and Rules in case of a Society registered under the Societies Registration Act, 1860.

Notes:

- 3.1 In Gujarat, the society is registered for charitable and other specified purposes except religious purpose. In Maharashtra, it can be registered for religious, charitable and other specified purposes.
- 3.2 Definition of public trust u/s 2(13) of the Bombay Public Trusts Act, 1950 as applicable to Gujarat includes a society registered under the Societies Registration Act, 1860. All the provisions of the Bombay Public Trusts Act apply. Therefore, registration under Societies Registration Act, 1860

Instruments creating / evidencing the public trust

and the Bombay Public Trusts Act, 1950 have to be obtained separately. The charity Commissioner, Gujarat is the Ex-officio Registrar of societies. Such society has only to file Annual list of managing /executive committee in the office of Registrar of society within 14 days from the date of AGM.

3.3 A society is a legal entity. It can sue or can be sued. The properties vest in the name of the society.

4. Memorandum of Association and Articles of Association for the companies registered u/s 8 of the companies act, 2013

5. Declaration / writing by pious benefactor for the fraternity of religious men for Hindu Math

6. Declaration / writing evidencing a permanent dedication by a Muslim for religious, pious or charitable purpose for a wakf. It is governed by the Mussalman Wakf Validating Act, 1913.

7. NGO can be in the form of a society under the Societies Registration Act or a public trust registered under the Bombay Public Trusts Act or a company registered u/s 8 of the Companies Act, 2013. It is governed by section 11, 12 and 13 and entitled for approval u/s 80G(5) of the Income-tax Act.

Form No. 10A

Who are required to file an application for fresh registration u/s 12AB in Form no.10A

1. All public charitable or religious trusts registered with charity commissioner, all societies registered under the Societies Registration Act, 1860 and all companies registered u/s 8 of the Companies Act, 2013, having registration u/s 12A/12AA of the Income-tax Act as on 31/03/2021, have to apply for fresh registration within three months from 01/04/2021.
2. All Trusts or the Institutions having approval u/s 80G(5) as on 31-03-2021 have to apply for fresh approval within three months from 01/04/2021.
3. All Trusts or institutions falling in the residue category as prescribed in sub-clause (vi) of clause (ac) of sub-section 1 of section 12A of the Income-tax Act have to apply at least one month prior to the commencement of the previous year relevant to the assessment year from which the said registration u/s 12AB is sought. There is a practical difficulty in implementation.
4. All Trusts or the Institutions falling into any other category as prescribed in clause (iv) of first proviso to section 80G(5) have to apply at least one month prior to the commencement of the previous year relevant to the assessment year from which the said approval is sought. There is a practical difficulty in implementation.

Form No. 10A

Who are required to file an application for fresh registration u/s 12AB in Form no.10A

5. The Fund or the Trust or the Institution or University or other educational institution falling under different clauses of first proviso to section 10(23C) as mentioned at Sr. Nos. 3 to 10 of the Instructions to fill in Form No.10A have to apply within three months from 01-04-2021.
6. All institutions approved u/s 35(1) of the Income tax Act having registration as on 31-03-2021 have to apply for fresh registration within three months from 01-04-2021.
7. All public charitable or religious trusts, societies registered under The Society Registration Act, 1860 the Companies registered u/s 8 of the Companies Act, 2013 seeking registration for the first time.

NOTES

Note – 1:

For each fresh registration / approval u/s 12AB / 80G(5) / 10(23C) / 35(1) different Form no. 10A have to be filed under different section code. The fresh registration / approval under all above sections shall be granted in Form no.10AC for five Assessment years commencing from Assessment year 2022-23. The order for registration or approval shall be passed u/s 12AB(3) of the Income-tax Act in Form no.10AC within three months from the end month in which application is made.

Form No. 10A

Who are required to file an application for fresh registration u/s 12AB in Form no.10A

Note – 2:

For each application for new registration / approval u/s 12AB / 80G(5) on or after 01-04-2021, provisional registration / approval shall be granted in Form no.10AC for three Assessment years commencing from Assessment year 2022-23. The order for provisional registration or provisional approval shall be passed u/s 12AB(3) of the Income-tax Act in Form no.10AC within one month from the end of the month in which application is made.

Note – 3:

All documents in English version have to be uploaded alongwith the Form no.10A failing which the application would stand rejected. The documents in vernacular language are also required to be uploaded.

Note – 4:

Unique Registration Number (URN) shall be issued by CPC – Bengaluru or CIT (Exemption), Bengaluru.

Form No. 10A

Who are required to file an application for fresh registration u/s 12AB in Form no.10A

Note – 5:

If it is found, at any point of time, that Form no.10A has not been duly filled in by not providing, fully or partly, or by providing false or incorrect information or documents required to be provided or by not furnishing Form no.10A in digital signature or EVC or Form no.10A not verified by an authorised person to verify the return of income u/s 140 of the Income-tax Act, DIT(CPC),Bengaluru or CIT(Exemption), Bengaluru can cancel the registration / approval granted in Form no.10AC and URN after giving an opportunity of being heard. This is the harshest provision likely to be misused by literal interpretation instead of interpretation in its spirit. An order passed u/s 12AB of the Income-tax Act rejecting or cancelling the registration or approval shall directly lie to tribunal u/s 253(1)(c).

Note – 6:

Failure to make fresh registration for application u/s 12AB will result in denial of exemption u/s 11 of the Income-tax Act from the Assessment Year 2022-23 and onwards i.e. gross total Income of the trust including corpus donation shall be liable to tax without any deduction of amount applied for the objects of the trust. In such a situation, trust may be put to unimaginable financial hardship. All applications pending before the Principal Commissioner or Commissioner on which no order has been passed under clause (b) of sub-section (1) of section 12AA before the date on which this section has come into force, shall be deemed to be application made under sub-clause (vi) of clause (ac) of sub-section (1) of section 12A on that date vide section 12AB(2) of the Income-tax Act.

Form No. 10AB

Who are required to file an application for registration u/s 12AB in form no.10AB

- 1.** All trusts or institutions registered/approved u/s 12AB/80G and the period of the said registration / approval is due to expire, at least six months prior to the expiry of the said period.
- 2.** All trusts or institutions which have been provisionally registered / approved u/s 12AB / 80G(5) of the Act, at least six months prior to the expiry of the period of provisional registration or within six months of the commencement of its activity, whichever is earlier.
- 3.** All trusts or institutions which have become inoperative due to issue of registration u/s 12AB from the registration u/s 10(23C), at least six months prior to the commencement of the Asst. year from which said registration is sought to be made operative.
- 4.** All trusts or institutions which have adopted or undertaken modification of the objects which do not confirm to the condition of the registration, within a period of 30 days from the date of the said adoption or modification.

Notes

Note – 1:

The order for registration or approval shall be passed u/s 12AB(3) of the Income-tax Act in Form no.10AC within three months from the end month in which application is made.

Note – 2:

If it is found, at any point of time, that Form no.10A has not be duly filled in by not providing, fully or partly, or by providing false or incorrect information or documents required to be provided or by not furnishing Form no.10A in digital signature or EVC or Form no.10A not verified by an authorised person to verify the return of income u/s 140 of the Income-tax Act, DIT(CPC),Bengaluru or CIT(Exemption), Bengaluru can cancel the registration / approval granted in Form no.10AC and URN after giving an opportunity of being heard. This is the harshest provision likely to be misused by literal interpretation instead of interpretation in its spirit.

An order passed u/s 12AB of the Income-tax Act rejecting or cancelling the registration or approval shall directly lie to tribunal u/s 253(1)(c).

Other important issues relating to the Public charitable / religious trusts

1. If the Trust is denied exemption u/s 11 of The Income Tax Act, the total income is taxed at the maximum marginal rate under various assessment orders received from the department.

The charging of income at the maximum marginal rate appears to be against the provisions of section 164(2) which provides that the tax shall be charged on so much of the relevant income as is not exempt u/s 11 or u/s 12 as if relevant income not so exempt were the income of the association or person.

The plain reading of the above provision is that if the exemption u/s.11 is not granted, then the income not so exempt was the income of an AOP. The maximum marginal rate can be applied only if the Trust is hit by provisions of section 13(1)(c) of the Act (benefit to the relatives) and section 13(1)(d) (investment in violation of section 11(5) as per proviso to section 164(2) of the Act.

2. The benefit of indexation of sale of the asset owned by the public trust is not available while computing capital gain. The amount utilised for acquiring another capital asset has to be reduced from the net consideration. The 15% deduction is available on the net value of capital gain and not on gross amount of capital gain.

Other important issues relating to the Public charitable / religious trusts

3. What is corpus donation?

3.1 Donation received for creating/acquiring capital asset would be a corpus donation. e.g. Donation received for construction of school / hospital building, Donation received for construction of temple, Donation received for acquiring Gold / silver ornaments for idols.

3.2 The donation received with the condition to keep the principle amount intact and only interest arising therefrom is to be utilised as per example Kayami Trust Nibhav Fund. The equivalent amount of donation is required to be invested in Bank fixed deposit or Government securities or interest earning permissible investments.

3.3 There has to be a direction from the donors that the donation given by him shall form part of the corpus of the trust.

4. The amount of corpus donation given by one trust to the other trust shall not be treated as application of income.

Other important issues relating to the Public charitable / religious trusts

5. The payment made without TDS invites disallowance of 30% of the amount on which the TDS is required to be made.
6. Any expenditure of revenue or capital nature incurred in cash for an amount in excess of Rs. 10,000/- shall not be treated as amount applied for the objects of the trust.
7. The amount applied for the objects of the trust out of loan taken shall not be qualified for deduction, however repayment of loan shall be treated as amount applied for the objects of the trust.
8. If the return of income of 12AB entity is not filed in time, it shall lose the exemption under section 11 of the Income-tax Act for that Assessment Year i.e. the entire gross income including corpus donation shall be liable to tax without deduction of any amount applied for the objects of the trust.
9. The deficit of earlier year shall not be set off against the income of subsequent year.

Other important issues relating to the Public charitable / religious trusts

10. Amount applied for charitable or religious purpose out of the corpus shall not be treated as amount applied for the objects of the trust, however when the amount not so treated as application or part thereof, shall be treated as application for charitable or religious purposes in the previous year in which the amount or part thereof, is invested or deposited back, into one or more of the forms or modes specified in sub-section 5 maintain specifically for such corpus form the income of that year and to the extent of such investment or deposit.
11. There is no enabling provision under the Bombay Public Trust Act to cancel the registration in spite of there being no fund.
12. Any assistance received from any trust or institution registered under section 12AB is not liable to tax under section 56 of the Act.
13. The investment made by 12AB entities in Gold / Silver would be hit by provision of section 11(5) of Income-tax Act and Section 35 of the Bombay Public Trust Act.
14. Anonymous donations received by a public religious trust are not liable to tax at the rate of 30%.

Other important issues relating to the Public charitable / religious trusts

15. The return of income of the entities approved u/s 80G(5) should not be in any positive figure.
16. Except there is an enabling clause to give loan for the common objects of the trust to any person, inter trust loan is not permissible since it is in violation of section 35 of the Bombay Public Trusts Act, 1950 and section 11(5) of the Income-tax Act

Thankyou