Organisations which provide services of Charitable Purposes in India.

Section 2(15) in The Income Tax Act, 1961

"Charitable Purpose" includes relief of the poor, education, yoga, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility:

> Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless—
>
> (i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and
>
> (ii) the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year;

Under Section 12A of the Income Tax Act, 1961, non-profit organisations like **charitable trusts, welfare societies, NGOs, religious institutions**, etc. are entitled to tax exemptions. This tax relief was introduced, keeping in consideration that non-profit entities work for social welfare and not for generating profit.

Owing to their selfless contribution towards the society, they are exempted from taxes that come under the purview of Section 11 and Section 12.

Nevertheless, to claim such tax benefits individuals need to get registered as per the norms of Section 12A of ITA. In case a non-profit organisation fails to register under 12A, all their future financial transactions and receipts will be deemed taxable.

Eligibility Criteria

The Income Tax Department of India sets eligibility criteria for registering under Section 12A. Ideally, these following entities who are engaged with social welfare are considered eligible to register under 12A –

- Incorporated Trusts
- Societies
- Section 8 companies and trusts

All the Institutions who want to avail the benefits of Section 12A are required to complete certain formalities by filing Form 10A through electronic mode by applying Digital Signatures of the applicant or trough EVC.

Documents Required

Besides 10A Form, applicants need to submit a set of other vital documents. Here is a list of self-certified documents required to be shared by the societies, trusts and firms –

1. A document stating the establishment of the trust or organisation.
2. A document that serves as proof of the creation or establishment of a trust or institution.
3. Registration with the - RoC or Registrar of Companies, Registrar of Public Trusts or Registrar of Firms and Societies.
4. Documents that serve as proof of adoption or alteration of objects.
5. Trusts or institutions’ annual accounts.

6. An existing order granting permission for registration under either Section 12A or Section 12AA.
7. A list that highlights the activities of the trust or institution.
8. An order that rejects the application granting registration under either Section 12A or Section 12A.

Once non-profit entities become aware of the required eligibility and documents for Section 12A Income Tax registration, they should proceed to find out about the registration process.

Steps to Obtain 12A Registration

These pointers below highlight how to obtain 12A registration –

Step 1 – Apply in the required format online.

Step 2 – The Department may direct applicants to submit additional documents.

Step 3 – Once the Department is satisfied with the information availed, an order will be passed in writing, registering the organisation or trust in question.

In case the commissioner is not satisfied with the information received, he/she may convey the refusal to register the entity in writing.

The registration application under Section 12AA is filed under the jurisdictional commission of the Income Tax Department. Ideally, it takes 1-3 months to conclude the 12A registration process.

Also, Section 12AA(2) states that both approval or rejection order passed by the commissioner should be conveyed before 6 months (computed from the month-end in which the application in question was received).

One must also note that when a trust is registered, the registration is done provisionally for three years period and after getting satisfied the Department allows it for a maximum period of five years under new regime where as earlier it was for life time.

Difference Between 12A and 12AA of Income Tax

The primary difference between Section 12A and Section 12AA is that the former provides clauses for the applicability of both Section 11 and 12.

On the other hand, Section 12AA of Income Tax Act enumerates how to get registered under Section 12A.

The collective advantage of Section 12A and Section 12AA Registration are as follows –

- Income is exempted from taxes.
- Provides an upper-hand in FCRA registration.
- Allows being prioritized when it comes to availing grants from the government, abroad or other agencies.
- Entities registered under Section 12A can avail benefits for income aggregating to or below 15% for religious or charitable activities.
- Expenses incurred for charitable and religious activities or income application will not be included in total income and in turn, will be exempted from tax.

12A and 80G can be applied together simultaneously as well as independently. If an organization wishes to submit both applications independently, the application for registration under Section 12A will be submitted first.

For having the benefit of exemptions under the income tax act, 1961 the Charitable or Religious Trusts have to get themselves registered under the income tax act u/s 12AA. If the objects of Trust have been modified later on from that of which was initially declared while taking the registration, then the Trust has to apply for the modification of the Registration Certificate of such Trust. If such modification is not been done then exemptions would not be allowed.

Income Tax Return must have been filed within due date. If Gross Receipts exceeds Rs. 2,50,000/- then the accounts of Charitable or Religious trust must be audited to get the tax benefit available to the Trusts under the act.

The Trusts need to utilise at least 85% of the Gross Receipts to attain objects of the Trust/ Societies otherwise they may have to pay the taxes on the receipts which has not been utilized for the said purposes.

The Tax Calculation will be done as follows:

Sr. No.	Particulars	Remarks
Gross Receipts	100000	
85% of Gross Receipts	85000	
15% of the Gross Receipts	15000	
Revenue Expenses incurred during the year	20000	
Capital Expenses incurred during the year	30000	
Total Utilisation done during the year	50000	
Unutilised funds	50000	
Form 10 need to file for	35000	After filing form 10 the unutilised funds can be carried over for utilisation with in next 5 years

Treatment of Capital Gains under Trusts:

If any capital assets of the Trusts which is wholly for Charitable or Religious purposes is transferred, then the NET SALE CONSIDERATION (i.e. total sale price as reduced by expenditure for such transfer) of such assets is utilized in the purchases of New Asset then; then the whole of capital gains shall be exempt. If part of net sale consideration is utilized in new assets then the balance shall be taxable at the maximum marginal rate of tax.

Situations when Tax benefits are withdrawn

There are also certain cases when the tax exemption u/s 11 & 12 is withdrawn from the Trusts. These are as follows:

When amount Accumulated & Set Aside for specific purpose has been transferred to general funds. Further, if any condition of Period or Purpose of such accumulation is breached later on then the exemption provided to the Trusts would be withdrawn. [In such case it will become the income of the previous year in which such default has been done.]

When Any of the following conditions arise:-

(i) Income is for private religious purpose and not for the public at large.

(ii) Income is for the particular religious community or caste etc.[Note- Any Trust created for the benefit of the SC/ST/OBC or women and children shall not be covered by this exclusion which means the exemption would be allowed for such Trusts.]

(iii) Income is for the benefit of the Specified Person* (e.g. Founder/Trustee/Relative etc.)

(iv) If funds are not invested as per the specified modes. [Important Note-

(v) If any of the condition (i)/(ii)/(iii)/(iv) is breachedorthe Activities of the Trust are not genuine then the Registration of Trust may be canceled] [* If any Medical or Educational Services are provided by Hospital, Medical Institution, or Educational Institution then the exemption u/s 11 & 12 shall not be withdrawn for all income of the Trust. The Exemption shall be withdrawn for this income only which has been received from the specified person by providing such services. The exemption would be available for the rest of the income.

Charitable/Religious Trusts can do Businesses

The Charitable/Religious trusts can do the business activities as well but such business must be INCIDENTAL to the attainment of the main object and SEPARATE BOOKS OF A/Cs has been maintained for such business. 8.What is the treatment of Anonymous Donations? Anonymous Donations as its name suggests are the donations which have been received but without the identification of the person who has given. It might be received towards the free donation or as a donation towards corpus but in both the cases, it would be taxable. Anonymous Donations would be taxable @ Flat 30% u/s 115BBC (and no exemption u/s 11 & 12). But any amount received up to the HIGHER of the following limit would not be taxable at the rate of 30% but it shall be taxable normally: 5% of Total Donations; OR Rs. 1,00,000/-

Some Important Points:

a. What is the difference between Exemption u/s 11 & 12 & Deduction u/s 80G? The Exemption u/s11 & 12 is allowed to the Trust towards the income which has been applied for the object of the Trust. While Deduction u/s80G is allowed to the Donor who is giving the Donation to the such Charitable/Religious Trust (which has also taken 80G Registration).

b. Is it necessary that money should have been actually spent for claiming exemption u/s 11 & 12? No, If any liability for an expenditure has been incurred then such expenditure would be considered as the application of income.

c. Can Depreciation be also claimed by Trusts on its Assets? No,If any trust has considered the amount spent on acquisition of assets as application of income then on such assets no depreciation would be allowed.