

**Organised by PD Committee of ICAI
and
Pune Branch of WIRC of ICAI**

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Trust /NPO Meaning

- Obligation attached to property
- Relationship and not entity
- Legal title with trustees – held for benefit of beneficiaries
- Trustees obligations and responsibilities – Indian Trusts Act
- Status – Individual. Applicable Rate of tax – AOP

Formation – Regulations and Modalities

- ▶ In India, one can form a non-profit organisation (charitable or religious entity) by way of
 - Charitable trust
 - Society Registration Act, 1860
 - Company under S. 8 of the Companies Act, 2013 (S. 25 of the Companies Act, 1956)

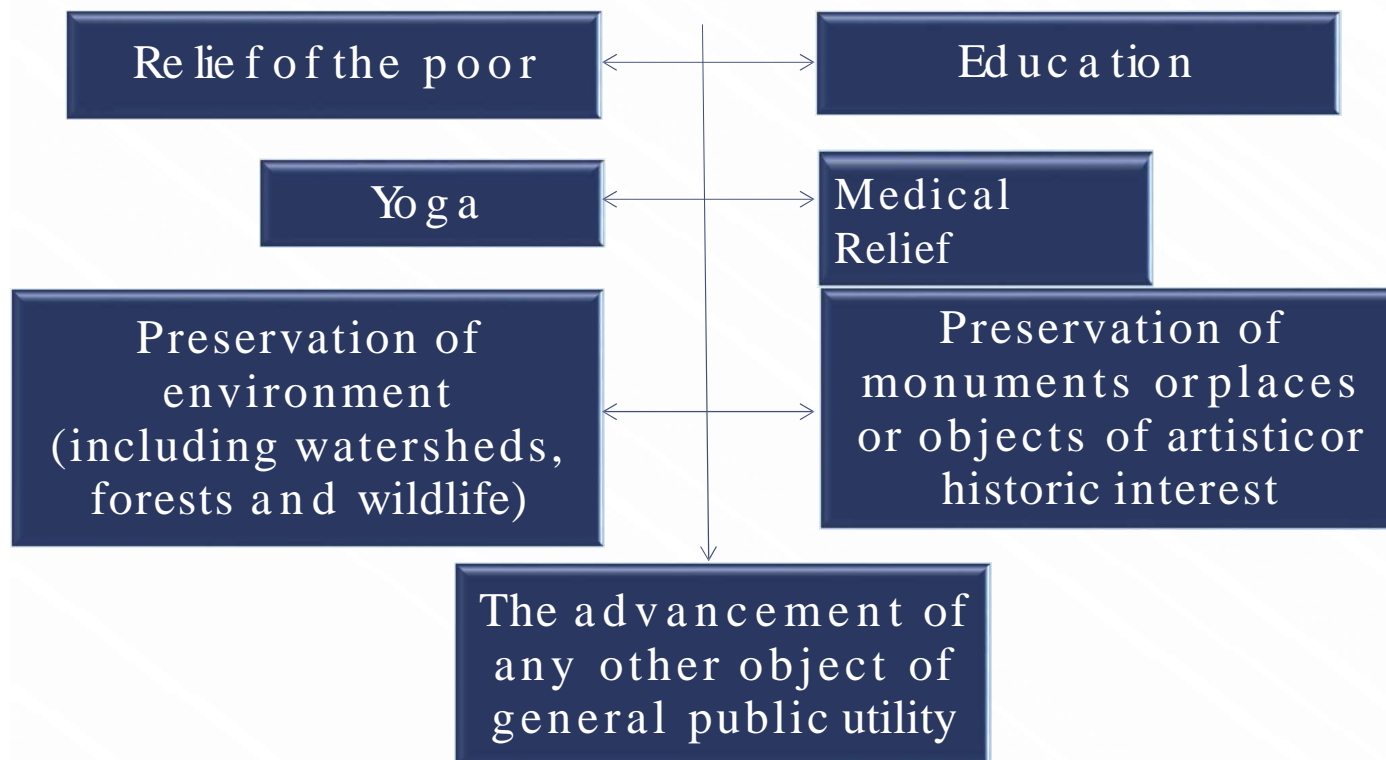
Formation – Regulations and Modalities

continued

- ▶ In Maharashtra, one has to also register the charitable Trust and the Society with Charity Commissioner under Maharashtra Public Trust Act, 1950
- ▶ Companies need to take up Licence from the Company Registrar, which enables removal of words `private' and `limited' (not liable to register with Charity Commissioner)
- ▶ For getting Income Tax exemption– one has to get registration u/s 12AB (Earlier 12A/12AA) or approval u/s 10(23C) (some entities are automatically exempt u/s 10(23C)
- ▶ For availment of deduction from Income by donor, the trust will also need approval u/s 80G (no 80G for Religious Trusts)

Charitable Purpose – Section 2(15)

“Charitable Purpose” includes



Exclusion – Proviso to Section 2(15)

such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility

&

aggregate receipts from such activities do not exceed 20% of the total receipts, of the trust of that previous year

Principals to determine applicability of proviso

- The dominant & prime objective has to be seen - institution not driven primarily with a desire to make profits. [India Trade Promotion Organisation vs DGIT (E), 371 ITR 333 (Del)].
- The test to be applied is whether the activity pursued is ancillary to a dominant object or is independent to the main object & whether the same were carried out predominantly with a profit motive. [Indian Chamber of Commerce vs ITO (E) 52 taxmann.com 52 (Kol)].
- Activity to be considered in the nature of trade, commerce or business should be carried out on a regular basis with the profit intent (even if it does not fructify). There is no bar in law to a trust selling its produce at market price. [DIT(E) v Shree Nashik Panchvati Panjrapole (2017) 81 taxmann.com 375 (Bom)].
- Educational institute - Income from letting of vacant premises – applied for objects. DIT(E) v Shri Vile Parle Kelavani Mandal 378 ITR 593 (Bom).
- Dominant objective - Conducting extensive educational program. whether⁸ conducting coaching classes and campus placements, for fees can be considered as business?
Institute of Chartered Accountants of India v DGIT(E) 358 ITR 91 (Del).

Applicability of proviso for granting /cancelling registration?

- Examining eligibility for exemption is a year on year exercise and hence cannot influence granting of registration u/s 12AA. [CIT(E) v Water & Land Management Training & Research Institute (AP and Telangana)].
- Issue of trust not being genuine cannot be concluded by merely giving a finding in one year that income earned from activities of trade, business or commerce are in excess of the limit specified in the proviso to s. 2(15). [DIT(E) v North Indian Association 393 ITR206 (Bom)].
- Insertion of section 13(8) by Finance Act, 2012.
- CBDT Circular No. 21/2016, dated May 27, 2016.

Scheme of Exemption u/s 11

Income derived from property held in trust wholly for charitable or religious purposes exempt from tax to the extent that:

- income applied for charitable or religious purposes
- income accumulated for spending in subsequent years

Income applied for charitable purpose can be revenue or capital expenditure

Income in Commercial Sense

- CBDT Circular No. 5-P (LXX-6) dated 19-6-1968
- Income not to be computed under various heads as defined in S. 14
- Section 11 to 13 are a self-contained code for determining the income of the trust
- Payment of taxes to be reduced to derive income available for application to charitable purposes.
- Taxability of:
 1. Dividend Income
 - 1 2. Income tax refund
 - 1 3. Refund of loan scholarships

Income applied to Charitable or Religious Purposes



Accumulated or set apart to the extent of 15% of Income

Income applied for charitable or religious purposes in India

Option to spend in subsequent year

Accumulation of Income under section 11(2) of the Act

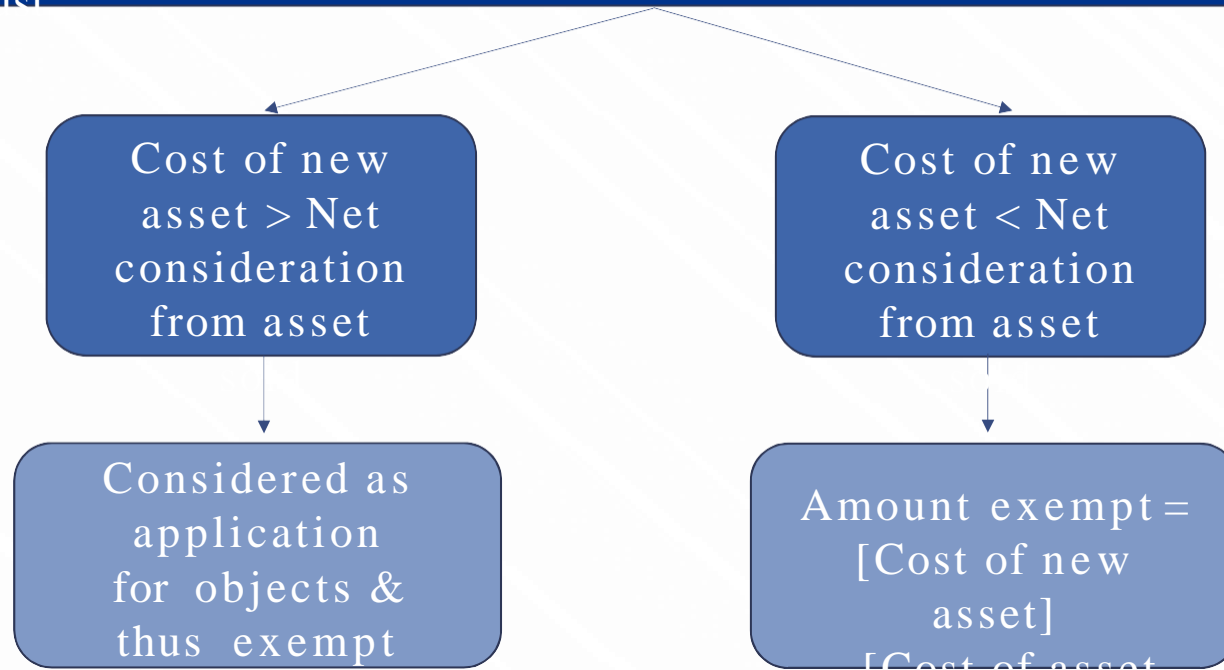
Straying from the concept of computing income on commercial basis

- The principle of commercial income under strain with the insertion of Explanation 3 to sec 11(1) - inserted by Finance Act 2018 - w.e.f. 01.04.2019
- Now certain artificial disallowances are introduced in the computation of the trust income
 - Default in deduction or payment of TDS u/s 40(a)(ia)
 - Payments in cash in excess of prescribed limits u/s 40A(3) & 40A(3A)

Disallowance shall mutatis mutandis apply to application of income as they apply while computing business income.

Capital Gains – S. 11(1A)

Capital gain arising from transfer of a property held by the trust



Capital Gains – S. 11(1A)

- Capital gains deemed to have been applied for charitable purposes if sale proceeds utilised for acquisition of another capital asset – s.11(1A)
- Will provisions of S. 45 to 55A apply in computing gains?
- No time limit for reinvestment. Investment should be made within the same year or within immediately succeeding year
- No specified investments – any capital assets - even bank FD
- No period for which investments need to be held – at least till end of year.

Accumulation u/s 11(2)

- Accumulation for a specific purpose – for a period of 5 years
- Donation to another registered trust not permitted out of such accumulation
- Investment in any of the modes specified u/s 11(5) of the Income Tax Act, 1961
- Furnishing of Form No. 10 (online w.e.f. AY 2016–17), before due date specified u/s 139(1). Delay of up to 365 days may be condoned on merits if assessee can demonstrate sufficient cause – CBDT circular No. 03/2020, dated 03.01.2020
- Trust to pass appropriate Resolution for accumulation
- Purpose of accumulation can be amended by specific application to AO u/s 11(3A). However, Extension for spending not possible.
- If not spent within time limit of 5 years, the same is to be included as income of 6th year
- Whether unspent amount taxable u/s 11(3) eligible for 15% accumulation u/s.11(1)(a)?

Corpus Donations

- Corpus fund normally represents a permanent fund kept in a trust.
- Corpus Donations are contributions received with specific direction that they shall form part of the corpus.
- The intention of the donor that the contribution should form part of corpus is relevant [DIT(E) v Sri Ramakrishna Sewa Ashrama 357 ITR 731 (Kar)]

Corpus Donations

- Corpus contribution made by a trust to another registered trust (u/s 12AA) shall not be considered as application of Income. [Explanation 2 to S. 11(1) by Finance Act 2017 w.e.f. AY 2018-19, amended vide Finance Act, 2020]

Similar provision also added as 12th proviso to section 10(23C).

- The intention for insertion of this Anti Abuse Measure was mentioned in the explanatory memorandum - Finance Bill 2017

“However, donation given by these exempt entities to another exempt entity, with specific direction that it shall form part of corpus, is though considered application of income in the hands of donor trust but is not considered as income of the recipient trust. Trusts, thus, engage in giving

¹⁸corpus donations without actual applications.”

Option to spend in subsequent year

| Reason for non-application of income | Income may be applied in the year | Default will result in income being taxed in PY |
|---|---|--|
| Income was not received during the year | of actual receipt or the immediately succeeding year | Immediately succeeding the PY in which income was received |
| Any other reason | Immediately succeeding the PY in which income was derived | Immediately succeeding the PY in which income was derived |

- Option to be exercised before time limit prescribed in s.139(1) of the Act
- In prescribed form - Form 9A (to be filed online w.e.f. AY 2016-17)
- To be reduced from income applied in subsequent year/year of receipt of income

Investments

- Investments are required to be in the form and mode specified in s.11(5)
- Violation results in loss of exemption – s.13(1)(d) and relevant income being taxed at MMR
- Prohibited asset to be disposed of within 1 year from end of year in which asset acquired
- Trust can hold prohibited assets (other than shares) received as donation - no investment of funds of the trust
- Blanket prohibition on holding shares, except shares held as corpus as on 1-6-1973 and accretion to such shares by way of bonus shares.

Depreciation on Capital Assets

S.11(6) introduced w.e.f AY2015-16

- Income of the Trust will be determined without considering depreciation in respect of an asset, where acquisition of such asset has been claimed as application of income in any year.
- S.11(6) shall apply prospectively from AY2015-16

Depreciation on Capital Assets

- Questions that arise in claiming of cost of acquisition as application of income -

• What if capital asset is acquired out of funds accumulated u/s 11(1)(a) – 15%?

• What if cost of acquisition is claimed as application out of s.11(2) accumulation?

• What if capital asset is acquired as a corpus donation, or out of corpus donation?

Carry Forward of Deficit

- No specific provision for carry forward of deficit
- No limitation u/s.11 that income should be applied for charitable purposes only in year in which the income has arisen
- Expenditure incurred in an earlier year can be adjusted against the income of a subsequent year
- Does a Trust have unfettered right to carry forward its deficit?

Section -12

Procedure for registration under new regime

| Sr. No. | Category | Application to be made | Action to be taken by PCIT/CIT | Order granting or rejecting approval 'shall' be passed |
|---------|--|---|--|---|
| (1) | Trust already approved under the existing provisions – i.e. under section 10(23C), 80G, 12A or 12AA | On or before 31st Dec, 2020 (CBDT Press release dt. 08.05.2020) | Order granting approval for a period of 5 years | Accept within 3 months from the end of the month in which apln was received |
| (2) | Re-registration on or after 1st October, 2020 under section 12AB | At least 6 months before the expiry of registration | i. Calling for documents and conducting inquiries for satisfying genuineness of activities and other compliances, ii. Either grant the registration for period for 5 years or reject the application after giving an opportunity of being heard | Within 6 months from the end of the month in which application was received |
| (3) | Trust provisionally registered under section 12AB (for the first time) | i. At least 6 months before the expiry of provisional registration, or ii. Within 6 months from commencement of activities of the trust, whichever is earlier. | | |
| (4) | Trust modifying the objects | Within 30 days of date of modification | | |
| (5) | In any other case not covered above (fresh Registrations & pending application under old provisions) | At least 1 month before the commencement of relevant previous year | Order granting provisional approval for a period of 3 years | Within 1 month from the end of the month in which application was received |

Benefit to Specified Person – s.13(1)(c)

- Benefit to specified person results in loss of exemption and relevant income being taxed at MMR
- Specified persons:
 - ❑ Author/Founder – Settlor
 - ❑ Substantial Contributor – Cumulative Donations >Rs.50,000
 - ❑ Member of HUF (Settlor/substantial contributor)
 - ❑ Trustee/Manager
 - ❑ Relative
 - ❑ Concern in which substantial interest



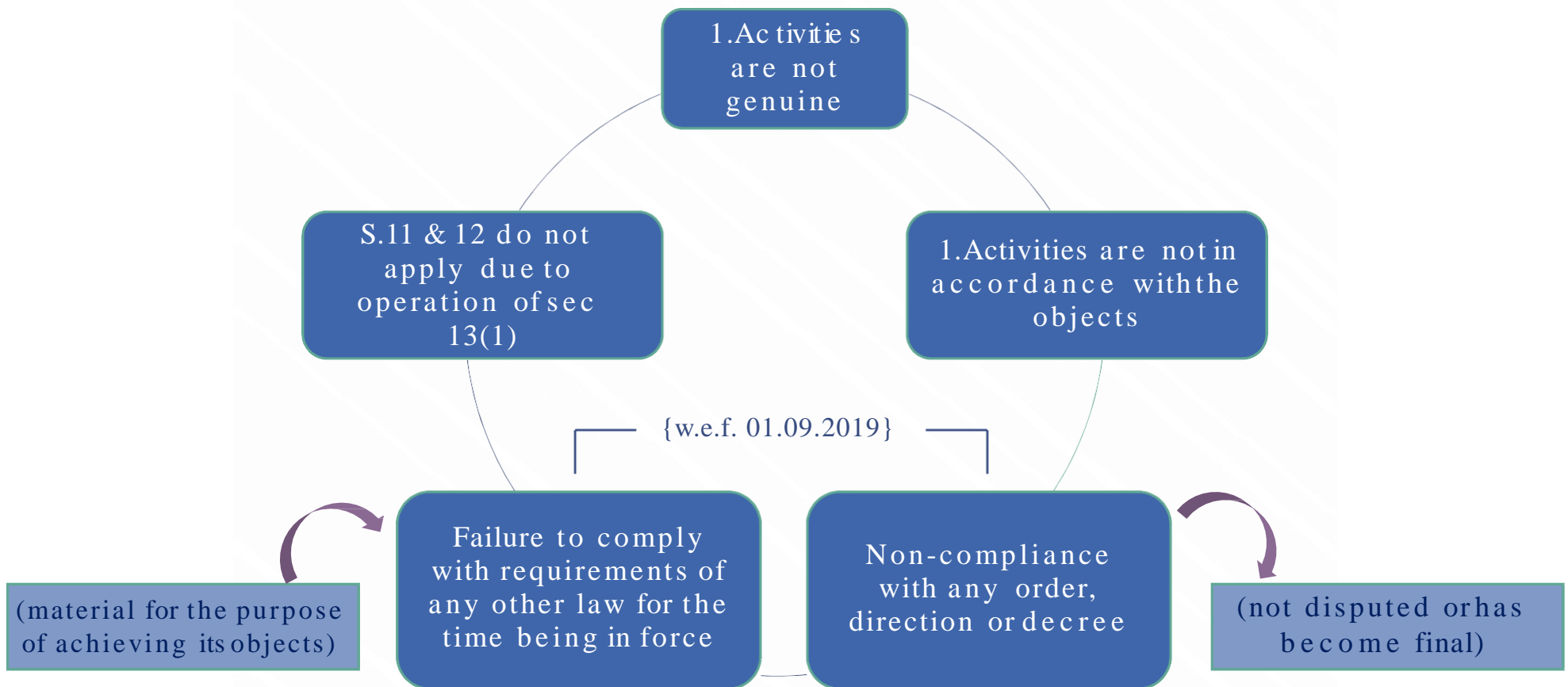
Nature of Benefit

- Income/property lent without adequate security/ interest
- Land / Building / Other Property made available without adequate rent/ compensation
- Salary/Allowance paid in excess of reasonable amount
- Services made available without adequate remuneration/compensation

Concept of Mutuality

- ▶ Complete identity between contributors and beneficiary– income not taxable at all
- ▶ If however, the income is from third party, e.g. interest on fixed deposit with banks– will be taxable – Bangalore Club case, Supreme Court

Cancellation of Registration by PCIT/CIT



Q. Whether registration can be cancelled retrospectively?

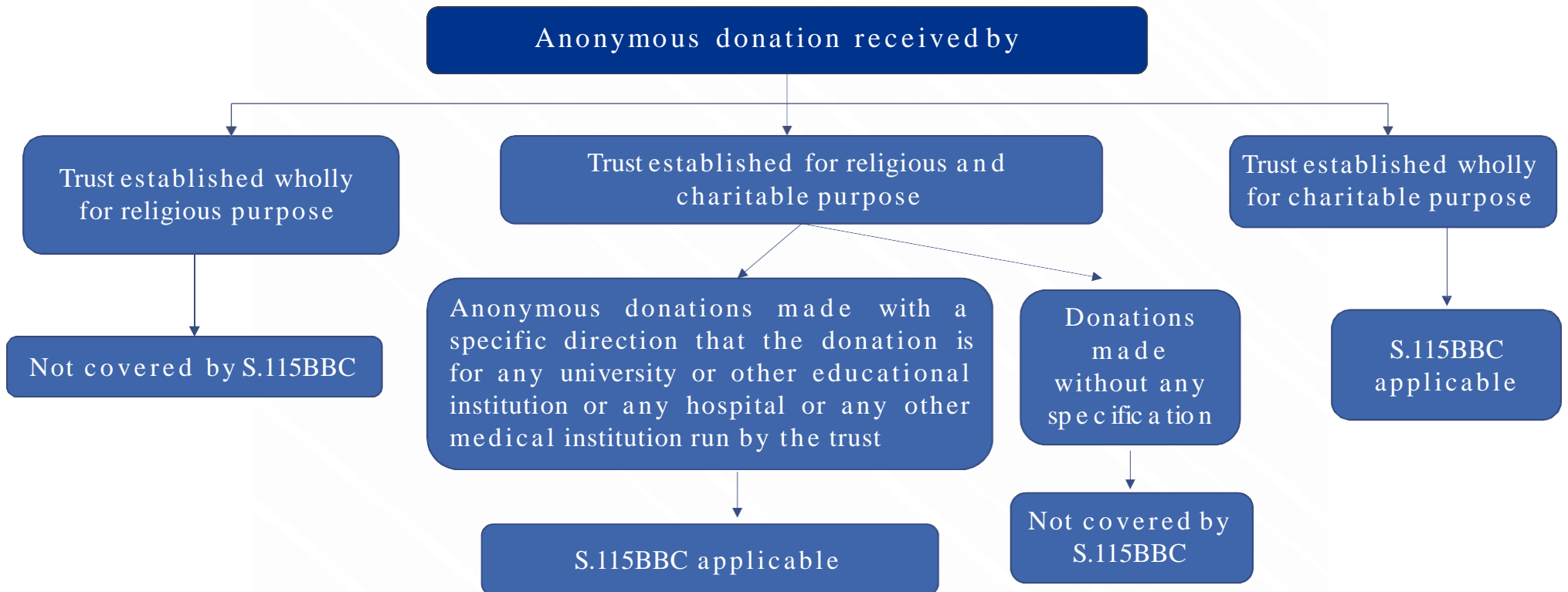
Anonymous Donations – S. 115BBC

- Anonymous Donations: where the trust/institution receiving donation does not maintain any record (name, address & other prescribed particulars) of the identity of the person giving the donation.
- Anonymous donations taxed as under

| | |
|--|-----------------------------------|
| Charitable or religious trust/institutions | Section 11 |
| Universities or other educational institutions | Section 10(23C)(iiiad) and (vi) |
| Hospitals and other medical institutions | Section 10(23C)(iii ae) and (via) |
| Notified funds or institutions established for charitable purpose | Section 10(23C)(iv) |
| Notified trusts or institutions established wholly for public religious and charitable purpose | Section 10(23C)(v) |

Anonymous Donations – S. 115BBC

- Section 115BBC does not apply in the below mentioned cases where anonymous donations are received:



Anonymous Donations – S. 115BBC

- ▶ Tax payable @30% plus applicable surcharge on the aggregate of anonymous donations received in excess of the higher of the following –
 - ← 5% of the total donations received by the assessee trust; or
 - ← Rs 1 lakh
- ▶ S.13(7) provides that the exemption u/s11, 12 & 10(23C) not applicable to such anonymous donations.
- ▶ Such donations shall not be included in the total income eligible for exemption & therefore, 85% thereof need not be spent. Nor would it be considered for calculating the permissible 15% accumulation.

Tax on Accreted Income – S.115TD

- Effective from: 1st June, 2016.
- Explanatory memorandum to Finance Bill, 2016 stated that

“...In the absence of a clear provision, it is always possible for charitable institutions to transfer assets to a non-charitable institution. There is a need to ensure that the benefit conferred over the years by way of exemption is not misused and to plug the gap in law that allows the charitable trusts having built up corpus/wealth through exemptions being converted into non-charitable organization with no tax consequences”

Tax on Accreted Income - S.115TD

Situations that trigger applicability of s.115TD

Date of conversion:

Conversion of trust into trust not eligible for registration u/s 12AA

Date of order cancelling the registration

Date of adoption or modification of any object which do not confirm to the conditions of registration

Date of merger:

Merger with an entity not having similar object and s u/s registered

Date of Dissolution:

Non distribution of assets on dissolution to any charitable institution registered u/s 12AA/ 12AB/ 10(23C) within a period of 12 months from dissolution.

Tax on Accreted Income - S.115TD

Meaning of
accreted
Income

S.115TD(2):
Aggregate
FMV of
total assets
(-)
Total liability
= Accreted
income

Asset
and
liabilities
to be
ignored
for
calculati
on of
accreted
income

Any asset which is directly acquired by the trust out of agricultural income

Any asset acquired by the trust during the period which the trust is ineligible for the benefit of s.11 and s.12 (Beginning from the date of its creation and ending on the date from which the registration became effective)

Assets or liabilities of charitable trusts which have been transferred to another charitable organization within specified

Tax on Accreted Income - S.115TD

- ← Tax payable at maximum marginal rate – now 42.74%
- ← tax on accreted income is payable even if no income tax is payable by the trust/institutions on its total income [S.115TD(4)]
- ← No deduction under any other provisions of the Act is allowed from income charged to tax u/s 115TD [S.115TD(7)]

Tax on Accreted Income - S.115TD

- Tax is to be paid within 14 days from specified date being -

| | |
|--|---|
| | |
| Cancellation of registration | Date of receipt of appellate order confirming cancellation, or date of expiry of period for filing appeal if no appeal is filed |
| Modification of objects where no application for fresh registration is made | Last date of PY in which modification occurred |
| Modification of objects where application for fresh registration is rejected | Date of receipt of appellate order or date of expiry of period for filing appeal, if no appeal is filed |
| Merger | Date of merger |
| Dissolution where assets not transferred within 12 months | Date on which 12 month period expires |

Tax on Accreted Income – S.115TD

- Interest on non payment of tax within prescribed time [s.115TE]
If Principal officer or trustee fails to make the payment of tax within the prescribed time – simple interest @1% p.m. or part thereof is payable for the period of delay/non payment
- Liability of Principal officer of the trust or trustee [s.115TF]:
 - Any principal officer or trustee of trust or institution shall be deemed to be an assessee in default if he does not pay tax on accreted income as per s.115BBC
 - If a trust fails to transfer all its assets to another charitable trust within 12 months of dissolution, a person to whom asset has been transferred shall be deemed as assessee in default(to the extent to which the asset is capable of meeting the liability)
- Cost of acquisition of the asset on which the exit tax has been paid shall be FMV of the asset as on the specified date on which tax was levied u/s 115TD

Exemption u/s 10 & 11 – Mutually Exclusive

- Trust registered to avail exemption u/s 11 cannot claim any exemption u/s 10 [other than exemption specified in s.10(1), (10(23C) & 10(46)]
- Registration under s.12A or 12AA or 12AB, will become inoperative from the date on which the Trust gets approval under s.10(23C) or 10(46) OR from the date this provision comes in force
- Restriction on switching of exemption between S. 10 and 11 in case the Trust is eligible to claim exemption under both the sections. (inserted by Finance Act 2020 – w.e.f. 01.06.2020)
- One Time Switching: To get registration u/s 12AB operative again, application to be made at least 6 months prior to the commencement of the relevant AY. Approval u/s 10(23C) or 10(46), shall cease to have any effect from the date on which the 12AB registration restored.

Furnishing Statement of Donations

- W.e.f. 01.06.2020 - Trusts approved u/s 80G & 80GGA – need to file statement of donation in the prescribed manner and time to the prescribed authority.
- Correction Statement can be filed in case of any addition/deletion/updation of information can be filed in the prescribed form & manner
- Donor will get deduction under s.80G/ 80GGA based on the donation statement
- Trust needs to furnish a certificate in prescribed format to the donor specifying the amount of donation.
- On failure to furnish the statement –

| | | | |
|-----------|------|----------------------------------|--------------------|
| Late Fees | 234G | Rs. 200 for every defaulting day | Amount of donation |
| Penalty | 271K | Rs. 10,000 | Rs. 1,00,000 |

THANK YOU