To claim exemption under IT Act in relation to a trust, a trust should be formed for a **lawful purpose** which can be either charitable or religious purpose. The term **religious purpose** is not defined under IT Law. However, the term Charitable Purpose is defined **u/s 2(15)** to include:-

(i) Relief of **poor**.
(ii) Education.
(iii) **Medical** Relief.
(iv) **Yoga**.
(v) Preservation of Monuments.
(vi) Preservation of Environment.
(vii) Any other object of **General Public Utility**.

The first 6 categories of purposes are specified categories who will enjoy exemption irrespective of amount of **Commercial receipt** (Fees) from that activity in a P.Y.

**Example:** - If a school which is registered as trust will enjoy exemption even if it will receive fees of Rs. 100 crores in a P.Y. (i.e. even if it crosses 20% of Total Receipts).

However, if trust is covered under general category, then it would be treated as charitable trust only if it receives Commercial receipt (fees) from that activity up to 20% of total receipts.

**Eg:** XY charitable trust with a main object of promotion of sports receives corpus donation of Rs. 40L, voluntary donation of Rs. 40L and fees from activity is Rs. 50L.

Since the fees from the activity of promoting sports exceeds 20% of total receipts.

XY can't enjoy exemption. In case if the fees received from the activity is Rs. 10L, then it can enjoy exemption as the fees of Rs. 10L is less than 20% of total receipts.

**Treatment of Donations:**

<table>
<thead>
<tr>
<th>(1) Where Identity of Donor is known</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Corpus</td>
</tr>
<tr>
<td>Not an income</td>
</tr>
</tbody>
</table>
Not taxable | Add to Income statement
---|---
(2) Where identity is not known - Anonymous Donation Taxable u/s 115BBC

### Computation of Income of Trust

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income from trust (Gross Fees - Expenses)</td>
<td>20,00,000</td>
</tr>
<tr>
<td>(+) Voluntary Donation</td>
<td>10,00,000</td>
</tr>
<tr>
<td></td>
<td>30,00,000</td>
</tr>
<tr>
<td>(-) Adhoc Exemption u/s 11(1) @ 15%</td>
<td>(4,50,000)</td>
</tr>
<tr>
<td>(-) Application for charitable / Religious purpose</td>
<td>(15,50,000)</td>
</tr>
<tr>
<td><strong>Total Income</strong></td>
<td><strong>10,00,000</strong></td>
</tr>
</tbody>
</table>

### What amounts to application for Charitable or Religious Purpose?

→ The word **application** is quite wider as compared to the word expenditure.

The following amounts to application of income:- *(Illustrative list)*

1. **Repayment of loans** taken to fulfill the objective of the trust amounts to application of income provided that the expenditure incurred for which loans were taken was not treated as application.

2. **Expenditure on Purchase of Capital Assets**:-
   
   Sec 11(6) provides that where any capital asset has been allowed as application of income, then no depreciation can be claimed on such assets.

3. **Payment of taxes** whether of current year or last year’s amount to application of income.

4. **Advancing education loans** to students would also amount to application of income.

5. **Loss due to excess application** of earlier years can be allowed as application in the current Financial Year.

The above list is just illustrative in nature and it would include many other activities in relation to a trust.

### Amendment made by Finance Act 2018

A new explanation has been inserted in Sec 11 which provides that for the purpose of determination of application of income, the provisions of Sec 40(a)(ia) & 40A(3)/(3A) shall, *mutatis mutandis*, apply.
### Various Tax Planning Measures:-

#### (1) Donation to another Trust:

A trust can claim exemption by donating another trust who is registered under **Sec 12AA** and **Sec 10(23C)** of IT Act. Further, the **objects** of the donor and the donee **may or may not** match.

**Example:** A school can give donation to another school or even to hospital who is registered under respective Secs.

### Amendment made by Finance Act 2017

1. Any donations made by a trust registered u/s **12AA**, to another trust registered u/s **12AA or 10(23C)**, is considered as application of income.

2. Donations received with specific direction is not an income of recipient trust. However, at the same time, it is allowed as application of income to donor trust.

3. **Therefore FA, 2017 has made an amendment to provide that any donation made with a specific direction to a trust registered u/s 12AA will not be considered as application of income.**

### Amendment made by Finance Act 2020:

From FY 2020-21, Any amount credited or paid, out of income to any university or other educational institution or any hospital or other medical institution referred to in sec 10(23C)(iv)(v)(vi)(via) being contribution with a specific direction that it shall form part of the corpus, shall not be treated as application of income for charitable or religious purposes.

Therefore, now NO deduction if Corpus donation is given to both, trust u/s 12AA and Institutions etc u/s 10(23C).

#### (2) Non-Application due to Non-Receipt:

Where a trust has not received any amount during any P.Y, then it can **claim exemption** in the current year in which the income is earned but not received by making an **application in writing** on or before the due date of filing of return. However, **whenever** such amount is **received** it must be **applied in the year of receipt or year following the receipt**. In case of non-application such amount will become deemed income of the year following the receipt.
(3) Accumulation for the Specified Purpose:
If an assessee do not wish to apply the income in the current year, then it can take benefits specified u/s 11(2) provided it wants to accumulate for specified purpose.
For this purpose, a trust has to file a statement in prescribed form and manner in writing to A.O. specifying the purpose and the period of accumulation. In no case the period of accumulation should exceed 5 years.
The assessee is supposed to file the statement before the due date mentioned u/s 139(1).
The amount accumulated must be deposited in the modes specified u/s 11(5).
{Mainly Government Securities}

Deemed Income:
If such amount is withdrawn and not used for specified purpose, then it will become deemed income of the year of withdrawal. {Sec 11(3)}
If such amount is withdrawn and donated to another trust, then it is deemed income of the year of withdrawal.
If such amount ceases to be invested in the mode specified u/s 11(5), then also it will be deemed income of the year in which it ceases to remain invested in modes specified u/s 11(5).
If such amount is not withdrawn and applied within 6 years, then unutilized amount will become deemed income of 6th year. {i.e it should be accumulated for 5 years and applied till 6th year}

(4) Any Other Reason
A trust can make application under any other reason whereby it can claim exemption in current year without applying the money. However, it must be applied in immediate next year. In case of any default, it will become deemed income of next year.

Amendment made by FA 2014:-
Sec 11(7) provide that where a trust has been granted registration u/s 12AA/12AB and registration is in force in P.Y, then trust can’t claim exemption u/s 10 except Sec 10(1), Sec 10(23C) or Sec 10(46).
By making this amendment, the Govt. is forcing the assessee to apply such income for the objects of the trust which was earlier not applied.

Amendment made by Finance Act 2020

Sec 12A:- Conditions for Applicability of Sec 11 & 12.

(1) An Assessee to be registered as trust has to make an application in prescribed form & manner to the commissioner and such trust would be registered u/s 12AA.

Amendment made by Finance Act 2020
(2) The exemption u/s 11 & 12 will be available to the assessee from the P.Y. in which the application is made e.g. if an application is made on 20-11-19, then exemption will be available from P.Y. 2019-20 and for future years. However, earlier the assessee could not use to enjoy the exemption for preceding years under any circumstances.

Proviso’s u/s 12A:

Amendment made by Finance Act 2020

Second Proviso:- A trust can enjoy exemption for preceding years if on the date of registration the assessment for preceding years are pending in front of the A.O. and the objects on the date of registration and preceding years are similar.

Third Proviso:- It is further provided that no action u/s 147 shall be taken by A.O. in case of trusts for any preceding years only for grounds of non-registration.

Fourth Proviso:- It is also provided that benefit contained in 1st and 2nd proviso shall not be available if the registration was refused or it was cancelled earlier.

Sec 12AA:- Procedure for Registration Trust

<table>
<thead>
<tr>
<th>(1)</th>
<th>TRUST</th>
<th>Application</th>
<th>CIT</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Further</td>
<td></td>
</tr>
</tbody>
</table>

Call for such documents and information as he thinks necessary in order to satisfy himself about the genuineness of activities of trust.
(2) **After Satisfying:**

| Pass an order in writing registering the Trust. | OR | If he not satisfied, then pass an order in writing refusing* the registration. |

(*) Before refusing an **opportunity** of being heard must be given to the applicant.

(3) **Time Limit for Granting or Refusing Registration:**

Every order refusing / granting registration shall be passed before **expiry of 6 months** from the **end of the month** in which application was received. If **no order** is passed **within 6 months**, then it shall be **deemed** that trust is **registered**.

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**Meenakshi Amma Endowment Trust (Karnataka HC)**

a) The H.C observed that with the funds available with the trust, it can’t be **expected to carry out activity of charity immediately** after its formation. Therefore, it can’t be concluded that the trust has not intended to do any activity of charity.

b) In such a situation, the **objects of the trust mentioned in the trust deed** have to be taken into consideration for satisfying themselves.

c) Later on, if it is found the CIT is open to cancel registration.

d) The registration can’t be **cancelled** on the grounds that the trust has not carried out any activity of charitable Nature in **short span of time** after its formation.

(4) It was held in the case of **U.P. Distillers Association** that **cancellation** of the trust’s registration under **sec 12AA** on the basis of **search** conducted in the **premises of the Secretary General** and the statement recorded under **sec 132(4)** from him, is valid.

(5) The CIT may pass an order in writing to **cancel** the registration subsequently, if he is satisfied that activities of the trust are **not genuine or are not being carried out in accordance with the objects of the trust**. (**12AA(3)**)

(6) The CIT may also **cancel registration** if he is satisfied that assessee was engaged in activities mentioned in **Sec 13(1). (12AA(4)) (Refer TB for Detail)**
Amendment made by Finance Act (No.2) 2019

While granting registration as well while cancelling the registration the CIT shall consider fulfillment of conditions of other Laws applicable to trust.

What is to be done if there are changes in the objects of the trust?

1. In order to provide clarity, Sec 12AA has been amended which provides that in case of modifications/adoption in the objects, the trust is required to obtain fresh registration by making an application within 30 days from the date of such adoption / modification of objects in the prescribed form and manner.

SEC 12AA IS NOT APPLICABLE FROM 1ST JUNE 2020.
Sec 11(1A):- Exemption for CG in case of Trust

<table>
<thead>
<tr>
<th></th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>FVC</td>
<td>9,30,000</td>
</tr>
<tr>
<td>(-) Exp on transfer</td>
<td>(30,000)</td>
</tr>
<tr>
<td>N.S.C</td>
<td>9,00,000</td>
</tr>
<tr>
<td>(-) C.O.A.</td>
<td>(6,00,000)</td>
</tr>
<tr>
<td>Capital Gains</td>
<td>3,00,000</td>
</tr>
</tbody>
</table>

(1) If the trust invests in new capital asset of an amount equivalent to the NSC or greater than NSC, then entire CG of the trust will be exempt u/s 11(1A).

(2) If the trust invests in a new capital asset for an amount less than NSC, then exemption u/s 11(1A) will be as follows:

Cost of New Asset – Cost of Old Asset transferred.

Sec 13(8):-

This Sec provides that if the trust has the object of any other activity of general public utility & trust has been granted registration u/s 12AA & if the commercial receipts of the trust goes beyond 20% of total receipts, then exemption u/s 11 & 12 will be denied, but CIT will not cancel the registration.

[Also refer Proviso to sec 143(3)] [Different from 1st & 2nd Proviso to 143(3)]
Anonymous Donation → Taxable u/s 115BBC @ 31.2%.

(1) When Sec 115BBC is applicable?

If
A.D. > 5% of T.D. AND A.D. > 1 lakh.

(2) How Anonymous Donations are taxable?

<table>
<thead>
<tr>
<th>T.D. = 100L</th>
<th>Anonymous Donation</th>
<th>XX</th>
<th>10L</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(-) Exemption :-</td>
<td>(XX)*</td>
<td>(5L)*</td>
</tr>
<tr>
<td>A.D. Other</td>
<td>• 5% of T.D.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10L 90L</td>
<td>• Rs. 1 Lakh</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Taxable A.D. u/s 115BBC @ 31.2 %</td>
<td>XX</td>
<td>5 L</td>
</tr>
</tbody>
</table>

Notes:
1. No exemption u/s 11 shall be allowed from Anonymous donation taxable u/s 115BBC.
2. (* ) It will be added to Normal Income Statement before 15% and then apply for Charitable & Religious purpose and claim exemption u/s 11.

(3) Non-Applicability of Sec 115BBC :-

(i) A trust which is wholly registered as Religious trust.

Note 1:- However, from F.A. 2014 onwards a trust which is partly charitable & partly religious, then it has to keep 2 donation boxes :-
→ Amount Received in school → Sec 115BBC will be applicable.
→ Amount Received in temple → Sec 115BBC Not applicable.
(Add to Normal Statement).

Note 2:- Sec 115BBC is applicable to a trust who is wholly charitable in nature.