NGOs – BASICS & COMPLIANCES

Objectives : Getting Working knowledge & to understand the responsibilities upon our shoulders and to handle them in effective manner.

Topics for the discussion

1. Basics of NGO
   - What is NGO?
   - Types of NGOs
   - Trust and its formation related matters.
   - Society & Section 8 Company related matters.
2. Income Tax Provisions & Forms & Rules
3. Proposed Amendment via Finance Bill 2025
4. Dos & Don'ts
5. Q&A

What is NGO?

A non-governmental organization is an organization that generally is formed independent from government. They are typically non-profit entities, and many of them are active in humanitarianism or the social sciences; they can also include clubs and associations that provide services to their members and others.

Types of NGOs

- TRUSTS
- SOCIETY
- SECTION 8 COMPANY

Trusts - Overview

Definition of Trust

According to Indian Trust Act, trust **means an obligation annexed to the ownership of property, & arising out of a confidence reposed in & accepted by the owner for the benefit of another or for another and owner**. The written document through which trust is created is called instrument of trust.

At the very elementary level, the idea of the trust is when a person (i.e., Settlor) distributes assets in the legal supervision of another person (i.e.,Trustee). Consequently, the trustee operates the assets for the benefit of any third party (i.e., Beneficiary). The trust is not separate legal existence, however more of a legal "obligation" accepted between the two parties – the 'Settlor and the trustee.' This arrangement gets outlined in formal documents, which is known as the Trust Deed.

Trusts - Overview

Parties Involved in the trust :

1. **The Settlor** is the person who usually creates the **trust** by placing a particular asset of the trust that s/he owns into the **trust**. It is done by transferring that asset to other person (trustee) along with crystal clear instructions that the asset be held for the benefit of a third party only. Usually, any person 18 years of age or higher and sound mind has the essential legal potential to create a valid trust.
2. **Trustee:** A trustee is **a person who holds and administers property or assets for the benefit of a third party (Beneficiary(ies))**
3. **Beneficiary :** A beneficiary of trust is **the individual or group of individuals for whom a trust was created**. The person who creates a trust also determines the trust beneficiary and appoints a trustee to manage the trust in the beneficiary's best interests.

Trusts - Overview

This trust should have a clear definition of the following:

- Intention by the author to create the trust
- Purpose of the trust
- The beneficiary of the monetary assets controlled by the trust
- The monetary assets assigned to the trust for the purpose defined above

In addition to the above, the Trustees should be impartial, should not convert property and monetary assets to profitable property outside the limits of the purpose for which the trust was created. Trustees should not breach the trust of the author or the purpose of the trust. In addition investments of a trust if found to be against the law of the land can be the cause of dissolution of the trust and action can be taken against the trust.

Types of Trusts

- Public Religious Trust – General public is going to be the beneficiaries.
- Public Charitable Trust – General public is going to be the beneficiaries.
- Public Religious-cum-Charitable Trust – General public is going to be the beneficiaries.
- Private Trust – Individual or minor or particular family are going to be the beneficiaries. [Will Vs Private Trust : One main difference between a will and a trust is that a will goes into effect only after you die, while a trust takes effect as soon as you create it. Another difference between a will and a trust is that in case of a will court oversees the administration of the will and ensures the will is valid and the property gets distributed the way the deceased wanted, whereas in case of trust court does not oversees the process].
- Others – Revocable, Irrevocable, Business trust, Investment trust and so on…

Trust Deed – A Quick walk through

Society - Overview

Meaning

A society is a non-commercial organization, formed for the promotion of the object like art, culture, science, religion etc.

Society is an association of person, who come together to fulfill any particular purpose, described under the act.

Parties Involved :

1. Executive Members
2. Members &
3. Beneficiaries

Society - Overview

Acts & Rules

In Tamilnadu, TN Society Registration Act 1975 & TN Society Registration Rules, 1978

State level Acts & Rules to be referred and followed.

Registration and Renewal formalities with Registrar of Societies.

Society – > A Quick walk through – Registration & Renewal or Annual Filing & Principle of Mutuality

Section 8 Company - Overview

Meaning

A company is referred to as **Section 8 Company** when it registered as a Non-Profit Organization (NPO) i.e. when it has motive of promoting arts, commerce, education, charity, protection of environment, sports, science, research, social welfare, religion and intends to use its profits (if any) or other income for promoting these objectives. The income of NPO can not be used for paying out dividends to the company's members and has to be for the promotion of charitable objectives. Such companies obtain an incorporation certificate from the central government and are liable to adhere to the rules specified by the government.

According to the rules, failure to comply with the responsibilities stated by the Central Government may lead to the winding up of the company on the orders of government. Besides, strict legal action will be taken against all the members of the company if the objectives laid down by the company proves to be bogus.

Section 8 Company – > A Quick walk through – Registration & Annual Filing

Post Formation - Formalities & Compliances

After the registration of Trust / Society / Section 8 Company, the following things are to be carried out :

- ✓ PAN to be Applied
- ✓ Darpan ID Regn as per RBI MD
- ✓ Bank Account to be opened and operated as per the deed / resolutions
- ✓ Book Keeping – Vouchers, Bills, Receipts, recording the transactions and events (resolutions & minutes of meeting)
- ✓ Audit as per the requirements mentioned in deed or Bye law or as per companies act as well as Tax Audit as per Income Tax Act
- ✓ Annual Filing with Registrar of Societies or ROC. No annual filing requirement with SRO for trust
- ✓ Income Tax filing for every year – ITR 7 Vs ITR 5
- ✓ Dissolution, if activities could not be carried out or violation detected.

IT Provisions, IT Forms & IT Rules – > A Quick walk through

IT Provisions

2(15) "charitable purpose" includes

1) relief of the poor,
2) education,
3) Yoga
4) medical relief,
5) preservation of environment (including watersheds, forests and wildlife) and
6) preservation of monuments or places or objects of artistic or historic interest, and
7) the advancement of any other object of general public utility ; (Sec. 2(15)) – Gross receipts does not exceed 20% of the total receipts of the organization.

2 (24) "income" includes-
(i) profits and gains ;
(ii) dividend ;
[39][(iia) voluntary contributions received by a trust created wholly or partly for charitable or religious purposes or by an institution established wholly or partly for such purposes [40][or by an association or institution referred to in clause (21) or clause (23), or by a fund or trust or institution referred to in sub-clause (iv) or sub-clause (v) [41][or by any university or other educational institution referred to in sub-clause (iiiad) or sub-clause (vi) or by any hospital or other institution referred to in sub-clause (iiiae) or sub-clause (via)] of clause (23C) of section 10 [80][or by an electoral trust]]

Registration Not Required – Section 10 (23c)

1. Section 10 (23c) (iiiab) - existing solely for educational purposes, not for profit and wholly or substantially financed by the Government
2. Section 10 (23c) (iiiac) - any hospital or other institution, philanthropic purposes and not for purposes of profit, and which is wholly or substantially financed by the Government

– Refer Rule 2BBB for Govt Grant

Registration Not Required – Section 10 (23c)

1. Section 10 (23c) (iiiad) - any university or other educational institution existing solely for educational purposes and not for purposes of profit if the aggregate annual receipts do not exceed five crore rupees
2. Section 10 (23c) (iiiae) - any hospital or other institution, existing solely for philanthropic purposes and not for purposes of profit, if the aggregate annual receipts do not exceed five crore rupees

Registration Required– Section 10 (23c)(iv), (v), (vi) and (via) & 12 A(1)(ac) & 80 (G) – Refer Provisions

1. Section 10 (23c) (iv) - Refer Provision
2. Section 10 (23c) (v) – Refer Provision
3. Section 10 (23c) (vi) – Refer Provision
4. Section 10 (23c) (via) – Refer Provision
5. Section 12 A (1) (ac) (i) to (v) and (vi) (A) and (vi) (B)
6. Section 80G

Relevant Provisions – Section 11, 12, 12A, 12AB, 12 AC & 13 – Conditions, Compliances and Consequences

1. Section 12 A – Conditions for Applicability of Sections 11 and 12 :

   - Application for registration before PC or Commissioner in the prescribed form

   - Section 12 A (1)(ac) :

   (i) – Revalidation of Erstwhile registration within 3 months from 01/04/21

   (ii) – Already 12AB Approved organization – Application to be made at least 6 months prior to the expiry of the registration

   (iii) – Provisional to Permanent Registration - Application to be made at least 6 months prior to the expiry of the registration or within 6 months from the date of commencement of activities [whichever is earlier]

Relevant Provisions – Section 11, 12, 12A, 12AB, 12 AC & 13 – Conditions, Compliances and Consequences

- Section 12 A (1)(ac) :

(iv) – Inoperative trust due to first proviso to subsection 7 of section 11 – At least 6 months prior to the commencement of the AY from which the said regn is sought.

(v) – Modification of objects that do not conform to the conditions of registration – within 30 days from the date of modification.

(vi) (A) – Activity not commenced yet – At least one month prior to the commencement of the previous year relevant to AY from which the said regn is sought.

(vi) (B) – Activity already commenced but exemption not claimed so far – Any time after the commencement of such activities.

Relevant Provisions – 8o G – Registration

1. Section 80 G applies only to the Institution or fund if this is approved by the Principal Commissioner or Commissioner of IT [Exemption]
2. Section 80G (5) First Proviso Clause (i) – Application within 3 months from 01/04/2021 – Erstwhile Regn cases
3. Section 80G (5) First Proviso Clause (iv) Sub Clause A - At least one month prior to the commencement of the previous year relevant to AY from which the said regn is sought. – New cases
4. Section 80G (5) First Proviso Clause (ii) – Renewal Cases – At least 6 months prior to the expiry date
5. Section 80G (5) First Proviso Clause (iii) – Provisional to Permanent Case - Application to be made at least 6 months prior to the expiry of the registration or within 6 months from the date of commencement of activities [whichever is earlier]

Relevant Provisions – Section 11, 12, 12A, 12AB, 12 AC & 13 – Conditions, Compliances and Consequences

1. Section 11 - **INCOMES WHICH DO NOT FORM PART OF TOTAL INCOME - Income from property held for charitable or religious purposes – Refer Provision**
2. **Section 12 - Income of trusts or institutions from contributions – Refer Provision**
3. **Section 12 A - *Conditions for applicability of sections 11 and 12 – Refer Provision***
4. ***Section 12 AB -* Procedure for fresh registration – Refer Provision**
5. **Section 12 AC - Merger of charitable trusts or institutions in certain cases – Refer Provision**
6. **Section 13 - Section 11 not to apply in certain cases – Refer Provision**

1. Other Provisions – Section 115BBI, 115BBC, 115TD to TF, 119(2)(b), 139(4A), 40(a)(ia), 40 A(3)(3A) and Sec 197 – Refer Provision
2. IT Circulars
3. IT Forms
4. IT Rules
5. Exit Tax Article
6. GST Notifications

Major Change – Proposed in FB 2025

7. In section 12AB of the Income-tax Act,—
Amendment of
section 12AB.
(a) in sub-section (1), the following proviso shall be inserted, namely:—
'Provided that where an application is made under sub-clauses (i) to (v) of the said clause, and the total income of such trust or institution, without giving effect to the provisions of sections 11 and 12, does not exceed rupees five crores during each of the two previous years, preceding the previous year in which such application is made, the provisions of this sub-section shall have effect as if for the words "five years", the words "ten years" had been substituted.';

Dos and Don'ts

Dos :

1. Activities to be carried out within the scope of Objects as defined in the Deed / MOA.
2. Activities to be carried out within INDIA only.
3. Can raise donation / gifts in India and from abroad if FCRA registration obtained.
4. Remuneration can be given to trustees if services obtained and not in excess of normal remuneration
5. Change of Trustees / address and authorized signatories permitted via Resolution or Amended deed or MOA.
6. Can work with another organization with similar objectives and registered with 12AB and 80G
7. Charitable organization to file form Form 10BD and issue certificate in form 10BE to the donors to avail exemptions before 31st May.
8. Transfer of A&L to another organization with similar objectives and registered with 12AB and 80G, in the event of dissolution.

Dos and Don'ts

Don'ts :

1. No cash expenses beyond 10000 – DD or Account payee cheque alone permitted – Open cheque prohibited.
2. TDS to be complied – Deduct TDS wherever it is applicable – Non deduction will lead to 30% disallowance.
3. Investment mode as per section 11(5) should not be violated.
4. No activities beyond India.
5. No benefit to related parties as per section 13(3)
6. No Anonymous donation by Charitable organizations.
7. No profit motive.
8. No sharing of profit among trustees in the event of dissolution.

Q&As



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