



CPA CONNECT



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Dear Partner,

Warm Greetings!

In this article, we are going to discuss the Condition subject to which regular 12A registration is granted by the Income Tax Department. In this issue we will cover the first Five of the following 11 conditions subject to which the regular registration is granted to the organization.

- Any income derived from property held under trust, wholly or in part for charitable or religious purposes, shall not be applied, other than for the objects of the trust or institution.
- The trust or institution shall not have income from profits and gains of business which is not incidental to the attainment of its objectives.
- Separate books of account shall be maintained by such trust or institution in respect of the business, which is incidental to the attainment of its objectives.
- The trust or institution shall not apply any part of its income from the property held under a trust for private religious purposes, which does not ensure for the benefit of the public.
- The trust or institution established for charitable purposes created or established after the commencement of this Act, shall not apply any part of its income for the benefit of any particular religious community or caste.
- No non-genuine activity shall be carried out by the trust or institution.
- No such activity shall be carried on by the trust or institution which is not in accordance with all or any of the conditions subject to which it was registered.
- The trust or institution shall comply with the requirement of any other law, as referred to in item (B) of sub-clause (i) of clause (b) of sub-section (1) of section 12AB.
- Where the trust or institution is required to furnish an application for registration under sub-clause (ii) of clause (ac) of sub-section (1) of section 12A the said trust or institution shall furnish such application within the time allowed under that clause.

- Where the trust or institution has adopted or undertaken modifications of the objects which do not conform to the conditions of registration, the trust or institution shall make an application in the prescribed form and manner to the Principal Commissioner or Commissioner, for registration of the trust or institution, within a period of thirty days from the date of the said adoption or modification.
- The applicant shall comply with the provisions of the Income Tax Act, 1961 read with Income Tax Rules, 1962.

We will analyze the remaining 6 conditions in the upcoming edition.

In case you would like to access the previous issues on this topic, please click [here](#).

Condition subject to which regular 12A registration is granted

(For orders passed under clause (a) of sub-section (1) of section 12AB)

Introduction

In order to claim exemptions under section 11 & 12 of Income Tax Act, 1961, it is mandatory for all NGOs to get registration under section 12A of the act. "It is important to note here that notwithstanding the fact that trust, society and section 8 companies are registered as per their respective acts, the registration under section 12A is necessary to claim exemption under Income Tax Act. The organization is required to make an application in the respective form (form 10A or Form 10AB) to the Income tax department and On receipt of application, the order for regular registration or rejection or cancellation of registration is passed. In case if the registration is granted, the same is subject to the conditions which we have analyzed in the article. The same can also be found in the Registration certificate issue to the organization or in Circular No. 11 of 2022 dated 03rd June, 2022.

Implication in case of Non compliance of the Condition

The Income Tax Department can withdraw the registration order if it is later found that the applicant's activities are not genuine or do not comply with the conditions under which the registration was granted. This withdrawal can be applied retrospectively from the initial date of registration. Consequently, the organization's income will be subject to a tax rate of 30% from the date the registration is withdrawn.

Analysis of the Conditions

1) Any income derived from property held under trust, wholly or in part for charitable or religious purposes, shall not be applied, other than for the objects of the trust or institution

Analysis:

a) Income Derived from Property: This refers to any financial gains or returns generated by assets owned by the NPO, which could include real estate, investments, or other income-generating properties.

b) *Property Held Under Trust:* This specifies that the assets in question are held by the organization, meaning they are managed by the organization for the benefit of certain beneficiaries or purposes defined in the trust deed/MOA/Bye laws of the organization.

c) *Wholly or in Part for Charitable or Religious Purposes:* The NPO is established either entirely or partially to support charitable (e.g., educational, medical, relief of poor, environment) or religious activities. This indicates the primary mission of the organization.

d) *Application of Income:* The statement mandates that the income generated from the properties held by the organization must be used exclusively for the objectives of the trust or institution.

e) *Objects of the Trust or Institution:* These are the specific goals or purposes outlined in the trust deed or institutional charter, such as providing services, supporting activities, or fulfilling other charitable or religious aims.

This principle is foundational to the ethical and legal operation of charitable and religious NPO. It safeguards the organization objective, ensuring that all derived income directly supports the intended charitable or religious activities, thus preserving donor intent and public trust.

2) The trust or institution shall not have income from profits and gains of business which is not incidental to the attainment of its objectives

Analysis:

a) *Income from Profits and Gains of Business:* This includes any financial benefits derived from business activities, such as sales revenue, service fees, or other commercial transactions.

b) *Not Incidental to the Attainment of Its Objectives:* This means the business activities generating the income must be directly related to and support the primary goals or objectives of the trust or institution.

Examples:

Activity Allowed: A religious institution operating a bookstore that sells religious texts and materials, with profits used to support its religious activities.

Activity not Allowed: The same institution running a general retail business that has no connection to its religious mission and uses profits for unrelated activities.

This principle is designed to ensure that trusts and institutions remain focused on their primary charitable or religious purposes. By restricting income to business activities that are incidental and supportive of their objectives, it helps maintain the integrity and public trust in these organizations. Additionally, it ensures compliance with regulatory requirements, particularly for maintaining tax-exempt status.

3) Separate books of account shall be maintained by such trust or institution in respect of the business, which is incidental to the attainment of its objectives

Analysis:

a) *Separate Books of Account:* This refers to distinct and independent financial records that are maintained separately from other financial transactions of the trust or institution.

b) Business Incidental to the Attainment of Its Objectives: Business activities that are directly related to and support the core objectives of the trust or institution.

Maintaining separate books of account for business activities incidental to the objectives of a trust or institution is crucial for transparency, accountability, and regulatory compliance. It ensures that such activities are properly monitored and that the income generated is used appropriately to support the trust's primary objectives.

Example:

Charitable Trust Operating a Bookstore:

Separate Books: Maintain a distinct set of accounts for the Book store, detailing all income and expenses associated with its operation.

Primary Books: The primary accounts of the trust will continue to record donations, grants, and other income directly related to its charitable activities.

4) The trust or institution shall not apply any part of its income from the property held under a trust for private religious purposes, which does not ensure for the benefit of the public

Analysis:

Note: This condition shall be applicable for the organizations registered for the religious purpose.

a) **Income from the Property Held Under a Trust or Institution:** This includes financial returns or benefits generated from assets owned by the trust, such as real estate, investments, or other income-producing properties.

b) **Private Religious Purposes:** Refers to activities or uses that serve specific individuals or a closed group of a religion rather than the general public.

c) **Does Not ensure for the Benefit of the Public:** Means the income must benefit the public at large, not just a specific group of people or individuals within the religious community.

Examples:

Allowed: A trust using its income to run a public food bank, offer free educational workshops, or conduct open-to-all religious festivals.

Not Allowed: A trust using its income to fund private religious retreats for select members or to improve a property that only benefits a specific religious leader or group.

5) The trust or institution established for charitable purposes created or established after the commencement of this Act, shall not apply any part of its income for the benefit of any particular religious community or caste.

Analysis:

Note: *This condition shall be applicable for the organizations registered for the charitable purpose.*

a) **For the Benefit of Any Particular Religious Community or Caste:** Ensures that income is not used exclusively to benefit a single religious community or caste, promoting inclusivity and equality.

Examples:

Allowed: A trust funding education programs accessible to children from all communities or providing healthcare services to the general public.

Not Allowed: A trust using its funds to build facilities or run programs that are only available to members of a specific religious community or caste.

In the meantime, if you have any question on the above, feel free to get back to me/us and we will respond to it.