

FORMATION OF PUBLIC CHARITABLE TRUST

Process of Trust Formation



Information Required for Drafting of Trust Deed

- Name of Settlor/Author
- Details of Movable/Immovable property he wants to settle towards Corpus of the Trust
- Name of at least three prospective trustees (Settlor can also be a Trustee)
- Name of the Trust
- Address of the Registered Office of the Trust
- Main Objects of the Trust / other Objects
- Beneficiary details

Important clauses to be taken care of-

- Appointment, Term of Office & Removal of Trustees/ Office Bearers & their Powers & Duties
- Appointment of Additional Trustee(s)
- Formation of various Committees, etc.
- The manner of making, altering & rescinding Regulations
- Manner of dissolving of Trust
- Removal or Termination of any Office Bearer on some Happening or Conditions
- Clause may be given to Allow Donation/ Contribution to Trust having similar Objectives
- Clause Allowing Authority to Borrow Money and /or Mortgage the Property
- The Trust Deed is required to be executed on Non-Judicial Stamp Paper of the requisite value

Important Points - for Registration under I.T. Act

- Earlier, a period of twelve month from the date of creation/formation was provided for filing of above application with a power to CIT to condone the delay, if any (s.12A). But, now this power of condonation has been withdrawn & it is provided that Registration shall be granted from the F.Y. in which above application has been filed by the trust or society in all cases, where such applications have been filed on or after 01.06.2007.
- Since, all benefits of section 11 shall be available only after getting Registration u/s 12A of the I.T. Act, 1961, hence it is better to apply for above Registration immediately after the Creation of Trust.
- After necessary Enquiry and satisfying himself about the objects of the Trust and the genuineness of its activities, the CIT shall grant registration u/s 12AA as well as approval u/s 80G of the I.T. Act, 1961.
- Every order granting or refusing registration u/s 12AA shall have to be passed before the expiry of six months from the end of the month, in which application has been made.

Taxation Matters

- Provision of section 11 to 13 apply in case Trust u/s 12AA of the I.T. Act.
- 85% of receipt of the year is to be utilized during that year itself [s.11(1)]
- Donation/contribution towards Corpus Fund not considered as receipts [s.11(1)(d)]
- In case 85% of the receipt not utilized:
 - Option u/s 11(1) Expl. 2 may be exercised by filing an application to the A.O. before the due date u/s 139(1) of the I.T. Act.
 - Option u/s 11(2) may be exercised by passing a Resolution for Setting Apart a Specified Sum for Specific Objective for the period not more than Five years. A Notice in Form 10 is required to be filed to the A.O. before the due date u/s 139(1) of the I.T. Act. Amount to be invested in the modes specified in Sec 11(5) of the I.T. Act
- Addition to fixed assets will be treated as Application of Income, whereas proceeds of Sale of Fixed Assets will be considered as receipt of that year.
- Accounts are required to be get Audited, if Gross Receipt (Income) in any year is in excess of the Maximum Amount which is not Chargeable to I.T. [s.12A(1)(b)]
- Report in Form 10B is to be filed with the Return of Income.
- Provisions of TDS applies on these institutions also.

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