Formation & Taxation of NGO’s

CA Tarun Kumar

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Definition of NPO?

The World Bank defines NPO's as "private organizations that pursue activities to relieve suffering, promote the interest of the poor, protect the environment, provide basic social services, or undertake community development."

Example of NGO's:

1. Child Rights and You commonly abbreviated as CRY is a non-profit organization working in India, which aims to restore children's rights.

2. Help Age(NGO India) – A Non Profit Organization in India caring for disadvantaged elderly senior citizens

Features of NGO

1. These organizations do not exist for profit motive, hence called as Non Profit Organizations.
2. These organizations do the work which ought to have been done by the government; therefore it is termed as Non Governmental Organizations.
3. NGO's has charitable objects. Doing something good to others without expectations is charity. It is a selfless act.

Formation of NGO

1. Public Charitable Trust.

2. Society.

3. Section 8 Company.

Trust

Trust is created for the purpose of charitable and religious purposes. Trust can be constituted by Trust deed. In case of formation of trust there are no specific statues available.

However, charitable endowment act'1890 and Charitable and religious act'1920 have bearing on the formation of a charitable trust. The state of Maharashtra, Rajasthan, Gujarat and Madhya Pradesh etc have their own state Acts.

Settler and minimum 2 trustees are required for the formation of trust. The requisite documents are to be submitted at the office of the registrar.

Society

Society is an association of persons who come together by mutual consent to act jointly for common purpose. The compliance has to be made under the Societies registration act'1860.

Minimum 7 members in state level and minimum 9 members in National level society are required for formation of society. The requisite documents are to be submitted in the office of the registrar. After the verification of the documents a certificate of registration is issued along with the certified copy of the bye law's of the Society.

Section 8 Company

Company Act'2013 applies in case of a registration of Section 8 Company. The main object of company is to give benefit to public. It is company formed for charitable objects.

Minimum 2 members are required in a Private and 7 members in a public company. 2 directors are required for formation of private company and 3 directors in a public company.

Comparison

Basis	Trust	Society	Sec 8 Company
Basic Document	Trust Deed	Bye Laws (MOA & AOA)	MOA & AOA
Formation	Very Easy	Easy	Little Hard
Governing Legislation	Relevant State Trust Act.	Societies Registration Act'1860	Companies Act'2013
Authority for Registration	Sub-Registrar	Registrar of Society	ROC
Management Board	Trustees	Governing Body	Board of Directors
Meetings	Board of Trustees	Governing Body Meeting as per bye laws	Board of Directors

Comparison

Basis	Trust	Society	Sec 8 Company
No. of Members Reqd.	2	7	2
Compliance	Low	Medium	High
Annual Filing	No Such Requirement	Filing of Audited Financials & list of Governing Body	Audited Financials & Annual Return
Voting Rights	Equal Rights to All Trustees	Equal Rights to All Members	As per Shareholding

Taxation of Charitable and Religious Trusts

Charitable or religious trusts are constituted to promote the welfare of the public and hence the income-tax law provides exemption to any income derived from property, held under trusts for charitable or religious purposes, provided the income of such trusts is not misused or diverted to non-charitable objects.

Meaning of Charitable Purpose [Sec 2(15)]

Charitable purpose includes following:

- Relief of Poor
- Education
- Yoga
- Medical Relief
- Preservation of environment (including watersheds, forests and wildlife) Preservation of monuments or places or objects of artistic or historic interest
- Advancement of any other object of general public utility

Religious Purposes

Religious purpose includes the advancement and propagation of a religion and its tenets. The distinction between a charitable trust and a religious trust is that a charitable trust is always public but a religious trust may be public or private.

(CIT v. Jamal Mohammad Sahib (1941) 9 ITR 375 (SC))

Taxability under Income Tax Law

The sections 11, 12, 12A, 12AA and 13 constitute a complete code governing the grant or withdrawal of registration and its cancellation, providing exemption to income, and also the conditions under which a charitable trust or institution needs to function in order to be eligible for exemption. They also provide for withdrawal of exemption either in part or in full if the relevant conditions are not fulfilled.

Application of Income

- As per the section 11(1), at least 85% of income should be applied during the Previous year for the purpose of Trust/ Institutions.
- If 85% amount is not applied due to following reasons:
  - (a) Income due but not received in the previous year.
  - (b) Any other reason.

(Form 9A is to be filed along with the ITR)

Valid Application of Income

1. Revenue Expenditure.
2. Capital Expenditure.
3. Repayment of Loan.
4. Accumulation of Income.
5. Capital Gains.
6. Payment of Taxes.
7. Donations to other Trusts.
8. Excess Application of last year.

Invalid Application of Income

1. Corpus Donations.
2. Charitable Purpose Outside India.
3. Depreciation.
4. Expense from which tax not deducted.
5. Cash Expenditure.

Denial of Exemption to Trust

1. Private Religious Purpose.
2. Particular religious community or caste.
3. Benefit to Specified Persons.
4. Investment of Funds in unspecified manner.

Accumulation of Income

If income applied during the previous year for charitable or religious purpose in India falls short of 85%, the unspent amount is still deemed to be applied for charitable or religious purposes in India if trust submits a declaration to the Assessing Officer and invest the surplus amount in the modes specified under section 11(5).

(Filing of Form 10)