

AccountAble™

15. Basic Income Tax Registration

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Some people believe that NGOs are automatically exempt from income tax. This is not true. You need to apply for income tax exemption. After that you need to follow certain conditions in order to remain exempt. Additionally, there are other requirements that affect an NGO's working.

Broadly there are three types of registration. Basic registration means that the NGO will not have to pay income tax¹ on its surplus². This is the most important registration and every NGO should have it. An associated registration is that of getting a Permanent Account Number (PAN).

Next is the registration for TDS³. NGOs have to deduct income tax when they make payments to some people. After deducting tax, this is deposited with the Government.

Third is the approval for donors. These approvals mean that your donors will have to pay less income tax whenever they donate money to you. In this issue of Accountable we deal with basic registration only.

Basic Registration

For NGOs involved in development⁴ work, basic income tax exemption can be of two types. One is under section 10 and the other is under section 11.

Exemption under Section 10

Section 10 has many sub-sections. Each subsection has several clauses. For NGOs of national or regional importance, the relevant clause is 10(23C)(iv)⁵. However, this exemption is not available very easily. NGOs being assessed in Ahmedabad, Bangalore, Chennai, Hyderabad, Kolkata and Mumbai need to apply to the Chief Commissioner of their respective

cities. Organizations in Delhi need to apply to the Director General (Income Tax Exemption). Other organizations need to apply to their local chief commissioner. The application is made in form 56.

After an inquiry, your application may be approved. Then a notification will be published.

Exemption under Section 11

It is easier to obtain exemption under section 11⁶. For this, you have to apply for registration under section 12A.

How to apply

Application for registration under section 12A should be made in form 10-A (See page 3). Two sets of the following documents should also be filed in the office of the local Income Tax Commissioner:

- Attested copy of registration certificate issued by Registrar of Societies (or of the Trust Deed);
- Attested copy of Memorandum of Association and Rules & Regulations of the society. Original copy of these documents is also shown at the



¹ Subject to certain conditions.

² When income (including grants) is more than the expenditure, you get a surplus.

³ Tax Deduction at Source

⁴ Income Tax Act uses the word 'charitable'

⁵ Pronounced as 'section ten [pause] twenty three see'. If you want to be perfect, add 'clause four' after you say this. Other organizations, which have religious and charitable objects, can apply under clause (v).

⁶ This is sometimes also called '12A registration'

time of registration; and,

- Copy of Final Accounts for last two to three years, in case the society (or Trust) is old.

Who should apply?

When should you apply for this exemption? You should apply in the financial year in which your gross receipts⁷ cross Rs. 150,000. When your application is approved, you will get the exemption from the financial year in which you applied⁸.

This means that NGOs with gross receipts of Rs. 150,000 or less need not file any tax return or apply for tax exemption.

The Commissioner has to decide on your application within six months. For this, you may need to provide more information or attend a personal hearing. The Commissioner also has the power to refuse registration⁹.



Permanent Account Number

In recent years, the Income Tax Department has been doing some serious revamping of the Permanent Account Number system. As a result, now almost everyone has to apply for a Permanent Account Number (PAN). Quoting this number will gradually become essential for almost all the important transactions.

Your NGO should also apply for a PAN, if its gross receipts reach Rs. 150,000 in any year. This application is now made through NSDL¹⁰ or UTITSL¹¹, with a small fee. You can apply online by locating the PAN link through the Income Tax Department's website¹². You will get an acknowledgement, which you should preserve carefully.

In due course of time, you will get a laminated card showing your PAN¹³. Note this number down in your diary so that you can provide it when asked.

A person, who does not have a PAN, can make a declaration to this effect in Form 60¹⁴ and conclude his transaction.

What happens now?

Once you have applied for basic registration under section

12A of the Income Tax Act, you should start filing your Income Tax Return (form ITR 7).

This should be filed by 30th September each year. The return should be accompanied by audited Balance Sheet, Income & Expenditure and

Receipts & Payments Account. An audit report in form 10B should also be filed. Why is this necessary? The exemption under section 12A is dependent on 'good behaviour'. In practical terms this means:

1. You should spend at least 85% of the income each year.
2. You should keep your funds in approved banks / investments.
3. You should not make unreasonable payments / diversion of resources to key persons.
4. If you are engaged in traditional forms of charity (education, medical relief and relief of the poor), you can undertake certain business activities¹⁵, provided you maintain separate accounts for these.
5. If you are a modern NGO, you should not engage in any commercial activities¹⁶.



⁷ All grants from donor agencies are treated as income under the Income Tax Act.

⁸ The Commissioner no longer has the power to waive delays in application.

⁹ Section 12AA

¹⁰ <http://www.tin-nsdl.com/DownloadsPAN.asp>

¹¹ <http://www.utitsl.co.in/pan/Form49AOnline.html>

¹² www.incometaxindia.gov.in

¹³ PAN cards for individuals also carry their photographs.

¹⁴ Form 61 for people having agricultural income

¹⁵ These should be 'incidental' to attaining the main objectives. Plainly speaking, it means that the business should not be the main objective. [sec. 11(4A)]

¹⁶ Sec. 2(15). Change effective from 1-Apr-2008. See Accountable 142 and 143 for more on this.

FORM NO. 10A
[See rule 17A]

Application for registration of charitable or religious trust or institution under
[clause (aa) of sub-section (1) of section 12A] of the Income-tax Act, 1961

To
The Commissioner of Income-tax,
.....

Sir,
I,, on behalf of [name of trust or institution] hereby apply for the registration of the
said trust/institution under section 12A of the Income-tax Act, 1961. The following particulars are
furnished herewith:

1. Name of the * trust/institution in full [in block letters]
2. Address
3. Name(s) and address(es) of author(s)/ founders(s)
4. Date of creation of the trust or establishment of the institution
5. Name(s) and address(es) of trustee(s) manager(s)

I also enclose the following documents:

1. (a) * Original/Certified copy of the instrument under which the trust/institution was created/estab-
lished, together with a copy thereof.
(b) * Original/Certified copy of document evidencing the creation of the trust or the establishment of
the institution, together with a copy thereof. [The originals, if enclosed, will be returned].
2. Two copies of the accounts of the * trust/institution for the latest * one/two/three years.

I undertake to communicate forthwith any alteration in the terms of the trust, or in the rules governing
the institution, made at any time hereafter.

Date _____

Signature _____

Address _____

Designation _____

* Strike out whichever is not applicable

LEKHA YOGI



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Interpretation of law: Interpretation of law given here is of a general nature. Please consult your advisors before taking any important decision. The law stated in this issue of AccountAble is valid as of 1st April 2009.

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mation on NGO accounting and related issues. To subscribe, send an e-mail to accountaid-subscribe@topica.com.

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