

EXEMPTION UNDER SECTION 11 OF INCOME TAX ACT, 1961

Section 11 of Income Tax Act, 1961 provides exemptions for Income earned from property held under charitable trusts/societies for the activities carried out on charitable or religious purposes subject to certain terms and conditions.

❖ **Who can claim the exemption?**

- Any trust or institution which is registered under section 12AA of Income Tax Act, 1961 can claim the exemption under this section.

❖ **Incomes that can be claimed as exemption:**

- Income received/derived from property held by charitable trust/societies, and if it is utilised for charitable or religious purposes exemption can be claimed under section 11.
- Income received in the form of voluntary contributions with a specific direction that they shall form part of corpus of the trust or institution.

***Note:** For the purposes of this section charitable or religious purposes are defined according to section 2(15) of Income Tax Act, 1961.*

❖ **Conditions for claiming exemption:**

- Income should be received from property held under trust wholly or in part (for the properties held in part, exemption can be claimed only if trust has been created before commencement of this act) for charitable or religious purposes in India.
- The aforesaid income should either be applied or accumulated for such purposes in India.
- The income accumulated or set apart for charitable or religious purposes should not exceed **15%** of the total income received/derived during the previous year.
- In computing income under this section, any contributions referred in Section 12 of Income Tax act shall be deemed to be part of the income. Section 12 deals with voluntary contributions other than received with a specific direction that they shall form part of corpus trust or institution.
- The income applied for charitable purposes which tends to promote international welfare can also be claimed as exemption subject to the following:
 - Trust created on or after 1-04-1952: To the extent such income is applied to promote international welfare in which India is interested.
 - Trust created before 1-04-1952: To the extent income is applied for charitable or religious purposes outside India.
- Any income credited or paid to any other trust or institution registered under section 12AA, being contribution with a specific direction that they shall form part of the corpus of the

trust or institution, shall not be treated as application of income for charitable or religious purposes.

- For determining the amount of application under this section, the provisions of 40(a)&(ia), 40A (3) &(3A) shall apply as they apply in computing the income chargeable under the head profits or gains of business or profession.

*For **Example**, if a trust named "X" registered u/s 12AA received an income of Rs.1,00,000 and utilised Rs.80,000 and created a reserve of Rs.20,000.*

Can the trust claim exemption under section 11?

No, because 85% of the income should be utilised for the religious or charitable purposes and 15% can be created as reserve, but here only Rs.80,000 has been utilised i.e. 80% which is less than the prescribed limits.

❖ **If Income applied < Income Derived:**

- If in the previous year, the income applied to religious or charitable purposes in India fall short of 85% of income derived during that year, by any amount-
 - For the reason that whole or part of the income has not been received during the year
 - (OR)
 - For any other reason
- Then at the option of the trust, the income so derived i.e. including income not utilised for religious or charitable purposes (be deemed to be income applied to the religious or charitable purposes) can be claimed as exemption. But, the exemption cannot be claimed on the same amount on its receipt or utilisation.
- If the income so deemed to be utilised for charitable or religious purpose is not utilised for such purpose on its receipt, then such income shall be added back as income of the trust in the year in which it is received or derived.
- Such option can be exercised before the expiry of time allowed under section 139 for filing of return of income.
- To claim exemption, the assessee should furnish a form **9A**¹ to the assessing officer specifying the reason for such shortfall and the amount on which such option is exercised.

Example:

For example, a trust named "X" has derived an amount of Rs.1,00,000 but has received only Rs.80,000 in that previous year and also utilised the total amount of Rs.80,000 in that year. Can the trust claim an exemption under section 11?

Usually the answer would be **NO**. Because, trust failed to utilise the 85% of the amount derived i.e. Rs.85,000. But by submitting form 9A trust can claim exemption on confirmation from the assessing officer.

❖ **If Income utilised < 85% of income received/ utilised:**

¹ Form 9A: <https://www.incometaxindia.gov.in/Forms/Income-Tax%20Rules/ITR62FORM9A.pdf>

Sometimes it may happen that the trust may receive more income than it needs to utilise in that year i.e. the expenses trust needs to incur in the year may be less than the income received/derived during the year

In such circumstances that trust can set apart more than 15% of income derived or received subject to the following conditions:

- It should furnish a form numbered **10²** stating the purpose and period for which the income is held for accumulation.
- The period of such accumulation shall not exceed 5 years.
- Form 10 should be furnished on or before the due date specified in section 139 for furnishing the return of income for the previous year.
- The money so accumulated or set apart **exceeding 15%** should be invested in the specified modes as follows:
 - Investment in savings certificates as defined under section 2 of Government savings certificates act, 1959, and any other securities or certificates issued by Central Government.
 - Deposit in any account with Post office savings bank
 - Deposit in any account with a scheduled bank, or a co-operative society engaged in carrying on the business of banking
 - Investment in units of UTI
 - Investment in any security for money created and issued by the Central Government or a State Government
 - Investment in Debentures issued by or on behalf of company or corporation where principal and interest are fully and unconditionally guaranteed by central or state government.
 - Investment or deposit in any public sector company. However, if the company ceases to be public company then investment in shares shall be treated as eligible investment for a period of 3 years and any other investment shall be treated as eligible until it is repayable by such company.
 - Investment in any bonds issued by a financial corporation which is engaged in providing long-term finance for industrial development in India and which is eligible for deduction sub-section (1) of section 36;
 - Investments in any bond issued by public company formed and registered in India with an objective of providing long term finance for urban infrastructure or purchase of house for residential purposes
 - Investment in Immovable property (immovable property does not include Plant or machinery)
 - Deposits with IDBI
 - Investments in the any other mode or forms as said in rule 17C like investment in mutual funds, acquiring shares of incubatee by an incubator, acquiring shares of National Skill Development Centre etc.

² Form 10: <https://www.incometaxindia.gov.in/Forms/Income-Tax%20Rules/10312000000007794.pdf>

- Any income as referred above
 - Is applied for purposes other than charitable or religious purposes
 - Is not utilised before the expiry of 5 years
 - Ceases to remain invested or deposited in the above-mentioned forms or modes
 - Credited or paid to any institution or trust registered under section 12AA or mentioned u/s 10(23C)

Shall be deemed to be income of the trust in the previous year in which there is a breach of such conditions. If the circumstances are beyond the control, then the income could be utilised for other than religious or charitable purposes on confirmation of assessing officer.

❖ **Exemption on sale of Capital Asset:**

- Capital gain arising on the sale of capital asset held **wholly** under trust for religious or charitable purposes is exempt to the extent specified here under:

Amount used to buy new capital asset	Exemption
Whole Net Consideration	Whole of the capital gains
Part of the consideration	Exempted Capital gain = Cost of new asset - Cost of transferred asset

Example:

If a trust had a capital asset costing Rs.1,00,000 and sold the same for Rs.1,50,000 and then bought a capital asset for Rs.1,30,000, then the working will be as follows:

Particulars	Amount
Sale proceeds of old asset	1,50,000
Less: Cost of old asset	(1,00,000)
Capital Gain	50,000
Cost of new asset	1,30,000
Cost of old asset	(1,00,000)
Capital Gain Utilised	30,000
Capital gain taxable	20,000

- Capital gain arising on the sale of capital asset held **partly** under trust for religious or charitable purposes is exempt to the extent specified here under:

Note: Here it is assumed that 50% of the asset is only held for charitable or religious purposes

Amount used to buy new capital asset	Exemption
Whole of Net Consideration	Capital gain*50%
Part of the consideration	Exempted Capital gain= (Cost of new asset - Cost of transferred asset) *50%

❖ **Can the exemption be claimed if property held under trust is a business undertaking?**

- If the charitable trust or institution claims that the income received from business undertaking can also be claimed as exemption, then the respective Assessing Officer shall have the power to determine that amount on which the exemption can be claimed. If the income so determined by the Assessing Officer is more than the income disclosed as per Books of Accounts of the undertaking, then such excess cannot be claimed as exemption under this section i.e. it shall be treated as income and taxed accordingly.

Example:

If an institution named "X" has received an income of Rs.1,00,000 from a business undertaking and also disclosed the same in its books of accounts and made a claim regarding the same. The assessing officer determined the amount of Rs.1,50,000 as income from such business undertaking.

Then the excess amount i.e. Rs.50,000 should be treated as income in the hands of trust or institution.

❖ **Exemption on income from business:**

- No trust can claim exemption under this section for the income received from business, unless such business is incidental to the attainment of the objectives of the trust.

For example, if a trust has been established with an objective to sell handmade goods but, it is also selling other goods along with such hand made goods then exemption can be claimed only on such income which is received from sale of handmade goods. The income which is received from sale of the goods shall be treated as income and tax shall be levied respectively.

❖ **Is depreciation allowed under section 11?**

- Yes, there is no bar on claiming any expenses including depreciation under this section. But, if on acquisition of an asset it has been treated as application of income in that previous year, then depreciation is not allowed under this section.

❖ **Exemption under section 10:**

- Any trust or institution being registered under section 12AA or 12A, then no other provisions of section 10 (except clause 1 and clause 23C) shall be applicable for claiming exemption.