Religious And Charitable Trusts In India

Social welfare is the basic responsibility of government. Charitable and Religious Trusts lessen this burden. Therefore, tax concessions are offered. Income applied for predefined and declared charitable object is exempt from income tax. Wealth tax is also not charged on properties held. If eligible, donor are also given deduction from income tax u/s 80G or section 80GGA. Skillful and Intelligent tax planner tends to use trust for evasion of taxes. This result in a plethora of regulatory measures. Consequently, the legislation has become confused and complicated. More so because the term like 'income', 'capital', 'capital gains', 'donations', etc., used in normal tax parlance or even in ordinary parlance have entirely different meanings and connotations in the case of trusts.

Following are few instances:

a. Normally, gifts are capital receipt and not charged to tax either in the hands of the donor or the donee. However, donations to trusts are their income.

b. The income of trusts is real income. Normal statutory deduction and rebates are not available to trusts.

c. Profit & Loss is meaningless. A charitable trust is not expected to earn any profit. Tax is based on Income & Expenditure.
What Is Trust?

India follows the English concept of a trust as a vehicle under which property is alienated from the original owners and held by a trustee for the benefit of others. The law governing trusts is codified and contained in the Indian Trust Act.

Types Of Trust.

Common types of trusts are noted below.

- Public charitable or religious trusts
  Income from these trusts is applied to charitable or religious purposes.

- Private trusts
  Income from private trusts is available to specified beneficiaries and not the public at large. In some cases, the shares of the individual beneficiaries are fixed or ascertainable, according to the provisions of the trust deed. In others (discretionary trusts), the trustee has the power to apply the income among a class or group of beneficiaries in proportions determined entirely at the trustee's discretion.

Trusts are often used as vehicles to hold property for present or future needs of dependents and family members, and sometimes they are used to reduce the burden of tax. A common example is a trust that provides for the accumulation of income and capital for specified infant children. Subject to their maintenance during this period, the accumulation must be handed over to them upon their attaining a specified age or, in the case of a female beneficiary, upon marriage. Retirement trusts are commonly set up by employers to provide retirement benefits to employees.
Exemption In Charitable Trust In India.

Exemption From Tax.
Income of a charitable trust is exempt according to the provisions of sections 11, 12, 12A, 12AA and 13. The trust should be one which is established in accordance with law and its objects should fall within the definition of the term "charitable purpose".

Charitable purpose.
It is defined to include relief to the poor, education, medical relief and the advancement of any other object of general public utility. Promotion of sports and games is considered to be a charitable purpose. Therefore, any association or institution engaged in the promotion of sports and games can claim exemption under section 11 even if it is not approved under section 10 (23) - Circular No. 395, dated September 24, 1984.

Essential conditions for exemption.
The following main conditions are essential for claiming exemption under section 11

a. The property from which income is derived should be held under a trust or other legal obligation.
b. The property should be held for charitable or religious purposes. In the case of a charitable trust created on or after April 1, 1962, the further conditions are:
   - The trust should not be created for the benefit of any particular religious community or caste.
   - No part of the income should directly or indirectly be for the benefit of the settlor or other specified persons.
   - The property should be held wholly for charitable purposes.
c. The three conditions mentioned above also apply to religious trust created on or after April 1, 1962.
d. The exemption is confined to only such portion of the trust's income which is applied to charitable or religious purposes or is accumulated for applying to such purposes within the limits of accumulation permitted under section 11(1) and (2).
e. The exemption is restricted to such portion of the income as is applied to charitable or religious purposes in India except in the cases covered by section 11(1)(c).
f. The exemption from tax will not be available to any religious or charitable trust or institution in respect of business profits, unless:
   - The business is carried on by the trust wholly for public religious purposes and the business consists of printing and publication of books or publication of books or is of a kind notified by the Government.
   - The business is carried on by the institution wholly for charitable purposes and the work in connection with the business is mainly carried on by the beneficiaries of the institution and separate books of account are maintained.
intained by the trust/institution of such business.

g. Trusts or institutions can carry out business activities if business activities are incidental to the attainment of its objectives and separate books of account are maintained. In other words, irrespective of whether any business is carried on by such a trust or institution or the business undertaking itself is held in trust, in either case, the trust or institution is charged to tax on such profits and gains at the rates of tax applicable in the case of individuals, association of persons, body of individuals, etc., if the above conditions are not satisfied.

Hi, I have a specific query here - I am a member of a christian church and we intend to be registered as an entity. Questions:

1. What entity is recommended - society, an AOP or a trust? If a trust, then will it be registered as a 'charitable trust for religious purpose' or a 'religious trust'?

2. Provisions for formation/ registration of the entity in 1 above

3. How long will it take to register this entity?

4. In the transition phase, how must the payments (ie hall rent, salary to pastor, etc) and other things be carried out?

A quick revert will be appreciated. Also, if someone can recommend some reading material - web links, books, will really grateful.