



RSM India Whitepaper – Public Charitable Trusts - ‘Irrevocability’ Clause in Trust Deed Mandatory for Grant of Registration under Section 12AB of the Income-tax Act, 1961?

Whitepaper

Public Charitable Trusts - 'Irrevocability' Clause in Trust Deed Mandatory for Grant of Registration under Section 12AB of The Income-tax Act 1961?

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1. Background

Public charitable and religious organizations serve a pivotal role in advancing philanthropic and welfare initiatives, contributing significantly towards the social development and the well-being of communities across India. These organisations are typically constituted either as a Section 8 Company (Not for Profit Company) or a Charitable Trust or a Society and are required to register under various regulations (Income-Tax Act, Public Trust Acts, Companies Act, etc) as applicable and need to comply with the terms of registrations.



The registration framework for such NPOs under the Income-Tax Act and the current issue of whether there is a requirement to have a “irrevocability” clause in the Trust deed for a Public Charitable Trust has been analysed in this whitepaper.

1.1 Registration of charitable organisations under the Income-tax Act, 1961 ('the Act')

1.1.1 Definition of charitable purpose as per the Act

Charitable purpose is defined under the provisions of Section 2(15) of the Act as *charitable purpose includes relief of the poor, education, yoga, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility.*

1.1.2 Registration of Charitable Organisations

Charitable organisations in India are accorded exemption in respect of their income under Sections 11 and 12 of the Act, subject to compliance with the prescribed statutory conditions. Section 12A of the Act prescribes the registration of such charitable trusts as a prerequisite for the applicability of Section 11 and 12. Further, registration by such public charitable or religious trusts under the provisions of Section 80G allows deduction to donors of such institutions under Chapter VIA of the Act at the time of computing their taxable income.

Earlier, registrations held by charitable entities under the provisions of Section 12AA or Section 80G of the Act were permanent in nature. **However, the regulations regarding charitable entities were completely overhauled in the year 2021 where the Finance Act 2020 introduced a transformative shift through significant amendments to the framework governing charitable institutions under Section 10(23C), Section 12A and Section 80G of the Act.** Further, the introduction of Section 12AB marked a decisive move towards a time-

bound regulatory regime, whereby registrations were no longer perpetual but restricted to a limited tenure of 5 years. Consequently, charitable entities were now required to periodically apply for renewal of registration at the end of every 5-year cycle.

Furthermore, the Finance Act, 2025 amended Section 12AB(1) of the Act, extending the validity of registrations granted to charitable organisations from 5 years to 10 years in case where the total income without giving effect to the provisions of Section 11 and Section 12 of the Act does not exceed Rs. 5 crores during each of the 2 previous years, preceding the financial year in which such application is made.

1.2 Process of Registration under the Act

In view of the above, the existing regular registration (under Section 12AB and 80G of the Act) of the charitable entities which had obtained registration in 2021 remained valid from FY 2021-22 to FY 2025-26 (i.e. AY 2026-27). In such cases, the charitable organizations were supposed to apply for renewal of regular registration in **Form 10AB** (separate forms to be filled for 12AB and 80G registration) at least 6 months prior to the date of expiry of the existing registration (i.e. on or before 30 September 2025).



The Principal Commissioner ('PCIT') or Commissioner ('CIT'), on receipt of the above application made in **Form 10AB** shall call for such documents or information from the trust or institution or make such inquiries as he thinks necessary and may pass order in **Form 10AD** registering the trust or institution for a period of 5 years after satisfying himself on the following two grounds:

- (i) **the genuineness of activities of the charitable entity and**
- (ii) **Compliance by the charitable entity with the provisions of any other law in force, to the extent as they are material to the achievement of its objects.**

2. Irrevocability Clause: Mandatory Clause for Registration of Public Charitable Trust?

2.1 Provisions under the Act

The Act does not explicitly mandate that the charitable trust shall be irrevocable and that the irrevocability clause shall be expressly mentioned in the trust deed. A trust is ordinarily considered irrevocable unless the settlor has expressly retained a power of revocation in the deed.

An irrevocable clause in the trust deed prohibits the transfer of the income and assets earned or held by the trust back to the settlors. In other words, it establishes the permanence in transfer of the ownership and title of the assets and the income earned thereon by the settlors towards the trust and thereby restrict the settlor's power to regain the ownership of such assets. It ensures that the assets held by the trust are only utilised towards the objects of the trust and not for any personal gain.

It is notable that the provisions of Section 332(2)(b) under the Income-tax Act, 2025 (ITA 2025), pertaining to non-profit organisations ('NPOs') mandate the properties by such organisations to be held under an "irrevocable trust" for public charitable or religious purposes. Hence, the concept of irrevocability becomes an explicit statutory condition under ITA 2025. However, it still does not explicitly require presence of irrevocability clause in the trust deed.

2.2 Implications under the Act on application of income or any property of the trust for the benefit of the Settlor

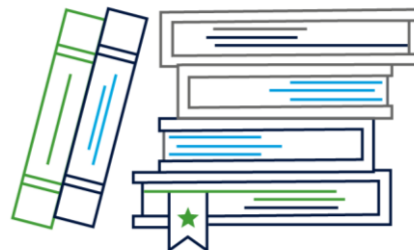
The provisions of section 13(c) of the Act is attracted if any part of income or property is applied to the benefit of a specified related person by the charitable trust including the author, founder, trustee, a substantial donor to the trust up to specified limits, or any relative of any such author, founder, member, trustee or manager, thereby denying exemption under the provisions of Section 11 and 12 of the Act.

Such application may also be construed to be specified violation under section 12AB of the Act leading to cancellation of the registration of the Trust and consequent invocation of section 115TD of the Act wherein the accreted income of the Trust shall be taxable at maximum marginal rate. The Accreted income shall be the aggregate fair market value of the total assets as reduced by the total liability as on the date of cancellation of the registration.

Considering the above, the Act contains inherent safeguards to prevent the application of income or property for the benefit of the Settlor.

2.3 Provisions under other Laws

Provisions of Section 22(3A) of the Maharashtra Public Trusts Act, 1950 ('MPT Act') empowers the Deputy and Assistant Charity Commissioner to de-register the trust, after a detailed and impartial inquiry, on various grounds. Accordingly, Section 22(3B) of the MPT Act provides that *"the Deputy or Assistant Charity Commissioner may take over the management of properties of the trust de-registered under sub-Section (3A) and pass such necessary orders for the same as he deems fit and may, if he considers it expedient, dispose them of by sale or otherwise and deposit the sale proceeds in the Public Trusts Administration Fund established under Section 57"*.



Further, the provisions of Section 55 of the MPT Act specifies the doctrine of Cy Pres by empowering the Assistant or Deputy Charity Commissioner to make an inquiry and submit a report to the Charity Commissioner if he is of the opinion that the original object for which the public trust was created has failed or the income or any surplus balance of any public trust has not been utilised or is not likely to be utilised or for any other specified purpose.

Consequently, based on the report submitted, the Charity Commissioner may give directions by giving effect to the original intention of the author of the public trust or object for which the public trust was created. Further, the Charity Commissioner is authorised to direct the property or income of the public trust or any portion thereof to be applied to any other charitable or religious objects. The Charity Commissioner may also alter any scheme already settled or to vary the terms of any decree or order already passed in respect of the public trust or the conditions contained in the instrument of the public trust.

Trusts registered under the MPT Act are inherently irrevocable, by virtue of the combined effect of the statutory mechanism for de-registration and transfer of funds to the Public Trusts Administration Fund in cases of revocable trusts that are specifically revoked, and the application of the Cy Pres doctrine upon dissolution.

A similar view has been issued by the Charity Commissioner of Gujarat through FAQs whereby it is provided that *"a trust once created cannot be undone, dissolved or extinguished by*

subsequent conduct or by subsequent act of the author of the trust. A trust once created exist for all time, inspire of fraud, ignorance, mistake or inaction. A mere mistake of law would not be sufficient to revoke deed. A trust is irrevocable unless a power of revocation is expressly reserved in the deed.”

Accordingly, as per the provisions of the MPT Act, absence of an explicit clause on irrevocability does not render the trust revocable.

2.4 Inference on the clause of ‘irrevocability’ in the trust deed

In view of the above, it can be inferred that the clause relating to irrevocability may not be a sine qua non for grant of registration to the trust, neither such condition is prescribed under the Act. Further, the provisions of the Act as well as MPT Act effectively addresses the issue of irrevocability of the Trust.

2.5 Irrevocability Clause under Form 10AB and subsequent rejection of the application by the Hon’ble PCIT / CIT

The application for renewal of registration in Form 10AB specifically asks for “*whether the trust deed contains clause that the trust is irrevocable*”.

At the time of filing of Form 10AB by the trusts for renewal of registrations, the applicants are bound to answer “Yes” regarding the presence of the irrevocable clause which is subsequently construed as a specified violation by the PCIT/CIT, in terms of clause (g) of the explanation below Section 12AB(4) of the Act, on account of furnishing “false or incorrect information,” and thereby cancellation / refusal of registration under Section 12AB solely on the ground that the trust deed does not expressly state that the trust is “irrevocable”.



Submission of “No” as response displays an error specifying “Approval / Registration is not allowed if the applicant being a trust does not have an irrevocable clause” and subsequently does not allow the submission of the form.

Due to above condition pertaining to the “irrevocability” clause, registrations held by bonafide trusts were cancelled and where a trust converts into a non-charitable entity due to cancellation of registration, the charitable entity may lose its exemption benefit and thereby attracting the exit tax provisions under Section 115TD through taxation of the accreted income at the maximum marginal rate.

3. The Writ Petition before the Bombay High Court

The BCAS on 7 January 2026 submitted a letter to the Ministry of Finance and the Central Board of Direct Taxes for exemption to the public charitable trust from having a specified irrevocable clause in its trust and require the concerned officer to examine the trust deed and other documents submitted to ascertain whether, notwithstanding the absence of such a clause, the trust may still be considered irrevocable.

Further, a writ petition was filed before the Hon’ble Bombay High Court (‘court’) by the Chamber of Tax Consultants jointly with the BCAS and various charitable trusts registered under the MPT Act, herein referred to as Petitioners / Applicants, challenging the action of the Income Tax Department in cancelling or refusing registration of charitable trusts on the ground that the trust deed does not contain an express irrevocability clause.

The petition was filed against the Commissioner of Income Tax (Exemptions) whereby the petitioner had contended that the provisions of the Act do not mandate the inclusion of a specific irrevocability clause in the trust deed as a precondition for grant or continuation of registration under Sections governing charitable trusts.

It was argued that several trusts, created decades ago, do not contain such a clause and requiring amendment of trust deeds merely to insert an irrevocability clause is impractical and not supported by the statute. The petition seeks appropriate relief from the court against denial or cancellation of registration solely on this ground.

The court vide its order dated 9 March 2026 quashed the rejection orders and provided clarity on whether the absence of an express irrevocability clause in a trust deed can be treated as a valid ground for cancellation or refusal of registration of charitable trusts.

3.1 Contentions of the Petitioner

The Contentions of the petitioner as advanced by the counsel were as under:

- 3.1.1 Neither Section 12AA nor Section 12AB of the Act specifically prescribes the presence of an explicit “irrevocability clause” as a preliminary condition for granting registration and insisting on such a clause may amount to acting beyond the jurisdiction by imposing a condition not contemplated by the statute, which is impermissible in law.
- 3.1.2 The applicant further contended that the trusts were granted registration under the earlier regime despite absence of such clauses, and there is no change in law or facts to justify a different interpretation as adopted by the PCIT & CIT. Furthermore, the dependence by the revenue to Sections 60 to 63 of the Act is untenable because the said provisions constitute anti-avoidance provisions relevant at the stage of exemption under Section 11 and do not bear relevance for the purpose of the grant of registration.
- 3.1.3 The applicant also contended that the transfer is “revocable” under the provisions of Section 63 of the Act only if there is a provision for re-transfer or re-assumption of power. Thereby, silence in the trust deed does not render the trust as revocable. It is a settled principle that a trust is irrevocable unless there is an express power of revocation. The appropriate test for application is the “presence of a revocation clause”, rather than the “absence of an irrevocability clause”.
- 3.1.4 Trusts registered under the MPT Act are inherently irrevocable on account of the assets being precluded from reverting to the settlor and mandatorily required to vest in another charitable trust with similar charitable objects.
- 3.1.5 The online utility mandates an applicant to submit a coerced affirmative declaration regarding the presence of the irrevocability clause as a precondition for uploading and submission of the form, which is then perversely invoked as a ground for rejection by the PCIT and CIT by treating the response as a specified violation under the provisions of the Act on account of furnishing of “false or incorrect information”.



3.1.6 The Petitioner also relied upon the judgement issued by this court¹ (Bombay HC) and the clarification issued by the Ministry of Finance, in its reply to the Public Accounts Committee regarding a Comptroller and Auditor General of India ('CAG') Report, thereby concluding the existence of a dissolution clause or the irrevocability clause as unnecessary ingredients for grant of registration.

3.1.7 The Petitioner also submitted that the Act already contains adequate safeguards in Section 13 and Section 115TD as well as imposition of specific condition at the time of initial registration of the trust under Section 12AB(1)(a) of the Act by prohibiting the transfer of assets to the founder/settlor at the time of dissolution.

3.2 Contentions of the Revenue

3.2.1 The Revenue contended that Section 12AB of the Act permits an inquiry into the aspect of revocability, and that the CIT/PCIT is required to be satisfied regarding the revocability of a public charity trust along with the compliance with other applicable laws, including the MPT Act, which provides for the de-registration of a public trust in circumstances where it is revocable and has been specifically revoked.

3.2.2 Sections 60 to 63 of the Act and the linkage with Section 11 justify examining revocability at the stage of registration considering that public trust property is public property. Thus, there is nothing arbitrary in requirement of revocability as a condition precedent for grant of registration.

3.2.3 Row 6 of Form 10AB requiring an irrevocability clause is consistent with law and prevents misuse on account of the direct nexus between the legal principle of not allowing revocable trusts to claim exemption and how the Revenue seeks to achieve that by obligating trusts to have irrevocability clauses in their trust deeds.



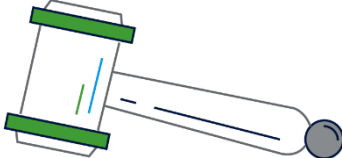
3.2.4 The Revenue also submitted that registration had been granted and/or renewed for public trusts who had submitted applications to the Charity Commissioner for amendment of their trust deeds to insert irrevocability clauses therein. The Revenue also contended that, registration under Section 332 of the ITA 2025 mandates the trust to be irrevocable.

3.2.5 The Revenue further contended that the absence of an irrevocability clause may imply a possibility of reassumption of power (directly or indirectly) over the income or assets of the trust by the settlor, making the transfer revocable.

3.2.6 The Commissioner is duty-bound to ensure that the trust is irrevocably dedicated towards public purposes and an expressed clause of irrevocability is necessary for administrative clarity.

¹ CIT vs. Tara Educational & Charitable Trust (Income Tax Appeal No. 247 of 2015) (Bombay HC)

3.3 Decision of the High Court

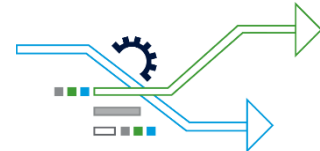
- 3.3.1 The High Court in its judgement held that Section 12AB of the Act does not mandate an explicit irrevocability clause and requires the PCIT / CIT to consider **(i) the objects of the trust, (ii) the genuineness of its activities, and (iii) compliance with other material laws for the purpose of grant of registration**, and thereby such additional condition cannot be read into the statute. The court further held that the provisions of Section 60 to 63 of the Act were not specified exceptions to the registration under Section 12AB of the Act.
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- 3.3.2 A trust is revocable only if the instrument contains a provision for re-transfer or re-assumption of power over the assets or the income of the trust. Absence of an irrevocability clause does not make it revocable, thereby concluding that the silence in the trust deed implies irrevocability, not revocability.
- 3.3.3 Under the MPT Act, assets of a public charitable trust can never revert to the settlor and must be applied to charitable purposes, making such trusts inherently irrevocable. Further, the interpretation adopted by the Revenue is contrary to the statutory provisions and settled legal principles. The requirement of an irrevocability clause and rejection on that basis is unjustified and based on a misapplication of law.
- 3.3.4 The court also held reliance of various judicial precedents² and the provisions of the MPT Act addressing the provisions of irrevocability and the doctrine of cy-pres. The Court further held reliance on the clarification issued by the Ministry of Finance and thereby concluded that the Revenue, who functions under the administrative authority of such Ministry, cannot take a contrary stand.
- 3.3.5 Section 36A(1) of the MPT Act with similar provisions under the Indian Trusts Act, 1882 clarifies that a trustee of every public trust shall administer the affairs of the trust and apply the funds and properties thereof for the purpose and objects of the trust in accordance with the Trust Deed. Accordingly, absence of the revocability clause restricts the trustee to retransfer the trust property.
- 3.3.6 The High Court further stated that the conditions for grant of registration remain the same, both under Sections 12AA and 12AB of the Act, there is no reason forthcoming to take a different stand at the stage of renewal for the trust when considering the same trust deed, registration was granted earlier. The High Court also clarified the position with respect to the provisions of ITA 2025 requiring the trust to be irrevocable. Accordingly, the Act does not mandate the requirement of an explicit irrevocable clause and absence of such clause shall deem the trust to be irrevocable.
- 3.3.7 Further, in relation to the coerced response pertaining to the presence of the irrevocable clause in the trust deed to be provided in Form 10AB and subsequent treatment of the same as a violation on account of furnishing of false information, the court held that a procedural form cannot be used as a tool to coerce applicants into making declarations that are then used to their detriment and accordingly directed the Revenue to change their system in this regard and is not to use this as a ground to deny registration.

² Controller of Estate Duty, Vidarbha vs. Smt. Mangala [(1983) 143 ITR 491 (Bom)]
Smt. Virbala K. Kewalram & Ors. Vs. Shri. Ramchand Lalchand & Ors. reported in 1996(4) ALL MR 490

3.3.8 **The High Court of Bombay held that the absence of an explicit irrevocability clause in a trust deed is not a valid ground for rejection of registration under Section 12AB. A public charitable trust is presumed to be irrevocable unless expressly made revocable. Accordingly, the Revenue's interpretation is legally unsustainable and contrary to both the Act and the MPT Act.**

3.3.9 **Key Directions**

The High Court directed the Revenue to refrain from rejecting the applications for registration and renewal on the ground of absence of irrevocability clause and consideration of the coerced "Yes" to the question 6 of the Form 10AB in the absence of the irrevocability clause in the trust deed as a "specified violation" on account of furnishing of false or incorrect information".



The High Court further directed the amendment of the utility for Filing Form 10AB, requiring the question 6 to be modified as ***"Is the trust/ institution revocable?"***.

Lastly, the High Court quashed and set aside all previous rejection orders issued by the PCIT / CIT and directed revisit and reconsideration of the orders within a period of 6 weeks from the date of passing of the order with such reconsidered orders to be deemed to be effective from 01 April 2026.

4. **Key Takeaways**

The judgement issued by the Bombay High Court marks the reaffirmation of statutory interpretation and fairness in administration by unequivocally holding the absence of an explicit irrevocability clause, in isolation, as an untenable basis for rejection of renewal and registration applications of the public charitable trusts. The High Court further quashed and set aside the Revenue's rejection of previous applications based on the specified grounds of the order.

It is important to note that the order by the High Court shall not be specifically applicable to the registered trusts in Maharashtra but to all charitable trusts present across India.

Further, the High Court has also clarified the position with respect to the provisions of ITA 2025 requiring the trust to be irrevocable. Accordingly, the Act does not mandate the requirement of an explicit irrevocable clause. This interpretation is expected to be of significant relevance in the examination of registration applications filed under the provisions of the new Act.

The implementation of the High Court's directions by the Revenue authorities will be an important area to monitor. The court has directed the Revenue to amend Form No. 10AB to require a trust to specify its nature as revocable or irrevocable. Further, it has ordered that all past judgements denying registration or renewal be revisited and reconsidered within six weeks from the date of passing the order.

At last, this decision is a welcome decision which brought in much needed clarity on the irrevocability clause in the trust deed of the public charitable trusts functioning for the welfare of the public.

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This whitepaper presents a comprehensive analysis of whether the inclusion of an 'irrevocability' clause in the trust deed of a public charitable trust is mandatory for obtaining registration under Section 12AB of the Income-tax Act, 1961. It may be noted that nothing contained in this Whitepaper should be regarded as our opinion and facts of each case will need to be analyzed to ascertain thereof and appropriate professional advice should be sought for applicability of legal provisions based on specific facts. We are not responsible for any liability arising from any statements or errors contained in this Whitepaper.

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