1. Trust, 2. Society, 3. Non-profit Company

In India non profit / public charitable organizations can be registered as trusts, societies, or a private limited non profit company, under section-25 companies. Non-profit organizations in India (a) exist independently of the state; (b) are self-governed by a board of trustees or ‘managing committee’/ governing council, comprising individuals who generally serve in a fiduciary capacity; (c) produce benefits for others, generally outside the membership of the organization; and (d), are ‘non-profit-making’, in as much as they are prohibited from distributing a monetary residual to their own members.

Section 2(15) of the Income Tax Act – which is applicable uniformly throughout the Republic of India – defines ‘charitable purpose’ to include ‘relief of the poor, education, medical relief and the advancement of any other object of general public utility’. A purpose that relates exclusively to religious teaching or worship is not considered as charitable. Thus, in ascertaining whether a purpose is public or private, one has to see if the class to be benefited, or from which the beneficiaries are to be selected, constitute a substantial body of the public. A public charitable purpose has to benefit a sufficiently large section of the public as distinguished from specified individuals. Organizations which lack the public element – such as trusts for the benefit of workmen or employees of a company, however numerous – have not been held to be charitable. As long as the beneficiaries of the organization comprise an uncertain and fluctuating body of the public answering a particular description, the fact that the beneficiaries may belong to a certain religious faith, or a sect of persons of a certain religious persuasion, would not affect the organization’s ‘public’ character.

Whether a trust, society or section-25 company, the Income Tax Act gives all categories equal treatment, in terms of exempting their income and granting 80G certificates, whereby donors to non-profit organisations may claim a rebate against donations made. Foreign contributions to non-profits are governed by FC(R)A regulations and the Home Ministry.

CAF would like to clarify that this material provides only broad guidelines and it is recommended that legal and or financial experts be consulted before taking any important legal or financial decision or arriving at any conclusion.

Formation and Registration of a Non -Profit organisations in India

1) Trust
2) Society
3) Section-25 Company
Additional Licensing/ Registration

I. Trusts

A public charitable trust is usually floated when there is property involved, especially in terms of land and building.

Legislation : Different states in India have different Trusts Acts in force, which govern the trusts in the state; in the absence of a Trusts Act in any particular state or territory the general principles of the Indian Trusts Act 1882 are applied.

Main Instrument : The main instrument of any public charitable trust is the trust deed, wherein the aims and objects and mode of management (of the trust) should be enshrined. In every trust deed, the minimum and maximum number of trustees has to be specified. The trust deed should clearly spell out the aims and objects of the trust, how the trust should be managed, how other trustees may be appointed or removed, etc. The trust deed should be signed by both the settlor/s and trustee/s in the presence of two witnesses. The trust deed should be executed on non-judicial stamp paper, the value of which would depend on the valuation of the trust property.

Trustees : A trust needs a minimum of two trustees; there is no upper limit to the number of trustees. The Board of Management comprises the trustees.

Application for Registration :

The application for registration should be made to the official having jurisdiction over the region in which the trust is sought to be registered. After providing details (in the form) regarding designation by which the public trust shall be known, names of trustees, mode of succession, etc., the applicant has to affix a court fee stamp of Rs.2/- to the form and pay a very nominal registration fee which may range from Rs.3/- to Rs.25/-, depending on the value of the trust property. The application form should be signed by the applicant before the regional officer or superintendent of the regional office of the charity commissioner or a notary. The application form should be submitted, together with a copy of the trust deed. Two other documents which should be submitted at the time of making an application for registration are affidavit and consent letter.

II.Society

According to section 20 of the Societies Registration Act, 1860, the following societies can be registered under the Act: ‘charitable societies, military orphan funds or societies established at the several presidencies of India, societies established for the promotion of science, literature, or the fine arts, for instruction, the diffusion of useful knowledge, the diffusion of political education, the foundation or maintenance of libraries or reading rooms for general use among the members or open to the public, or public museums and galleries of paintings and other works of art, collection of natural history, mechanical and philosophical inventions, instruments or designs.’

Legislation : Societies are registered under the Societies Registration Act, 1860, which is a federal act. In certain states, which have a charity commissioner, the society must not only be registered under the Societies Registration Act, but also, additionally, under the

Bombay Public Trusts Act. Main Instrument : The main instrument of any society is the memorandum of association and rules and regulations (no stamp paper required), wherein the aims and objects and mode of management (of the society) should be enshrined.

Trustees : A Society needs a minimum of seven managing committee members; there is no upper limit to the number managing committee members. The Board of Management is in the form of a governing body or council or a managing or executive committee

Application for Registration : Registration can be done either at the state level (i.e., in the office of the Registrar of Societies) or at the district level (in the office of the District Magistrate or the local office of the Registrar of Societies).(2) The procedure varies from state to state. However generally the application should be submitted together with: (a) memorandum of association and rules and regulations; (b) consent letters of all the members of the managing committee; (c) authority letter duly signed by all the members of the managing committee; (d) an affidavit sworn by the president or secretary of the society on non-judicial stamp paper of Rs.20-/, together with a court fee stamp; and (e) a declaration by the members of the managing committee that the funds of the society will be used only for the purpose of furthering the aims and objects of the society. All the aforesaid documents which are required for the application for registration should be submitted in duplicate, together with the required registration fee. Unlike the trust deed, the memorandum of association and rules and regulations need not be executed on stamp paper.

III. Section-25 Company

According to section 25(1)(a) and (b) of the Indian Companies Act, 1956, a section-25 company can be established ‘for promoting commerce, art, science, religion, charity or any other useful object’, provided the profits, if any, or other income is applied for promoting only the objects of the company and no dividend is paid to its members.

Legislation : Section-25 companies are registered under section-25 of the Indian Companies Act. 1956.

Main Instrument : For a section-25 company, the main instrument is a Memorandum and articles of association (no stamp paper required)

Trustees : A section-25 Company needs a minimum of three trustees; there is no upper limit to the number of trustees. The Board of Management is in the form of a Board of directors or managing committee

Application for Registration :

1. An application has to be made for availability of name to the registrar of companies, which must be made in the prescribed form no. 1A, together with a fee of Rs.500/-. It is advisable to suggest a choice of three other names by which the company will be called, in case the first name which is proposed is not found acceptable by the registrar.

2. Once the availability of name is confirmed, an application should be made in writing to the regional director of the company law board. The application should be accompanied by the following documents: Three printed or typewritten copies of the memorandum and articles of association of the proposed company, duly signed by all the promoters with full name, address and occupation.

A declaration by an advocate or a chartered accountant that the memorandum and articles of association have been drawn up in conformity with the provisions of the Act and that all the requirements of the Act and the rules made thereunder have been duly complied with, in respect of registration or matters incidental or supplementary thereto.
Three copies of a list of the names, addresses and occupations of the promoters (and where a firm is a promoter, of each partner in the firm), as well as of the members of the proposed board of directors, together with the names of companies, associations and other institutions in which such promoters, partners and members of the proposed board of directors are directors or hold responsible positions, if any, with description of the positions so held. A statement showing in detail the assets (with the estimated values thereof) and the liabilities of the association, as on the date of the application or within seven days of that date. An estimate of the future annual income and expenditure of the proposed company, specifying the sources of the income and the objects of the expenditure.

A statement giving a brief description of the work, if any, already done by the association and of the work proposed to be done by it after registration, in pursuance of section-25.

A statement specifying briefly the grounds on which the application is made.
A declaration by each of the persons making the application that he/she is of sound mind, not an undischarged insolvent, not convicted by a court for any offence and does not stand disqualified under section 203 of the Companies Act 1956, for appointment as a director.

3. The applicants must also furnish to the registrar of companies (of the state in which the registered office of the proposed company is to be, or is situate) a copy of the application and each of the other documents that had been filed before the regional director of the company law board.

4. The applicants should also, within a week from the date of making the application to the regional director of the company law board, publish a notice in the prescribed manner at least once in a newspaper in a principal language of the district in which the registered office of the proposed company is to be situated or is situated and circulating in that district, and at least once in an English newspaper circulating in that district.

5.The regional director may, after considering the objections, if any, received within 30 days from the date of publication of the notice in the newspapers, and after consulting any authority, department or ministry, as he may, in his discretion, decide, determine whether the licence should or should not be granted.

6. The regional director may also direct the company to insert in its memorandum, or in its articles, or in both, such conditions of the licence as may be specified by him in this behalf.

IV. Special Licensing

In addition to registration, a non-profit engaged in certain activities might also require special license/permission. Some of these include (but are not limited to):

A place of work in a restricted area (like a tribal area or a border area requires a special permit – the Inner Line Permit – usually issues either by the Ministry of Home Affairs or by the relevant local authority (i.e., district magistrate).

To open an office and employ people, the NGO should be registered under the Shop and Establishment Act.

To employ foreign staff, an Indian non-profit needs to be registered as a trust/society/company, have FCRA registration and also obtain a No Objection Certificate. The intended employee also needs a work visa.

A foreign non-profit setting up an office in India and wanting staff from abroad needs to be registered as a trust/society/company, needs permission from the Reserve Bank of India and also a No Objection Certificate from the Ministry of External Affairs.

Comparison among Trust, Society and Non profit Company

	Trust	**Society**	**Section-25 Comapny**
Statute/Legislation	Relevant State Trust Act or Bombay Public Trusts Act, 1950	Societies Registration Act, 1860	Indian Companies Act, 1956
Jurisdiction	Deputy Registrar/Charity commissioner	Registrar of societies (charity commissioner in Maharashtra).	Registrar of companies
Registration	As trust	As Society In Maharashtra, both as a society and as a trust	As a company u/s 25 of the Indian Companies Act.
Registration Document	Trust deed	Memorandum of association and rules and regulations	Memorandum and articles of association. and regulations
Stamp Duty	Trust deed to be executed on non-judicial stamp paper, vary from state to state	No stamp paper required for memorandum of association and rules and regulations.	No stamp paper required for memorandum and articles of association.
Members Required	Minimum – two trustees. No upper limit.	Minimum – seven managing committee members. No upper limit.	Minimum three trustees. No upper limit.
Board of Management	Trustees / Board of Trustees	Governing body or	Board of directors/

		council/managing or executive committee	Managing committee
Mode of Succession on Board of Management	Appointment or Election	Appointment or Election by members of the general body	Election by members of the general

1. Trust

2. Society

3. Non profit Company

I. Summary

A. Types of Organizations:

1. Trusts

The public charitable trust is a possible form of not-for-profit entity in India. Typically, public charitable trusts can be established for a number of purposes, including the relief of poverty, education, medical relief, provision of facilities for recreation, and any other object of general public utility. Indian public trusts are generally irrevocable. No national law governs public charitable trusts in India, although many states (particularly Maharashtra, Gujarat, Rajasthan, and Madhya Pradesh) have Public Trusts Acts.

2. Societies

Societies are membership organizations that may be registered for charitable purposes. Societies are usually managed by a governing council or a managing committee. Societies are governed by the Societies Registration Act 1860, which has been adapted by various states. Unlike trusts, societies may be dissolved.

3. Sec. 25 Companies

A section 25 company is a company with limited liability that may be formed for "promoting commerce, art, science, religion, charity or any other useful object," provided that no profits, if any, or other income derived through promoting the company's objects may be distributed in any form to its members.

B. Tax Laws

India 's tax laws affecting NGOs are similar to the tax laws of other Commonwealth nations. These laws may have some impact on U.S. grant makers, and thus are summarized here. India provides for exemption from corporate income taxes of the income of certain NGOs carrying out specific types of activities, with unrelated business income being subject to tax under certain circumstances. India also subjects certain sales of goods and services to VAT, with a fairly broad range of exempt activities. The rates range from 4 percent to 12 percent, with most goods and services taxed at 8 percent.

The income tax law and the corporate tax law provide tax benefits for donors, and these may be relevant to an American corporation doing business in India in deciding whether to engage in direct corporate grant making in India. The existence of a double taxation treaty between India and the United States may also affect gift planning decisions of U.S. corporate grant makers doing business in India. Finally, not-for-profit organizations involved in relief work and in the distribution of relief supplies to the needy are 100% exempt from Indian customs duty on the import of items such as food, medicine, clothing and blankets. Other exemptions may also be available.

II. Applicable Laws

Constitution of India Articles 19(1)(c) and 30; Income Tax Act, 1961; Public Trusts Acts of various states; Societies Registration Act, 1860; Indian Companies Act, 1956, section 25; Foreign Contribution (Regulation) Act, 1976; Maharashtra Value Added

III. Relevant Legal Forms

The right of all citizens to form associations or unions is guaranteed by the Constitution of India, Article 19(1)(c).

There are three pertinent legal forms of not-for-profit entities under Indian law: trusts, societies, and section 25 companies (as well as cooperatives and trade unions, which, as mutual benefit organizations, are not discussed in this note). Many state and central government agencies have regulatory authority over these not-for-profit entities. For example, all not-for-profit organizations are required to file annual tax returns and audited account statements with various agencies. At the state level, these agencies include the Charity Commissioner (for trusts), the Registrar of Societies (referred to in some states by different titles, including the Registrar of Joint Stock Companies), and the Registrar of Companies (for section 25 companies). At the national or federal level, the regulatory bodies include the income tax department and Ministry of Home Affairs (only for not-for-profit organizations receiving foreign contributions).

1. Trusts

Public charitable trusts, as distinguished from private trusts, are designed to benefit members of an uncertain and fluctuating class. In determining whether a trust is public or private, the key question is whether the class to be benefited constitutes a substantial segment of the public. There is no central law governing public charitable trusts, although most states have "Public Trusts Acts." Typically, a public charitable trust must register with the office of the Charity Commissioner having jurisdiction over the trust (generally the Charity Commissioner of the state in which the trustees register the trust) in order to be eligible to apply for tax-exemption.

In general, trusts may register for one or more of the following purposes: Relief of Poverty or Distress; Education; Medical Relief; Provision for facilities for recreation or other leisure -time occupation (including assistance for such provision), if the facilities are provided in the interest of social welfare and public benefit; and The advancement of any other object of general public utility, excluding purposes which relate exclusively to religious teaching or worship.

At least two trustees are required to register a public charitable trust. In general, Indian citizens serve as trustees, although there is no prohibition against non-natural legal persons or foreigners serving in this capacity.

Legal title of the property of a public charitable trust vests in the trustees. Trustees of a public charitable trust may not, however, in any way use trust property or their position for their own interest or private advantage. Trustees may not enter into agreements in which they may have a personal interest that conflicts or may possibly conflict with the interests of the beneficiaries of the trust (whose interests the trustees are bound to protect). Trustees may not delegate any of their duties, functions or powers to a co-trustee or any other person, except that trustees may delegate ministerial acts. In essence, trustees may not delegate authority with respect to duties requiring the exercise of discretion.

Trustees of religious or charitable trusts are charged with discharging their duties with the degree of care that an ordinarily prudent person would exercise with respect to his personal property. This is a slight variant on the duty of care applicable in many U.S. jurisdictions, which requires directors and officers to act with the degree of diligence, care and skill that ordinarily prudent persons would exercise under similar circumstances in like positions (as opposed to in the management of their personal affairs). Public charitable trusts are highly regulated. For instance, in many states, the Charity Commissioner must approve purchases or sales of property by a trust in advance.

Indian public charitable trusts are generally irrevocable. If a trust becomes inactive due to the negligence of its trustees, the Charity Commissioner may take steps to revive the trust. Furthermore, if it becomes too difficult to carry out the objects of a trust, the doctrine of cy pres, meaning "as near as possible," may be applied to change the objects of the trust. Thus, it appears that grantors can feel fairly secure that the charitable nature of a trust will be honored, even if the original, specific purposes of the trust cannot be carried out.

2. Societies

Societies are governed by the Societies Registration Act 1860, which is an all-India Act. Many states, however, have variants on the Act. Societies are similar in character to trusts, although there a few essential differences. While only two individuals are required to form a trust, a minimum of seven individuals is required to form a society. The applicants must register the society with the state Registrar of Societies having jurisdiction in order to be eligible to apply for tax-exempt status. A registration application includes the society's memorandum of association and rules and regulations.

In general, Indian citizens serve as members of the managing committee or governing council of societies, although there is no prohibition in the Societies Registration Act against non-natural legal persons or foreigners serving in this capacity.

According to section 20 of the Act, the types of societies that may be registered under the Act include, but are not limited to, the following: Charitable societies; Societies established for the promotion of science, literature, or the fine arts, For education; and Public art museums and galleries, and certain other types of museums.

The governance of societies also differs from that of trusts; a governing council usually manages societies or managing committee, whereas their trustees govern trusts. Individuals or institutions or both may be members of a society. The general body of members delegates the management of day-to-day affairs to the managing committee, which is usually elected by the membership. Members of the general body of the society have voting rights and can demand the submission of accounts and the annual report of the society for inspection. Members of the managing committee may hold office for such period of time as may be specified under the bylaws of the society. Societies, unlike trusts, must file annually, with the Register of Societies, a list of the names, addresses and occupations of their managing committee members. Furthermore, in a society, all property is held in the name of the society, whereas all of the property of a trust legally vests in the trustees.

Unlike trusts, societies may be dissolved. Dissolution must be approved by at least three-fifths of the society's members. Upon dissolution, and after settlement of all debts and liabilities, the funds and property of the society may not be distributed among the members of the society. Rather, the remaining funds and property must be given or transferred to some other society, preferably one with similar objects as the dissolved entity.

3. Companies

The Indian Companies Act, 1956, which principally governs for-profit entities, permits certain companies to obtain not-for-profit status as "section 25 companies." A section 25 company may be formed for "promoting commerce, art, science, religion, charity or any other useful object." A section 25 company must apply its profits, if any, or other income to the promotion of its objects, and may not pay a dividend to its members. At least three individuals are required to form a section 25 company. The founders or promoters of a section 25 company must submit application materials to the Regional Director of the Company Law Board. The application must include copies of the memorandum and articles of association of the proposed company, as well as a number of other documents, including a statement of assets and a brief description of the work proposed to be done upon registration.

The internal governance of a section 25 company is similar to that of a society. It generally has members and is governed by directors or a managing committee or a governing council elected by its members. Like a society (but unlike a trust), a section 25 company may be dissolved. Upon dissolution and after settlement of all debts and liabilities, the funds and property of the company may not be distributed among the members of the company. Rather, the remaining funds and property must be given or transferred to some other section 25 company, preferably one having similar objects as the dissolved entity.

Public Benefit Status

To be eligible for tax-exemption under the Income Tax Act, 1961, a not-for-profit entity must be organized for religious or charitable purposes. Charitable purposes include "relief of the poor, education, medical relief and the advancement of any other object of general public utility." Public charitable trusts, by definition, must be created for the benefit of the public. Societies likewise may be registered for charitable purposes. Section 25 companies are formed for the limited purposes of "promoting commerce, art, science, religion, charity or any other useful object."

IV. Specific Questions Regarding Local Law

The following discussion addresses the extent to which Indian not-for-profit entities satisfy the requirements for a charitable equivalency determination under section 501(c)(3) of the U.S. Internal Revenue Code of 1986, as amended (hereinafter the "Code"). The discussion is limited to the minimum requirements under Indian law; the governing documents of charitable entities may of course choose to include further provisions, which may satisfy the requirements of an equivalency determination. U.S. private foundation donors should, therefore, also review a potential grantee's governing documents for provisions relevant to an equivalency determination.

A. Inurement

Public charitable trusts must benefit a large class of beneficiaries and must be for the public benefit. Moreover, trustees of public charitable trusts may not engage in self-dealing. Despite the clear charitable intent of a public charitable trust, absent a provision in the trust deed specifically prohibiting private inurement, it is unclear whether public charitable trusts satisfy the prohibition on private inurement in Code section 501(c)(3).

The Societies Registration Act 1860 does not prohibit the increment of any earnings of the society to any private shareholder or individual.

The Indian Companies Act, 1956, section 25 specifically provides that no profits, if any, or other income may be distributed by way of dividends to its members.

B. Proprietary Interest

Whether an individual may have a proprietary interest in a not-for-profit entity relates to the issue of increment. Trustees of a public charitable trust hold trust assets on behalf of the trust. Thus, although trustees have legal title to the trust's assets, they hold these assets for the beneficiaries of the trust, not for themselves. Members of the managing committee or governing council of a society or section 25 company hold the assets of a society or section 25 company.

C. Dissolution

Indian public charitable trusts are generally irrevocable. If a trust becomes inactive due to the negligence of its trustees, the Charity Commissioner may take steps to revive the trust. Furthermore, if it becomes too difficult to carry out the objects of a trust, the doctrine of cy pres, meaning "as near as possible," may be applied to change the objects of the trust. Thus, it appears donors could feel fairly secure in the event the trust can no longer accomplish its initial purposes; the trust's purposes would be changed to another similar public charitable purpose, or in the unlikely event of a distribution or winding up of a trust due to changed circumstances, the trust assets would be used for similar charitable purposes.

Unlike trusts, societies and section 25 companies may be dissolved. Upon dissolution and after settlement of all debts and liabilities, the funds and property of the society or company may not be distributed among the members. Instead, the remaining funds and property must be given or transferred to some other society or section 25 company, preferably one with similar objects.

D. Activities

Economic Activities

There are no restrictions on Indian NPOs' business/commercial/economic activities. However, the profits must be applied fully towards charitable objects. If this is not done, then the NPO will lose its income tax exemption and its income will be liable to tax at the maximum marginal rate (35.1%). Further the NPO must maintain separate books of account for the business/commercial/economic activities. [Income Tax Act, 1961 (seventh proviso to section 10(23C); section 11, subsection 4 and 4A)].

Investment Activities

State and national laws limit the types of investments Indian not-for-profit organizations may make. For example, Indian not-for-profit organizations may not invest in shares of public or private limited companies. Furthermore, not-for-profit organizations registered in India may not invest abroad.

E. Political Activities

Not-for-profit organizations in India may not engage in political campaign activities or legislative activities. Indian not-for-profit entities may "lobby" for non-political causes, however, provided that such activity promotes the "general public utility" and is incidental to the attainment of the charity's objects.

F. Discrimination

Article 30 of the Constitution of India gives all "minorities," whether based on religion or language, the right to establish and administer educational institutions of their choice. "Minority" is defined as those groups that wish to preserve stable ethnic, religious or linguistic traditions or characteristics markedly different from those of the rest of the population. Accordingly, special inquiry should be made when donors are considering providing grants to educational institutions.

G. Control of Organization

With regard to charities in general, trustees are expected to be independent. It is, however, ordinarily possible for another legal person to influence the selection of directors, officers, or trustees – for example, by making a donation contingent on the donor's right to appoint a member of the board. A for-profit company that creates a public charitable trust can exert more direct control. The for-profit company could, in the process of founding the public charitable trust, reserve the authority to appoint and remove trustees and to influence major policy decisions. This is typical of a form of public charitable trust known as a "corporate foundation," which is essentially controlled by its for-profit founder, or "settler."

In the case of a Section 25 company or a society, members always have the right to remove directors and thus to influence policy. These members can include for-profit entities. Therefore, it is possible that an Indian charity may be controlled, perhaps indirectly, by a for-profit entity (which will lead to additional IRS scrutiny) or by an American grantor charity (which requires that the charity specifically so provide in the affidavit).

V. Tax Laws

A. Tax Exemptions

1. General Scheme

The Income Tax Act, 1961, which is a national all-India Act, governs tax exemption of not-for-profit entities. Organizations may qualify for tax-exempt status if the following conditions are met: The organization must be organized for religious or charitable purposes; The organization must spend 85% of its income in any financial year (April 1st to March 31st) on the objects of the organization. The organization has until 12 months following the end of the financial year to comply with this requirement. Surplus income may be accumulated for specific projects for a period ranging from 1 to 5 years; The funds of the organization must be deposited as specified in section 11(5) of the Income Tax Act; No part of the income or property of the organization may be used or applied directly or indirectly for the benefit of the founder, trustee, relative of the founder or trustee or a person who has contributed in excess of Rs. 50,000 to the organization in a financial year; The organization must timely file its annual income return; and The income must be applied or accumulated in India. However, trust income may be applied outside India to promote international causes in which India has an interest, without being subject to income tax.

2. Corpus Donations

Corpus donations or donations to endowment are capital contributions and should not be included to compute the total income of the organization.

3. Business Income

Under amendments to Section 11(4A) of the Income Tax Act 1961, a not-for-profit organization is not taxed on income from a business that it operates that is incidental to the attainment of the objects of the not-for-profit organization, provided the entity maintains separate books and accounts with respect to the business. Furthermore, certain activities resulting in profit, such as renting out auditoriums, are not treated as income from a business.

4. Disqualification from Exemption

The following groups are ineligible for tax exemption: all private religious trusts; and charitable trusts or organizations created after April 1, 1962, and established for the benefit of any particular religious community or caste. But note that a trust or organization established for the benefit of "Scheduled Castes, backward classes, Scheduled Tribes or women and children" is an exception; such a trust or organization is not disqualified, and its income is exempt from taxation.

B. Value Added Tax

India subjects certain sales of goods and services to VAT, with a fairly broad range of exempt activities. The rates range from 4 percent to 12 percent, with most goods and services taxed at 8 percent. An entity (including a public charitable trust) is liable under the VAT Act if its sales/purchase turnover in the previous year exceeded Rs.500,000. The threshold is lower, Rs.100,000, for importers. Several other tax laws have now merged into VAT, including Sales Tax Act, Motor Spirit Taxation Act, Purchase Tax on Sugarcane Act, and Transfer of Right to Use Act.

C. Tax Deduction for Donors

The Income Tax Act, section 80G, sets forth the types of donations that are tax-deductible. The Act permits donors to deduct contributions to trusts, societies and section 25 companies. Many institutions listed under 80G are government-related; donors are entitled to a 100% deduction for donations to some of these government funds. Donors are generally entitled to a 50% deduction for donations to non-governmental charities. Total deductions taken may not exceed 10% of the donor's total gross income.

The following are examples of governmental charities listed in section 80G, contributions to which entitle the donor to a 100% deduction: the Prime Minister's National Relief Fund; the Prime Minister's Armenia Earthquake Relief Fund; the Africa (Public Contributions – India) Fund; and the National Foundation for Communal Harmony.

As to those entities not specifically enumerated in section 80G, donors may deduct 50% of their contributions to such organizations, provided the following conditions are met: the institution or fund was created for charitable purposes in India; the institution or fund is tax-exempt; the institution's governing documents do not permit the use of income or assets for any purpose other than a charitable purpose; the institution or fund is not expressed to be for the benefit of any particular religious community or caste; and the institution or fund maintains regular accounts of its receipts and expenditure. Note that donations to institutions or funds "for the benefit of any particular religious community or caste" are not tax-deductible. A not-for-profit organization created exclusively for the benefit of a particular religious community or caste may, however, create a separate fund for the benefit of "Scheduled castes, backward classes, Scheduled Tribes or women and children." Donations to these funds may qualify for deduction under section 80G, even though the organization, as a whole, may be for the exclusive benefit of only a particular religious community or caste. The organization must maintain a separate account of the monies received and disbursed through such a fund. In-kind donations are not tax-deductible under Section 80G. Receipts issued to donors by not-for-profit organizations must bear the number and date of the 80G certificate and indicate the period for which the certificate is valid.

The Income Tax Act contains a number of other provisions permitting donors to deduct contributions. Under section 35AC of the Act, donors may deduct 100% of contributions to various projects, including 1) construction and maintenance of drinking water projects in rural areas and in urban slums; 2) construction of dwelling units for the economically disadvantaged; and 3) construction of school buildings, primarily for economically disadvantaged children. Furthermore, under section 35CCA of the Act, donors may deduct 100% of their contributions to associations and institutions carrying out rural development programs and, under Section 35CCB of the Act, 100% of their donations to associations and institutions carrying out programs of conservation of natural resources. A weighted deduction of 125% is also allowed for contributions to organizations approved under section 35(1)(ii) (a scientific research institute or a university, college or other institution) specifically for "scientific research," and for contributions made under section 35(1)(iii) specifically for "research in social science or statistical research."

D. Reporting Foreign Contributions Under the Foreign Contribution (Regulation) Act, 1976 (FCRA), all not-for-profit organizations in India (e.g., public charitable trusts, societies and section 25 companies) wishing to accept foreign contributions must a) register with the Central Government; and b) agree to accept contributions through designated banks. Furthermore, not-for-profit entities must report to the Central Government regarding foreign contributions received, within 30 days of their receipt, and must file annual reports with the Home Ministry. The entity must report the amount of the foreign contribution, its source, the manner in which it was received, the purpose for which it was intended, and the manner in which it was used. Foreign contributions include currency, securities, and articles, except personal gifts under Rs. 1,000 (approximately $20). Funds collected by an Indian citizen in a foreign country on behalf of a not-for-profit entity registered in India are considered foreign contributions. Moreover, funds received in India, in Indian currency, if from a foreign source, are considered foreign contributions.

According to FC(R)A guidelines if 50% or more of the "office bearers" (not members of the board of management) of a trust/society or section 25 Company change, the organization must apply to the Home Ministry for approving the change. This approval could take as long as three to four months. However, in the interim period, the FC(R) A registration granted to the organization would stand "suspended".

FC(R)A guidelines require that an organization allowed to receive funds from a foreign source, may provide funds from its FC(R)A account to another organization, only if the other organization also has clearance from the Home Ministry to receive funds from a foreign source. If the foreign donor agency specifies in writing that the whole or part of the grant may be taken to "corpus", the recipient organization may do so. Such corpus fund may be invested in an approved security. The "interest" or "dividend" generated should be accounted for as amount received by way of interest on deposit drawn out of funds received from a foreign source. In other words, even the interest/dividend received in India in Indian rupees must be disclosed in the Return Form FC-3.

E. Customs Duty

Not-for-profit organizations involved in relief work and in the distribution of relief supplies to the needy are 100% exempt from customs duty on the import of items such as food, medicine, clothing and blankets. Moreover, other exemptions may be available, such as an exemption from customs duty for scientific/technical equipment and components intended for research institutes. Donors should investigate whether an exemption from customs duty is available before shipping articles to not-for-profit entities in India.

F. Double Tax Treaty

India and the United States signed a double-tax treaty on September 12, 1989. The treaty does not address issues related to charitable giving or not-for-profit entities.