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Sell, Reinvest, or Pay: Capital Gains Rules for Trusts

How Section 11(1A) treats the sale of a capital asset by a charitable or religious trust, covering:

a. Why the yardstick is net consideration, not the capital gain;

b. The Form 9A rollover to the next financial year; and

c. The 30% penal rate under Sec. 115BBI and the corpus myth

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The Section 11(1A) Framework: Reinvest the Whole Consideration

When a charitable or religious trust registered under the Income-tax Act, 1961 sells a capital asset, the taxation of the resulting gain is governed by the special provisions of Section 11(1A), which override the general computational provisions of Chapter IV-E (Capital Gains). A common misconception is that reinvesting the **capital gain** alone secures full exemption. The statutory yardstick is, in fact, the **net consideration** — the total sale proceeds less expenses incurred wholly and exclusively in connection with the transfer.

Full Exemption — Sec. 11(1A)(a)(i)

► The **entire net consideration** is utilised to acquire a new capital asset.

► The whole of the capital gain is deemed to have been applied to charitable purposes — no tax arises.

► A fixed deposit with a scheduled bank for a period exceeding 6 months qualifies as a new capital asset (CBDT Instruction No. 883).

Partial Exemption — Sec. 11(1A)(a)(ii)

► Only **part** of the net consideration is reinvested — the exemption is restricted proportionately.

► The unapplied portion of the gain falls into the trust's general current-year income basket.

► That portion must then meet the regular 85% application test under Sec. 11(1)(a) to escape tax.

Note: Even a fixed deposit placed with a scheduled bank is treated as an investment in a new capital asset for this exemption.

Missed the Year of Sale? The Form 9A Rollover

Section 11(1A) does not itself provide an extended timeline. The rollover is achieved by exercising the option under Clause (b) of Explanation 1 to Section 11(1):

► **Declare deemed application** — where the net consideration could not be reinvested in the year of sale (for instance, a transfer late in the financial year), the trust may declare the unutilised amount as "deemed application" by filing Form No. 9A electronically.

► **Watch the deadline** — Form 9A must be filed at least two months prior to the due date for furnishing the return of income under Section 139(1).

► **Complete the purchase in time** — the new capital asset must be acquired within the immediately subsequent financial year; otherwise the protective cover of the deemed application is permanently lost.

► **Year of taxability** — under Section 11(1B), the unutilised gain does not revert to the year of sale; it is deemed to be the taxable income of the subsequent financial year, when the investment window closed.

The Cost of Failure: Sec. 115BBI and the Corpus Myth

The Finance Act, 2022 introduced Section 115BBI (effective from Assessment Year 2023-24), a stringent, non-obstante regime for trust non-compliance. Any unutilised income arising from a failed Form 9A rollover (Sec. 11(1B)) or a regular application deficit (Sec. 11(1)(a)) is statutorily defined as **"Specified Income"**.

Sec. 115BBI(1)(a) — Specified Income is taxed at a mandatory, flat rate of 30% (plus surcharge and cess).

Per Sec. 115BBI(2), no deductions, exemptions or set-offs of deficits/losses are permitted against this amount — the concessional long-term capital gains rates are entirely inaccessible.

The 15% Accumulation Is Not Corpus

► Section 11(1)(a) permits a trust to accumulate up to 15% of its total income for future application, without time limits or paperwork.

► However, under Section 11(1)(d), an amount enters the "Corpus" only when received as a voluntary contribution with a specific written direction from the donor.

► Internal accumulations or unspent capital gains cannot be unilaterally capitalised by the trustees as corpus; the 15% balance remains regular, unencumbered trust funds that must eventually be applied to charitable objectives.

The Position at a Glance

Scenario	Tax outcome
Entire net consideration reinvested in the year of sale	Full exemption — entire gain deemed applied
Only the capital gain (part of consideration) reinvested	Proportionate exemption; balance falls to the 85% application test
Form 9A filed; asset acquired within the next financial year	Exemption preserved through deemed application
Form 9A filed; investment window missed	Taxable in the subsequent year (Sec. 11(1B)) at 30% flat under Sec. 115BBI

The takeaway. Plan the reinvestment around the full net consideration, calendar the Form 9A deadline, and complete the acquisition within the extended window. Once Section 115BBI is triggered, the flat 30% rate applies with no deductions — and the 15% accumulation offers no refuge as corpus.

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