



**MODULE-4**

# **LEGAL COMPLAINECE OF NPOs SECTOR**

**CERTIFICATE COURSE IN  
FINANCIAL MANAGEMENT  
AND ACCOUNTABILITY**

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# CHAPTER-1

## Incorporation Law

### Forms of incorporation

In order to incorporate a Not-for-profit organization (or NPOs) in India, there are three forms of incorporation which are as follows



Each form of incorporation has different and salient features with respect to ease of formation, registered authority and post-incorporation compliances, which have been mentioned in the subsequent paragraphs

#### 1.1 NGOs as a Trust

Under Indian Laws, various kinds of public and private trusts can be formed. A public trust is one that is formed for benefit of public at large and undertakes religious and charitable activities.

It should be noted that while forming a Trust, the Trust deed is registered and not the trust. There is no specific act under which a Public Trust is to be registered, except in the State of Gujarat and Maharashtra wherein the Trust are registered under Bombay Public Trust Act.

All the trust formed in other states are registered with the Sub-registrar and hence, technically registered under the Indian Registration Act, 1908.

## Five elements of a Trust

A trust consists of five elements and absence of one or more of these elements will invalidate the constitution of the trust. These elements are:

- There must be an author or settlor of the trust
- There must be a trustee.
- There must be a beneficiary or beneficiaries.
- There must be clearly delineated trust property (or any amount of funds, which can be referred as 'property')
- The objects of the trust must be specific

The author or the settlor refers to the person who sets aside certain property for the benefit of the beneficiaries. The trustees are the persons who manage this property for the benefit of the beneficiaries as per the trust deed. The author himself may or may not become a trustee.

Normally, certain funds are settled in the trust deed for the benefit and purposes as mentioned in the trust deed.

## 1.2 NGOs as a Society

A Society needs to be registered with a minimum of 7 members. There are 2 kinds of legislation under which a society can be registered.

Central Legislation i.e. Societies registration Act, 1860:

**State specific Societies legislation:** There are various states which have a separate societies legislation. Hence, a society in state of Karnataka can register itself under Karnataka societies Act, 1960.

## **Governing Structure**

The Governance of the Society is done by two Bodies in the form of General Body and the Governing Board (commonly known as the Board). Ideally, the governing board is selected from the members of the General Body.

### **Statutory submissions to Registrar of Societies**

- As per Section 04 of the Societies Registration Act, 1860, the organizations need to file the List of Board members and Annual Audited Statements to the Registrar of Societies. Similarly, each State-specific registrar have different requirements with regard to statutory submissions.

### **1.3 NGO as Section 8 Company**

#### **Incorporation under Companies Act, 2013**

The third form of incorporation is a Section 8 Company which needs to be registered under the Companies Act, 2013.

A person or an association of persons can make an application to the Registrar of Companies to form a company with charitable objectives under Section 8 of Companies Act.

# CHAPTER-2

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## Registration, Operational Aspects and Compliances under Income tax

### 2.1. Registration and Renewal under 12A and 80G

#### 2.1.1. Need for 12A

An organization registered under 12A undertaking charitable or religious activities can claim for tax exemption after getting itself registered with income tax under section 12A of the Income Tax Act. The registration under section 12A is necessary to claim exemption under Income Tax Act.

#### 2.1.2. Need for 80G

Also, the Income Tax Act has certain provisions which offer tax benefits to the "donors". All NGO's should avail the advantage of these provisions to attract potential donors and section 80G is one of such sections.

If an NGO gets itself registered under section 80G then the person or the organization making a donation to the NGO will get a deduction of 50% from his/its taxable income. However, such benefit is available only up to a ceiling limit of 10% of the Gross Total Income of the Individual/ Institutional donor for that particular year.

*It is important to note that when registration is granted under section 12A, it does not mean that section 80G approval is to be given i.e. registration under section 12AB will not provide automatic approval under section 80G. Section 80G applies only to charitable trusts or institution. It does not apply to religious trust or institution*

### **2.1.3. Registration and Renewal under 12A and 80G**

The new procedure and amendment stated that the registration under 12A would be valid for a period of 5 years, whereas it was permanent in nature earlier. On the basis of the new amendments, we can classify the registration into following below mentioned categories:

- A. New Registration under 12AB (Provisional Registration)
- B. Renewal of existing registration

#### **New Registration under 12AB (Provisional Registration)**

An application for fresh registration under section 12A needs to be submitted electronically in form 10A, as per provisions of section 12AB.

A provisional registration for 3 years will be given to organisations. The registration once granted shall be valid for three years from the Assessment Year from which the registration is sought.

Application for renewal of such new registration needs to be submitted as the following timelines

- at least six months prior to the expiry of validity period or
- within 6 months from commencement of activities,  
whichever is earlier.

The registration so renewed shall be valid only for 5 years and needs to be renewed at the end of each 5 years in form 10AB.

**Important Note:** In cases of new registration, application for provisional registration shall be submitted, at least one month prior to the commencement of the previous year relevant to the assessment year for which registration is sought, meaning thereby new NGO will not be entitled to have the benefit of registration of section 12AB in the first year of operation.

## **Renewal of existing registration**

All the existing NGOs that are registered under 12A are required to apply for renewal of the registration on or before 31st August, 2021 electronically in form no. 10A at the Income Tax portal. Once granted, the Registration shall be valid for a period of 5 years. Therefore, the organization would have to apply for renewal after every 5 years. However, the application for the renewal of registration (after five years) needs to be submitted at least six months prior to the expiry of validity period.

### **2.1.4. Applicable Forms & Timelines**

There are common forms and timelines for applying under 12A and 80G which have been provided as follows

| <b>Category</b>   | <b>Forms</b> | <b>Timeline to make application</b>  |
|---|--------------|--|
| Trusts already approved/registered and their approval/registration is continuing as on 01-04-2021 | 10A          | On or before 31-08-2021  |
| Trusts making application for provisional registration/approval                                   | 10A          | 1 month before the commencement of the Assessment year from which the registration is sought                   |
| Conversion of provisional registration into regular registration                                  | 10AB         | At least 6 months before the expiry or within 6 months of commencement of its activities, whichever is earlier |
| Renewal of registration/approval after five year said registration period                         | 10AB         | At least 6 months prior to expiry of the said registration period  |

### **2.1.5. What if the application is not made within the prescribed time limits?**

The Act has prescribed certain time limits for the application of applying for provisional registration, renewal and revalidation of existing registration. In case, the organization fails to apply with

the said time limits, it would be considered as if the organization has ceased to be registered under the said section. In other words, the application-based tax exemption provided under section 11 and 12 would not be available for the said organization.

*Note: The registration and renewal process of 80G is same as mentioned in 12A as per the above mentioned provisions.*

## **2.2. Operational aspects and Conditions under 12A**

### **2.2.1. Charitable Purpose**

One of the basic conditions of the 12A exemption is that the application of income should be towards religious and charitable purposes. The term charitable purpose has been defined under Section 2(15) of the Act. Any other activity which is not covered by the said section shall not be treated as charitable activity or purpose and hence, no exemption will be granted for the income applied towards activities which do not fall under Section 2(15).

The expression “charitable purpose” has been defined under Section 2(15) of the Act to include:

- (a) Relief of the poor,
- (b) Education,
- (c) Medical relief,
- (d) Preservation of environment (including water sheds, forests and wild life)
- (e) Preservation of monuments or places or objects of artistic or historic interest
- (f) Yoga and
- (g) Advancement of any other object of public utility

*It should be noted that the charitable institutions are allowed to carry out business activities without any ceiling limit in case, the overall objective of the organization falls under the first 6 limbs {Section 2 (15)(a) to (f)} of Charitable purposes. However, in case of “advancement of any*

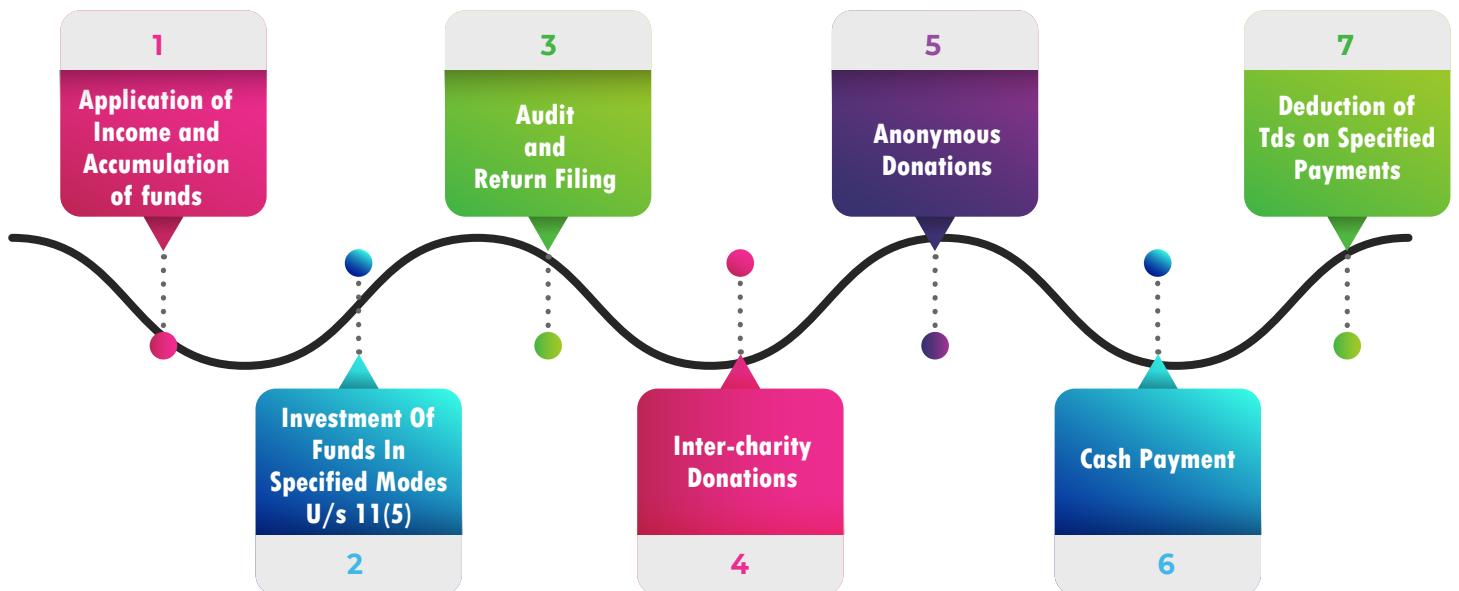
*other object of general public utility” the receipts from business activities shall not exceed 20% of the total Income of the institution. In case, such activities exceed 20 % of the total Income of the organization, the organization stands the risk of losing its 12A exemption.*

### **Conditions for undertaking commercial activity**

- The business or commercial activity should be incidental to the attainment of the objectives of the entity.
- Separate books of account should be maintained in respect of such business. The amount of receipts from such business should be separately disclosed in Income Tax Return (in case of advancement of general public utility).

#### **2.2.2. Condition for Claiming Exemption U/s 11**

The organization may obtain registration under section 12A of the Act. However, there are certain conditions attached to the tax exemption which needs to be complied by the exempted organizations. The seven conditions related to 12A Registration have been provided below:



Now, we would study each of the conditions in below paragraphs.

## I. Application of Income & Accumulation of Funds

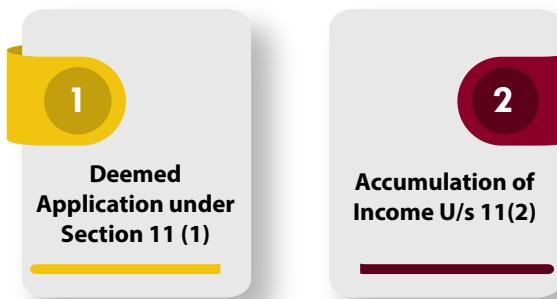
### Application of Income

One of the basic conditions to avail benefits u/s 11 and 12 is that an institution or trust is required to apply **at least 85% of its income received in a financial year** for charitable or religious purposes in India. While computing 85% of the income, repayment of loan and purchase of capital assets are also treated as an application of income, provided they be for charitable purposes. However, any **voluntary contributions towards the corpus of the organization would be excluded** for the purposes of calculating the application of income.

In other words, 15% of income can be retained by a charitable organization without applying it for charitable purposes in the year in which the income is received. This 15% accumulation is an indefinite accumulation for the organization.

### What if 85 % is not spent?

As per the provisions of income tax act, if an organization registered under 12A fails to apply 85% of the income for charitable purposes, then the organization is required to accumulate or set apart such income for future application. There are 2 options available to the organization for such accumulation:

- 
- 1 Deemed Application under Section 11(1)
  - 2 Accumulation of Income U/s 11(2)

### Deemed application under section 11(1)

In the said section, the organization has to apply such shortfall of the application of income in the next financial year. However, the following condition are to applied

- Such organization furnishes electronically Form No. 9A – notice of application of income organization electronically to assessing officer, on or before the due date for filing the return of income.
- Mention the purpose for which income is being accumulated or set aside.

### **Accumulation of Income U/s 11(2)**

In the other option, the income so accumulated will not be included in the total income of the institution if the following conditions are applied:

- Such trust or institution furnishes Form No. 10 – notice of accumulation of income by charitable trust or institution electronically to assessing officer, on or before the due date for filing the return of income.
- Mention the purpose for which income is being accumulated or set aside.
- Income shall not be accumulated for more than 5 years
- Money so accumulated or set aside is invested or deposited in specified mode as mentioned under section 11(5).

#### **Illustration**

*For instance, the total income of an organization is Rs. 5, 00,000 and it applies Rs. 1,00,000 only for charitable purposes during the year, Rs. 4,00,000 remains unutilized subject to accumulation. In this case, the Assesse would be required to accumulate only Rs. 3,25, 000 under section 11(2). The application under section 11(1) would be Rs. 175,000 [Rs. 100, 000 actually applied + Rs. 75, 000 (15% of Rs. 5,00,000)].*

## **II. Investment of income under Section 11(5)**

Section 11(5) of the Act provides the forms and modes of investing or depositing the income accumulated or set aside under section 11(2). In other words, an organization registered under 12A can invest in the modes prescribed in section 11(5) of the Act. Some of the modes of investments under the said section have been mentioned in the Annexure 1.

### **III. Audit and Return filing**

The next condition is with regard to audit and return filing for availing the exemption available under the Act:

- a) Audit by qualified chartered accountant.
- b) Return filing within the prescribed time limits

It means audit by a Chartered Accountant is a pre-requisite for claiming exemption under section 11 and 12, where the total income of the trust exceeds Rs 2, 50,000 in any previous year.

Also, the Income Tax returns should be filed within the prescribed time limits for availing the exemption of a particular financial year. In other words, if the income tax returns are not filed within the prescribed time limits, then the benefit of exemption u/s 11 and 12 should not be available in the hands of the organization.

Further, as per a CBDT circular, it has been clarified that the benefit of exemption u/s 11 and 12 shall be available in case, the organization files the Income Tax return within the time limits prescribed for belated returns.

For instance, the last date of filing for the financial year 2019-20 is 31st October, 2020. In case, organization fails to file ITR before 31st, October, 2020, it can still file the returns till 31st December, 2020 for availing exemption u/s 11 and 12. However, the penalty for late filing of returns would still be applicable in filing of belated returns.

### **IV. Inter Charity Donation**

While calculating the application of income, a donation made by one charitable organization to another shall be considered as application of income for the objectives of the organization provided the recipient organization also has objects similar to the object of donor organization.

However, there are 3 conditions attached for the valid application of income as per the Act:

**Donation out of current income:** Inter-Charity donations are made out of current year's income are considered as application of funds under the provisions of the act. In other words, the donation should be made out of current year's income and should not be made out of accumulated funds u/s 11 (2), which is also explained in the next paragraph.

**Donation out of accumulated fund:** If an organization makes donation from funds accumulated under section 11(2), then it would not be considered as application of the income. In other words, the amount so donated shall not be considered as application of Income for donor organization.

However, as an exception, inter-charity donation out of accumulated funds will be permissible only in case of dissolution of a Charitable Organization.

**Donation to Corpus Fund:** Any amount donated with specific direction that it shall form part of the corpus, to any trust or institution registered under section 12A will not be treated as application of income. *In other words, any inter-charity donations cannot be made to the corpus of the recipient organization. If such donations are made, it would not be considered as application of income for the donor organization.*

In the light of above provisions, we can conclude the following:

- Inter-organizational donations out of current year's income is allowed, and considered as application of the income;
- Donations out of the funds accumulated under section 11(2) is not at all valid except in case of dissolution of charitable organization;
- Inter-Charity donation as corpus to other organization cannot be treated as application of income.

## **V. Anonymous Donations- Definition and Treatment**

"Anonymous donation" means any voluntary contribution, where a person receiving such contribution does not maintain a record of the identity indicating the name and address of the person making such contribution and such other particulars as may be prescribed.

Anonymous donations are taxable for trust or institutions at the rate of 30%. However, it is permissible to receive anonymous donation up to

- Rs. 1, 00,000 or
- 5% of total donations received,

**whichever is higher.**

**Exception:** The donations received by any trust or institution created or established '**wholly or partly for religious purposes**'; shall not be liable for taxability on anonymous donations.

## **VI. Cash Payments and Donations**

Where an organization incurs any expenditure in respect of which a payment or aggregate of payments made to a person in a day, in cash (or bearer cheque or any other mode apart from the banking channel) exceeds Rs. 10,000, then such expenditure shall not be considered as application of Income [40A (3)].

However, the above provision shall not be applicable in case where there is restrictions in regard to the nature and extent of banking facilities available, considerations of business expediency and other relevant factors.

Earlier, this section was not applicable for trusts. However, an amendment under Finance act 2018 has made it applicable for trusts also. Thus, payment exceeding Rs. 10,000 in cash in a day with respect to particular expenditure will not be considered as the application of income.

## **Limit to cash donations**

Any cash donation in excess of Rs 2000 shall be made in any mode other than cash. In other words, any donations above Rs 2,000 should be received through proper banking channel in order to be eligible for 80G exemption to the donor.

## **VII. Deduction of TDS on specified payments**

The Act provides that failure to deduct Tax (TDS) from payment of specified nature or failure to deposit TDS on or before the due date of filing of ITR, would attract disallowance 30% of such payments in the hands of the payer. In other words, if an organization fails to deduct TDS on certain specified payments, then 30% of such expenditure shall not be considered as application of Income in the hands of the defaulting organization.

The details of certain specified payments and the related TDS compliances have been mentioned in the later part of the study material.

### **2.2.3. Cancellation of 12A Exemption**

Section 13 of the Act specifies the circumstances under which the registration under section 12A would be cancelled by the statutory authorities. Section 13 has been enacted as an exception to section 11, thereby, the 12A registration benefits will not be available under the circumstances stated in section 13.

### **Grounds for cancellation of 12A registration**

An organization, under the following circumstances, may risk losing its exemptions under section 11:

- If the income is not applied for the benefit of the public [section 13(1)(a)].
- If the income is applied for the benefit of any particular religious community or caste [section 13(1)(b)].

- If the income or property of the trust or institution is applied/used for the benefit of the persons specified in section 13(3) who may be the founders, trustee, manager, chief functionary, major donors, relatives of the founders or persons who have a substantial interest in the organization [explained in later part of the study material].
- If the funds are applied in modes other than those specified in section 11(5) or shares of companies other than a government company are held [Explained in page no. 12 of the study material].
- Violation of Any other laws (as amended in Finance Act, 2019)

### **Violation of any other laws**

The said provision states that the registration under 12A can be cancelled by the Assessing Officer if it is found that the organization has violated any other law which had to be complied by the said organization. A point-wise summary has been provided below

Registration can be refused for violation of other laws at

- the time of initial registration
- any point of time after registration if such violation is noted

However, the registration would be cancelled only if

- Violation of the laws is undisputed or attained finality and
- Reasonable opportunity of being heard is provided

Some of the laws (on sample basis) to be followed by an NGO are as follows

- FCRA Act, 2010
- EPF Act
- Payment of Gratuity Act, 1972
- Societies, Act 1860

- Bombay Public Trust Act, 1950
- Companies Act, 2013
- Goods and Service Tax Act

Therefore, in case, the Assessing Officer has noted any violation under the above mentioned laws, then it can proceed towards cancellation of 12A registration based on this provision.

### **Income of Trust for the Benefit of Interested person 13(3)**

One of the circumstances specified under section 13 is payments made to specified person. As per the Act, following are considered as specified persons:

- Author/Founder of Trust
- Person who made donation of more than 50,000 rupees
- Trustee or manager of trust
- Relative of Founder, donor , member, trustee and manger
- Any concern in which any of the above person has substantial interest

When any trust or institution has made payment to or provide any service to specified persons then it has to disclose following details in its audit report (Form 10B) filed under section 12A (b):

- Any part of the income or property of the trust/institution was lent, or continues to be lent, in the previous year to specified person
- Any land, building or other property of the trust/institution was made, or continued to be made, available for the use of specified person during the previous year
- Payment made during the previous year by way of salary, allowance or otherwise services of the trust/institution made available to previous year

- Any share, security or other property was purchased by or on behalf of the trust/institution during the previous year from specified person
- Any share, security or other property was sold by or on behalf of the trust/institution during the previous year to specified person
- Income or property of the trust/institution was diverted during the previous year in favor of specified person
- Income or property of the trust/institution was used or applied during the previous year for the benefit of any such person in any other manner
- Investments held at any time during the previous year(s) in concerns in which persons referred to in section 13(3) have a substantial interest.

In simpler words, all the benefits provided to specified persons should be disclosed in Form 10B. Further, if it is found that **there is any undue benefit being provided to such specified persons, then the organization may stand the risk of losing its income tax exemption.**

**Important Note:** It should be noted here that payment to a Secretary who is also acting as a Project director in an Executive position may receive Salary in the capacity of the Project Director as per the prevailing market rates.

#### **2.2.4. What if 12A is cancelled- Exit Tax**

An organization registered under 12A carrying on a charitable activity may voluntarily wind up its activities and dissolve or may also merge with any other charitable or non-charitable institution, or it may convert into a non-charitable organization.

Provisions under section 115TD is introduced to ensure that the benefit conferred over the years by way of exemption claimed by charitable trusts is not misused by converting it into

non-charitable organization. It is a kind of exit tax that is imposed on circumstances which have been provided in the following paragraph.

### **Circumstances under which Exit Tax would be levied**

Section 115TD prescribes circumstances under which exit tax is leviable. Exit tax would become leviable under three conditions:

- 1.** Trust is converted into **any form which is not eligible for grant of registration** under section 12A.
- 2.** The registration granted to it under section 12A has been cancelled or
- 3.** Trust has adopted or undertaken modification of its objects which do not conform to the conditions of registration and it:
  - has not applied for fresh registration under section 12AA in the said previous year.
  - has filed application for fresh registration under section 12AA but the said application has been rejected.
- 4.** Trust is **merged with an entity** which is not having similar objectives and not registered u/s 12A.
- 5.** Trust **failed to transfer upon dissolution all its assets** to any other trust or institution registered under section 12A or approved u/s 10(23C) within a period of **twelve months from the end of the month in which the dissolution takes place.**

### **Rate of Exit Tax**

Tax on accrued income is to be paid at **Maximum Marginal Rate**; this levy is in addition income-tax chargeable in hands of entity and is calculated as below:

**Accreted Tax = Accreted Income \* Maximum Marginal Rate (42.744% for Financial year 2020-21)**

## **Meaning of Accreted Income**

Accreted income is Fair Market Value (FMV) of assets minus Liabilities of trust/institution as on specified date.

## **2.3. Statutory Submission under Income Tax**

### **2.3.1. Issuance of certificate to donor**

The donations to 80G registered organizations are eligible to income tax exemption for the donors. The finance Act, 2020 has brought the requirement of issuing a certificate to the donor in **Form No. 10 BE** specifying the amount of donation received during financial year from such donor. These provision is applicable with effect from financial year 2021-2022.

The certificate referred above is required to be furnished to the donor on or before the 31st May, immediately following the financial year in which the donation is received.

### **2.3.2. 80G Return**

The organisations eligible to receive donations under section 80G are required to furnish a statement of donation received, in a **Form No.10BD**. This statement is required to be furnished electronically on an annual basis on or before 31st May immediately following the financial year in which the donation is received.

**Late fee:** In case there is a delay in filing of annual statement of donation, a mandatory late fee of Rs 200 per day shall be levied of the person responsible to file the statement (Section 234G).

**Penalty:** A penalty can also be levied if there is delay in filing annual statement of donation (section 271K). The minimum amount of penalty is Rs. 10,000, which may go up to Rs. 10, 00,000.

### **2.3.3. TDS related compliances**

- Types of Payments for TDS Deduction**

Every organization making payment or crediting income of specified types to another person is required to deduct a specific proportion of amount payable/creditable at the time of making payment or giving credit, whichever is earlier and deposit the sum so deducted.

The illustrative list of specified payments (wherein TDS needs to be deducted) and the percentage of deduction have been provided in Annexure 2.

- Deposit of TDS**

The tax deducted at source is required to be deposited to the credit of the Central Government within the stipulated time limit. TDS should be deposited quoting the PAN of the deductee. The time limit for depositing the amount of TDS is as under:

During all months except March: Any amount of TDS that is deducted should be deposited before the 7th of next month in which such TDS has been deducted.

In the month of March: In case, TDS is deducted in the month of March, the TDS can be deposited by 30th April.

- TDS Return**

All organizations responsible for deduction of TDS are required to submit to the prescribed income-tax authority; a return(s) within a stipulated period after the end of each quarter. The relevant return form and the respective due dates have been provided as under:

| <b>Quarter</b>      | <b>Type of expenditure</b> | <b>Type of Form</b> | <b>Due Date for filing of Return</b> |
|---------------------|----------------------------|---------------------|--------------------------------------|
| April to June       | Salaries                   | 24Q                 | 31st July                            |
|                     | Contractor/Rent/Profession | 26Q                 |                                      |
| July to September   | Salaries                   | 24Q                 | 31 <sup>st</sup> October             |
|                     | Contractor/Rent/Profession | 26Q                 |                                      |
| October to December | Salaries                   | 24Q                 | 31 <sup>st</sup> January             |
|                     | Contractor/Rent/Profession | 26Q                 |                                      |
| January to March    | Salaries                   | 24Q                 | 31 <sup>st</sup> May                 |
|                     | Contractor/Rent/Profession | 26Q                 |                                      |

## **Issuance of certificate**

The person deducting TDS is required to issue a certificate to the deductee. This certificate will enable the deductee to claim credit for such tax deducted in his/her return of income.

Following are the forms that are required to be issued:

| <b>Particulars</b>   | <b>Form</b> | <b>Date of Furnishing</b>  |
|--|-------------|--|
| Salary   | Form 16     | 15 <sup>th</sup> June of next year                               |
| Other than Salary  | Form 16A    | Within 15 days of last day on which TDS return needs to be filed |
| For fringe Benefits/amenities and profit in lieu of salary | 12BA        | 15 <sup>th</sup> June of next year                               |

# CHAPTER-3

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## **Concepts, Operational Aspect and Compliances under FCRA**

### **3.1 Introduction and Basic Concepts**

The Foreign Contribution (Regulation) Act 2010 and The Foreign Contribution (Regulation) Rules 2011 have been enacted w.e.f 01.05.2011. The Act was further amended on 29.09.2020 vide FCR (Amendment) Act, 2020. The old FCR Act and Rules, 1976 have been repealed. In this Module, we would discuss the concepts of FCRA, its operational aspects and related compliances.

#### **3.1.1 Applicability of FCRA**

As per the FCRA 2010, the law applies to whole of India including Indian ‘persons’ domiciled outside India. Therefore, FCRA would also apply to foreign Branches of Indian Associations outside India.

The FCRA Act has defined the term ‘person’ as any Individual, HUFs, Section 8 Company or any kind of associations.

#### **3.1.2. What is Foreign Contribution**

Foreign Contribution includes all kind of transfers from foreign sources. As per the Act, Foreign Contribution includes any kind of transfer, delivery or donation of currency, article or securities.

As mentioned above, the scope of foreign contribution has been broadly divided into three parts i.e. (i) article or gift, (ii) currency both Indian or foreign and (iii) foreign security received from a foreign source.

- **Article or Gift**

Any kind of Article or gift or intangibles received from foreign sources would be considered as Foreign Contribution as per the above definition.

- **Currency or Place of receipt is not relevant for determination of foreign contribution**

Any amount received from ‘foreign source’ in rupees or foreign currency is construed as ‘foreign contribution’ under law. Such transactions even in rupees are considered foreign contribution. In this context, it is important to understand that contribution in any form received from foreign source shall be covered under FCRA 2010.

It may be noted that the place of receipt or nature of currency are not relevant. For instance, dollars received from an NRI in New York will not be treated as FC if the NRI is possessing a valid Indian Passport. On the other hand, Rupees received in India from a foreigner will be treated as FC.

- **Foreign Security**

Any kind of Foreign security received would be termed as Foreign Contribution as per the above definition of Foreign Contribution. The term ‘Foreign Security’ would generally mean Shares, securities or Bonds issued by a Foreign Company or any person falling under the definition of a Foreign Source.

## **What is included in foreign contribution**

FCRA 2010 further clarifies that the following income/receipts shall also be included as a part of foreign contribution:

- **FC received as subsequent receiver:** Any foreign contribution received from any person who has received it from any foreign source, either directly or indirectly shall also be deemed to be

foreign contribution. In other words, any foreign contribution received as subsequent receiver shall also be treated as foreign contribution and shall be subject to FCRA. However, subsequent receipt/ transfer of FC funds to another organization have been prohibited prospectively from 29th September, 2020 vide FCRA Amendment Act, 2020.

- **Any Income from FC funds or Assets or Project:** Any interest or income generated from foreign contribution or foreign assets or FC projects shall also be treated as a part of foreign contribution. In other words, all income from FC assets and FC funds should be considered as a part of foreign contribution and be reported accordingly.

## **What is Excluded from Foreign Contribution**

Explanation 3 to Section 2(1)(h) of FCRA, 2010 provides that all commercial receipts received from foreign sources shall be excluded from the purview of FCRA.

It specifically provides that any amount received, by any person from any foreign source in India, by way of fee (including fees charged by an educational institution in India from foreign student) or towards receipt in lieu of goods or services rendered by such person in the ordinary course of his business, trade or commerce whether within India or outside India shall be excluded from the definition of foreign contribution

### **3.1.3. Definition of Foreign Source and Exemptions**

- As per Section 2(1)(j) of FCRA, ‘foreign source’ is defined as follows :

*Foreign source*” includes, —

- i. *The Government of any foreign country or territory and any agency of such Government;*
- ii. *Any international agency, not being the United Nations or any of its specialized agencies, the World Bank, International Monetary Fund or such other agency as the Central Government may,*

- iii. A foreign company;*
- iv. A corporation, not being a foreign company, incorporated in a foreign country or territory;*
- v. a multi-national corporation referred to in sub-clause (iv) of clause (g);*
- vi. a company within the meaning of the Companies Act, 2013, and more than one-half of the nominal value of its share capital is held, either singly or in the aggregate, by one or more of the following, namely:—*
  - a) The Government of a foreign country or territory;*
  - b) The citizens of a foreign country or territory;*
  - c) Corporations incorporated in a foreign country or territory;*
  - d) Trusts, societies or other associations of individuals (whether incorporated or not), formed or registered in a foreign country or territory;*
  - e) Foreign company;*

*“Provided that where the nominal value of share capital is within the limits specified for foreign investment under the Foreign Exchange Management Act, 1999, or the rules or regulations made there under, then, notwithstanding the nominal value of share capital of a company being more than one-half of such value at the time of making the contribution, such company shall not be a foreign source;”.*(Inserted through Finance Act, 2016).

- vii. A trade union in any foreign country or territory, whether or not registered in such foreign country or territory;*
  - viii. A foreign trust or a foreign foundation, by whatever name called, or such trust or foundation mainly financed by a foreign country or territory;*
  - ix. A society, club or other association of individuals formed or registered outside India;*
  - x. A citizen of a foreign country;*
- As it is evident, the term “foreign source” has not been defined precisely or exhaustively. The act has given an inclusive definition of the term ‘foreign source’ and that includes the sources mentioned in clauses (i) to (x).

- By virtue of the proviso inserted in clause vi, FCRA law will not apply even if the nominal value of share capital of a donor held by foreigners exceeds 50 per cent at the time of making contributions provided the foreign investment is within the limit specified under the Foreign Exchange Management Act, 1999 or the rules or regulations made there under.
- Therefore, for all practical purposes, Indian Companies where more than 50 percent of shareholding is by a foreign source will be exempted from definition of “Foreign Source” as all Indian Companies have to comply with the limits set by FEMA for foreign investment.

The amended law shall be applicable with retrospective effect from 26th September, 2010. In other words, all donations/grant given by such companies since 26th September, 2010 in violation of FCRA will be condoned.

## **Agencies of foreign Government and Exempted organizations**

Agencies of Foreign Government include their embassies and consulates in India and are included within the purview of foreign source. However, the Central Government has notified in the Official Gazette, the agencies of United Nations and other International Organizations which shall not be treated as ‘foreign source’ for the purposes of this Act.

In simpler words, any donations, contribution or grants received from such organization would not be treated as FCRA funds and instead, should be deposited in the local accounts and treated as a local fund. The list of such organization has been provided in Annexure 3

## **Contributions by Indian Citizen**

It may be noted that contribution made by a citizen of India living in another country, from his personal savings, through the normal banking channels, is not treated as foreign contribution. It is advisable to obtain the passport details of the concerned citizen of India before accepting such contributions. It may be noted that, contribution received in foreign currency from an Indian

Indian passport holder shall not be treated as foreign contribution whereas; contribution from an Indian who has acquired foreign citizenship is treated as foreign contribution. This will also apply to PIO cardholders and to Overseas Citizen of India (OCI).

### **3.2. Registration & Renewal under FCRA**

There are two ways in which an association can apply to the Central Government to obtain certificate of registration or permission to receive FC under FCRA

- a. Registration
- b. Prior Permission

#### **3.2.1. Registration**

An organization having a definite cultural, economic, educational, religious or social program can accept foreign contribution after obtaining a regular registration under section 12 of FCRA law. All applications have to be made online in form FC-3A on the FCRA portal along with the prescribed documents and prescribed fees of Rs. 10,000. The eligibility criteria for registration are as follows:

- Be registered under the Societies Registration Act, 1860 or a trust or section 8 of the Companies Act, 2013 etc.
- Any person making an application for registration shall have an FCRA Account i.e. a bank account with State Bank of India, main branch, New Delhi.
- An association should be in existence for at least 3 years and has undertaken reasonable activity in its chosen field for the benefit of the society for which the Foreign Contribution is proposed to be utilized.
- An association should have spent at least Rs. 15, 00,000/- over the last 3 years on its core activities for the benefit of the society during the last three (3) financial years.

### **3.2.2. Prior Permission**

Any person, if it is not registered under FCRA, can accept foreign contribution only after obtaining the prior permission of the Central Government and such prior permission shall be valid for the specific purpose for which it is obtained and from the specific source.

The application for prior permission needs to be made online in form FC-3B on the FCRA portal along with the prescribed documents and prescribed fees of Rs. 5,000. The eligibility criteria for prior permission are as follows

- Be registered under an existing statute like the Societies Registration Act, 1860 or the Trust law or section 8 of the Companies Act, 2013 etc.
- Any person making an application for prior permission shall have an FCRA Account i.e. a bank account with State Bank of India, Main branch, New Delhi.
- The Chief Functionary of the recipient person shall not be a part of the donor organisation;
- Seventy-five percent, (75%) of the office-bearers or members of the governing body of the person shall not be members or employees of the foreign donor organisation;
- In case of foreign donor organisation being a single individual, then that individual shall not be the Chief Functionary or office bearer of the recipient person; and
- In case of a single foreign donor, seventy-five percent of the office bearers or members of the governing body of the recipient person shall not be the family members or close relatives of the donor. ;
- Possess a specific commitment letter from the donor indicating the amount of foreign contribution and the purpose for which it is proposed to be given.

### **3.2.3. FCRA Renewal**

The FCRA registration once granted will remain valid for the period of 5 years, and shall be renewed after internal of every 5 years. Any application for renewal of certificate of registration shall be made to MHA in electronic form in form FC-3C six months before the expiry for their existing registration.

The application for renewal needs to be made online in form FC-3C on the FCRA portal along with the prescribed documents and fees of Rs. 5,000.

### **Delayed Application**

In case an NGO fails to apply for renewal within the due date, its registration shall cease to exist. However, the department may condone the delay if satisfactory reasons for not submitting the renewal application are provided. A delayed application for renewal can be filed up to 1 year from the date of the expiry of the FCRA Certificate. A delayed renewal application shall be accompanied by a fee of Rs. 5,000 (Five thousand only).

## **3.3 Operational Aspects under FCRA**

### **3.3.1. Method of Accounting and Books of accounts**

FCR Act 2010 and FCRR, 2011 do not prescribe any specific method of accounting. Therefore, technically speaking, any legally consistent and otherwise acceptable method of accounting can be used for maintaining books of account under FCRA. However, looking at the current structure and the requirements of the revised FC-4 form, it is always advisable that cash basis of accounting should be followed while filing the Annual Returns since information such as Administrative expenditures, Transfers to other association etc. needs to be filed on cash basis only

Every person who has been granted registration or prior permission under the Act shall maintain a separate set of accounts and records, exclusively, for the FC received and utilized. The Books of accounts needs to maintained on regular basis so that the following statements can be prepared as per the requirements of the Act:

- Receipts and Payment Account
- Income and Expenditure Account
- Balance Sheet
- Certificate from a Chartered Accountant

### **3.3.2. Preservation of Books of Accounts:**

FCRA 2010 provides that the financial statements should be preserved up to six years. However, as per Income Tax Act, 1961, an Assessing Officer may call for documents or scrutiny even after 8 years from the assessment year. Therefore, for all practical purposes, the books of accounts and other related documents shall be preserved for a period of 8 years from the particular assessment year.

### **3.3.3. FCRA Asset and Income from Assets**

Any asset created out of foreign funds should be recorded in the FC books of account only. A FC asset will continue to remain an FC asset irrespective of time factor or closure of the project.

Under practical circumstances, it may so happen that a portion of the asset is funded from domestic sources. In such cases, the asset cost related to domestic funds should be reflected in the domestic books of account and the cost of asset related to FC funds should be shown in the FC books of account. Further, the consolidated statement will show the total cost of asset.

As stated in Section 3.1.2, the Act provides that any income like interest accrued or Income generated from FC Assets (including sale of FC Assets) shall also be treated as foreign contribution.

- Some example of income from FC assets is:

Income from FC building, training centre etc.

Income from FC machines and equipments such as photocopier, Projectors, laptops, utensils etc.

Income from FC vehicles.

Income from FC projects.

## **Disclosure requirements and Books of Account of Assets:**

Following Information regarding Assets are required to be given in the Annual Return:

- Total purchase of fresh assets
- Details of Land and Buildings remained unutilized for more than two years.

It should be noted that Creation of Asset and income from Assets incurred by the association needs to be disclosed separately while filing the Annual returns in the form FC-4. Therefore, it becomes important that while maintaining FCRA Books of Accounts, Creation of Asset and income from Assets is recorded separately in such accounting procedures. The maintenance of books of accounts is pivotal to comply with the reporting requirement under the revised annual returns of FC-4.

### **3.3.4 Investments under FCRA**

The FCRA law does not permit investment of surplus funds in risky or speculative assets. Rule 4(1) (a) prohibits investment in shares & stocks even through mutual fund. It prohibits investments in:

- Equity linked mutual funds or shares
- Any investment which has element of risk with gain or loss
- Participation in any scheme related with chit fund, land etc. which promises high return and is not related to the objectives

Rule 4(1) (b) prohibits investment in high return schemes or in land if it is not directly linked to the declared aims and objectives of organization.

Therefore, practically speaking, the FC funds can be invested only in Fixed Deposits with any of the scheduled Banks. Further, due care should be taken to link such Fixed Deposits in FCRA Accounts. Any linking of such FDs with local accounts may result in intermingling of Foreign and Local funds.

Further, organization shall maintain a separate register of investments. Every register of investments maintained under the Act shall be submitted for audit to a chartered accountant. Such register shall contain the details of the investments such as Date of Investment, Maturity Value, FD No., interest accrued etc.

### **3.3.5. Administrative Expenditure**

Section 8 of the FCRA 2010, provides that the administrative expenditure shall not exceed 20% of the total utilization of funds in a particular year. In case, the organization plans to utilize administrative expenses in excess of 20%, it shall obtain prior approval of the Central Government for utilizing such excess amount. Since there is no form for applying of such prior approval, the organization should submit an application on plain paper for such approval.

Rule 5 of FCRR, 2011 defines the administrative expenditure and constitutes the following:

- Remuneration and other expenditure to board members and trustees
- Remuneration and other expenditure to person managing activity
- Expenses at the office of the NGO
- Cost of accounting and administration
- Expenses towards running and maintenance of vehicles
- Cost of writing and filing reports
- Legal and professional expenses

- Rent and repairs to premises
- Expenses towards running and maintenance of vehicles;

The expenditure incurred on salaries or remuneration of personnel engaged in training or for collection or analysis of field data of an association primarily engaged in research or training shall not be counted towards administrative expenses. In other words, they shall form part of the programme expenditure.

The expenses incurred directly in furtherance of the stated objectives of the welfare oriented organization is excluded from admin expenses. For Example: salaries to doctors of hospital, salaries to teachers of school etc.

The above definition of the administrative expenses along with the proviso indicate that *all the expenditures related to direct implementation of the programme may be considered as programme expenditure*. This may include the salaries of the staff implementing the programmes in the field and other related expenditures. For example: vehicle expenditures have been counted as administrative expenses. However, the proviso indicates that if such vehicles are being used for field travel related to programme implementation it may be considered as programme expenditure.

On the other hand, *any expenditures related to the management of the programme (which are not directly related with implementation)* would be considered as administrative expenditures. This may include the salaries of personnel involved in accounting, finance, HR, admin, Senior management etc. (which are not directly related to implementation) and other related expenditures.

### **3.3.6. Transfer to other organization**

Section 7 of the amended FCRA, 2020 states that the FC funds cannot be transferred or sub granted to another organization whether registered or unregistered under FCRA after 29.09.2020.

in other words, the existing funds collected on behalf of other institutions cannot be transferred to such organisations. Such organisation have to utilize the funds directly for charitable/religious purpose.

### **3.3.7. Cash Payments**

Section 40A (3) (a) of the income tax Act provides that any expenditure incurred in respect of which payment is made in a sum exceeding Rs 10,000/- in a single day otherwise than by account payee Cheque, drawn on a bank or by an account payee bank draft or through use of electronic clearing system, shall not be allowed as application of Income.

As per the charter issued by the FCRA department for the FCRA Registered associations, it has been noted that the cash expenses are authorized upto Rs. 20,000 in a single day. However, the Charter for associations has not been formally notified not incorporated in the Act or the rules.

Therefore, it is advised to follow the income tax provisions strictly in order to avoid any unnecessary scrutiny from the statutory authorities.

### **3.3.8. Bank Management under FCRA**

As per the amended rules, an association granted prior permission or registration under the FCRA, 2010 should receive the foreign contribution in the account opened in designated branch of the SBI.

Recent amendment in FCRA 2020, provides for three types of Accounts:

- i. Statutory Designated Account
- ii. Another FCRA Account for keeping and utilizing FC
- iii. Utilization account

- **Statutory Designated Account**

The FCRA Amendment Act, 2020 states that the designated bank account, in which all the foreign contributions are received, should be opened in the Sansad Marg branch of State Bank of India at New Delhi. However, the Foreign Contribution received in statutory designated bank account can be transferred to Another FCRA Account for keeping and utilizing FC or utilization bank account.

- **Another FCRA Account for Keeping And Utilizing Fc**

The NPOs may open another FCRA Account in any of the scheduled bank of his choice for the purpose of keeping or utilizing the foreign contribution, which has been received from their FCRA Account in the specified branch of State Bank of India at New Delhi. Such bank account will become the “Another FCRA Account for keeping and utilizing FC”.

This also means that the previously used FCRA Designated Bank account of the organizations can be converted into “Another FCRA Account for keeping and utilizing FC”.

No foreign remittances can be directly received in the Another FCRA bank account after 30th June or the date of opening of Account in SBI, whichever is earlier.

- **Utilization Account**

The NPOs may also open one or more accounts in one or more scheduled banks of his choice to which he may transfer for utilizing any foreign contribution received by him in his FCRA account in the specified branch of the SBI, New Delhi or kept by him in another FCRA Account in a scheduled bank of his choice.

The FAQs suggest that there is no bar in transferring foreign contribution between the utilization accounts. However, Association should preferably avoid such practice for keeping the accounting process simple.

The organization may open multiple Utilization bank account for project utilization purposes. However, under FCRA, all foreign contribution should be received in one designated bank account only. Therefore, under no circumstances, separate bank account should be opened for receiving funds from various donors.

### **3.3.9. Advances under FCRA**

Transfers of salary advances or vendor advances to the bank account of employees or vendors are legally permissible since it is against a service and denotes end utilization of the funds.

With regard to programme advance being transferred to personal bank account of the staff, such transfers are prohibited under FCRA due to the following facts

- Staff is not registered under FCRA
- Transfer of funds is not considered as end utilization.

Therefore, Programme advances to the personal bank account of staff is not permissible from FC funds.

## **3.4. Statutory submissions under FCRA**

### **3.4.1 Filing of Annual Returns**

The annual return in Form FC-4 showing receipt and utilization of Foreign Contribution in FCRA shall be filed online within 9 months from the close of the financial year i.e. 31ST December of each year.

FCRA, 2010 requires filing of Annual Return in the online form FC-4 at [www.fcraonline.nic.in](http://www.fcraonline.nic.in). Books of Accounts should be maintained in such a way that the following statements can be prepared for the requirement of the form FC-4.

- Receipt and Payment account of FC
- Income and Expenditure account of FC
- Balance sheet of FC
- Certificate by the Chartered accountant

Even if no FC is received during a year, a 'Nil' return is required to be filed online in Form FC-4 within 31st December. However, in such case, certificate from Chartered Accountant or the financial statements is not required to be uploaded.

### **3.4.2. Filing of Quarterly Returns**

As per the foreign contribution regulation amendments Rules, 2015, any person registered under FCRA shall have to upload financial information in their organizational website or fill the requisite form at the FCRA website.

Quarterly Intimations shall clearly indicate the details of:

- Name of the Donor
- Status of the donor i.e. Individual/Association.
- Address, City and Country of the Donor.
- Website/Email Id of the Donor.
- Amount of FC Received
- Purpose for Which the FC Received i.e. Educational, Social, Religious, Cultural and Economic

Intimation shall be done within fifteen days following the last day of the quarter in which it has been received. The quarters and the respective due dates have been provided in the table below:

| Quarter                  | Due Date of Intimation |
|--------------------------|------------------------|
| <b>Q1 (Apr to June)</b>  | 15th July              |
| <b>Q2 (July to Sep)</b>  | 15th Oct               |
| <b>Q3 ( Oct to Dec)</b>  | 15th Jan               |
| <b>Q4 (Jan to March)</b> | 15th Apr               |

Association receiving foreign contribution can intimate quarterly receipt of foreign contribution on:

- Organizational website or
- FCRA Portal i.e. fcraonline.nic.in.

### **3.4.3. Change in Name and Address**

A person or an organization registered under FCRA may change the Name/address by intimating the same online in Form FC-6A, within fifteen days, of such change. A Resolution of Governing Body for proposed change name/ address should be passed by such body. However, this resolution is not required to be reported.

If there is change of Address outside the state, there is a requirement to file a fresh application for registration, since the FCRA Registration number is allotted State-wise in which the organization is registered. Therefore, until and unless it is absolutely necessary, the organization should avoid changing the address outside the state in which it is registered.

As per the amended Rules 2020, specified change of Name/address in FC-6A shall be effective only after final approval by the central government.

However, prior to changing of Name/ Address under FCRA, necessary changes or approval should be obtained from the incorporation bodies such as Society Registrar/Ministry of Corporate Affairs and enabling authorities such as Income Tax Department in Permanent Account Number (PAN) and Tax deduction Account Number (TAN).

### **3.4.4. Change in Nature, Aim and Objectives**

A person or organization who is registered under FCRA may change in nature, aim and objectives by intimating online in Form FC-6B, within fifteen days, of such change.

However, prior to changing of objectives under FCRA, necessary changes or approval should be obtained from the incorporation bodies such as Society Registrar/Ministry of Corporate Affairs and enabling authorities such as Income tax Department in 12A certificate.

As per the amended Rules 2020, specified change in FC-6B shall be effective only after final approval by the central government.

### **3.4.5. Intimation / Approval of Designated SBI A/c or another A/c**

A person who has been granted a certificate of registration under section 11 of the Act shall open a FCRA designated A/c in SBI mail branch, New delhi for receiving of FC funds, another FCRA A/c can also be opened for keeping & utilizing of FC funds.

As per the amended Rules 2020, intimation of opening account in SBI or change in “**another FCRA A/c**” shall be intimated in FORM FC-6C & shall be effective only after final approval by the central government.

Acknowledgement copy should be taken from bank for keeping the existing bank account as another FCRA bank account. Also, the same has to be intimated in Form FC-6C along with the intimation for opening the SBI bank account.

### **3.4.6. Opening of additional FC utilization bank account**

Any person registered under FCRA may open one or more accounts in one or more banks for the purpose of utilizing the foreign contribution after it has been received and in all such cases online

As per the amended Rules 2020, any specified change in FC-6D shall be effective only after final approval by the Central Government.

Utilization bank accounts can be a savings/current account and the interest earned from such accounts should be reported as interest income in the FC-4 statement.

#### **3.4.7. Change in original Key functionaries**

The amended Rules 2020, provides that any change in the board members at any point of time irrespective of change of percentage needs to be filed in form FC-6E within 15 days of such change.

As per the amended Rules 2020, specified change in FC-6E shall be effective only after final approval by the central government. Every Board Member is required to provide Affidavits in the prescribed formats while filing form FC- 6E.

### **3.5. Suspension, Cancellation and penalties under FCRA**

#### **3.5.1. Suspension of FCRA**

The Central Government may temporarily suspend the registration pending such cancellation, for a period of 180 days, or such further period, not exceeding 180 days, as may be specified. In other words, the period of suspension can be extended to a period of **360 days** from the date of the issue of the order.

Every person whose certificate has been suspended shall

- (a) Not receive any foreign contribution during the period of suspension of certificate without the prior approval of the Central Government.

(b) Utilize, in the prescribed manner, the foreign contribution in his custody with the prior approval of the Central Government.

### **3.5.2. Cancellation of FCRA**

Section 14 of the FCRA Act 2010 has given the power to the Central Government to cancel the registration certificate. The Government can issue such order only after making such enquiry as it deems fit and after giving a reasonable opportunity of being heard to concerned person.

### **3.5.3. Surrender of FCRA**

Earlier, there was no provision for surrender of FCRA certificate. However, the amended FCRA Act 2020, prescribes that the FCRA registered organizations would now have the option to voluntarily surrender their registration by filling form FC-7. It is also to be noted that such surrender can be done only after MHA is satisfied that there has been no contravention of the FCRA provisions by the said organization.

On surrendering the FCRA registration, assets created out of the foreign contributions and management of the unutilized foreign contribution shall be vested with the authority prescribed by government in this regard.

### **3.5.4. Offences and Penalties**

In case, the FCRA provisions are not followed by the organization, there are penal provisions which have been mentioned in the FCRA Law. The comprehensive list for penalties for compounding and the officer competent for compounding has been provided in the Annexure

In case, there is delay in filing of FC-4 by an FCRA Registered organization, it is a punishable offence under the FCRA Rules. However, an organization can compound the delay in Filling of FC-4 by paying a Compounding penalty calculated as per the penalty calculator at the FCRA Portal while filing the delayed returns. The amount of penalty is levied @ Rs. 1, 00,000/- or 5% of the foreign contribution received during the financial year, whichever is higher. In other words, this penalty would be levied even if there is a delay of a single day while filing the annual returns.

# CHAPTER-4

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## Labour Laws compliance for NGOs

### 4.1. Provident Fund

#### 4.1.1. Introduction

Provident fund (PF) is a welfare scheme for the benefits of the employees. Under this scheme, both the employee & employer contribute their part but whole of the amount is deposited by the employer to the PF authorities.

The interest earned on this investment is also credited in PF account of the employees. At the time of retirement, the accumulated amount is given to the employees, if certain conditions are satisfied.

#### 4.1.2. Applicability

The provisions of Provident Fund apply to establishments employing 20 or more persons with certain exceptions. Therefore, if an organization employs 20 or more staff, it would mandatorily need to register under PF. However, provisions also exist for coverage on voluntary basis on joint request by the employer and majority of the employees of establishments even in case, where there are less than 20 staff.

#### 4.1.3. PF Contribution

Contribution is payable monthly by the employer and employee both at equal rate. The employer is required to deposit both the shares of contribution including those of contractors' employees, if any.

Basic rate of PF contribution rate is @12% of the salary (which includes basic pay + dearness allowance + retaining allowance). The entire 12% of your contribution goes into the respective employees' EPF account along with equal share from employer.

#### **4.1.4. Time Limit to deposit**

Employer shall pay the amount of contribution within 15 days of the close of every month pay to the PF Authority which is authorized for collection on account of contributions and administrative charge.

#### **4.1.5. Penalty for delay in PF payment**

Delay in payment of PF by employer having PF registration will attract penalty as follows:

| <b>Period of Delay</b> | <b>Rate of Penalty</b> |
|------------------------|------------------------|
| Upto 2 months          | 5%                     |
| 2 - 4 months           | 10%                    |
| 4 - 6 months           | 15%                    |
| Above 6 months         | 25%                    |

### **4.3. Gratuity**

#### **4.3.1. Applicability**

Any establishment having employed more than 10 persons at any time during the financial year will be covered under the payment of Gratuity Act, 1972. Therefore, every public charitable and religious trusts would be covered by payment of Gratuity Act, provided that they have employed more than 10 persons at any time during the year. There is no specific exemption for NGOs under the said Act.

#### **4.3.2. Payment of Gratuity**

Gratuity shall be paid to an employee on the termination of his employment after s/he has rendered continuous service of not less than 5 years i.e. on superannuation, retirement, resignation, death or disablement due to accident or disease (Sec 4).

The period of 5 years is not necessary if the termination of the employee is because of death or disablement. In the case of death, the amount is paid to the legal heirs.

There is no provision that restricts an employer from paying gratuity to his employees even if the organisation is not covered under the Act. Therefore, an organization can pay gratuity to the staff on voluntary basis even if it has less than 10 staff.

#### **4.3.3. Amount of Gratuity**

Gratuity is calculated at 15 days wages as per the last drawn salary for each completed year of service or part of thereof in excess of six months. The monthly wage is divided by 26 and multiplied by 15. In computing a completed year of service, the period in excess of six months shall be taken as a full year.

The maximum amount of gratuity payable under the Act is Rs.20,00,000. Therefore, an employer may not be bound to pay more than the amount of Rs. 20 Lakhs irrespective of the above calculations.

## **Annexure 1**

Modes of investment under section 11(5)

1. Investment in Government Savings Certificates and any other securities or certificates issued by the Central Govt. under the Small Savings Scheme ;
2. Deposit in any account with the Post Office Savings Bank Account ;
3. Deposits in any account with any scheduled bank or a co-operative society engaged in carrying on the banking business (including a co-operative land mortgage bank or a co-operative land development bank) ;
4. Investment in units of the Unit Trust of India.
5. Investment in any security for money created and issued by the Central Govt. or a State Govt.
6. Investment in debentures of any company or corporation, the principal whereof and the interest whereon are guaranteed by the Central or State Government.
7. Investment or deposit in any public sector company.
8. Deposit with or investment in any bonds issued by a Central Government approved financial corporation engaged in providing long-term finance for industrial development in India.
9. Deposits with or investments in any bonds issued by any Central Government approved public Company formed and registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses
10. Deposits in bonds issued by a public company engaged in long term finance for development of urban infrastructure.
11. Investment in immovable property.
12. Deposits with the Industrial Development Bank of India (IDBI).

13. Any other form or mode of investment or deposit as may be prescribed. Rule 17C of the Income Tax Rules, 1962 have so far prescribed the following:

- investment in the units issued under the Scheme of the Mutual Fund referred to in clause (23D) of Section 10 of the Income Tax Act, 1961.
- any transfer of deposits to the Public Account of India;
- deposits made with an authority constituted in India for the purposes of housing accommodation, planning & development of cities, towns and villages;
- Investment by way of acquiring equity shares of a depository as defined in clause (e) of sub-section (1) of Section 2 of the Depositories Act, 1996.

## Annexure 2

Illustrative list of payments on which a non-profit organisation is supposed to deduct TDS.

| S.no | Nature of payments   | Section | Basic Cut off   | TDS rates for      |                            |
|------|--|---------|---|--------------------|----------------------------|
|      |  |         |   | Individual and HUF | Other than Individual/ HUF |
| 1    | Payment to Contractors, Advertisement /Sub Contractor , Payment to Transporter | 194C    | 30,000 (Single bill) or 100,000 aggregate bills during the year.  | 1%                 | 2%                         |
| 2    | Insurance Commission   | 194D    | 15,000  | 5%                 | 10%                        |
| 3    | Commission/Brokerage   | 194H    | 15,0000   | 5%                 | 5%                         |
| 4    | Rent-property  | 194I    | 240,000   | 10%                | 10%                        |
| 5    | Rent-Plant / Machinery   | 194I    | 240,000   | 2%                 | 2%                         |
| 6    | Professional Fees  | 194J    | 30,000 (Fees for professional, Royalty, Director sitting fees)<br><br>30000( Fees for technical services, call centers) | 10%<br><br>2%      | 10%<br><br>2%              |
| 7    | Salary   | 192B    | As per applicable slab rates  |                    |                            |

It should be noted that in case the deductee (person who is liable to deduct TDS), does not have PAN, 20% TDS needs to be deducted irrespective of the nature of the payment and the status of deductee.

## **Annexure 3**

### **I. Secretariat**

1. Office of Internal Oversight Services, New York.
2. Office of Legal Affairs, New York.
3. Department of Political Affairs, New York.
4. Department for Disarmament Affairs, New York.
5. Department of Peacekeeping Operations, New York.
6. Office for the Coordination of Humanitarian Affairs, New York.
7. Department of Economic and Social Affairs, New York.
8. Department for General Assembly Affairs and Conference Services, New York.
9. Department of Public Information, New York.
10. Department of Management, New York.
11. United Nations Office at Geneva.
12. United Nations Office at Vienna.
13. United Nations Office at Nairobi.

### **II. Bodies of The United Nations**

14. International Research and Training Institute for the Advancement of Women (INSTRAW), Santo Domingo, Dominican Republic.
15. Joint United Nations Programme on HIV/AIDS (UNAIDS), Geneva.
16. Office of the UN High Commissioner for Human Rights (OHCHR), Geneva.
17. Office of the UN High Commissioner for Refugees (UNHCR), Geneva.
18. United Nations Capital Development Fund (UNCDF), New York.

19. United Nations Conference on Trade and Development (UNCTAD), Geneva.
20. United Nations Development Fund for Women (UNIFEM), New York.
21. United Nations Institute for Disarmament Research (UNIDIR), Geneva.
22. United Nations Institute for Training and Research (UNITAR), Geneva.
23. United Nations Interregional Crime and Justice Research Institute (UNICRI), Rome.
24. United Nations Office for Project Services (UNOPS), New York.
25. United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), Gaza and Amman.
26. United Nations Research Institute for Social Development (UNRISD), Geneva.
27. United Nations University (UNU), Tokyo.
28. United Nations Volunteers (UNV), Bonn

### **III. Funds and programs**

29. United Nations Children's Fund (UNICEF), New York.
30. United Nations Development Programme (UNDP), New York.
31. United Nations Environment Programme (UNEP), Nairobi.
32. United Nations International Drug Control Programme (UNDCP), Vienna.
33. United Nations Population Fund (UNFPA), New York.
34. World Food Programme (WFP), Rome.

### **IV. Regional commissions**

35. Economic Commission for Africa (ECA), Addis Ababa, Ethiopia.
36. Economic Commission for Asia and the Pacific (ESCAP), Bangkok, Thailand.
37. Economic Commission for Europe (ECE), Geneva.

39. Economic Commission for Western Asia (ESCWA), Beirut, Lebanon.

## **V. Law of sea treaty bodies**

40. International Seabed Authority, Kingston.

41. International Tribunal for the Law of the Sea, Hamburg.

42. Commission on the Limits of the Continental Shelf, United Nations Divisions for Ocean Affairs and the Law of the Sea, New York.

## **VI. Environmental bodies**

43. Secretariat of the United Nations Framework Convention on Climate Change (UNFCCC), Bonn.

44. Intergovernmental Panel on Climate Change (IPCC), Geneva.

45. Ozone Secretariat to the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on Substance that Deplete the Ozone Layer, Nairobi.

46. Secretariat of the Convention on Biological Diversity (CBD), Montreal.

47. Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Geneva.

48. UNEP/CMS Secretariat of the Convention on the Conservation of Migratory Species of Wild Animals (CMS or Bonn Convention), Bonn.

49. Secretariat of the Basel Convention on the Control of Trans-boundary Movements of Hazardous Wastes and their Disposal, Geneva.

50. Secretariat of the United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought /or Desertification, especially in Africa (CCD), Bonn.

51. Global Environment Facility, Washington D.C.

52. Bureau (Secretariat) of the Convention on Wetlands (Ramsar), Gland, Switzerland.

## **VII. Specialised agencies**

53. International Labour Organization (ILO), Geneva.

54. Food and Agriculture Organization (FAO), Rome.

55. United Nations Educational, Scientific and Cultural Organization (UNESCO), Paris.

56. International Civil Aviation Organization (ICAO), Montreal.

57. World Health Organization, Geneva.

58. Universal Postal Union (UPO), Berne, Switzerland.

59. International Telecommunication Union (ITU), Geneva.

60. World Meteorological Organization (WMO), Geneva.

61. International Maritime Organization (IMO), London.

62. World Intellectual Property Organization (WIPO), Geneva.

63. International Fund for Agricultural Development (IFAD), Rome.

64. United Nations Industrial Development Organization (UNIDO), Vienna.

## **VIII. The World Bank group**

65. International Bank for Reconstruction and Development (IBRD), Washington D.C.

66. International Development Association (IDA), Washington D.C.
67. International Monetary Fund (IMF) Washington D.C.
68. International Finance Corporation (IFC), Washington D.C.
69. Associated Organizations of World Bank Group:
- A) International Centre for the settlement of Investment Disputes (ICSID), Washington D.C.
  - B) Multilateral Investment Guarantee Agency (MIGA), Washington D.C.
  - C) Consultative Group on International Agricultural Research (CGIAR), Washington D.C. (It has 16 Research centers)
    - International Plant Genetic Resource Institute (IPGRI), Rome.
    - International Wheat and Maize Improvement Centre (CIMMYT), Mexico.
    - International Centre for Living Aquatic Resource Management (ICLARM), Philippines.
    - International Irrigation Management Institute (IIMI), Colombo.
    - International Food Policy Research Institute (IFPRI) Washington D.C.
    - International Centre of Research in Agro-forestry (ICRAF), Nairobi.
    - International Centre for Agricultural Research in Dry Areas (ICARDA), Syria.
    - International Centre for Tropical Agriculture (CIAT), Columbia.
    - International livestock Research Institute (ILRI), Nairobi.
    - West Africa Development Association (WARDA), Abidjan.
    - International Service of National Agricultural Research (ISNAR), the Netherlands.

## **IX. Regional development banks**

71. Inter-American Development Bank (IDB), Washington D.C.
72. Asian Development Bank (ADB), Manila.
73. Caribbean Development Bank (CDB), St. Michael, Barbados.

## **X. Other bodies related to United Nations**

74. International Atomic Energy Agency (IAEA), Vienna.
75. Organization for the Prohibition of Chemical Weapons (OPCW), The Hague.
76. Provisional Technical Secretariat (PTS) for the Comprehensive Nuclear Test Ban Treaty Organization (CTBTO), Vienna.
77. International Consultative Group on Food Irradiation (ICGFI), Vienna.
78. International Narcotics Control Board (INCB), Vienna.
79. International Trade Centre UNCTAD/WTO (ITC), Geneva.
80. International Union for the Protection of New Varieties of Plants (UPOV), Geneva.
81. World Tourism Organization (WTO/OMT), Madrid.
82. World Food Council (WFC).
83. United Nations Social Defense Research Institute (UNSDRI).
84. United Nations Statistical Office (UNSCO).

## **XI. Other international organizations**

85. United Nations Outer Space Committee.
86. International Sugar Organization, London.

87. Asian Productivity Organization, Tokyo.
88. Asian and Pacific Development Administration, Kuala Lumpur.
89. Asian African Legal Consultative Committee, New Delhi.
90. Asia/Pacific Cultural Centre for UNESCO (ACCU), Japan.
91. Commonwealth Secretariat, London.
92. Afro-Asian Rural Reconstruction Organization (AARRO), New Delhi.
93. Centre on Integrated Rural Development for Asia and the Pacific, (CIRDAP), Dhaka.
94. International Centre for Genetic Engineering and Biotechnology (ICGEB), New Delhi.
95. Asia and Pacific Centre of Transfer of Technology (APCTT), New Delhi.
96. Centre for Science and Technology of the Non-Aligned and Other Developing Countries (NAM S&T Centre). New Delhi.
97. Commonwealth Agricultural Bureau International (CABI), UK.
98. The Asia Pacific Association of Agricultural Research Institution (APAARI), Bangkok
99. The Regional Co-ordination center for Research and Development of coarse Grains, Pulses, Roots and Tuber crops in the Humid Tropics of Asia and the Pacific (CGPRT Centre), Indonesia.
100. The Regional Network for Agriculture Machinery (RNAM), Bangkok.
101. Commission on Genetic Resources for Food and Agriculture (CGRFA), Rome.
102. The International Seeds Testing Association (ISTA), Zurich.

103. International Water Management Institute (IMI), Sri Lanka.

Notified in the Gazette of India, Extraordinary, Part II-Section 3-Sub-section (ii) vide S.O. No. 1014 (E) dated the 13th November, 2000).

1. World Trade Organization (WTO), Geneva, Switzerland

2. International Organization for Standardization (ISO), Geneva, Switzerland

3. Common Fund for Commodities (CFC), Amsterdam, Netherlands

4. International Cotton Advisory Committee, Washington, USA

5. The Global Fund to Fight Aids, Tuberculosis and Malaria, Geneva, Switzerland.

(Added vide Gazette of India, Extraordinary, Part II-Section 3-Sub-section (ii) vide S.O. No. 1133 (E) dated the 1st May, 2009).

6. Global Development Network (GDN)

(Added vide Gazette of India, Extraordinary, Part II-Section 3-Sub-section (ii) vide S.O. No. 1433(E))

## Annexure 4

| S.N | Offence   | Amount of Penalty   | Officer competent for Compounding   |
|-----|---|---|---|
| 1   | Offence punishable for accepting any foreign hospitality in contravention of the FCRA.  | Rs. 10,000/-  | Director, or as the case may be, the Deputy Secretary in-charge of the section responsible for the administration of the Act. |
| 2   | Offence punishable for transferring/sub-granting any foreign contribution to any other organization.                              | Rs. 1, 00,000/- or 10% of such transferred foreign contribution, whichever is higher.   | Director, or as the case may be, the Deputy Secretary in-charge of the section responsible for the administration of the Act. |
| 3   | Offence punishable for exceeding the administrative expenditure beyond 20%  | Rs. 1, 00,000/- or 5% of such foreign contribution so defrayed beyond the permissible limit, whichever is higher.                 | Director, or as the case may be, the Deputy Secretary in-charge of the section responsible for the administration of the Act. |
| 4   | Offence punishable for receiving foreign contribution without Registration/prior permission from the central government.          | Rs. 1,00,000/- or 10% of the foreign contribution received, whichever is higher   | Director, or as the case may be, the Deputy Secretary in-charge of the section responsible for the administration of the Act. |
| 5   | Offences punishable   |   |   |
| (a) | For Receiving foreign contribution in any account other than FCRA designated bank account.  | Rs. 1,00,000/- or 5% of the foreign contribution received in such account, whichever is higher;                                   | Director, or as the case may be, the Deputy Secretary in-charge of the section responsible for the administration of the Act. |
| (b) | Non-reporting the prescribed amount of foreign remittance or source and manner of such remittance by banks and authorized persons | Rs. 1, 00,000/- or 3% of the foreign contribution received or deposited in such account, whichever is higher.                     | Director, or as the case may be, the Deputy Secretary in-charge of the section responsible for the administration of the Act. |
| (c) | Receiving & depositing any local funds in the FCRA Bank Accounts  | Rs. 1,00,000/- or 2% of such deposit, whichever is higher   | Director, or as the case may be, the Deputy Secretary in-charge of the section responsible for the administration of the Act. |
| 6   | Offence punishable for non-furnishing of Quarterly returns or Annual Return within the due date and in a prescribed manner.       | Rs. 1,00,000/- or 5% of the foreign contribution received during the period of non-submission, whichever is higher                | Director, or as the case may be, the Deputy Secretary in-charge of the section responsible for the administration of the Act. |
| 7   | Offence punishable for not maintaining the Books of account and records of FCRA in the prescribed manner                          | Rs. 1, 00,000/- or 5% of the foreign contribution during the relevant period of non-maintenance of accounts, whichever is higher. | Director, or as the case may be, the Deputy Secretary in-charge of the section responsible for the administration of the Act. |