

INTERface

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Highlights:

- Legal Compliance
- Governance
- Financial Management
- Corporate Social Responsibility

Between Us

Misjudging people

Once upon a time, there was a small town. There lived a man by himself who couldn't see. He was blind. Yet, he carried a lighted lamp with him whenever he went out at night.

One night as he was coming home after having a dinner outside, he came across a group of young travelers. They saw that he was blind, yet carrying a lighted lamp. They started passing comments on him and made a fun of him. One of them asked him, "Hey Man! You are blind and can't see anything! Why do you carry the lamp then?!"

The blind man replied, "Yes, unfortunately, I am blind and I can't see anything but a lighted lamp which I am carrying is for the people like you who can see. You may not see the blind man coming and end up pushing me. That is why I carry a lighted lamp".

A handwritten signature in black ink, reading "Saijay Babu". The signature is written in a cursive, flowing style with a long horizontal line extending from the end.

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We are grateful to the authors who have contributed for the articles in this edition.

Dr. Manoj Fogla

Dr Fogla is the principal author of the articles published in this edition. He is a development consultant who has been involved in the voluntary sector for many years. He is a Chartered Accountant by qualification and specializes in financial evaluations and reviews of development programs. He has authored several books on governance, financial management, legal and taxation aspects of NGOs.

Mr. Suresh Kumar Kejriwal

Mr. Suresh Kejriwal is a practicing Chartered Accountant from Kolkata. He is working with NGO sector for more than 23 years. He is one of the prominent resource person for the NGO sector in the areas of Financial Management and Legal compliance.

Mr. Sandeep Sharma

Mr. Sandeep Sharma is the Director Programme in Financial Management Service Foundation (FMSF). He is overall responsible for various programs being run and implemented by FMSF, which includes monitoring of more than 150 large development projects in India, Nepal, Bangladesh, Pakistan and Sri Lanka.

Dr. Sanjay Patra

Dr. Sanjay Patra has experience of more than 25 years in the voluntary sector. He is the Executive Director of Financial Management Service Foundation (FMSF). He has been actively engaging with many national and international voluntary organizations in the areas of financial management, legal compliances, governance and transparency and accountability.

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expressed by the
authors are not
necessarily that
of FMSF

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Editorial Team: Dr. Sanjay Patra & Mr. Sandeep Sharma
 Published by Dr. Sanjay Patra on behalf of
Financial Management Service Foundation
"ACCOUNTABILITY HOUSE", A-5, Sector-26, NOIDA 201301
Tel: 00-91-120-4773200, **Fax:** 00-91-120-4773299
E-mail: fmsf@fmsfindia.org; **Web-site:** www.fmsfindia.org

I. LEGAL SECTION

ANALYSIS OF THE CHANGES IN THE NEW FORM FC-4 UNDER FCRA

1. INTRODUCTION

1.1 The Ministry of Home Affairs, Foreigners Division (FCRA Wing) has issued a Public Notification dated 07.03.2019 where in the Foreign Contribution (Regulation) Rules 2011 have been amended and there has been considerable changes in the various forms required to be filed. In this issue, the implications of the changes made in Form FC-4 as well as input for filling some of the new requirement of the form have been discussed. A copy of the notification and Form FC-4 is provided in *Annexure 1 & 2*.

2. OVERVIEW OF CHANGE

2.1 Greater detail required for receipt of foreign contribution: In the new Form there is change in point no. 2 which requires the detail of Foreign Contribution received and applied during the year. Earlier point no. 2 required details of both receipt & utilization of FC fund. However, the modified point no. 2 requires details of only receipt of foreign contribution and separate point no. 3 has been inserted for details of utilization of FC. The new Form requires the details of foreign contributions received in cash/kind (value) bifurcating the same as

- (a) Brought forward balance.
- (b) (i) Interest
(ii) Other receipts from projects/activities
- (c) Foreign Contribution received during the FY (directly from foreign source/ local source).
- (d) Total (a+b+c+d).

The amount of other receipts from project & activities to be supported by project / activity wise details from which these other FC receipt are received together with the name & location of project and year of commencement of the project.

Donor wise details of foreign contribution is required in all cases instead of earlier requirement of details only in cases of receipts in excess of rupees 20,000. Moreover, donor wise details also requires linking of receipts with the purpose and also linking the same with the specific activity/project. It

raises several questions, because an organisation can receive general donation towards the objects not linked to any project. In such circumstances, in our opinion, the main objects of the organisation should be treated as the project. Further all funds do not come for a specific area and certain projects may have a multiple area domain without any specific segregation of area wise budget. In such circumstances cases there will be difficulty in reporting under FC - 4. We suggest that organisations have to provide an overall breakup, though further clarity is necessary from the FCRA Department.

2.2 Greater detail required for utilisation of foreign contribution: In the new Form there is change in point no.3 which requires the detail of foreign contribution utilised during the year. Earlier this section was included in point no. 2. Now a separate section has been made for details of utilization of foreign contribution. This newly inserted point no. 3 requires details of utilization of FC.

The amended point no. 3 requires disclosure of utilisation in four parts i.e.

- (3) (a) Details of activities/ projects for which foreign contribution has been received & utilized
- (3) (b) Details of utilisation of foreign contribution
 - i) Total utilisation
 - ii) Total administrative expenses
- (3) (c) Total purchase of fresh assets
- (3) (d) FC transferred to other associations

Point no. 3(a) requiring details of activities/projects with the breakup of the opening balance, receipt, utilisation and closing balance in terms of:

- Name of the project/ activity
- Location of the project/ activity

There is an assumption that all funds have been received for specific project/ activity. Firstly such an assumption itself is unassailable as organisations do receive voluntary contribution which can be spent for any permissible activity at the discretion of the management. Secondly, the location of the expenditure and the location of the activity may be different. For instance books are purchased in New Delhi for distribution over rural areas spread across India. Thirdly, there might be expenditures which cannot be attributed to a particular activity or a location. For example, capacity building of staff, common expenditures, dissemination of information through electronic medium, website or social media etc. In the light of the aforesaid, the organisation may make an estimated segregation for the purposes of Form FC - 4.

In addition to the above issues the existing online form does not allow more than one pin code towards location against specific activity. In such circumstances if an object is being implemented at multiple locations, the principal or the primary location may be specified.

The Point No. 3(b) of the Form further requires the following two affirmations:

- (i) Total Utilisation** for projects as per aims and objectives of the association (Rs.):
- (ii) Total administrative expenses as provided in rule 5 of the Foreign Contribution (Regulation) Rules, 2011 (Rs.):

Firstly, an affirmation regarding compliance of section 12 of the FCR Act, 2010 is required to be given. The text of section 12 is provided in *Annexure 3*. This undertaking primarily is with regard to the proper use of FC funds for the following:

- the sovereignty and integrity of India; or
- the security, strategic, scientific or economic interest of the State; or
- the public interest; or
- freedom or fairness of election to any Legislature; or
- friendly relations with any foreign State; or
- harmony between religious, racial, social, linguistic or regional groups, castes or communities.

Secondly, the form also requires an affirmation that the administrative expenses are within 50% of the total expenditure. There is no issue in giving the above affirmations. However, such requirements regarding compliance with any particular provision of the Act and the Rules are unusual, because all registered organisations are duty bound to follow all the provisions of the Act and Rule, in any case.

The clause 3(c) requires the details and purpose of the movable and immovable assets purchased during the year. In other words, the capital expenditure has to be divided into movable and immovable assets. Further purpose wise bifurcation is also required.

The clause 3(d) requires the details and purpose of the inter charity donations made during the year with date and amount of each individual donation.

Though this clause contains four parts i.e. (a), (b), (c) & (d) but the total utilization is the total of (b), (c) & (d). Hence, the information in (a) requiring details of activities/ projects in the given format is separate and independent and is not related with the total utilization figure to be certified in the form.

2.3 Detail required for FC closing balance and investments: In the clause 4, the detail of the FC closing balance investment made out of foreign contribution is required to be provided. The new form makes an assumption that closing balances shall be confined to the following three categories:

- Cash in Hand
- Cash at Bank (Designated and Utilisation Accounts)
- Investments in the form of Fixed Deposits

The form does not provide any field for closing balances in the shape of advances, TDS or any permissible form of investment other than fixed deposits (for example; Government Bonds etc.). In such circumstances any legitimate closing balance has to be included in one of the above heads.

2.4 Detail required for foreigners as Key Functionaries: In the clause 5, the detail of the foreigners working with the organisation, working as key functionaries or associated with the organisations are required to be reported. Earlier the requirement was regarding foreigners working in the organisation, but the amended form has expanded the requirement to all type of foreigners associated with the organisation in any capacity.

2.5 Detail required for Land and Building lying unused for more than 2 years: In the clause 6, the detail of Land and Building lying unused for more than 2 years is required. In this context, it may be noted that under section 11(5) of the Income Tax Act land can be a permissible investment. The FCRA Act and Rule also do not debar any permissible investment unless it is speculative in nature. In such circumstances, it is not known why unused immovable property should be separately reported. There seems to be an assumption that all land and building are project assets and there for should be continuously used for the project. Such an assumption may not be in consonance with the FCR Act and Rules.

2.6 Detail required for Bank Accounts: In the clause 7 the detail of designated and utilisation bank account is required to be provided. There is an additional requirement of (i) the Email of bank, (ii) Phone Number, (iii) the date of opening of bank account.

2.7 The online form also provides that - Kindly see relevant provisions of FCRA, 2010 and rules made there under (available on MHA's Website).

2.8 If at any stage, it is found that any of the prescribed document is not uploaded or it incorrect, it will amount to non-submission of annual returns and considered violation of FCRA, 2010. This will also attract provisions of Gazette Notification SO 2133(E) dated 16/06/2016.

Hence, one has to very careful in uploading the prescribed document and filling the form correctly.

3. ISSUES ARISING OUT OF THE AMENDED FC – 4

3.1 As there are comprehensive and far reaching changes in the Form FC 4. There is considerable increase in number of new columns and information required, it would have been better if instruction/ advice was also issued by FCRA department explaining each change and the procedure fill up under the new requirement in FC-4. However, as the last date for submission of FC-4 Return is coming to an end and till date no advisory note has come from FCRA, we are summarising herein below our understanding based on which one can decide the best way forward to fill up the form.

Hence, under this background the following inputs are given that can be taken into account while filling FC4:

3.1.1 The meaning of term 'purpose': The purpose wise details are required at three places i.e. :

- Point no.(2) requires purpose wise donation received
- Point no. (3c) requires purpose wise purchase of assets
- Point no. (3d) requires purpose wise FC transfer to other association

We understand purpose should be taken from any of the listed purposes i.e. Social, Cultural, Educational, Economics & Religious and it needs to be reconfirmed that the purpose mentioned in FC4 is covered within the approved purposes as per FCRA renewal letter.

3.1.2 Specific Project/Activity: Point no. 2 requires the name of the specific project/ activity for which FC fund has been received and similarly Point no. 3 requires details of utilisation of FC fund on each project/ activity bifurcating into opening, FC received during the year, utilised during the year and FC closing balance. We understand that each of the funded program should be treated as a separate project.

3.1.3 Disclosure of fund received for unrestricted purpose while filling the donor wise details in column 2(ii) (a): We understand if the organisation has already earmarked the purpose for which the unrestricted fund shall be used then the same purpose can be mentioned under specific activities/ projects. Otherwise the organisation may follow the policy of ear marking unrestricted funds for the primary purpose of the organisation, which could be 'social', 'economic', 'educational' etc. for FCRA purpose.

3.1.4 Utilisation of foreign contribution on the basis of activities/projects (please refer requirement no 3(a) of the form: We understand this table requires details of FC fund received only towards some specific purpose and therefore details of opening balance unrestricted fund or the unrestricted fund received during the year may not be required to be part of this table. However, one should communicate this understanding by e-mail to FCRA department once the FC Return has been submitted.

3.1.5 Details of address/location for each project/activity: The existing online form does not allow more than one pin code towards location against specific activity. Hence in such circumstances if an object is being implemented at multiple location, the principal or the primary location may be specified.

3.1.6 Foreign Contribution transferred to other organisation: While disclosing the FC transfer to other organisation, the date wise transfer is required which, in some cases because of volume may not be accepted in the online system. It is, therefore, suggested to fill up the date of last

transfer against all the transfer and after submission of return we should send an e-mail explaining the difficulties faced and how we have taken up the issue.

3.1.7 Meaning of Term “Total Utilisation” in point No. 3(b)(i): Point No. 3(b)(i) requires the figure of total utilisation and again purchase of fixed assets and FC transfer to other organisation requires to be mentioned separately. Hence, total utilisation should mean all the revenue expenditures for the aim & object of the organisation other than Administrative expenses, capital expenses and transfer to other organisation.

3.1.8 FC contributions received in Kind:

- (a) Point no. 2 of foreign contributions received and Point no. 3 of FC utilisation: Both will include In kind FC contributions as well.
- (b) The opening balance of FC in point 2(a) and 3(a) should also have the opening balance of In kind contributions as per the returns submitted previously.
- (c) In case in kind contributions are received during the year, in addition to FC 4, Form FC 1 should also be submitted.

3.1.9 Unutilised Foreign contribution: The present form requires details of unutilized foreign contribution only to the extent it is in the form of Fixed Deposit, cash in hand; balance in FC designated bank a/c and in utilisation bank account. Hence the amended form does not require the total balance of un-utilised FC contribution as well as the details of closing FC balance in the form of TDS, advances, etc. Hence one option is to give the unutilised foreign contributions pertaining to TDS, advances etc. under Fixed Deposits so that correct reconciliation of closing balance is made. Then the organisation can send an e-mail to the FCRA Authorities explaining the details of total unutilised foreign contribution in hand and why the same was consolidated under one head due to unavailability of other field in the form.

3.1.10 Details of Key Functionary/working/associated: Earlier details were required only for foreigners working but the amended Rules provides for information on foreigners as a key functionary, working & associated. Hence, this part of the form needs to be carefully filled in as in some cases though there is no foreigner on Board but in General Body there may be foreigners or the foreigners may work in the capacity of volunteers etc.

FCRA NOTICE FOR CONDONATION OF DELAY IN FILING OF RETURN

1. INTRODUCTION

- 1.1 The Ministry of Home Affairs, Foreigners Division (FCRA Wing) has issued a Public Notice dated 01.08.2019 allowing an opportunity to all those organisations whose registration was cancelled due to non filing of FC Annual Return. Such organisations can file annual return within 31st October 2019 and may make a fresh application for grant of registration or prior permission. A copy of the Public Notice is provided in *Annexure 4*.

2. OVERVIEW OF THE PUBLIC NOTICE

- 2.1 The FCRA Department had cancelled thousands of FC registrations due to non filing of Annual Return. It may be noted that the FC Returns are required to be filed online from FY 2015-16. Many NGOs failed to comply with the online filing of return and consequently their registration was cancelled.
- 2.2 It may also be noted that once FC registration is cancelled due to any non compliance, then such organisation is not eligible to apply for grant of registration or prior permission for a period of 3 years from the date of such cancellation. Many NGOs became ineligible for fresh registration due to such cancellations.
- 2.3 The aforesaid public notice provides a 3 months window to all such organisations to restore their FC Registration by (i) filing the Annual Returns online, (ii) make a fresh application for grant of registration or prior permission.
- 2.4 It may also be noted no penalty will be levied for delayed filing of Annual Returns. This is an one time measure available only to those associations whose certificate has been cancelled only because of non filing of Annual Returns.
- 2.5 For those organisations who have other violations, the same violations need to be compounded before making a fresh application for grant of registration or prior permission.

MAJOR AMENDMENTS FOR NPOs IN BUDGET 2019

1. OVERVIEW OF THE KEY CHANGES FOR NPOs IN BUDGET 2019

- 1.1 The Finance (No. 2) Bill 2019 has brought some changes which will have a major effect on the charitable and religious organisations.
- 1.2 The provision relating to registration under section 12AA (the section under which registration for availing tax exemptions is granted to charitable and religious organisations) have been amended to provide extensive powers to The Commissioner of Income Tax (Exemptions) to reject an application for registration even if non-compliance or violation of some other law is found. The CIT(E) shall examine and satisfy himself on the compliance of the trust or institution to requirements of any other law which is material for the purpose of achieving its objects.
- 1.3 The above amendment shall have far reaching consequences as the CIT(E) has been empowered to look into compliances under other statute (which normally is not his/her mandate). For example, if an NPO is having more than 20 staff at the time of registration and has not been registered under labour laws, the CIT(E) may refuse to register the NGO u/s 12AA till labour laws are complied with. Another example would be if FCRA registration is not renewed for some reason, it may result in cancellation of 12AA registration as well.
- 1.4 The Finance (No. 2) Bill 2019 has also inserted a new section 194N to the Income Tax Act regarding Tax Deduction at Source (TDS) against cash withdrawal from bank account. The amended provision proposes a 2% TDS on cash withdrawal above Rs. 1 crore in a year. The limit of Rs. 1 crore is on the basis of each Permanent Account Number (PAN) and not for each bank account. In other words, an organisation cannot withdraw more than Rs. 1 crore from all the bank accounts put together. It is not known how the banks will monitor the cash withdrawal in case of NGOs having bank accounts at various places in various banks. In any case, this provision will create challenges and hardship particularly in the cases of large NGOs where there are a number of branches and cash withdrawal is necessary to incur field expenses in remote areas.
- 1.5 Further, the Finance Minister has announced a path breaking proposal for the NPOs regarding accessing capital markets. This is just an announcement as of now. The law and provisions in this regard shall probably be announced in due course.

2. REGISTRATION AND CANCELLATION OF REGISTRATION U/S 12AA OF THE INCOME TAX ACT, 1961 OF THE TRUST OR INSTITUTION

2.1 The provision relating to registration under section 12AA (the section under which registration for availing tax exemptions is granted to charitable and religious organisations) have been amended to provide extensive power to The Commissioner of Income Tax (Exemptions) to reject an application for registration even if non-compliance or violation of some other law is found. The CIT(E) shall examine and satisfy himself on the compliance of the trust or institution to requirements of any other law which is material for the purpose of achieving its objects.

2.2 As per Proposed Finance (No.2) Bill, 2019 - Section 12AA of the Act prescribes for the manner of granting registration in case of trust or institution for the purpose of availing exemption in respect of its income under section 11 of the Act, subject to conditions contained under sections 11, 12, 12AA and 13. Section 12AA also provides for manner in which such registration can be cancelled. This section provides that cancellation of registration can be on two grounds:-

- (a) The Principal Commissioner or the Commissioner is satisfied that activities of the exempt entity are not genuine or are not being carried out in accordance with its objects; and
- (b) it is noticed that the activities of the exempt entity are being carried out in a manner that either whole or any part of its income would cease to be exempt.

In order to ensure that the trust or institution do not deviate from their objects, it is proposed to amend section 12AA of the Income-tax Act, so as to provide that-

- (i) at the time of granting the registration to a trust or institution, the Principal Commissioner or the Commissioner shall, inter alia, also satisfy himself about the compliance of the trust or institution to requirements of any other law which is material for the purpose of achieving its objects;
- (ii) where a trust or an institution has been granted registration under clause (b) of sub-section (1) or has obtained registration at any time under section 12A and subsequently it is noticed that the trust or institution has violated requirements of any other law which was material for the purpose of achieving its objects, and the order, direction or decree, by whatever name called, holding that such violation has occurred, has either not been disputed or has attained finality, the Principal Commissioner or Commissioner may, by an order in writing, cancel the registration of such trust or institution after affording a reasonable opportunity of being heard.

2.3 The proposed amendment is as under:

In section 12AA of the Income-Tax Act, with effect from the 1st day of September, 2019,--

(I) in sub-section (1),--

(i) for clause (a), the following clause shall be substituted, namely:-- “

(a) call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about,--

(i) the genuineness of activities of the trust or institution; and

- (ii) the compliance of such requirements of any other law for the time being in force by the trust or institution as are material for the purpose of achieving its objects, and may also make such inquiries as he may deem necessary in this behalf; and”;
- (ii) in clause (b), after the words “genuineness of its activities”, the words, brackets, figures and letter “as required under sub-clause (i) of clause (a) and compliance of the requirements under sub-clause (ii) of the said clause” shall be inserted;
- (II) in sub-section (4), for the portion beginning with the words “the activities of the trust or the institution” and ending with the words “cancel the registration of such trust or institution”, the following shall be substituted, namely:--
 - a) “the activities of the trust or the institution are being carried out in a manner that the provisions of sections 11 and 12 do not apply to exclude either whole or any part of the income of such trust or institution due to operation of sub-section (1) of section 13; or
 - b) the trust or institution has not complied with the requirement of any other law, as referred to in sub-clause (ii) of clause (a) of sub-section (1), and the order, direction or decree, by whatever name called, holding that such non-compliance has occurred, has either not been disputed or has attained finality, then, the Principal Commissioner or the Commissioner may, by an order in writing, cancel the registration of such trust or institution”.

2.4 The text of the existing section 12AA is provided in *Annexure 5*. The proposed amendment shall have far reaching impact and consequences both at the time of granting registration and for cancellation of registration.

2.5 Normally applications for registration are made either at the time of incorporation of the organisation or sometimes after a gap of 3-4 years. As per the proposed amendment, at the time of granting registration, the CIT(E) shall examine and satisfy himself on the compliance of the trust or institution to requirements of any other law which is material for the purpose of achieving its objects meaning thereby if the trust is having more than 20 staff at the time of registration and has not been registered with labour laws, the CIT(E) may refuse to register the NGO U/S 12AA till compliance of labour laws are done or if it is submitted to the satisfaction of CIT Exemption that labour laws are not applicable to the concerned NGO.

2.6 Similarly the CIT(E) has been given the power to cancel the registration if it is found that the trust or institution has violated any other law which was material for the purpose of achieving its objects, and the order, direction or decree, by whatever name called, holding that such violation has occurred, has either not been disputed or has attained finality. It is very subjective and debatable to establish whether any violation was material for the purpose of achieving its objects.

- 2.7 Hence the proposed amendment gives subjective and extensive powers to the CIT(E) to be satisfied about the compliance or violation of compliance of any law which he/she thinks can be material for the organisation in achieving its objectives.

For example, on cancellation of FCRA registration, CIT(E) can resort to the proposed amended section and can issue a show-cause notice for cancellation of registration u/s 12 AA of Income Tax Act whereas the fact remains that not being eligible to receive foreign fund may not be the reason which can be material for the NGO for the purpose of achieving its objectives. The concerned NGO can raise funds from local sources for implementing the program which is legally permissible.. However this may lead to unwarranted litigations.

3. TDS ON CASH WITHDRAWAL TO DISCOURAGE CASH TRANSACTION

- 3.1 The Finance (No. 2) Bill 2019 has also inserted a new section 194N to the Income Tax Act, 1961 regarding Tax Deduction at Source (TDS) against cash withdrawal from bank account.
- 3.2 As per Proposed Finance (No.2) Bill, 2019 - In order to further discourage cash transactions and move towards less cash economy, it is proposed to insert a new section 194N in the Act to provide for levy of TDS at the rate of two per cent on cash payments in excess of one crore rupees in aggregate made during the year, by a banking company or cooperative bank or post office, to any person from an account maintained by the recipient.
- 3.3 It is proposed to exempt payment made to certain recipients, such as the Government, banking company, cooperative society engaged in carrying on the business of banking, post office, banking correspondents and white label ATM operators, who are involved in the handling of substantial amounts of cash as a part of their business operation, from the application of this provision. It is proposed to empower the Central Government to exempt other recipients, through a notification in the official Gazette in consultation with the Reserve Bank of India.
- 3.4 The amended provision proposes a 2% TDS on cash withdrawal above Rs. 1 crore in a year. The limit of Rs. 1 crore is on the basis of each Permanent Account Number (PAN) and not for each bank account. In other words, an organisation cannot withdraw more than Rs. 1 crore from all the bank accounts put together. It is not known how the banks will monitor the cash withdrawal in case of NGOs having bank accounts at various places in different banks. In any case, this provision will create challenges and hardship, particularly, in the cases of large NGOs where there are a number of branches and cash withdrawal is necessary to incur field expenses in remote areas.

4. PROPOSED LAW FOR NGOs ACCESSING STOCK MARKETS

4.1 Further, the Finance Minister has announced a path breaking proposal for the NPOs regarding accessing capital markets.

“It is time to take our capital markets closer to the masses and meet various social welfare objectives related to inclusive growth and financial inclusion. I propose to initiate steps towards creating an electronic fund raising platform – a social stock exchange - under the regulatory ambit of Securities and Exchange Board of India (SEBI) for listing social enterprises and voluntary organizations working for the realization of a social welfare objective so that they can raise capital as equity, debt or as units like a mutual fund.”

This is just an announcement the law and provisions in this regard shall be declared in times to come.

FCRA - LEGALLY INCONSISTENT PUBLIC NOTICE ON CHANGE IN FUNCTIONARIES

1. INTRODUCTION

- 1.1** The Ministry of Home Affairs, Foreigners Division (FCRA Wing) has issued a Public Notice dated 07.06.2019 directing all organisations registered under Foreign Contribution Regulation Act, 2010 (FCRA 2010) to submit online application in Form FC-6E regarding any change in the office bearers/key persons within one month of the Public Notice. A copy of the Public Notice is provided in *Annexure 6*.
- 1.2** The Public Notice also states that any change in the office bearers/key persons is subject to approval of the Ministry of Home Affairs and such change should be updated on a real time basis. Such an understanding of the FCRA Division in our opinion is legally inconsistent and therefore may render the Public Notice unsustainable. In this issue we shall discuss the law in this regard and the legality of the Public Notice regarding change in office bearers/key persons.

2. THE AMENDMENT RULE 17A UNDER FC(R) RULES, 2015

- 2.1** The FCR Act is silent about the change in office bearers/key persons of an organisation. However, the Rule as amended by Foreign Contribution Regulation Rule, 2015 published vide Notification No. GSR (E) dated the 14th December, 2015 states that any change in the:
- (i) office bearers/key persons
 - (ii) designated bank account,
 - (iii) name and address,
 - (iv) aims and objectives
- shall be intimated within 15 days electronically through online submission in the respective form.
- 2.2** The Rules of 17A as Amended by Foreign Contribution Regulation Rule, 2015 published vide Notification No. GSR (E) dated the 14th December, 2015 is as under:
- 17A. Change of designated bank account, name, address, aims, objectives or Key members of the association :
- A person who has been granted a certificate of registration or prior permission under section 11 of the Act shall intimate electronically online in Form FC-6, within fifteen days, of any change in the following, namely:

- (i) name of the association or its address within the State for which registration/ prior permission has been granted under the Act;
- (ii) its nature, aims and objects and registration with local/ relevant authorities.;
- (iii) bank and/ or branch of the bank and/ or designated foreign contribution account number; and
- (iv) key members of the association if at any point of time such change causes replacement of fifty percent or more of the original key members as reported in the application for grant of registration/ prior permission/ renewal of registration under the Act.”;

2.3 The FCRA 2010 and FC(R) Rules 2015 in fact empowered the organisations by simplifying various key provisions. It may be noted that in the old FCRA 1976, organisations were not allowed to open multiple bank accounts and further, change in the designated bank account was not possible without the approval of the FCRA authorities. The law makers created a very enabling environment by inserting liberal provisions allowing the organisations to take all the routine and executive decisions at their discretion and only intimation was required to be filed. However, this intimation process should have been just a submission of information without any assessment on the part of the authorities. The only process at the end of the authorities was to notify the organisations if there is any defect in filing of the required information.

3. AMENDMENT IN RULES AND FC FORMS IN 2019

3.1 The Central Government vide Notification No. G.S.R.199(E) dt. 07/03/2019 has made amendment in Foreign Contribution (Regulation) Rules, 2011. These rules shall be called the Foreign Contribution (Regulation) Amendment Rules, 2019. There are considerable changes in the Rules as well as in the Forms. In this issue the major changes made in the Rules have been discussed. The amended Rules are provided in Annexure 7.

4. SUMMARY OF OLD AND NEW FORMS

4.1 The amended rules have changed the old forms and the form numbers also have changed at some places, a summary of the old and new forms is as under:

Existing Form	New Form	Particulars
FC-1	FC-1	Gift from relative & Contribution in Kind
FC-2	FC-2	Intimation - Foreign Hospitality
FC-3	FC-3A	Registration
	FC-3B	Prior Permission
	FC-3C	Renewal
FC-4	FC-4	Annual Return
FC-5	FC-5	Transfer to Unregistered Persons
FC-6	FC-6A	Change of Name/address within the state
	FC-6B	Change in aims and objectives
	FC-6C	Change of FC Designated Bank Account
	FC-6D	Opening of FC Utilization Account
	FC-6E	Change in more than 50% of the key members of the organization

5. CAN THE AUTHORITIES MAKE CHANGES SUBJECT TO APPROVAL

5.1 The Public Notice (supra) states that any change without approval will be deemed as a violation and penal action will be initiated. The relevant extract is as under:

“It is noticed that some associations/persons, having been registered under the Act, have changed their office bearers/key functionaries without approval from the Ministry of Home Affairs and without updating this data on a real time basis through the online application meant for change of these details.”

“.....failing which penal action shall be initiated under the appropriate provisions of the Foreign Contribution (Regulation) Act, 2010 and the Foreign Contribution (Regulation) Rules, 2011.”

5.2 It can be seen that the notice is written under presumption that any change in functionaries is subject to prior approval. Whereas the Rule provides that only an intimation is required to be made that if the change exceeds 50%. Further, the notice states that penal actions would be taken, however, there

is no provision under the FCRA 2010 which empowers the authorities to make a change subject to prior approval or take penal measures thereof. Such notice creates an environment of fear and insecurity among the FC registered organisations and it is expected that the authorities shall revise the notice in consonance with law.

6. IS SUCH A PUBLIC NOTICE CONSTITUTIONALLY VALID

6.1 It may be noted that Article 19 of the Constitution empowers all citizens with the right to form associations and make the changes thereof. The Parliament of our Country in its wisdom has rightly refrained from inserting any provisions in FCRA, 2010 which regulates the formation or changes in the organisation. The Rules have been amended to regulate micro changes in the registered organisations, however, the rules also do not empower the FCRA Division to command or approve any change in any organisation. The only empowerment with FCRA Division is to ensure that it is intimated about the changes and it can take remedial measures only if such changes are likely to result in any violation of FCRA 2010.

In the light of the above the Public Notice is legally unsustainable

7. SUPREME COURT ON UNLAWFUL CIRCULAR AND PUBLIC NOTICES

7.1 It has been held that any circular or Notice issued by the Government is merely the understanding of the authorities about the statutory provisions, it has no legal consequences as the respective Act shall determine the application of law. In the case Commissioner of Central Excise, Bolpur Versus M/s Ratan Melting & Wire Industries Civil Appeal No. 4022 of 1999 in its judgement dated 14th October 2008 the Supreme Court observed as under:

“So far as the clarifications/circulars issued by the Central Government and of the State Government are concerned they represent merely their understanding of the statutory provisions. They are not binding upon the court. It is for the Court to declare what the particular provision of statute says and it is not for the Executive. Looked at from another angle, a circular which is contrary to the statutory provisions has really no existence in law.”

7.2 In the light of the above ruling the Public Notice looks bad in law and needs reconsideration.

8. OTHER LEGALLY INCONSISTENT ACTS AND DIRECTIONS OF FCRA DIVISION

8.1 It has been noticed that there are some legally inconsistent practices being followed by the FCRA Department, some of which can be outlined as under:

- For change of the designated FC Bank Account the rule provides, only, intimation to be given by the organisation. However, the online portal of FCRA Department keeps such intimation in

abeyance with a message “ under process” and the organisation is not allowed to use such Bank Account till it is cleared by the authorities. It is beyond the mandate of the FCRA Department to keep an intimation on hold subject to approval.

- Further, once an intimation for a change in Bank Account is filed the organisation is not allowed to file further changes or information about new utilisation Bank Accounts. In other words if an organisation has opened one utilisation bank account and has given online intimation to the FCRA Department in Form FC-6D it is not allowed to upload another Form FC-6D if one more utilisation bank account is opened, such practices are not consistent with the law.
- For change of the key persons/ office bearers the Rule 17A provides that an intimation should be sent only if the change is more than 50% from the list of key persons/ office bearers provided at the time of registration or renewal. Very few organisations have more than 50% change within such a short time frame, therefore very few intimation in this regard are filed. Therefore, issuing a Public Notice to all organisations is not warranted under the law.
- Filing a form is the prerogative of the organisation, the FCRA Department can only regulate whether the forms have been appropriately filed or not. **However, in practice the filing of form and acceptance of information itself is treated as an assessment/approval process, which is not as per the liberalised FCRA 2010 and the Rules thereof.**

9. THE PUBLIC NOTICE IS NOT CONSISTENT WITH THE NEW FORM 6E

- 9.1 The Public Notice regarding change of key functionaries/office bearers requires that any change should be reported on real time basis, which is not consistent with the revised Form 6E. Revised Form 6E provides that intimation should be given only if the change is more than 50% of key functionaries/office bearers. Further, under the Form 6E the requirement is to provide intimation there is no clause or column which refers to the condition of prior approval.

10. WAY FORWARD

- 10.1 It is suggested that Form FC-6E for change of key functionaries/ office bearers should be filed only if there is a change of more than 50% and intimation has not been submitted with the FCRA Department. If the changes already filed have not been updated then the same may be informed to FCRA Department for updation or further guidance, if any

NEW CIRCULAR CONDONING BELATED SUBMISSION OF AUDIT REPORT IN FORM 10B

1. OVERVIEW

- 1.1 Organisations registered under section 12AA of the Income Tax Act are required to follow various conditions to avail the exemptions under section 11. One of the condition is to get the accounts audited in Form 10B and such form is required to be furnished along with the Income Tax return.
- 1.2 During the last two years many organisations failed to file the audit report in Form 10B along with the Income Tax return. In a large number of cases Income Tax demands were raised by denying the exemptions under section 11. Recently Central Board of Direct Taxes (CBDT) has released a circular condoning the delay in filing of the audit report in Form 10B, particularly, for assessment years 2016-17 and 2017-18. The circular will provide great relief to all the organisations who were subjected to tax demand for delay in filing of the audit report in Form 10B for assessment years 2016-17 and 2017-18. The copy of the circular is provided in *Annexure 8*.
- 1.3 The content of the circular can be divided into three parts
- (i) All delay in filing of the audit report in Form 10B for assessment years 2016- 17 and 2017-18, has been condoned. Therefore no condonation petition is required to be filed before the Commissioner of Income Tax (Exemptions), only a petition needs to be filed before the AO with a request to rectify the assessment orders by giving effect of the said circular.
 - (ii) All delay in filing of the audit report in Form 10B for assessment year prior to 2018-19, a condonation petition under section 119(2)(b) is required to be filed before the Commissioner of Income Tax (Exemptions). The language of the circular implies the following:
 - (a) For the assessment year 2016-17 and 2017-18 if the Audit Report was not obtained before the filing of Income Tax return then a petition under section 119(2)(b) is required to be filed before the Commissioner of Income Tax (Exemptions).
 - (b) Further any case regarding delay in filing of audit report for older assessment years i.e. for assessment year 2015-16 or earlier are eligible for condonation petition before the CIT(E).
 - (iii) All delay in filing of the audit report in Form 10B for assessment year 2018- 19 onwards, the circular is silent therefore it is not known whether a condonation petition under section 119(2)(b) can be filed before the Commissioner of Income Tax (Exemptions). There is no clarity whether delayed filing of audit report for the assessment year 2018-19 onward shall be condonable or not. However, in our opinion based on the statute as well as judicial precedence filing of audit report is a directory provision and the AO has a right to allow any delay in filing of the audit report in Form 10B provided it is filed before 31st March of the respective assessment year i.e. the time limit under section 139 for filing of belated return.

2. THE CONDITIONS FOR AVAILING BENEFIT UNDER SECTION 11 AND 12

- 2.1** Section 12A states various conditions for availing the exemption under the Act - the first condition is regarding application for registration under section 12AA and among the other conditions there is the requirement of audit by an Chartered Accountant as defined in the Explanation to sub-section (2) of section 288. The Audit Report is required to be prepared in Form 10B. It may be noted that prior to 2013-14 the Audit Report was submitted in hard copies. However, with effect from Assessment year 2013-14, it has become mandatory to upload online audit report in Form 10B.
- 2.2** As online filing of Audit Report in Form 10B has become mandatory along with the Income Tax Return, there have been litigations where the Assessing Officer has denied the benefit of tax exemptions under section 11 for delayed filing of Audit Report.
- 2.3** Section 12AA of the Income Tax Act provides conditions for applicability for Sec. 11 & 12 of the Income Tax Act, 1961. The conditions are :
1. The organisation/ institution has to be registered u/s. 12AA of the Income Tax Act, 1961.
 2. If the organisation has adopted or undertaken modifications of the objects which do not conform to the conditions of registration, then within a period of thirty days from the date of said adoption or modification, application for approval of such modification to be submitted to the Principal Commissioner or Commissioner. (w.e.f. Asst Year 2018-19).
 3. The Trust or institution should get the accounts audited as required under the Act and shall submit the Audit Report in form no 10B along with the Return of income for the relevant Assessment Year.
 4. The organisation has to furnish the return of income in ITR-7 for the previous year under sub-section (4A) of sec 139, within the time allowed under that section (w.e.f. Asst Year 2018-19). In other words, delay in filing of return is also not permissible.
- 2.4** In the light of the above conditions it is mandatory to furnish Form 10B along with return of income as it is one of the conditions to claim the benefit u/s. 11 & 12.

3. FILING OF AUDIT REPORT ALONG WITH RETURN IS DIRECTORY AND NOT MANDATORY

- 3.1** In our opinion the requirement of submission of Form 10B along with the return though is one of the conditions for claiming the benefit of Sec. 11 & 12, it is directory in nature and not mandatory. In other words, it is a curable defect and the AO should accept belated filing of Audit Report in Form 10B.
- 3.2** If the Audit Report is not submitted with the Income Tax Return, then such return should be treated as defective and a notice u/s. 139(9) should be given to rectify the defect/ deficiency in the return being submitted. The Audit report in Form 10B can also be submitted along with the revised return.

4. OLD CBDT CIRCULAR REGARDING DELAYED FILING OF AUDIT REPORT

- 4.1 The recent circular has superseded the old CBDT Circular in this regard. The Central Board of Direct Taxes (CBDT) had issued the following circular clarifying the above issue, which is as follows:

(1/1148-CBDT F. No. 267/482/77-IT (Part) dated February 9, 1978--CBDT Bulletin Tech. XXIII/582.):

"Charitable trust-Requirement of filing audit report in Form 10B--Section 12A(b)--Instructions regarding.-- The Board have considered whether the requirement under Section 12A(b) of filing audit report 'along with the return of income' is mandatory so as to disentitle the trust from claiming exemption under Sections 11 and 12 in case of omission to furnish such report in the prescribed form along with the return.

Normally, it should be possible for a charitable or religious trust or institution to file the auditor's report along with the return of total income, where such trust or institution claims exemption under Sections 11 and 12. However, in cases where for reasons beyond the control of the assessee some delay has occurred in filing the said report the exemption as available to such trust under Sections 11 and 12 may not be denied merely on account of delay in furnishing the auditor's report and the Income-tax Officer should record reasons for accepting a belated audit report."

5. RECENT CIRCULAR CONDONING THE DELAY IN FILING OF FORM 10B

- 5.1 Recently Central Board of Direct Taxes (CBDT) has released a Circular No.10/ 2019 dt. 22/05/2019 condoning the delay in filing of the audit report in Form 10B, particularly, for assessment years 2016-17 and 2017-18. The circular will provide great relief to all the organisations who were subjected to tax demand for delay in filing of the audit report in Form 10B for assessment years 2016-17 and 2017-18. The copy of the Circular is provided in *Annexure 8*.

- 5.2 The relevant extract of circular is as under:

"4. in supersession of earlier Circular/ Instruction issued in this regard, and with a view to expedite the disposal of applications filed by such trusts or institutions for condoning the delay in filing Form No.10B and in exercise of the powers conferred under section 119(2) of the Act, the Central Board of Direct Taxes hereby directs that:

- (i) The delay in filing of Form no. 10B for AY 2016-17 and AY 2017-18, in all such cases where the Audit Report for the previous year has been obtained before the filing of return of income and has been furnished subsequent to the filing of the return of income but before the date specified under section 139 of the Act is **condoned**.
- (ii) ***In all other cases of belated applications*** in filing Form no. 10B for years ***prior to AY 2018-19***, the Commissioners of Income Tax are authorized to admit such applications for condonation of delay u/.s. 119(2) (b) of the Act. The Commissioners will while entering such belated applications in filing Form no.10B shall satisfy themselves that the assessee was prevented by

reasonable cause from filing such application within the stipulated time. Further, all such applications shall be disposed-off by 30.09.2019.”

6. IMPLICATIONS OF RECENT CIRCULAR CONDONING FILING OF FORM 10B

6.1 The content of the circular can be divided into three parts:

- (i) All delay in filing of the audit report in Form 10B for assessment years 2016- 17 and 2017-18, has been condoned. Therefore no condonation petition is required to be filed before the Commissioner of Income Tax (Exemptions), only a petition needs to be filed before the AO with a request to rectify the assessment orders by giving effect of the said circular. It may be noted that the assessee has obtained audit report for the previous year before the filing of return though furnished subsequent to the filing of return but before the date specified u/s. 139 of the Tax act, 1961.
- (ii) All delay in filing of the audit report in Form 10B for assessment year prior to 2018-19, a condonation petition under section 119(2)(b) is required to be filed before the Commissioner of Income Tax (Exemptions). The language of the circular implies the following:
 - (a) For the assessment year 2016-17 and 2017-18 if the Audit Report was not obtained before the filing of Income Tax return then a petition under section 119(2)(b) is required to be filed before the Commissioner of Income Tax (Exemptions).
 - (b) Further any case regarding delay in filing of audit report for older assessment years i.e. for assessment year 2015-16 or earlier are eligible for condonation petition before the CIT(E).All such applications shall be disposed off by 30/09/2019.
- (iii) All delay in filing of the audit report in Form 10B for assessment year 2018- 19 onwards, the circular is silent therefore it is not known whether a condonation petition under section 119(2)(b) can be filed before the Commissioner of Income Tax (Exemptions). There is no clarity whether delayed filing of audit report for the assessment year 2018-19 onward shall be condonable or not. However, in our opinion based on the statute as well as judicial precedence filing of audit report is a directory provision and the AO has a right to allow any delay in filing of the audit report in Form 10B provided it is filed before 31st March of the respective assessment year i.e. the time limit under section 139 for filing of belated return.

6.2 It may be noted that despite the CBDT circular indicating that the provisions related with the requirement of audit are directory and not mandatory, the assessee does not have any implied right to file belated audit reports. Audit reports are required and should be filed along with the return only. However, any delay in filing of Form 10B would not necessarily result in denial of exemptions under section 11.

7. CASE LAWS REGARDING DELAYED FILING OF AUDIT REPORT

- 7.1 In the case of CIT vs. Rai Bahadur Bissesswarlal Motilal Malwasie Trust (1992) 195 ITR 825, the Calcutta High Court has affirmed that the requirement of filing the audit report with the return is merely a procedural requirement, and that exemption cannot be denied so long as the report is available to the assessing officer before the completion of assessment.
- 7.2 In the case of Calcutta Management Association vs. ITO (1992) 42 ITD 62, the Calcutta bench of the Tribunal held that the Audit Report can even be filed at the time of appeal before the Commissioner (Appeals).
- 7.3 A similar view has been taken by the Tribunal, in the case of Swajan Pariwar Trust vs. ADIT(E) (1997) 57 TTJ (Mum)(SMC) 77, that, where the trust filed the audit report along with a rectification application under section 154, it was entitled to the exemption, as the defect had been removed.
- 7.4 The Gujarat High Court in CIT v. Gujarat Oil & Allied Industries [1993] 201 ITR 325 (Guj.) held that the provision about furnishing of the auditor's report along with the return has to be treated as procedural provision and, therefore, directory in nature.
- 7.5 In the case National Horticulture Board v. CCIT [2009] 176 TAXMAN 167 (PUNJ. & HAR.) the Chief Commissioner dismissed application for approval under section 10(23C)(iv) on ground that audit reports in Form No. 10BB were not filed with returns and same were filed later, but were not dated as required under 10th proviso to said provision. The High Court held that provisions of the law having been substantially complied with, audit report should have been taken into account even if, strictly speaking, it was not filed with return and not in Form No. 10BB but in Form No. 10B as stated in impugned order.
- 7.6 The High Court of Calcutta CIT vs. Hardeodas Agarwala Trust (1992) 198 ITR 511 (Cal). held that whether a provision is directory or mandatory has to be considered in the context in which the conditions are imposed. Whether a statute is mandatory or directory depends on the intent of legislature and upon the language in which the intent is clothed. The meaning and intention of Legislature must govern and these are to be ascertained not only from the phraseology of the provision but also by considering its nature, its design, and the consequences which would follow from construing it one way or the other.
- 7.7 The High Court of Punjab and Haryana in the case of Commissioner of Income Tax vs. Sankalp Welfare Society [2008] 303 ITR 64 (Punjab & Haryana) held that Provisions of section 32AB(5) are not mandatory and the Assessing Officer has discretion to entertain the audit report, even though the same was not filed along with the return, for grant of benefit of deduction to the assessee in terms of section 32AB(1). It may be noted that the provisions of section 32AB(5) are exactly similar to the

provisions of section 12A(1)(b) but there is requirement of filing the Audit Report along with the return of income. In this case the Punjab High Court relied on the cases CIT v. Punjab Financial Corpn. [2002] 254 ITR 6 (Punj. & Har.) and CIT v. Print Systems & Products [2006] 285 ITR 260 (Mad.).

8. THE AUDIT REPORT CAN EVEN BE SUBMITTED AT THE APPELLATE STAGE

- 8.1** In the case CIT vs. Shahzedanand Charity Trust – (1997) 228 ITR 292 (PH), it has been clarified that the exemption available to the trust under section 11 may not be denied merely on account of delay in furnishing the auditor's report. The word 'shall' occurring in section 12A cannot, under the circumstances, be read as a 'must' making it mandatory for the trust to furnish the auditor's report along with the return. If for certain unavoidable circumstances, the assessee is unable to furnish the auditor's report along with the return, then the same can be furnished at a later date with the permission of the Assessing Officer, who may permit the assessee to do so after recording the reasons for so doing.
- 8.2** There was no merit in the submission of the revenue that, as per that circular, the auditor's report could only be furnished up to the stage of framing of the assessment as the power to condone the delay for accepting the auditor's report at a later date has only been given to the ITO and not thereafter, i.e., at the appellate stage. The CBDT, by issuing the above circular, has treated the provisions regarding furnishing of auditor's report along with the return to be procedural and, therefore, directory in nature. By showing sufficient cause, the auditor's report can be produced at any later stage either before the ITO or before the appellate authority.

9. CONCLUDING REMARK

- 9.1** To sum up, in our opinion if the Form 10B is not uploaded along with the return, such defect itself cannot result in denial of exemptions under section 11. Therefore, where return has been processed u/s. 143(1) denying the exemption u/s. 11 mainly on the ground that Form 10B was not uploaded with the return but filed subsequently, the concerned NGO should submit application to the assessing officer for condonation of delay for late submission of Form 10B along with the return of income and also the petition u/s 154 of the Income Tax Act, 1961 for revising the intimation by allowing the benefit of section 11 of the Income Tax Act, 1961.

UNREGISTERED NPOs ARE ELIGIBLE FOR TAX BENEFIT AVAILABLE TO AN INDIVIDUAL

1. INTRODUCTION

- 1.1** The charitable organisations which do not have 12AA registration are subjected to tax on their income. It has been noticed small NPOs are being issued large tax demand notices against their income which is below taxable limit. For instance if any NPO has a taxable income of Rs. 2 lakh its tax liability should be nil, however, it has been noticed that the entire income is taxed at maximum marginal rate without providing the benefit of slab rates applicable to individuals for AOP (Association of Persons). In this issue we shall discuss the Income Tax provisions which provide that unregistered NPOs are eligible for tax benefits available to individuals or AOP. To further clarify, if an NPO's taxable is Rs. 5 lakh then its tax liability will be NIL if it is taxed at the rates applicable to individual, on the contrary if it is taxed at maximum marginal rate then the tax liability will be more than Rs. 1.5 lakh.

2. UNDERSTANDING THE PROVISIONS

- 2.1** When the income of a charitable organisation becomes taxable it is taxed at the rate applicable to an Association of Persons. The taxes are determined on the basis of the provisions of section 164(2) and (3).
- 2.2** The charitable organisations which do not have 12AA registration are subjected to tax as individuals or AOP.
- 2.3** It may also be noted that expenditure towards charitable activity are also not allowed to be deducted. In other words, the donations and other income will be taxed like any other assessee, any charitable activity conducted out of the donation will not be allowed as an admissible expense.
- 2.4** An admissible expenditure should be in a nature of charge against the income, in other words under law only those expenditures are permissible which are spent to earn the corresponding income. For example if a charitable organisation has received Rs. 5 lakh as donation (voluntary contribution) and has spent the entire amount towards charitable activities, still its taxable income will be Rs. 5 lakh.
- 2.5** It has been noted in the past that the Assessing Officers have been issuing tax demand notices by computing the Income Tax at maximum marginal rate. When income is taxed at maximum marginal rate then the tax is levied on the entire income, on the contrary for individuals Income Tax is exempted upto Rs. 5 lakh of income.

- 2.6 However, a careful reading of the Income Tax Act suggest that charitable NPOs cannot be taxed at maximum marginal rate. Further, there are CBDT Circulars and judicial precedence in support of allowing the tax benefits available to individuals or AOP.

3. THE APPLICABLE PROVISIONS OF THE INCOME TAX ACT, 1961

- 3.1 Provisions of section 164(2) & (3) of Income Tax Act, 1961, provide that the following nonexempt portion of income under section 11 or 12 shall be charged to tax at the rate of tax applicable to the income of an Association of Persons :
- (i) The portion of income derived from property held under trust either wholly or partly for charitable or religious purposes.
 - (ii) Voluntary contributions as defined under section 2(24)(ia).
 - (iii) Business income as derived under section 11(4A)
- 3.2 In other words the above provisions make it clear that only the above type of income shall be subjected to tax at maximum marginal rate. All other income of a trust shall be taxed at the rate applicable to an individual.
- 3.3 In addition to the above provisions, there is a proviso to section 164(2), which provides that, where the income becomes taxable by virtue of section 13(1)(c) or 13(1)(d), the tax shall be charged on the relevant income at maximum marginal rate. The text of section 164 is provided in *Annexure 9*.
- 3.4 To sum up, from the above provisions, it can be said that the non-exempt income of a charitable or religious organisation will be taxed at the rates applicable to an AOP and they will be entitled to the basic exemption limit. But, when the income becomes taxable due to the contravention mentioned under section 13(1)(c) & (d), then that particular portion of income will be taxed at the maximum marginal rate and the remaining income will be taxed at normal rates.

4. CBDT CIRCULAR NO. 387, DATED 6-7-1984

- 4.1 The CBDT has clarified this vide Circular No. 387, dated 6-7-1984. The CBDT interpreted the proviso to section 164(2) and 164(3) to imply that in case of organizations contravening the provisions of section 13(1)(c) & (d), they will be taxed at the maximum marginal rate only on that part of income which has forfeited the exemption under the said provisions.
- 4.2 *It may be noted that section 164(2) and 164(3) do not put any condition regarding 12AA registration, it is a section independent of the provision pertaining to exemptions. In case of Public Charitable Trust the issue of determinate or indeterminate beneficiaries is irrelevant as the beneficiaries are public at large, therefore section 164(2) does not provide for any such condition. In case of trust with private beneficiaries the issue of determinate or indeterminate beneficiaries is relevant. It is a settled*

law that charitable or religious trust shall eligible for the basic exemption limit and shall be taxed under normal rate of taxes.

5. CBDT CIRCULAR NO. 320 DATED 11-1-1982

5.1 CBDT has also issued a circular No. 320 [F. No. 131(31)/81-TP(Pt.)], dated 11-1-1982 regarding applicability of tax rates as individual for charitable and religious trust. The text of the circular is as under:

“Whether the section is applicable to income received by trustees on behalf of provident funds created exclusively for the benefit of employees

1. A reference is invited to paragraph 15.1 to 15.7 of the Explanatory Notes on the provisions relating to direct taxes in the Finance Act, 1981 [Circular No. 308, dated 29-6-1981] which explain the scope and ambit of section 167A, as inserted by the Finance Act, 1981.
2. A question has been raise whether the provisions of section 167A of the Income-tax Act which provide for charging of tax at the maximum marginal rate on the total income of an association of persons where the individual shares of members in the income of such association are indeterminate or unknown would also apply to income receivable by trustees on behalf of provident funds, superannuation funds, gratuity funds, pension funds, etc., created bona fide by persons carrying on business or profession exclusively for the benefit of the persons employed in such business. The Board have been advised that cases where income received by the trustees on behalf of a recognised provident fund, approved superannuation fund and approved gratuity fund is governed by section 10(25) of the Income-tax Act, the question of their being charged to tax does not arise. So far as cases where income is receivable by the trustees, on behalf of an unrecognized provident fund or an unapproved superannuation fund, gratuity fund, pension fund or any other fund created bona fide by a person carrying on a business or profession exclusively for the benefit of persons employed in such business or profession are concerned, they will continue to be charged to tax in the manner prescribed by section 164(1)(iv) of the Income-tax Act, as hitherto.

Similarly, in the cases of registered societies, trade and professional associations, social and sports clubs, charitable or religious trusts, etc., where the members or trustees are not entitled to any share in the income of the association of persons, the provisions of new section 167A will not be attracted and, accordingly, tax will be payable in such cases at the rate ordinarily applicable to the total income of an association of persons and not at the maximum marginal rate.”

5.2 In the light of the above circular it is clear that charitable and religious organisations registered as societies or trust shall not be taxed at Maximum Marginal Rate

6. CASE LAWS IN THIS REGARD

- 6.1** It has been held that, though the rate applicable to public charitable or religious organisations is that of an Association of Persons, the status of the organisation for the purposes of taxation would be that of an individual. In *DIT(Exemption) v Shardaben Bhagubhai Mafatlal Public Charitable Trust* [2001] 247 ITR 1 (Bom.), the issue was whether the assessee-trust was assessable as an individual and, consequently, entitled to deduction under section 80L of the Act? The Bombay High Court held that, the term “individual” does not mean a single living human being. It can include a body of individuals constituting a unit for the purposes of the Act. Even though the assessment of income was in the hands of the trust, it had to be made in the same manner and to the same extent as it would have been made in the hands of the beneficiaries. Therefore, it was held that the representative assessee in the case of a discretionary trust must be regarded as an individual and it would be entitled to the benefit of deduction under section 80L of the Act.
- 6.2** In the case of *DIT v. Agrim Charan Foundation* [2001] 119 Taxman 569 (Delhi) it was held that innocent violation of section 11(5) would not attract forfeiture of exemption. In this case, the assessee had invested in the fixed deposits of two companies which were not covered under section 11(5). The investment was withdrawn when the assessee became aware of such violation. The Court held that violation without any mala fide intention will not result in the forfeiture of exemption. Therefore, under the prevailing law barring exceptions and innocent violations, it seems that wilful violation of section 11(5) in prohibited investments will result in forfeiture of entire income and the investment amount shall be taxed at maximum marginal rate. In *Gurdayal Berlia Charitable Trust v Fifth ITO* [1990] 34 ITD 489 (Bom.), the Tribunal observed that only the income from unapproved investment would be taxable at the maximum marginal rate while the rest of the income would be exempt.

CBDT CLARIFICATION ON PENALTIES FOR DELAYED FILING OF RETURN IN ITR – 7

1. RECENT CBDT CIRCULAR AND ITS CONTEXT

- 1.1** The Central Board of Direct Taxes has issued a Circular dated 23rd April 2019 regarding the penal provisions for delayed filing of Income Tax Return in ITR-7. It may be noted that the normal time limit for filing Income Tax Return in ITR-7 is 30th September of each year. Further a belated or revised return can be filed upto 31st March of the succeeding year i.e. if the normal return filing time is 30th September 2019 then a belated or revised return can be filed upto 31st March 2020.
- 1.2** The Finance Act 2017 w.e.f 01.04.2018 had amended clause (ba) of section 12A(1) and specified that the benefit of section 11 shall be denied if the Income Tax returns are not filed in time provided under section 139(4A). The Assessing Officers started denying the tax exemptions under section 11 if the return was filed after 30th September. The CBDT has provided relief by clarifying that Income Tax returns can be filed upto 31st March without attracting forfeiture of Income Tax Exemptions. The copy of the Circular has been enclosed in *Annexure 10*.

2. OVERVIEW OF FILING OF RETURN

- 2.1** All charitable organisations having income exceeding the maximum amount which is not chargeable to income tax during the previous year are required to file their returns of income. Currently the maximum amount which is not chargeable to income tax is Rs. 2.5 lakhs per year.
- 2.2** The 'income' for the purposes of filing the return should be computed without giving effect to the provisions of sections 11 and 12 of the Act. This means trust & societies are required to submit their return if the income is more than the basic exemption limit and in case of Section 8 company, the return has to be filed even if there is Re.1/- income, as for Section 8 company there is no basic exemption limit. The return is to be filed as per the provisions of section 139(4A) and (4C) in the manner provided in section 139 of the Act.
- 2.3** The Taxation Laws (Amendment) Act, 2006 has amended section 139(4C)(e) and also inserted a new sub-section (4D) in section 139. As a consequence, medical institutions under section 10(23C)(iii)(a) having gross receipts of Rs. 1 crore or less are also required to file return if the income exceeds the maximum amount which is not chargeable to income-tax during the previous year.

- 2.4 Further, the organisations notified under section 35(1)(ii) & (iii) are also required to file annual return if the income exceeds the maximum amount which is not chargeable to income-tax during the previous year.
- 2.5 Upto the Assessment Year 2015-16, the organisations claiming exemption under sub-section (iiiab) & (iiiac) of Clause 23C of Section 10 i.e. university or other educational institution, Medical institution existing solely for educational/medical purposes & not for purposes of profit & which is wholly or substantially financed by the Government were exempt from furnishing of return. However Finance Act, 2015 has proposed that these organisations shall also have to file their Income Tax Return u/s. 139 w.e.f. 2016-17.
- 2.6 The Return has to be filed in ITR-7 and w.e.f. F.Y. 2013-14, e-filing of Income Tax Return has become mandatory. The last date of filing of return is 30th September of the Assessment Year.
- 2.7 Signature can be put through digital signature or submitting the verification of the return in Return Form ITR-7 & sending the same to Income Tax Centralized Processing Centre, Prestige Alpha, No. 48/1 & 48/2, NH-7, Basapura, Bengaluru, Karnataka- 560100 after signature.

3. EXEMPTIONS WILL BE LOST FOR NOT FILING RETURN

- 3.1 This law is applicable from 1st April, 2018 and will, accordingly, apply in relation to assessment year 2018- 2019 and subsequent years. In other words, if the return is not filed by 31st of March 2020 for the AY 2018-19 then the entire exemptions shall be forfeited for that particular year. Though it is a positive step to compel all organisations to file return in time, however the penalty is very harsh as the entire exemption will be withdrawn for that particular year.

4. ONLINE FILING OF AUDIT REPORT IN FORM 10B

- 4.1 With effect from Assessment year 2013-14, it has also become mandatory to upload online Audit Report in Form 10B along with the return. However, if the audit report is not uploaded along with the return then the failure to upload online Audit Report in Form 10B is a curable defect and the AO should accept the audit report filed after filing of return but before 31st March or completion of assessment under 143(1) whichever is earlier.

5. REVISION OR CORRECTION OF MISTAKES (IN THE RETURN ALREADY SUBMITTED)

- 5.1 The concerned organisation can file a revised return at any time before the expiry of one year from the end of the assessment year or completion of the assessment, whichever is earlier, only if there is any mistake or omission in the return. For instance, the income tax return submitted for the assessment year 2013-14 can be revised any time on or before 31st March, 2015, provided the Assessing Officer

has not completed the assessment in the intervening period. However it is to be noted that return can be revised only if the original return is filed within due date.

6. FILING OF RETURN BY UNREGISTERED ORGANISATIONS

- 6.1** Charitable / Religious Organisations, which are not registered u/s 11 or u/s 10(23C) of the Income Tax Act and do not enjoy any exemption on their income. Hence, they are liable to file the return if the voluntary contribution received by them or their income exceeds the maximum amount which is not chargeable to income-tax in any previous year. The tax rate applicable to such organisations will be that of an individual, in other words, income upto Rs. 2.5 lakh shall be exempted. However for section 8 company of Companies Act, 2013 there is no basic exemption limit, ITR needs to be submitted irrespective of amount of income.

TYPES OF REGISTRATION/APPROVAL FOR NGOs UNDER INCOME TAX

1. INTRODUCTION

1.1. Under the Income Tax Act 1961, there are various types of sections under which a charitable or religious organisation can claim exemptions from tax liability. Normally most of the charitable or religious institutions get themselves registered under section 12AA to claim tax benefits under section 11 of the Income Tax Act. However, there are various other sections under which the charitable or religious institutions can also avail tax benefits. In this issue, the various sections and provisions u/s 10(23C) of the Income Tax Act which are available to charitable or religious institutions have been discussed.

2. EDUCATIONAL INSTITUTION WHOLLY OR SUBSTANTIALLY FINANCED BY GOVERNMENT

2.1. Income received by a person on behalf of an educational institution wholly or substantially financed by Government is totally exempt from Income Tax under section 10(23C)(iiia). Such institutions are not required to apply for registration or approval before any authority. It may be noted that under Rule 2BBB the term “substantially financed by Government” would mean grant from Government in excess of 50% of total receipts including voluntary contribution.

2.2. Such institutions are not subject to audit under Form 10B or Form 10BB as required by other charitable institutions.

2.3. Such institutions are not subject to 85% utilisation or any other conditions of section 11 which is applicable for various other charitable institutions.

2.4. Such institutions are required to file Income Tax Return in the Form ITR-7 under section 139(4C)(e).

3. MEDICAL INSTITUTION WHOLLY OR SUBSTANTIALLY FINANCED BY GOVERNMENT

3.1. Income received by a person on behalf of a medical institution wholly or substantially financed by Government is totally exempt from Income Tax under section 10(23C)(iiia). Such institutions are not required to apply for registration or approval before any authority. It may be noted that under Rule 2BBB, the term “substantially financed by Government” would mean grant from Government in excess of 50% of total receipts including voluntary contribution.

- 3.2. Such institutions are not subject to audit under Form 10B or Form 10BB as is required by other charitable institutions.
- 3.3. Such institutions are not subject to 85% utilisation or any other conditions of section 11, which is applicable to various other charitable institutions.
- 3.4. Such institutions are required to file Income Tax Return in the Form ITR-7 under section 139(4C)(e).

4. EDUCATIONAL INSTITUTION WITH UPTO RS. 1 CRORE ANNUAL RECEIPTS

- 4.1. Income received by a person on behalf of an educational institution with less than 1 crore annual receipts is totally exempt from Income Tax under section 10(23C) (iiiad). Such institutions are not required to apply for registration or approval before any authority. It may be noted that the annual receipts will be calculated for each educational institution run by a society. For example, if a society runs three schools and in each school the total receipt is less than Rs.1 crore, then the society can claim tax benefit under section 10(23C)(iiiad) for all the three schools.
- 4.2. Such institutions are not subject to audit under Form 10B or Form 10BB as is required by other charitable institutions.
- 4.3. Such institutions are not subject to 85% utilisation or any other conditions of section 11, which is applicable, various other charitable institutions.
- 4.4. Such institutions are required to file Income Tax Return in the Form ITR-7 under section 139(4C)(e).

5. MEDICAL INSTITUTION WITH UPTO 1 CRORE ANNUAL RECEIPTS

- 5.1. Income received by a person on behalf of an medical institution with less than 1 crore annual receipts is totally exempt from Income Tax under section 10(23C)(iiiie). Such institutions are not required to apply for registration or approval before any authority. It may be noted that the annual receipts will be calculated for each educational institution run by a society. For example, if a society runs three hospitals and in each hospital the total receipt is less than 1 crore, then the society can claim tax benefit under section 10(23C)(iiiie) for all the three hospitals.
- 5.2. Such institutions are not subject to audit under form 10B or form 10BB as is required by other charitable institutions.
- 5.3. Such institutions are not subject to 85% utilization or any other conditions of section 11 which is applicable to various other charitable institutions.

5.4. Such institutions are required to file Income Tax Return in the Form ITR-7 under section 139(4C)(e).

6. CHARITABLE INSTITUTION OF NATIONAL / STATE IMPORTANCE

6.1. Income received by a person on behalf of a charitable institution of importance throughout India or throughout any state or states is totally exempt from Income Tax under section 10(23C)(iv). Such institutions are required to apply for approval before the Commissioner of Income Tax (Exemption) notified by CBDT in this regard in Form 56.

6.2. Such institutions are subject to audit under Form 10BB. Such institutions are also subject to 85% utilisation or many other conditions of section 11 which is applicable various other charitable institutions. A comparative chart of the provisions applicable to such institutions with those availing benefit under section 11 is provided in *Annexure 11*.

6.3. Such institutions are required to file Income Tax Return in the Form ITR-7 under section 139(4C)(e).

7. RELIGIOUS INSTITUTION FOR PUBLIC RELIGIOUS PURPOSES OR FOR RELIGIOUS CUM CHARITABLE PURPOSES

7.1. Income received by a person on behalf of a religious institution for public religious purposes or public religious cum charitable purposes is totally exempt from Income Tax under section 10(23C)(v). Such institutions are required to apply for approval before the Commissioner of Income Tax (Exemption) notified by CBDT in this regard in Form 56.

7.2. Such institutions are subject to audit under Form 10BB. Such institutions are also subject to 85% utilisation or many other conditions of section 11 which is applicable to various other charitable institutions. A comparative chart of the provisions applicable to such institutions with those availing benefit under section 11 is provided in *Annexure 11*.

7.3. Such institutions are required to file Income Tax Return in the Form ITR-7 under section 139(4C)(e).

8. EDUCATIONAL INSTITUTION ABOVE RS. 1 CRORE

8.1. Income received by a person on behalf of a solely educational institution with annual receipt above Rs. 1 crore is totally exempt from Income Tax under section 10(23C)(vi). Such institutions are required to apply for approval before the Commissioner of Income Tax (Exemption) notified by CBDT in this regard in Form 56D.

8.2. Such institutions are subject to audit under Form 10BB. Such institutions are also subject to 85% utilisation or many other conditions of section 11 which is applicable various other charitable

institutions. A comparative chart of the provisions applicable to such institutions with those availing benefit under section 11 is provided in *Annexure 11*.

8.3. Such institutions are required to file Income Tax Return in the Form ITR-7 under section 139(4C)(e).

9. MEDICAL INSTITUTION ABOVE 1 CRORE

9.1. Income received by a person on behalf of a solely medical institution with annual receipt above Rs. 1 crore is totally exempt from Income Tax under section 10(23C)(via). Such institutions are required to apply for approval before the Commissioner of Income Tax (Exemption) notified by CBDT in this regard in Form 56D.

9.2. Such institutions are subject to audit under Form 10BB. Such institutions are also subject to 85% utilisation or many other conditions of section 11 which is applicable various other charitable institutions. A comparative chart of the provisions applicable to such institutions with those availing benefit under section 11 is provided in *Annexure 11*.

9.3. Such institutions are required to file Income Tax Return in the Form ITR-7 under section 139(4C)

DELAYED FILING OF FORM 9A & 10 FOR ACCUMULATION UNDER INCOME TAX

1. SUMMARY

- 1.1 Under section 11 of the Income Tax Act 1961 a charitable or religious organisation is required to apply 85% of its income for charitable/religious purposes. If the organisation fails to apply 85% during the previous year then it can either carry forward the income to the next year and apply such deficit in the next year. On the other hand, the organisation can also accumulate the income for next five years following the provisions of the Act and Rules thereof.
- 1.2 Under the prevailing rules, Form 9A is required to be filed if the organisation fails to apply 85% and accumulates the deficit to be applied in the next financial year or in the year of receipt of income. Further, Form 10 is required to be filed if the organisation fails to apply 85% and accumulates the deficit to be applied in the next five years.
- 1.3 With effect from 1st April 2016 there has been a radical change which threatens to tax the entire income of the organisation if there is a delay in filing of Form 9A and Form 10. Under section 11(2)(c) read with Rule 17 any accumulation made under Form 10 or Form 9A shall not be allowed if the respective form is not filed within the due date of filing of return under section 139(1). In this issue we shall discuss the law pertaining to filing of Form 9A and Form 10.
- 1.4 CBDT Vide its Circular No. 7/2018 F.No.197/55/2018-ITA-I dated 20th December 2018 has authorised the Commissioner of Income Tax to condone the delay in filing of Form 9A and Form 10 under section 119(2)(b) only for Assessment Year 2016-17. The copy of the circular is provided in *Annexure 12*.

2. WHAT IS ACCUMULATION INCOME

- 2.1 All organisations registered under section 12AA are required to apply at least 85% of their income for charitable/religious purposes every year. If the organisations is unable to apply 85% of its income, then such surplus can be accumulated to be applied in future.
- 2.2 There are three types of accumulations possible,
 - First, an organisation can accumulate 15% of its income indefinitely i.e. it will not be required to apply such income within any specified time-frame.
 - Second, if an organisation is not able to apply 85% of its income in a particular year, then it can also

accumulate the income in excess of 15% of income. Such excess accumulation has to be used for religious or charitable purposes within the next 12 months or in the year of receipt of income under explanation to section 11(1). Such accumulation is otherwise called deemed application. For example, if the income of the organisations was Rs. 10 lakh and the actual utilisation was Rs. 5 lakh. Then the organisation can indefinitely accumulate Rs. 1.5 lakh (i.e. 15 percent) and has to accumulate Rs. 3.5 lakh for next 12 months filing Form 9A. The accumulation for 1 year is normally done when the income is received towards the end of the year and utilisation is not feasible. An accumulation under this provision is also possible if the income is not available for utilisation, e.g. the Bank Accounts are attached by authorities etc.

- Third, if an organisation is not able to apply 85% of its income in a particular year, then it can also accumulate in excess of 15% of income; such excess accumulation has to be used for religious or charitable purposes within the next 5 years. For example, if the income of the organisation was Rs. 10 lakh and the actual utilisation was Rs. 5 lakh. Then the organisation can indefinitely accumulate Rs. 1.5 lakh (i.e. 15 percent) and has to accumulate Rs. 3.5 lakh to be utilized next five years by filing Form 10.

3. FORMALITIES AND COMPLIANCES FOR VARIOUS ACCUMULATIONS

3.1 Accumulation upto 15% of income: No formalities or compliances are required for accumulating 15 per cent of income every year.

3.2 Deemed application in next 12 months or year of receipt under Expln. to Section 11 (1): Online Application in Form 9A should be filed within due date under section 139(1), w.e.f. Assessment Year 2016-17.

3.3 Accumulation for 5 years Under Expln. to Section 11(2): The following formalities are required to be complied:

- (a) Online Application in Form No. 10 along with the Income Tax Return within the time provided under section 139(1), w.e.f. Assessment Year 2016-17, Form 10 needs to be filed within the due date and at the same time income tax return has also to be furnished within the due date.
- (b) Accumulation possible only for 5 years (plus one year grace period for attracting of section 11(3)(c) within which the income has to be utilised for specified purposes.
- (c) The purposes for which the income has been accumulated have to be specified in Form No. 10.
- (d) All accumulated income is required to be invested in the form of investment prescribed in section 11(5).
- (e) Once the income is accumulated, it can only be utilised for specific purposes and inter-charity donation will not be possible.
- (f) Form No. 10 should be accompanied by a board resolution regarding the accumulation and the specific objects for which the income is accumulated. The details of investments and copies of annual accounts should be enclosed with it.

- (g) The Delhi High Court in CIT v. Hotel & Restaurant Association [2003] 261 ITR 190, held that, even if specific objects are not specified, the accumulation will still be valid as a charity cannot go beyond the overall objectives which are charitable in nature. Again the same position was reiterated in Bharat Kalyan Pratisthan v. DIT (Exemption) [2007] 211 CTR (Delhi) 354/160 Taxman 216 (Delhi).
- (h) The specific objects mentioned in Form No. 10 can be modified during the course of the 5 year period of accumulation, in the following circumstances :
- i. The organisation has to satisfy the Assessing Officer that the non- application of the impugned income was beyond the control of the organisation
 - ii. The amount not so utilised shall be applied for such other charitable purposes in India which are in conformity with the objects of the organisation.
 - iii. The organisation shall apply to the Assessing Officer and Assessing Officer shall permit the application of income in the aforesaid manner.
 - iv. However, by virtue of the amendment in the Finance Act, 2002, the powers of the Assessing Officer have been curtailed to the extent that he cannot allow the organisation to contribute such income to any other charitable organisation. However, inter-charity donation will be permissible in case of dissolution of a charitable or religious organisation in the year of its dissolution.
- (i) The accumulated income will become taxable in the immediately following year in the following circumstances :
- i. income is applied to purposes other than charitable or religious purposes as aforesaid or ceases to be accumulated or set apart for application thereto, or
 - ii. it ceases to remain invested or deposited in any of the forms or modes specified in section 11(5), or
 - iii. it is not utilised for the purpose for which it is so accumulated or set apart within the period of 5 years or in the immediately succeeding year. Therefore, effectively the organisation has 6 years to utilise the accumulated funds, or
 - iv. it is credited or paid to any trust or institution registered under section 12AA or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution.
 - v. Form 10 is not filed within the due date of filing of return under section 139(1) with effect from 1st April 2016 i.e. Assessment Year 2016-17.
- (j) The income, which becomes taxable as mentioned above will not be entitled to the 15 per cent accumulation as is available to the normal income of charitable organisations.
- (k) Violation related with section 11(5), i.e., investment in non-specified securities, should always be read with section 13(1)(d) because for violation of section 11(2) only the contravened portion of the income will be taxed but for violation under section 13(1)(d), the entire exemptions may be lost though judicial precedence of the contrary is also available.
- (l) The 5 year period of accumulation cannot be extended except in case of a court injunction.

4. CBDT CIRCULAR FOR CONDONATION OF DELAY

- 4.1 CBDT Vide its Circular No. 7/2018 F.No.197/55/2018-ITA-I dated 20th December 2018 authorizing the Commissioner of Income Tax to condone the delay in filing of Form 9A and Form 10 under section 119(2)(b) only for Assessment Year 2016-17. The copy of the circular is provided in *Annexure 12*. It may be noted that an application has to be made to the Commissioner of Income Tax (Exemptions) under section 119(2)(b) with the reasons for such non filing or delayed filing of Form 9A or Form 10. It may also be noted the power to condone delay has been granted to the CIT(E) only for the Assessment Year 2016-17, for all subsequent Assessment Year such power are not available with the CIT(E).

5. CONDONATION OF DELAY FOR ASSESSMENT YEAR PRIOR TO 2016-17

- 5.1 It is also noteworthy to mention that prior to the assessment year 2016-17, the CIT had the power to condone the delay in filing of Form No. 10 by virtue of Circular No. 273, dated 3-6-1980. However, due to the amendment in section 11(2)(c) w.e.f 01.04.2016 this circular became ineffective. Further, the CBDT Circular No. 7/2018 F.No.197/55/2018-ITA-I dated 20th December 2018 supersedes all previous circulars
- 5.2 However, the courts have held that (for any assessment year prior to 2016-17) the Form 10 needs to be filed before the assessment is completed. The Gujarat High Court in the case CIT v. Mayur Foundation [2005] 194 CTR (Guj.) 197/ 274 ITR 562 (Guj.) had held that Form No. 10 can be filed anytime during the assessment proceedings. The assessment would not be said to have completed even if an appeal is pending before the Tribunal. In the light of the aforesaid, the Form 10 for any assessment year prior to 2016-17 can be filed before the Assessing Officer any time before the assessment is complete.
- 5.3 For assessment years after 2016-17 there is no empowerment to the CIT(E) by CBDT for condonation of delay. However, an organisation can apply directly to CBDT under section 119 for condonation of delay and in exceptional circumstances CBDT may allow relief though there is no direct provision for relief after AY 2016-17.

MAJOR CHANGES IN FC(R) AMENDMENT RULES, 2019

1. INTRODUCTION

- 1.1** The Central Government vide Notification No. G.S.R.199(E) dt. 07/03/2019 has made amendment in Foreign Contribution (Regulation) Rules, 2011. These rules shall be called the Foreign Contribution (Regulation) Amendment Rules, 2019. There are considerable changes in the Rules as well as in the Forms. In this issue the major changes made in the Rules have been discussed. The amended Rules are provided in *Annexure 13*.

2. CHANGES PERTAINING TO BANK ACCOUNTS

- 2.1** In the Rule 2 after clause (a) a new clause (aa) regarding the definition of Bank Account has been inserted. The amendment is as under:

“(aa) “bank account” means a bank account in a core banking compliant bank, which is integrated with the Public Financial Management System (PFMS)”;

It may be noted that the Ministry of Home Affairs, Foreigners Division had issued a notification No. 2/21022/58(951)/2017/FCRA(MU) dated 21.12.2017, regarding integration of bank accounts under FCRA 2010 with PFMS. In other words under FCRA 2010 both designated bank account and multiple bank account are required to be registered with a bank which is integrated with the Public Financial Management System (PFMS). This change in the Rule is technical in nature and will not have any fresh impact on the FC registered organisation. The complete list of banks under PFMS is provided in *Annexure 14*.

- 2.2** Opening of utilization bank account is now required to be intimated in Form FC-6D in place of Form FC-6.
- 2.3** The changes in FC Receipt cum utilization bank account (Designated bank account) is now required to be intimated in Form FC-6C in place of Form FC-6.

3. SUMMARY OF OLD AND NEW FORMS

- 3.1** The amended rules have changed the old forms and the form numbers also have changed at some places, a summary of the old and new forms is as under:

Existing Form	New Form	Particulars
FC-1	FC-1	Intimation of receipt of FC by way of gift/as articles/ securities/ by candidate for election
FC-2	FC-2	Intimation - Foreign Hospitality
FC-3	FC-3A	Registration
	FC-3B	Prior Permission
	FC-3C	Renewal
FC-4	FC-4	Annual Return
FC-5	FC-5	Transfer to Unregistered Persons
FC-6	FC-6A	Change of Name/address within the state
	FC-6B	Change in aims and objectives
	FC-6C	Change of FC Designated Bank Account
	FC-6D	Opening of FC Utilization Account
	FC-6E	Change in more than 50% of the key members of the organization

4. SIGNATURE IN THE FORMS

4.1 Earlier the forms had to be signed by the Chief Functionary. Now the forms can be signed by chief functionary/ Chairperson/President/Secretary/ CEO/ MD.

5. SUMMARY OF CHANGE IN FEES

5.1 The amended rules have changed the fees structure for filing of various forms, a summary of the old and new fee is as under:

Type of Application	Old fee	New Fee
Registration	2000	5000
Prior Permission	1000	3000
Renewal	500	1500
Delayed Renewal	500	5000

6. ONLINE FILING OF FORM 1 & FORM 2

6.1 Form FC-1 and FC-2 need to be applied online; earlier, it was not mandated by the rules even though practically, it was being applied online. There is no change in the content of Form FC-1

6.2 Form FC-1 pertains to intimation regarding the following:

- (i) Receipt of foreign contribution by way of gift from relative
- (ii) Foreign Contribution (Articles) Account
- (iii) Foreign Contribution (Securities) Account
- (iv) Receipt of foreign contribution by a candidate for Election

6.3 Form FC-2 pertains to intimation regarding receipt of foreign hospitality. The following are the changes made in Form 2:

- PAN made mandatory
- Aadhar number is optional
- Details of hospitality availed during last 3 years
- Details of denial of foreign hospitality earlier

It may also be noted that a delayed intimation regarding foreign hospitality is also permissible, for foreign hospitality availed in case of emergent medical aid situation, intimation to be given on plain paper to the Secretary, Ministry of Home Affairs at the address mentioned in form FC-2, within sixty days of such receipt of foreign hospitality.

7. NEW FORM FC-3A

7.1 The Application form for obtaining FC registration is FC-3A, earlier it was a part of Form FC-3 which was a combined form for registration, prior permission and renewal. The key changes in the new FC-3A Form are as under:

- PAN of Key Functionaries is inserted and has been made mandatory
- Details of Designated Bank Account also include email of the Bank/ Branch and date of opening Account.
- A declaration has to be given whether the association was already registered under FC & the registration is cancelled or deemed to have been ceased in the past.
- Requires the amount of expenditures incurred in last three year towards activities for which registration is applied for.

8. NEW FORM FC-3B

8.1 The Application form for obtaining prior permission is FC-3B, earlier it was a part of Form FC-3 which was a combined form for registration, prior permission and renewal. The key changes in the new FC-3B Form are as under:

- PAN of Key Functionaries is inserted and has been made mandatory
- Details of Designated Bank Account also include email of the Bank/ Branch and date of opening Account.
- Applicant seeking Prior Permission for more than 50 Lakhs has to mandatorily enclose Audit statement and activity reports of Last 3 years; earlier, this was mandated only in case of Registration. *In other words, a new organization before completing three years can apply for prior permission only upto Rs 50 lakh.*

9. NEW FORM FC-3C

9.1 The application form for obtaining renewal is FC-3C, earlier it was a part of Form FC-3 which was a combined form for registration, prior permission and renewal. The key changes in the new FC-3C Form are as under:

- PAN of Key Functionaries is inserted and has been made mandatory
- Details of Designated Bank Account also include email of the Bank/ Branch and date of opening Account.
- Addition clause requiring information regarding cancellation of FCRA registration in the past
- Details of amount received in FC for the last 3 years has been added now.
- Details of change in key functionaries like date, reasons for change has been added.

10. EXTENSION OF TIME FOR DELAYED FILING OF RENEWAL APPLICATION

10.1 As per Section 16 of FCRA, 2010 every person who has been granted a certificate of registration under Section 12 thereof shall have such certificate renewed within six months before the expiry of the period of the certificate. Further, under Rule 12(8) a delayed submission of the renewal applicaiton was also permissible upto 4 months from the date of the expiry of the Registration Certificate. The amended rule 12(8) now allows filing of application upto 1 year from the date of the expiry of the Registration Certificate.

10.2 Further, fees for such late filing of renewal application has been fixed of Rs. 5000/- this fee is in addition to the normal fees of Rs. 1500/- charged for processing of renewal of application. It may also be noted that application for renewal shall be made in Form FC-3C earlier it was Form 3.

11. CHANGES IN FORM FC-4

11.1 The Form FC-4 which is used for filing the annual FC return as undergone considerable changes, which are as under:

- Amended FC-4 requires further details of individual donor wise contribution, activities/projects for which FC was utilized, purchase of assets (including details of movable & immovable), as well as FC transfer to other organizations.
- A new requirement is to provide details of other receipts from projects or activities. Here number of details like name and location of the project/activity, year of commencement is required to be provided. Here income out of FC project assets and other such project income would have to be reported. It may be noted that under explanation 2 to section 2(h) of FCRA 2010 any other income derived out of foreign contribution including interest is also treated as foreign contribution.
- The donor wise details of foreign fund received require additional requirement to specify the specific activity/project for which such contributions are received.
- Details of utilization is required to be under four different sub-heads :
 - i) Details on the basis of each project/activity with its address & location and bifurcating the receipts in between cash and in kind and also as previous balance, received during the year, utilized & balance.
 - ii) Amount of utilization as per aim and object and on Admin expenses.
 - iii) Utilisation on purchase of assets with details of movable & immovable assets with purpose & amount.
 - iv) Details of FC transferred to other associations with date & purpose.
 - Details of unutilized foreign contribution is required to be bifurcated into Fixed deposit, cash in hand, balance in FC designated bank account and in utilization bank account.
 - Earlier details were required only for foreigners working but the amended Rules provides for information on foreigners as a key functionary, working and associated.
 - Additional information is required for land & building remains unused for more than two years with reason for unutilisation.
 - Details of bank account requires further information i.e phone no, email id of the concerned bank account as well as date of opening of bank account.

12. CHANGES IN FORM FC-5

12.1 The FC-5 Form is regarding transfer of FC fund to organisations not registered under FCRA. The key changes in the new FC-5 Form are as under:

- Darpan ID of transferor association is optional.
- Details of Designated Bank Account also include email of the Bank/ Branch and date of opening Account.
- Additional column of details of recipient, in case recipient is an individual.

- Date of opening bank account of the recipient.
- Signature in the form: earlier the form has to be signed by the Chief Functionary. Now the form can be signed by chief functionary / Chairperson/President/ Secretary/ CEO/MD.

13. NEW FORM FC-6A

13.1 The application form intimating the change in registered office within the state is FC- 6A, earlier it was a part of Form FC-6 which was a combined form. There are no changes in the new FC-6A Form except that Darpan ID is optional.

14. NEW FORM FC-6B

14.1 The application form intimating the change in objects of the association is FC-6B; earlier it was a part of Form FC-6 which was a combined form. There are no changes in the new FC-6B Form except that Darpan ID is optional.

15. NEW FORM FC-6C

15.1 The application form intimating the change in designated cum utilisation bank account is FC-6C, earlier it was a part of Form FC-6 which was a combined form. There are no changes in the new FC-6C Form except:

- Darpan ID is optional.
- Details of Designated Bank Account: email of the Bank/Branch and date of opening account has been added.

16. NEW FORM FC-6D

16.1 The application form intimating the opening of utilisation bank account is FC-6D, earlier it was a part of Form FC-6 which was a combined form. There are no changes in the new FC-6D Form except that Darpan ID is optional.

17. NEW FORM FC-6E

17.1 The application Form for intimating the change in key members of the organisation is FC-6E, earlier it was a part of Form FC-6 which was a combined form. There are no changes in the new FC-6D Form except:

- That Darpan ID is optional.
- PAN of Key Functionaries mandatory.

II. GOVERNANCE SECTION

A. COMMITTEES

1. INTRODUCTION

- 1.1** In any organization the Board is the highest and ultimate decision-making body. However, as the organization grows in size, it may not be possible for the Board to make all the decisions directly. This is more so since the Board consists of volunteers who sacrificially give their time in governing the organization. Therefore, the Board decides to delegate certain responsibilities to the management team and provides oversight. Basically, the Board makes a distinction between governance and management function.
- 1.2** While the governance functions are retained at the Board level, the management functions are delegated to the management. However, even though the management functions are delegated to the management, the Board cannot absolve itself of its overall responsibility. Hence, certain oversight functions even in the management have to be maintained at the Board level.
- 1.3** In case of delegation of authority, the Board is still accountable for the outcome even though the work is not done under its direct supervision. So the responsibility of the Board is to form different Committees that can be assigned with various responsibilities. Here, the Board performs its oversight role and acts as a yardstick for the proper functioning of the organization.
- 1.4** However, it needs to be kept in mind that the Board cannot delegate its core oversight obligations to any subsequent committees. It is necessary to remember that the committees cannot replace the Board. They are supplementary to the Board. There are many types of committees that can be formed by the Board. These committees can be broadly classified into:
- 1.5** These committees can be broadly classified into:
- Standing Committee for specific purpose
 - Adhoc Committee for specific purpose
 - Standing Committee for generic purpose

Type of Committee	Purpose	Example
Standing Committee for Specific purpose	Formed for long term purposes and comprises of a specialized group of people on continuous basis on a very focused area	Finance Committee
Adhoc Committee for Specific purpose	Formed for a specific purpose on short term basis	Building Construction Committee
Standing Committee for Generic purpose	Formed for a continuous basis based on the bye laws or the constitutional documents	Executive Committee

It must be noted that the Standing Committee cannot take policy decision. It can only take operational decision. All decisions must however be presented to and ratified by the Board.

2. NEED FOR COMMITTEES

2.1 There are many reasons as to why it is desirable to form committees:

- The Board is large making it difficult to call a meeting and obtain a quorum on short notice.
- The Board members are dispersed over a wide geographic area and are difficult to reach, or travel frequently making it difficult to convene a meeting in an emergency, making it impossible for the Board to meet on regular basis
- Committees subsists the Board in crucial decision-making through thorough research and in-depth study on the issue. The committees are the extended executive arms of the Board, who can make exhaustive research for the Board on various executive and legislative issues like handling complex, time-taking, specialized issues that require persistent attention
- Committees may have invited external members who can provide expertise in areas that the Board may not have expertise in
- Also, the formation of committees may be mandated by the byelaws of the organization making it necessary for the Board to constitute them

EXECUTIVE COMMITTEE

1. INTRODUCTION

1.1 As the name suggests, the Executive Committee is formed with the purpose of performing executive functions only. They don't possess legislative powers. It is the most powerful Standing Committee of permanent nature.

- The Executive Committee meets and works in between the Board meetings to take executive decisions. In other words, Executive Committee provides the oversight function on behalf of the Board. The mandate of the Executive Committee is prescribed in the bye-laws of the organization. In the absence of such clear bye-laws, the Board can decide on the mandate of the Executive Committee.
- The committee is required to report directly to the Board, hence making them accountable to the Board.
- The committee is formed from within the Board but it can have external members as invitees from among the Stakeholders and the society at large, to fulfill the need for specific expertise and specialization which might not be present within the Board.

2. COMPOSITION

2.1 The Executive Committee primarily comprises of Board members. The CEO is generally an Ex-officio member of the Executive Committee. There are divergent views as to whether a CEO should have a right to vote in the meetings or not. However, it has been seen that having the CEO as an Ex-officio member with a voting right brings in greater ownership, accountability and trust. However, in the decisions where the CEO is an interested party, he/she should be excused from the meeting.

2.2 Generally, the Chairperson of the Board, the Secretary, the Treasurer and one or two Board members constitute the Executive Committee. The size of the Executive Committee is smaller than the Board and may vary from 4 to 10 members. The committee can have external members who are eminent persons in their field of expertise.

3. MEETINGS

3.1 An ideal frequency of Executive Committee meeting is four meetings in a year i.e. one meeting every quarter. These meetings are convened by the convener of the Executive Committee. Generally, the convener is the CEO or the Secretary of the Board. The Minutes of the meetings of Executive Committee must be maintained along with the attendance register. The meetings are chaired by the Chairperson of the Board if he/she is a part of the Executive Committee. If the Chairperson is not a

part of the Executive Committee, then one of the members of the Executive Committee is appointed as the Chairperson of the Executive Committee. Generally, it is provided in the rules and regulations of the organization.

4. ROLES & RESPONSIBILITIES

The role and responsibilities enshrined upon the Executive Committee are:

- General management of the organization
- To make necessary operational decisions on behalf of the Board and get them ratified in the subsequent Board meetings
- Prepare annual plans, budgets and other reports; present the same to the Board; and finally implement them once approved by the Board
- Handle issue related to recruitment, appraisals and capacity building
- Ensure operational implementation of policies and procedures
- Guide and direct the management in the implementation of various programs.
- Review of various risks and take necessary mitigation measures

5. SUMMARY

5.1 The Executive Committee can neither take over the role of the Board acting as ultimate decision-making authority nor can the Board be relieved off its accountability duties towards the organization. As the name suggests, the Executive Committee has executive powers as laid down in the byelaws. Also, there must be checks and balances to see that the committee does not overstep the authority of the Board. It is always important to strike a critical balance between the role of the Board and that of the Executive Committee so that they can play complementary roles, which will result in better oversight and governance of the organization.

AUDIT COMMITTEE

1. INTRODUCTION

- 1.1** It is well established fact that the board should exercise its oversight functions efficiently in order to make the governance effective. It has been reiterated time and again that board is the highest decision making body within an organization and thereby the highest body where accountability finally rests. In order to efficiently exercise its oversight function, the board works through setting up various committees. One very important committee which a board can set up is “Audit committee”.
- 1.2** Before going into the formation and other issues around the audit committee, it is important to develop a basic understanding on audit. Audit is an independent assessment of the true and fairness of the financial statements prepared by the organization. Audits are performed to ascertain the validity and reliability of information and also provide an assessment of an organization's internal control. It is important to recognize that even though the management of an organization is given the task of preparing financial statements, it is eventually the responsibility of the board to ensure that the financial statements are properly prepared. The duty of the auditor is to express his/her opinion on the financial statements.
- 1.3** Apart from the mandatory statutory audit, the board should also ensure regular Internal Audits. Internal Audits are not mandatory in nature. The internal audit keeps a check on the systems of the organization. The internal audit report should be presented to the Board of the Organization. This would provide a clear view of the internal state of affairs. It would be advisable if the internal audit is not conducted by the auditor who conducts the mandatory external audit. Another type of audit is special purpose audit or project audit. Project audits are conducted depending on the conditions of the project contract with the donor agencies.

Management, the board, and the audit committee all play critical roles in an organization's tone at the top.

2. NEED FOR AUDIT COMMITTEE

- 2.1** Audit is basically an inspection of an organization's accounts, typically by an independent body. Since, the management of an organization is subjected to audit; it is a good practice to hold this function at the highest level within the organization i.e. at the board level. This is to ensure that the audit process is independent and free from any influence from the persons who are subjected to the audit process.
- 2.2** When the organization is small, the board collectively can discharge this function. However, as the organization grows in size and complexity, the audit function requires more time and even

specialized skills. Therefore, generally the board appoints a standing committee which is known as “Audit Committee” to oversee this function. The audit committee being a subcommittee of the board remains independent of the management and deals with the audit issues within the organization

- 2.3** An audit committee is one of the committee of the Board charged with oversight of financial reporting and disclosure, reducing risk, and maintaining donor and other stakeholder's confidence. An audit committee not only minimizes such risks, but also instills confidence in prospective donors and stakeholders. An audit committee provides the Board with a clear, independent voice to address financial matters. However, it is important to remember that the creation of an audit committee does not absolve the individual board members of their responsibilities.

3. COMPOSITION

- 3.1** The audit committee should have a minimum of three members of whom two should be board members. Generally, the treasurer of the organization is part of the audit committee and is designated as Chairperson/Convener of the Committee. Apart from the two members, the board can nominate one/two person's (who can be from outside the board) to be co-opted based on the specialized skills in the areas of financial management.
- 3.2** The Chief Functionary and the Head-Finance desk generally, participate in the meeting as invitees and they will have a limited role to facilitate the meeting with documents etc. This practice ensures independent functioning of the committee. Therefore, the composition of the audit committee will look somewhat like this:

COMPOSITION OF AUDIT COMMITTEE		
Chairperson/Convener	Treasurer	1 Person
Members	Board Members	1 to 2 Person
Co-opted Members	Outside the Board	1 to 2 Person
In attendance as invitees	Chief Functionary and Head-Finance	2 Person

4. MANDATE

- 4.1 To oversee the financial reporting and disclosure practices:** One of the primary responsibilities of the audit committee is to oversee the accounting and reporting practices and financial statements. This includes making sure that the financial statements are understandable and transparent.
- 4.2 Hiring, performance and independence of external auditors:** Overseeing the external process is one of the key responsibilities of the audit committee. The audit committee is responsible for

appointment, independence, audit scope and compensation. Further, the committee also addresses the audit observations and action to be taken thereon.

- 4.3 To have oversight on regulatory compliances:** The committee is generally given the responsibility to ensure that the statutory and other contractual compliances are complied with on time. This includes filing of returns required under various laws and regulations as well as any other donor reporting requirements as well.
- 4.4 To monitor internal control and risk management processes:** While the audit committee's key focus is on financial reporting controls, audit committees should oversee controls that ensure legal and regulatory compliance. It is the responsibility of the audit committee to understand key controls and financial reporting risk areas as assessed by the external auditor, the internal auditors and other parties, as well as mitigating controls and safeguards. Where there is no internal audit function, the audit committee should consider annually whether there is a need for an internal audit function and make a recommendation to the board, and the reasons for the absence of such a function should be explained.

The need for an internal audit function will vary depending on organization specific factors including the scale and diversity of the organization's activities, the number of employees, and the cost/benefit considerations.

- 4.5 To oversee the performance of internal audit function (if any):** In those organization where there is an internal audit process in place, it is the responsibility of the audit committee to ensure that the internal audit is effective, timely and the reports are internally processed as well as recommendations are properly implemented within the organization

5. ENGAGEMENT WITH THE BOARD

- 5.1** The audit committee by virtue of being a subcommittee of the board gets its mandate from the board. Therefore, it has to function within the parameters of the mandate given by the board. The minutes of the Audit Committee meeting is generally circulated to the board members and the decisions taken are ratified by the board in its subsequent meetings.

To perform their oversight responsibilities, audit committee members need to understand what information they need, how to analyze it and what questions to ask to gain insights and make informed decisions

6. FREQUENCY OF MEETINGS, AGENDAS, MINUTES

- 6.1** Generally, it is expected that the audit committee would meet at least two times and maximum four times a year. As a good practice, it is encouraged that the audit in an organization is undertaken twice a year. Therefore, the audit committee should meet soon after the conclusion of audit in order to

review the findings and observations. In the meeting, the auditor is invited to make a presentation on the audit findings. On the basis of these discussions, necessary plan of action is evolved. Apart from the audit issues, the audit committee also reviews the compliances, internal controls and risk management issues as well.

- 6.2 The agenda for the meeting is set by the Chairperson who is generally the treasurer of the organization in consultation with Chief Functionary and Head Finance Desk. The minutes are recorded by the Head-Finance desk and approved by the Chairperson-Audit Committee. As mentioned above, the minutes of each meeting are circulated to board members for information and later on they are ratified in subsequent board meeting. An agenda template is attached for reference (*refer Annexure 15*).

7. SUMMARY

An audit committee must understand its responsibilities and monitor its effectiveness, identifying improvement needs and opportunities.

A well-informed, responsible audit committee can provide accountability, as the very purpose of setting up an audit committee is to help maintain the organization's overall integrity, financial credibility and long-term viability.

FINANCE COMMITTEE

1. INTRODUCTION

- 1.1** It is the fiduciary responsibility of the Board of an organization to be accountable for the finances. In other words, the Board is expected to oversee the financial affairs of the organization and is accountable to the donors, government, community and society at large. Therefore, the Board has the ultimate responsibility for the financial affairs of the organization.
- 1.2** This would mean that there should be a lot of hands-on work for the Board members to keep a strict oversight on the financial affairs of the organization. However, there may be issues of capacity and time at the Board members' end to effectively discharge this responsibility. Not all Board members would have the financial management accumen. Secondly, since the Board members provide voluntary service to the organization, they may not have adequate time to devote to detailed financial oversight. Therefore, the Board sometimes appoints a finance Standing Committee consisting of some Board members and specialists. A Standing Committee is an on-going committee with a clear mandate whereas adhoc (which denotes specific purpose) committees are setup for a particular task/time period and after the task is accomplished, they stand dissolved.

The Finance Committee is generally a Standing Committee of the Board that works with the senior staff team (Chief Functionary and Head Finance) to monitor the finances of the organization.

2. NEED OF FINANCE COMMITTEE

- 2.1** The Finance Committee supports the Board in fulfilling its fiduciary responsibilities.
- It can protect the organization from legal challenges;
 - It provides oversight to financial management;
 - Protects the organization from actual as well as apparent conflict of interest;
 - Acts as the Board's eye and ears in financial operations;
 - Acts in advisory capacity in financial operations;
 - Can be helpful in recruiting strategic finance staff;
 - Can facilitate audit process;
 - Can interpret the audit report for the Board;
 - Can liaise with the auditors

3. RESPONSIBILITIES OF FINANCE COMMITTEE

3.1 The major responsibilities of the Finance Committee are:-

- To oversee the financial affairs of the organization;
- To oversee annual audit process;
- Oversight of the financial management;
- To ensure that there is clear linkage between program and finance.
- To report to the Board about the financial management of the organization on regular basis.

4. MEMBERS OF A FINANCE COMMITTEE

4.1 The following individuals can become the members of the Finance Committee:

- Treasurer (Ex-officio Chair);
- Two Board members;
- Two/three persons having expertise in NPO finance management/related fields (from outside the Board) like Chartered Accountants (CA), Advocate, Bankers, Finance Head and other persons with related experience;
- Chief Functionary and Head Finance participate as invitees.

5. CREATE AND MANAGE FINANCE COMMITTEE

5.1 Create a mandate

It is very important to clearly develop a Terms of Reference (ToR) for the Finance Committee. Generally, the ToR or the mandate of the Finance Committee is determined by the Board. The mandate would depend upon the willingness of the Board to delegate the financial responsibilities. One important issue to be kept in mind is that the ultimate responsibility for the organization rests with the Board. Therefore, strategic and critical decisions should not be delegated to any of the sub-committees of the Board. The Finance Committees should have more of supervisory and advisory role rather than a critical decision making role. A sample ToR for Finance Committee is enclosed as per *Annexure 16*.

5.2 Choose the members

There should be a clear guideline for choosing members of the Finance Committee. The Board should select the Finance Committee in its Annual General Meetings (AGM) every year. The composition of the members of the Finance Committee should be a combination of Board members, staff, as well as certain subject matter experts. A broad combination of the Finance Committee has been mentioned in point no. 4.

5.3 Establishing processes

The Board should determine the number of times the Finance Committee should meet. Generally, the Finance Committee meets three to four times a year. The minutes of the meeting should be clearly recorded and circulated to all the Board members for information. Major actions taken by the Finance Committee should be placed before the next Board meeting for ratification.

5.4 Induction plan

There should be a clear induction plan for the new members of the Finance Committee. For the induction process, the Chair of the Finance Committee (generally the Treasurer) and the Chief Functionary should be involved. Certain key documents i.e. finance policy, human resource policy and other major policies, audited financial statements for last three years, annual activity report and any other relevant papers need to be provided. The induction process can happen before the first Finance Committee meeting.

6. ROLE OF CHAIR OF FINANCE COMMITTEE

6.1 As mentioned earlier, generally the Treasurer acts as the Chairperson of the Finance Committee. Therefore, the following roles are envisaged as the Chair of the Finance Committee:

- Chairing the meetings;
- Finalizing the agenda with the Chief Functionary and Head of Finance;
- Ensuring that clear and proper minutes of the meetings are recorded;
- Ensuring that decisions are implemented in appropriate time and reported back to the committee;
- Keeping the Board informed about the issues and decisions of the Finance Committee, at periodic intervals.

7. SUMMARY

7.1 Although, the entire Board carry the overall responsibility of the organization, the Finance Committee provides a leadership role in the area of financial transactions. Further, Finance Committees can also be assigned with ensuring compliance and /or developing policies that further serve to protect the organization and manage its exposure to financial risks. An organization with a good financial systems i.e. where policies and procedures pertaining to risk mitigation are in place is an indicator of an organization that is actively developing strategies to carefully use the financial resources, necessary to support activities towards the fulfillment of its mission and vision.

HUMAN RESOURCE COMMITTEE

1. INTRODUCTION

- 1.1** In non-profit organizations, human resource plays a key and pivotal role. Human resource is also an important asset of the organization. Therefore, it is important to develop, nurture, preserve and protect the very human resource of an organization.

As we have seen in the previous issues, the Board is responsible for proper governance and management of the organization. This would also include management of human resource of the organization. In case of medium or large organizations, the Board generally sets up a human resource (HR) Committee to support itself in discharging the HR Functions.

2. OBJECTIVES

- 2.1** The objective of the HR Committee is to oversee the following functions:

- Recruitment of key personnel
- Appraisals
- Compensation packages
- Service conditions
- Discipline
- Succession

3. RESPONSIBILITIES

- 3.1** The specific responsibilities that the committee carries out on behalf of the Board are as follows:

- To review, monitor and makes recommendations to the Board on human resource strategies and policies that pertain to staffing, compensation, benefits, and related issues of strategic importance;
- To conduct an assessment of the performance of the Chief Functionary at least on an annual basis. In addition to it, review the compensation on an annual basis;
- To review and provide recommendations to the Board concerning the approval or amendments to the Human Resource policy;
- To identify and meet the training/capacity building needs of existing staff;
- To report its actions and recommendations, if any to the Board after each committee meeting

4. STRUCTURE OR COMPOSITION

- 4.1 The HR Committee is said to be a sub-committee of the Board. In other words, the committee's functions are determined by the Board. The Board may delegate certain functions related to Human Resource to the HR Committee. Therefore, the HR Committee derives its mandate from the Board and also reports back to the Board.
- 4.2 The HR Committee should have a minimum of three members of whom two should be Board members. The Board can nominate members from among them who have expertise or interest in the areas of human resource management. Further, depending on the size and needs of the organization, the Board can also opt for one/two person's (who can be from outside the Board) to be co-opted based on the specialized skills.
- 4.3 The Chief Functionary and the Head-Human Resource desk generally, participate in the meeting as invitees and they will have a limited role to facilitate the meeting with documents etc. This practice ensures independent functioning of the committee. The Board shall appoint the Chairperson of the Committee who shall be independent. Further, the appointment and removal of Committee members shall be the responsibility of the Board.

5. CREATE AND MANAGE HUMAN RESOURCE COMMITTEE

5.1 Create a mandate

It is important to have a predefined mandate that clarifies the role, purpose and responsibilities given to the committee. The Board is entrusted with the responsibility of finalizing the mandate as they are the ones who are delegating their function and know what they expect from the committee. In other words, mandate provides terms of reference for the HR Committee. A sample of HR Committee "Terms of Reference" is attached as *Annexure-17*.

5.2 Meetings

The Board depending on the size and needs of the organization shall determine the frequency of HR Committee meetings. Generally, the committee shall meet twice annually, with pre-determined dates and agendas, and shall hold special meetings as and when required. Further, since the Committee members are also occupied at other places, it is recommended to have an annual work plan for the year, and committee meets regularly with pre-determined dates and agendas.

5.3 Reporting

A reporting mechanism should be in place so that the Board can be kept up to date with progress, consider proposals from the committee and ratify any decision taken by the committee within its terms of reference. The committee shall also provide to the Board such other information as the Board may require.

6. SUMMARY

- 6.1 It is important to have proper set up of human resource management in an organization to avoid losses i.e. both financial and goodwill. To overcome such situations, organizations put a lot of effort and energy into setting up strong and effective human resource management practices. Thus, the Board which has the oversight responsibility delegates its function to the HR Committee which is a small group of experts focusing in detail on a particular issue. This allows the Board to ensure that sufficient attention is being paid to specific issues and in a timely manner.

PROGRAM COMMITTEE

1. INTRODUCTION

- 1.1 Every organization has a vision and mission statement to direct it. Further, organizations plan various activities and programs in order to fulfill this mission. There is the Board and there is the Management team who provide oversight and supervision, respectively.
- 1.2 The Board may set up various sub-committees to effectively run the organization of which Program Committee is one. However, in case of small organizations, the Board may not form Committees and can be directly responsible. Generally, the Program Committee is a Standing Committee of the Board that works with the senior staff team (Chief Functionary and Head of Programs) to monitor various programs of the organization. Programs being the center of every organization, it can be said that Program Committee performs a key role in the governance of an organization.

2. NEED FOR PROGRAM COMMITTEE

- 2.1 The Program Committee usually comprises of both Board and non-Board members who have adequate knowledge to support various programmatic operations of the organization. However, in small organizations, the Board may oversee all program related activities directly without creating a sub-committee.
- 2.2 In case of medium or large organizations, it makes more sense to have a designated Program Committee to oversee the program activities on behalf of the Board. The Program Committee's responsibilities would include monitoring the quality of implementation, effectiveness of the planned activities and timely reporting to various stakeholders. The Program Committee especially ensures that the donor's program reporting compliances are being met.

3. RESPONSIBILITIES

- 3.1 The Program Committee members are expected to be specialists in the field of programs. The Program Committee of each organization comprises of thematic experts. At the larger level, the Board keeps an oversight of all the programs. The major responsibilities of the Program Committee are:-
 - To oversee new program development
 - To monitor and assess the performance of the existing programs and suggest improvements, at a strategic level
 - To initiate and guide program evaluations

- To conduct independent reviews of programs and oversee discussions on program priorities for the organization

4. MEMBERS OF PROGRAM COMMITTEE

4.1 The Program Committee should have a minimum of three members of whom two should be Board members. Apart from the two members, the Board can nominate one/ two person's (who can be from outside the Board) to be co-opted based on the specialised skills in the areas of program/project management. Therefore, the following individuals constitutes the Program Committee:-

- Two members of the Board
- One/Two persons having expertise in non-profit Program management/related fields (from outside the Board) like Consultants, Project monitoring and evaluation experts and other persons with related experience
- Chief Functionary and Head of Program participates as invitees for inputs and consultation. (This practice ensures independent functioning of the committee.) As can be seen from above, the size of the Program Committee should be between three and seven members (including Chief Functionary and Head of programs as invitees)

5. CREATING AND MANAGING PROGRAM COMMITTEE

The Board of NPOs comprises of individuals from diverse backgrounds. To ensure that the Board effectively stewards the organization, a formal mandate is adopted that distinctly sets out the functions of the Board and its various Committees among which the Program Committee is one.

5.1 Create a mandate

It is very important to clearly develop a Terms of Reference (ToR) for the Program Committee. The ToR/mandate of the Program Committee is determined by the Board. The mandate would depend upon the willingness of the Board to delegate the programmatic responsibilities. However, the ultimate responsibility for the organization rests with the Board thus, strategic and critical decisions should not be delegated by the Board. The Program Committees should have more of supervisory and advisory role rather than a critical decision making role. A sample ToR for Program Committee is enclosed as per *Annexure 18*.

5.2 Choose the members

There should be a clear guideline for choosing members of the Program Committee. The Board should select the Program Committee in its Annual General Meetings (AGM) every year. The composition of the members of the Program Committee should be a combination of Board members, staff, as well as certain subject matter experts. A broad combination of the Program Committee has

been mentioned in *point no.4.*

5.3 Establishing processes

The Board should determine the number of times the Program Committee should meet. Generally, the Program Committee should meet three to four times a year. At least once every six months, the committee members should make visits to field areas during the course of program implementation. The minutes of the meeting should be clearly recorded. During the Board meetings, report and updates on program activities should be shared with the Board members.

5.4 Induction plan

There should be a clear induction plan for the new members of the Program Committee. For the induction process, the Chair of the Program Committee (chosen from among the Board) and the Chief Functionary should be involved. Certain key documents i.e. Program Policy, Human Resource Policy and other major policies, annual activity report and any other relevant papers need to be provided. The induction process should happen before the first meeting of the Program Committee.

6. ROLE OF CHAIR OF PROGRAM COMMITTEE

6.1 The Chairperson of the Program Committee is elected among the Board who is a veteran at programs and is independent of the implementation of the programs of the organization. Therefore, the following roles are envisaged as the Chair of the Program Committee:

- Chairing the meetings
- Finalizing the agenda with the Chief Functionary and Head of Programs
- Ensuring that clear and proper minutes of the meetings are recorded Ensuring that decisions are implemented in appropriate time and reported back to the Committee
- Keeping the Board informed about the issues and decisions of the Program Committee, at periodic intervals

7. SUMMARY

The Program Committee provides oversight on program related issues on behalf of the Board. The Program Committee is set up by the Board and is accountable to the Board. A Program Committee which is well-structured, well-informed and comprises of experts in programs is beneficial for the organization as the committee is constantly involved in overseeing, mentoring and approving the programs and services of the organization, and in the process ensuring that all services reflect the organization's mission.

B. POLICIES

A Policy is a set of coherent decisions with a common long-term purpose. Policies normally have two essential elements – policy objectives, the ends and policy instruments, the means. In an organization, policies act as the standard operating protocol adopted for effective implementation of plans, project and programmes.

Policies are clear, simple statements of how an organization intends to conduct its working be it services, actions or business. It guides the standard operating protocol of an organization.

HUMAN RESOURCE POLICY

1. INTRODUCTION

1.1 The Human Resource policy is one such document that broadly contains details on employing staff, managing employee performance, dealing with employee concerns and supporting staff in the organization. It is a formal guide of principles or rules in the organization that employees are expected to adhere to. It aims to describe organization's practices, such as employment, compensation, benefits, leaves, hiring and termination procedures, and other pertinent information.

1.2 The Human Resource policy is essential for communicating an organization's workplace policy and therefore it must be detailed, accurate and approved by the appropriate authority. The policy manual should also be accessible to all staff members and be accompanied by procedures on how the policy will be implemented. Generally, procedures describe how a policy will be put to action in an organization. Broadly, each procedure should outline the following:

- Who will do what;
- What steps they need to take;
- Which forms of documents are to be used.

Policies and their accompanying procedures will vary between organizations because they reflect the values, approaches and commitment of a specific organization and its culture.

2. OBJECTIVES

2.1 Human Resource policy helps the organization to establish robust structure and basic set rules that is used to manage the employees on a day to day basis. It encourages fair and consistent treatment of employees. The board objectives of the human resource policy are:

- To provide formal procedure on hiring, induction and termination of employees. It should contain the framework for managing staff, while allowing management to respond and adapt to individual situations.
- To provide clear reporting structures that spell out who's in charge and how tasks are to be accomplished in the organization. Every successful team has well-defined positions for its members. Everyone knows what he or she is to do; how to do it; and how their performance can impact those around them. The policy should provide a clarification and validation of the responsibilities.
- It has been seen that an employer is usually held accountable for the bad behaviors of his/her employee, especially when that bad behavior affects other employees, target groups or individuals. In such cases, the human resource policy should provide clear and specific behavioral standards in the form of rules for spotting and addressing violations of those standards.

Overall, Human Resource policy serves as a guide on decision-making guideline for the management. For the employees, it serves as a guide on how to conduct oneself in the organization.

3. STEPS INVOLVED IN POLICY DEVELOPMENT

3.1 Generally, the human resource policy development process includes the following steps:

- Need for the policy on Human Resource in the organization should be established.
- The establishment of need should be followed by development of the draft policy. This will be done by a team of people who are assigned this job.
- Along with the policies a draft on the procedures should also be developed.
- Once the draft policy is ready, it should be critically reviewed by key members (usually by all those who will be using it).
- Next, the reviewed policy should be approved by the approving authority (usually the Board).
- The approved policy should then be formally implemented and the policy manual should be shared with the employees along with all necessary application formats such as leave format, travel requisition format, etc.
- After sometime the existing policy should to be review and updated, so that the policy is robust and relevant on any particular date. The interval for policy review shall be discerned by the Board in consultation with the management. In many cases, the interval is not fixed and the review can take place when a need is felt which has to be approved by the Board.
- Once the old policy has been reviewed and necessary changes have been incorporated, it should

be appropriately conveyed to all.

4. RESPONSIBILITY OF DEVELOPING POLICY

4.1 In large organizations, it is the human resources department and in small organizations a small assigned committee/ team which develop the policy after taking into consideration the vision, mission and objectives of the organization. The draft of the policy is shared with the management for feedback and after changes the same is approved by the board. The key areas that should be covered in the human resource policy manual are:

- Scope of the Policy
- Functions (Roles & Responsibilities)
- Standards of Conduct
 - ◆ Conflict of Interest Guidelines
 - ◆ Confidentiality
 - ◆ Privacy
 - ◆ Complaint/ Grievance Resolution
- Employment Practices
 - ◆ Recruitment, Selection, Appointment Practices
 - ◆ Orientation and Induction
 - ◆ Probationary Period
 - ◆ Anti-discrimination/ Equal Opportunity
 - ◆ Discrimination and Harassment
- Termination of Employment
 - ◆ Notice of Resignation
 - ◆ Discipline by Suspension or Dismissal
 - ◆ Terminations
 - ◆ Retirement
 - ◆ Exit Interviews
- Hours of Work / Leave
 - ◆ Hours of work
 - ◆ Annual Leave
 - ◆ Statutory Holidays
 - ◆ Special Leave
 - ◆ Maternity Leave / Paternity Leave
 - ◆ Medical Leave
- Compensation & Employee Administration
 - ◆ Pay Administration

- ♦ Job Description
- ♦ Performance Evaluations
- ♦ Travel & Expenses
- Benefits
 - ♦ Insurance and other benefits
 - ♦ Pension
 - ♦ Payroll
- Training and Development
- Work Environment
 - ♦ Safe and Healthy Work Environment

For a more detailed template on Human Resource Policy, refer to *Annexure 19*.

5. UPDATING THE HUMAN RESOURCE POLICY

5.1 One very crucial element of any policy is that its relevance remains intact in current time. Hence, developing the Human Resource policy is an on-going process. The department/ committee/ team involved in formulating the Human Resource policy is also entrusted with the responsibility of reviewing, adding, deleting or revising the policy. This is to ensure that the policy remain current with the objective and with organization needs. Further, the human resource department/ committee/team help interpret policies, ensuring that they are applied fairly and equitably throughout the organization. Key issues that must be ensured by the organization's human resource department are:

- The policy manual is kept up-to-date;
- The policy manual continues to set out the procedure that must be followed in the operation of the system and procedures;
- Sufficient copies of the manual are available;
- Amendments to the policy manual are properly authorized and communicated to the concerned parties immediately.

6. SUMMARY

6.1 There are different types of people in an organization and they react differently to the need for policies and procedures based on those differences. For example, some people prefer there should be a written policy for everything, while others favor having no policies at all and would leave everything open to interpretation as situations arise. Neither of these extremes contributes to a work environment that is conducive to high productivity levels. The focus of an organization is not just about meeting specific goals and objectives, but also about how one can achieve them.

6.2 Thus, policies and procedures are like the lighthouse which guides an organization on its way to its destination i.e. achievement of the organizational goals/objectives. Policies are the 'means' but not the 'end'. It is important to note that human resource policy is an internal document of an organization and is not a legal requirement. It takes some effort to develop and implement the human resource policy, but it brings definite long-term benefits as it will overall minimize the incidence of disputes or grievances within the organization. The Human Resource policy does not have to be complex, but comprehensive and compliant with the organizations objectives and need.

CONFLICT OF INTEREST POLICY

1. WHAT IS CONFLICT OF INTEREST?

1.1 Conflict of interest is a situation where a person has interest in different capacities. Interest in different capacities may be understood as a situation wherein a person has a fiduciary responsibility of promoting an interest, but has another competing interest at the same time. When the competing interest is exercised over the fiduciary interest, this situation is termed as Conflict of Interest. In simple terms, when an interested person is also involved in the decision making, it is termed as conflict of interest.

2. WHAT IS CONFLICT OF INTEREST POLICY?

2.1 Conflict of Interest Policy is a guiding document which sets the standard operating protocol of an organization to be adopted wherever the organization or an individual in the organization has a Conflict of Interest.

2.2 Illustrations for conflict of interest in an organization

When the decision making person of an organization is involved in the following transactions, conflict of interest situation can arise:

- Appointing relatives in board or senior management;
- Selecting a vendor who is a relative;
- Deciding and Paying of fees/remuneration to self or relatives;
- Purchasing/ Leasing a property for organization from a relative or self;
- Selling/ taking on lease a property for organization from a relative or self;
- Having Directorship or Managerial position in other competing organization(s);
- Providing consultancies in personal capacities;
- Having personal interest in any decision or resolution;
- Having relations/ownership or substantial interest in an organization giving or receiving donations.

3. WHO IS AN INTERESTED PERSON?

3.1 Whenever a person involved in decision making has another competing interest as illustrated in section 2.2, she/he should be considered as an interested person. Generally, the following persons are involved in the decision making process and may face a conflict of interest while making decisions:

- Founder(s)
- Board Members/Trustees
- Senior Management: Executive Director, Chief Executive Officer, Chief Finance Officer, other Head of Departments etc.

4. OBJECTIVES- 'THE ENDS'

4.1 Conflict of Interest policy helps the organization to establish robust structures and procedures to be adopted in case a conflict of interest is identified. Following are the key objectives of a Conflict of Interest policy-

- To provide guidelines for identification of the conflict of interest
- To provide formal procedures to be adopted in case of a conflict of interest
- To provide clear reporting structures that spell out the nature and persons having a conflict of interest.
- To provide guidelines to the individual/organization for avoiding/ managing issues of conflict of interest

5. PROCEDURE TO HANDLE CONFLICT OF INTEREST- "THE MEANS"

5.1 The conflict of interest within the organization should be handled with due transparency and the decision should be made in the interest of the organization instead of the interest of an individual involved in decision-making. For example, in case of selection of an employee in an organization, the proper handling of conflict of interest ensures that all applicants get a fair chance of selection irrespective of his/her relationship with the employer. Irrelevant of the size, nature or area of operation of an organization, there are three steps to handling Conflict of Interest issues. The procedure starts with identification, followed by disclosure and decision-making.

5.2 Identification

All Conflict of Interests should be duly identified by the persons holding an office, Board Members, and Senior Management team of the organization. The "Related Party Questionnaire" is a relevant tool for identification of Conflict of Interests. The format of the Related Party Questionnaire may be referred from *Annexure 20*.

5.2 Disclosure

Once the Conflict of Interest has been identified, the disclosure shall be made by all the interested parties. As a good practice the disclosure shall be submitted as per the following:

Person with Conflict of Interest

Employees
Senior Management
Board Members
Chairman

Disclosure to be submitted to

Senior Management
Board
Chairman
Board Members

An organization may however adopt a different system for submission of disclosure. Such disclosures may be submitted either annually or upon occurrence of a conflict of interest.

5.3 Decision Making

Once the disclosure is made by all individuals, the decision regarding such transactions/events may be made by the Board or the concerned Department/Committee. Person(s) having a conflict of interest should refrain from being part of such processes. This would ensure transparency and fair decision making in the process. It should be ensured that all such processes of decision making are duly documented, i.e. the minutes of the proceedings should be duly recorded for future reference.

5.4 Steps to develop Conflict of Interest policy?

A conflict of interest policy can be developed within an organization by following the below suggested process:

Step 1: Need Establishment

The organization should have an internal discussion on the need to have a Conflict of Interest policy. This discussion should be led by the Board.

Step 2: Formation of Drafting Committee

The Board should form a committee to prepare a draft of the policy. The key issues and requirements should be discussed within the team for a better understanding of the members. As a good practice the Drafting Committee should comprise of the following members:

- At least one Board member
- Executive head/ Chief Functionary
- Representative from Finance team
- Representative from HR/ Administration team
- Representative from Programme Team

Step 3: Preparation of Draft

The Drafting Committee should prepare the draft of the policy after discussions. While preparing the draft, the committee should define the scope and purpose along with the procedures to be adopted. This will help the stakeholders to acquire a better understanding of the applicability and purpose of the policy. The Committee may also seek advice from external experts. However, suggestions from experts should be included only after obtaining a unanimous consent of the Committee members.

Step 4: Review of the Draft

The draft should then be reviewed individually by each Drafting Committee member. The suggestions should be placed before the Committee which should be incorporated with majority acceptance.

Step 5: Approval

Once the Drafting Committee is satisfied with the draft, it is shared with the Board for their approval. After receiving the draft, the Board may make the desired changes in the draft or direct the drafting committee to make certain changes and thereafter approve the policy after unanimous consent within the Board members.

6. CONTENT OF CONFLICT OF INTEREST POLICY?

Broadly, an ideal Conflict of Interest Policy should contain the following contents:

- Preamble/Introduction to the policy
- Aim of the policy
- Scope or the coverage of the policy
- Objectives of the policy
- Definitions of the technical words in the policy
- Procedures for handling the conflict of interest
- Addressing the violations of policy
- Procedure for the reviews and amendment to update the policy
- Declaration for the acceptance and date of adoption of the policy with signatures of the Board Members.

Please refer *Annexure 21* for the template of Conflict of Interest Policy.

7. SUMMARY

It should be understood that the policy on Conflict of Interest is merely a tool for handling the cases of identified conflict of interests. The policy does not ensure addressing all the potential cases until and unless the cases are identified. Further, the identification of the cases is subjective to the integrity and conscience of the persons concerned. The organization should ensure to cultivate a sense of integrity and accountability within all its stakeholders for a better management of Conflict of Interest.

FINANCE POLICY

1. WHAT IS FINANCE POLICY?

Finance policy is a key policy to be developed for any organization. A financial policy is a set of financial procedures which govern the financial and legal aspects of an organization. A finance policy also helps documentation of the financial decision making process and thereby provides greater credibility.

2. PURPOSE OF DEVELOPING FINANCE POLICY:

- Serve as a framework for organization financial planning and decision making
- Clarify roles and responsibilities in financial management or procedures
- Establish standards operating procedures (SOP).
- Ensure compliance with law of the land

3. RESPONSIBILITY OF DEVELOPING FINANCE POLICY

3.1 It is the responsibility of the Board to formulate financial policies and review operations and activities on a periodic basis. The Board sometimes may delegate the responsibility of formulating finance policy to the Treasurer and the Finance Committee. Further, the Finance Committee forms a team of Finance and Programme staff to develop the policy based on existing practices being followed in the organization. The ultimate responsibility for formulation and approval of finance policy lies in the hand of the Board.

4. USERS OF FINANCE POLICY

4.1 All those associated with the day to day financial activities of the organization can be the users of this policy.

- Board
- Staff
- The Statutory auditors/Internal auditors
- The Financial and Programme Consultants
- Resource Partners- with approval from the organization.
- Any other person prescribed by the organization

The above mentioned persons are expected to familiarize themselves with the contents of the Manual and to refer to it as and when the need arises.

5. STEPS TO DEVELOP FINANCE POLICY

STEP 1: Review of Existing Practices

Every organization operates on the basis of some policy. In some organizations it may be unwritten. Therefore, as a first step, all the existing practices in Financial Management need to be documented. These practices may be in the areas of accounting procedures, budgeting, auditing etc. Once the practices are documented, it needs to be further compared with standards of good practices. If the document is adequate and covers all aspects of good financial management and accounting practices, then it is forwarded for approval as draft policy and in case there are any gaps then these areas are filled in and a draft policy is finalized.

STEP 2: Implementation

On preparation of the draft policy, it is presented for review and approval by the Board of Directors. After receiving the draft, the Board may make the desired changes in the draft or direct the team to make certain changes and thereafter approve the policy. On approval of the policy, the same is circulated to the staff members. The policy can be explained to staff members through orientation meetings. Copy of the policy should be made easily accessible to all the employees.

STEP 3: Review & Implementation

The Finance policy once implemented should be followed diligently by all the staff and concerned persons. After the policy is being followed and implemented for a period of 6 months or so, it is once again reviewed to identify any gaps and updated accordingly. The review of policy at periodical intervals is necessary to ensure that they are current and in line with changes within the organization.

STEP 4: Compliance

It is necessary that policy apply consistently throughout the organization and it is well documented. Any breach of policy should be dealt with according to the set procedures mentioned in the policy.

6. BROAD AREAS FOR SETTING UP OF POLICY

6.1 The Finance policy would broadly consist of 7 sections, which are as follows:

- Budget planning, monitoring and controls
- Accounting and reporting policies
- Internal control systems
- Statutory compliances

- HR systems and management
- Audit, monitoring and reporting
- IT systems

6.2 Budget planning, monitoring and controls

The section of budget planning, monitoring and control should entail the approaches of budgeting process in order to achieve the defined objectives and scope of the organization. The procedure for planning, monitoring and controlling the budgets should be stated in the following way:

- Defining objectives & scope
- Approaches of budgeting
- Activity schedule/ time table
- Planning & Budgeting process
- Approval of budget
- Budget variance analysis

6.3 Accounting and reporting policies

This section should define the organizations accounting and reporting procedures. The procedure for the following areas needs to be mentioned:

- Responsibility matrix
- Maintenance of Books of Accounts & Records
- Vouching process
- Basis of accounting being followed
- Recognition criteria for the following items:
 - ♦ Income
 - ♦ Expenditure
 - ♦ Liabilities
 - ♦ Assets

6.4 Internal control systems

The internal control systems imply development of systems within the organization to ensure efficient functioning and minimize the possibilities of mismanagement and inefficiency. Under this section, an organization needs to entail the control procedures to be followed in the following areas:

- Assets management
- Cash management

- Bank management
- Fund management
- Advance management

6.5 Statutory compliances

Under this section, the organization should mention the statutory compliances as well as compliances as per the incorporation law under which the organization is registered. The various procedures being followed to meet these compliances from time to time has to be mentioned.

A non-profit organization may be registered under the following acts:

- Foreign Contribution Regulation Act 2010
- Income Tax Act 1961
 - ♦ TDS
 - ♦ Service Tax
- Provision of Gratuity Act 1972
- Employees Provident Fund Act 1952
- Employees State Insurance Act 1948
- Payment of Bonus Act 1965

6.6 HR systems and management

The following procedures and policies which are being followed with regard to Human resource management needs to be mentioned:

- Attendance Procedure & Records
- Employment Policy
- Working Schedule
- Remuneration
- Leave policy
- Benefits & Incentives
- Consultant's management
- Personal Income Tax
- Full & Final Settlement

6.7 Audit, monitoring and reporting

The process and methods for conducting audits should be defined in this section of policy. The financial and programme monitoring procedure for all the activities of the organization should be stated along with the guidelines on reporting requirements.

Thus, this section should include the following process:

- Audit:
 - ♦ Internal audit
 - ♦ Statutory audit
 - ♦ Project audit
 - ♦ Appointment of an auditor
 - ♦ Change of an auditor
- Programme monitoring
- Financial monitoring
- Reporting

6.8 IT systems

Computerized accounts are very beneficial to ensure correctness, accuracy and completeness of accounts. It reduces human errors. For ensuring efficiency of the information present in database and in backups, an organization should prepare a checklist enlisting the various procedures with regard to maintenance of IT systems. The checklist may include the following:

- Accounting package
- Updating and documentation of computerized vouchers
- Authorized person
- Back up of database
- Password protection
- Anti-virus

7. CONCLUSION

Thus, a Finance policy not only provides guidelines for the organizations stakeholders but also clarifies the roles, responsibilities and authorities for essential financial management activities and decisions. It is to be noted that in the absence of such policy the staff and board members are likely to operate under a set of assumptions that may or may not be accurate. Therefore, it is necessary for an organization to develop a Finance policy which act as a guiding framework for its staff and also act as a principal document for showcasing the operations of the organization in the areas of Finance, Programme and Administration.

GENDER POLICY

1. HISTORICAL BACKGROUND

- 1.1** Until the 21st century, the organizational policies were largely concentrated on the expansion of the business operations. Consideration to workplace safety gained less attention since women were not frequently involved in the business activities. Women joining the professional sectors were limited to teaching and nursing. After the post industrial revolution and social movements, women began to enter the occupational and professional careers to supplement the rising needs of the family. Gradually the need based involvement of women in the industry shifted to interest based involvement in the top notch professions which impacted the choices of hiring amongst organizations. They became more open and flexible in acquiring women employees and were looked from a macro perspective then being a homemaker. This change in the mindsets halted the myths and assumptions concerning the difference of masculinity & femininity and ensuring that both genders have equal rights, authority, power and access to different set of resources.

2. HOW TO MEASURE SUCH EQUALITY

- 2.1** But now the question arises, how such equality in the organization or any workplace is achieved and measured? One possible solution could be formulating a comprehensive Gender Policy covering all key issues necessary in ensuring the equal rights, participation and access to men and women in the organization.
- 2.2** A well drafted and properly disseminated Gender Policy demonstrates the level of transparency and attention given to gender equality in the organization by the top management. The term 'Gender' has a wide scope to cover than just by limiting to the total number of women involved in the organization. A sound Gender Policy represents the organization's commitment to gender equality and incorporation of sensitivity involved with each staff member in the day to day decision making processes. In fact, Gender Policy is a comprehensive term which determines the protocol for a healthy workplace, lays guidelines on conduct with internal and external stakeholders, manner in which the private lives of the staff are taken into account and social complexities associated with a staff's background. Thus, all the areas affecting workplace is part of Gender Policy. The 'Gender Policy' acts as a blueprint for the top management to integrate and promote gender equality within its organizational culture and programmatic operations.

3. WHAT IS A GENDER POLICY?

3.1 Gender Policy is a set of principles and ideal practices applied across different levels of employment in the organization to build a healthy workplace culture and equality among all employees. The policy also provides a framework for action to ensure that the staff are equally treated and given full access to different resources and opportunities. The policy also focuses on 'mainstreaming' of gender both in implementation work as well as in the decision making processes. Gender Equality Tool of International Labour Organization (ILO) explains the degree of mainstreaming of genders 'mainstreaming is not about adding a "woman's component" or even a "gender equality component" into an existing activity. It goes beyond increasing women's participation; it means bringing the experience, knowledge, and interests of women and men to bear on the development agenda'. The main objective of the policy is to maximize Fair Equitable participation and free access by all employees to key work areas in the organization.



4. RELEVANCE OF GENDER POLICY IN THE DEVELOPMENT SECTOR

4.1 The Constitution of India under Article 15 prohibits the state from discriminating on the grounds of religion, race, caste, sex and place of birth in various day-to-day activities; and Article 39 urges the state to ensure that citizens, men and women equally have the right to an adequate means of livelihood, right to shelter, food, education and work. Gender equality is a global phenomenon with international community taking initiatives in fostering this positive change in all spheres of life.

IMPORTANT LAWS TO BE KEPT IN FOCUS WHILE DEVELOPING A 'GENDER POLICY'

- Declaration on Elimination of Violence against Women 1993,
- Convention on Elimination of all forms of Discrimination against Women (CEDAW), 1993
- Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013
- Vishaka Guidelines against Sexual Harassment at Workplace - Guidelines and norms laid down by the Hon'ble Supreme Court in Vishaka and Others Vs. State of Rajasthan and Others (JT 1997 (7) SC 384)

4.2 India is also one of the many countries, which has ratified the Convention on elimination of all forms of Discrimination against Women (CEDAW) bill in 1993, making it legally bound to put its provisions in practice. By accepting the Convention, India has committed to undertake a series of measures to end discrimination against women in all forms, including:

- To incorporate the principle of equality of men and women in their legal system, abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women;
- To establish tribunals and other public institutions to ensure the effective protection of women against discrimination;

- To ensure elimination of all acts of discrimination against women by persons, organizations or enterprises.

4.3 With the rise in easy access to technology and higher participation of western countries in the developing nations, Gender Policy has started getting due push and impetus. Scope of Gender Policy The existing NGO sector in India is unstructured and widely spread across far flung rural to cosmopolitan regions. Gender policy is a niche concept and not spoken much in the development sector as it is presumed to be followed by the organizations. In development sector, it becomes even more essential to create and implement a gender policy as the main forte is to empower vulnerable communities. Thus, developing an ethical and equal workplace is a must for implementing the welfare projects downward in the target locations. Every employee of the organization is a key player especially when the organization is working with and for the empowerment of communities.

Therefore, Gender Policy should not be treated as a small section or chapter in the Human Resource Policy, in fact it should have its own space with clear set of principles, actions plan and a committee to resolve gender specific issues in the organization to which employees of all levels must adhere to.

5. SPECIFIC PURPOSES OF GENDER POLICY

- To serve as a framework for maximizing fair and equitable access to opportunities in terms of Ownership, Leadership, Representation and Governance.
- To clarify roles and responsibilities of each position and level in the organization irrespective of the gender.
- To establish Standard Operating Procedures (SOP) for handling grievances related to gender inequality.
- To form a committee equipped with adequate authority in order to take required action in case of any grievance or breach of provisions of the gender policy.
- To ensure compliance with the law of the land.

6. USERS OF GENDER POLICY

Gender Policy talks about the inherent values of an organization which covers wide range of stakeholders such as:

- Board
- Top Management
- Staff
- External Agencies/ Donors
- Resource Partners

¹<http://www.un.org/womenwatch/daw/cedaw/>

- Any other person prescribed by the organization

The above mentioned stakeholders are expected to familiarize themselves with the conduct of the Gender Policy/Manual governing the code for a healthy and equal opportunity based workplace.

7. POTENTIAL AREAS UNDER THE POLICY

Recruitment and Retention	<ul style="list-style-type: none"> • Open dissemination of recruitment process, job description and work delivery expectations, • Fair selection process based on the requirement of the position, skills, experience, and knowledge of the candidate, • Fair and equal monetary compensation to the selected candidate irrespective of the gender, • Organizing skill and performance analysis of all employees on regular basis to ensure the work performed by each employee is duly valued, providing training and development opportunities to all employees.
Promotions and Growth	<ul style="list-style-type: none"> • Conducting analysis of the number of promotions for both women and men annually, • Consider employees on parental leave for promotion, • Proper communication of opportunities for promotion so as to be easily accessed by all employees throughout the organization.
Training and Development	<ul style="list-style-type: none"> • Implement mentoring or sponsorship programs in non-traditional areas for women particularly, • Conduct analysis on the number of women and men accessing training and development programs, • Ensure all employees have an annual career discussion with their senior managers that includes an annual training and development plan.
Termination/ Resignation	<ul style="list-style-type: none"> • To implement a process for capturing exit interview data for each employee to identify the correct of reason for termination or resignation, • To implement a process for tracking and comparing the number of women and men resigning from the organization.
Safety, and Freedom from Violence	<ul style="list-style-type: none"> • Ensuring the safety of female employees in the workplace, including travel to and from the workplace, • Prohibition and prevention of all forms of violence in the workplace, • including verbal, physical, and sexual harassment, • Ensure flexible working conditions for women employees.
Equal participation in the Management and Governance	<ul style="list-style-type: none"> • Ensure fair representation of men and women in the Board, and Top Management, • Providing due responsibility and authority to all members of the board and management to initiate and execute given task.

8. DEVELOPING A GENDER POLICY

8.1 Generally, it is the Human Resource Department which is responsible for preparing the Gender policy taking the vision, mission and objectives of the organization into consideration. In some

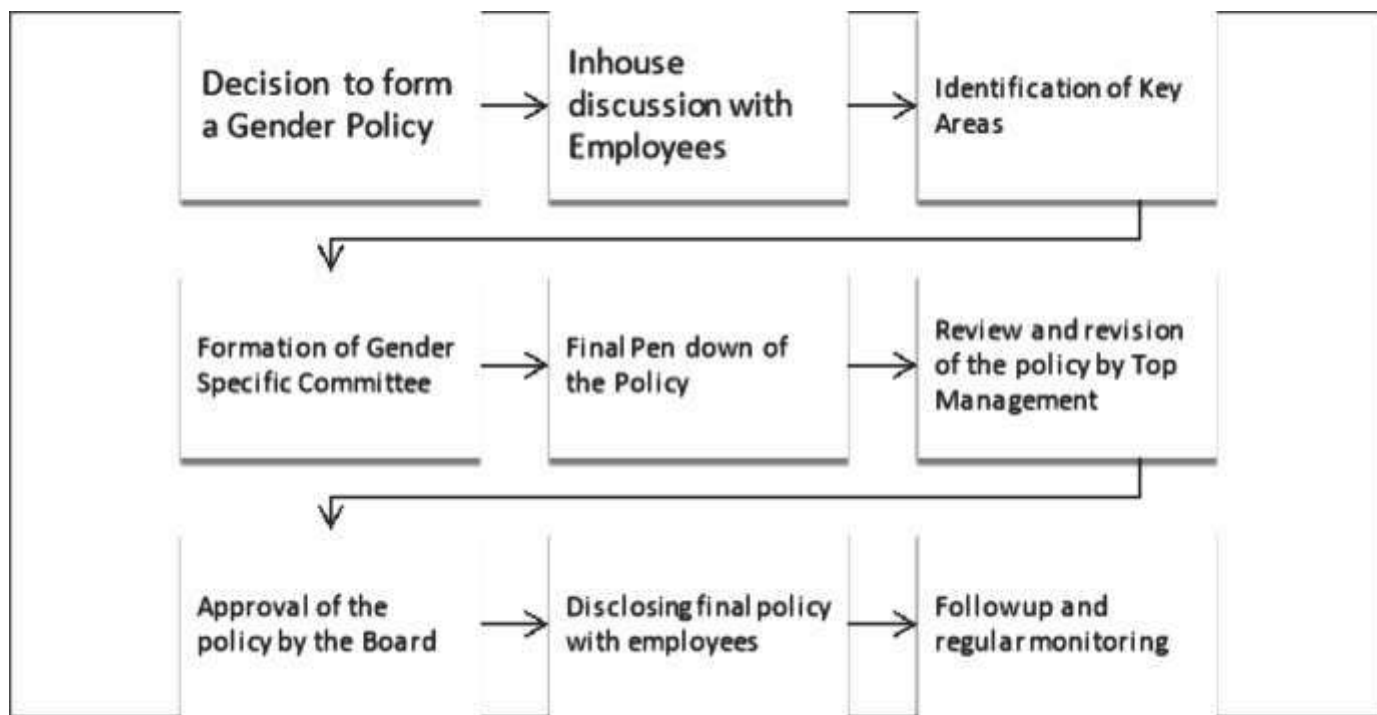
organizations a separate committee is formed to look into gender specific issues. The draft of the policy is then shared with the senior management for further feedback. After thorough reviews and revisions, the policy is approved by the Board. (Refer *Annexure – 22*)

9. IMPLEMENTATION FRAMEWORK

- 9.1 Once a strategic level planning through interactive sessions by top management is held and the same is transparently disseminated to all stakeholders mainly employees, it goes to the concerned department mainly HR department to identify the key areas that would form part of the policy in consultation with staff members.
- 9.2 After the initial exercise to form a Gender policy, process of selecting the committee members begin. The members selected should include staff from all levels, genders and diverse experience. While forming the committee members, below mentioned areas should be considered and disclosed to other staff members:
- Process of formation and selection criteria of the committee members,
 - Mandate, Powers, Responsibilities, Authorities and different functions of the committee members,
 - Recording of the meetings and agenda discussed during the respective meetings,
 - Clearly specify the names and contact details of the members,
 - Implementation framework of changes brought forward by the committee in this regard at the office and field level.
- 9.3 Further, it is essential the committee should develop a separate framework for the field staff that generally operates in far located disadvantaged areas.

Once the basic background is ready, it goes to the final assigned team to get it structured. If required external expertise can also be sought. The Gender Policy should cover internal, institutional, external service delivery issues as well as the issues arising in the field area.

Further, the draft policy is discussed and reviewed by top management and respective committee members before being approved by the Board members. Once the policy is approved by the Board it is shared and disclosed down to the employees.



10. KEY POINTERS WHILE DEVELOPING A GENDER POLICY

- Commitment to gender equality through a Board statement or comparably prominent means,
- Display the commitment in the workplace with due emphasis and make it available to all employees in a readily accessible form,
- Establish benchmarks to measure and monitor progress towards gender equality and report results publicly,
- Establish a clear, unbiased, non-retaliatory grievance policy allowing employees to comment or complain about their treatment in the workplace,
- Engage in constructive dialogue with stakeholder groups, including employees, non-governmental organizations, business associations, donor's customers, and the media on progress in implementing the organization's commitment to gender equality.

11. CONCLUSION

11.1 Every organization has people from different walks of life and can have different approaches and opinions about various issues pertaining to Gender prospect. Some might not be comfortable to discuss these issues and others just overlook the long term repercussions of non-adherence of such policies.

Thus, it is imperative to understand the significance associated with the adverse effects of not adhering to the provisions of Gender Policy particularly the legal and reputational consequences. Looking at the upcoming global concerns over disadvantaged genders business operations cannot be performed in isolation. Also the policy should be in conformity with national, regional and international legal compliances specially if it funded by foreign sources. Stakeholders are now much more vigilant and participative in selecting its partners. Therefore, an issue which seems small might not be the way it appears. Moreover, maintaining a healthy workplace will contribute to the upward growth of the organization and assist the top management to retain its employees for a longer period. A good Gender Policy is an indispensable tool for ensuring fair working environment which is free from all forms of discrimination. Once the key components of the policy are finalized, it should be disclosed to all the employees and stakeholders for due adherence and practice in day to day operations.

Therefore, Gender Policy should not be treated as a small section or chapter in the Human Resource Policy, in fact it should have its own space with clear set of principles, actions plan and a committee to resolve gender specific issues in the organization to which employees of all levels must adhere to.

III. FINANCIAL MANAGEMENT

INTRODUCTION ABOUT CONTROL SYSTEM

CONTROL SYSTEM IN GENERAL

Since we would be using the word “Control” over and over again it is very important for us to understand the meaning and concept of Control. We would at the same time try to understand its importance with regard to the organizations and their related functional aspects.

Control is a systematic effort to set performance standard with planning objectives. It is the process that guides an activity towards some predetermined goals.

1. INTRODUCTION

For an organization to function effectively certain goals and objectives must be set clearly. Control in a way, helps to measure the progress towards the accomplishment of such goals. It should be noted that plans are realized only through effective managerial control.

The following definitions make the concept of Control clear:

"Managerial control implies measurement of accomplishment against the standard and the correction of deviations to assure attainment of objectives according to plans." - Koontz & Donnell.

"Control consists in verifying whether everything occurs in conformity with the plans adopted, the instructions issued and the principles established." - Henry Fayol.

"Control maintains the equilibrium between ends and means, output and efforts" - Peter Drucker.

As it is clearly seen that control involves setting of standards which will prevail in the organization. To achieve this, the resources will have to be closely monitored. As such, information about the actual performance of the organization will have to be known. In return, this level of performance will be

measured with the performance stated at the very beginning. Consequently, appropriate action can be taken.

2. ELEMENTS OF CONTROL

Summarizing the above, we come to the four basic elements of control. These are:

- Setting standards of performance at strategic points.
- Leading, motivating, supervising, directing, guiding the employees.
- Measurement of actual performance.
- Its comparison with the stated standards of performance.

However, in all organisations, control should be effective enough in helping the organisation in achieving its pre-determined goals. There are certain pre-requisites, which are essential for control. These form the characteristics for effective control to bring into existence – the effective control.

3. ELEMENTS OF EFFECTIVE CONTROL

- **Suitability:** The technique of control to be used should suit the organizational working system. Different departments/NGOs may have different system of control.
- **Deviations:** Any change in the conditions should be reported well in advance so that immediate action can be taken to avoid any loss or damage.
- **Objective:** Control should be done with accurate and suitable standards. Management should take into consideration the proper objectives of the organisation for control to be effective.
- **Predictions:** Control should also aim for the future. If necessary steps are taken well in advance, the Management will be able to take both corrective and precautionary measures.
- **Flexible:** Necessary flexibility is required in the control design so that control can be effective when there are some unforeseen changes in the pre-determined plans.
- **Economic:** It should be made sure that the benefits derived from the system should be more than the cost incurred from the control system.
- **Understandable:** The whole of the control process should be clearly understood by everybody involved, especially Managers. It is only then, that control will be effective in the organisation.
- **Corrective:** A proper control system should not only detect deviations from the plans, but must also show the way to corrective action so that further loss or damage is not caused to the organisation.

Once the pre-requisites of effective control is in place then it becomes important to understand what should be the characteristics of control.

4. CHARACTERISTICS OF CONTROL

4.1 Control has some basic characteristics. These are:

- **End Function:** Control, being an end function of the management process is not the beginning, but a follow up to the other functions of Management. Control is said to be the end function, since, it judges the performance of different factors engaged in the attainment of the objective of the enterprise.
- **Continuous Process:** Just like planning, control process is also continuous. Control should also be prompt in dealing with deviations. A Manager should monitor the performance of his staff continuously and assure himself that they are on the right track.
- **Flexible Activity:** Controlling process cannot be rigid. It has to be flexible and is required to be adjusted according to the needs and situations arising from time to time. As plans and objectives may change according to the needs of the situation, control must also adjust itself to them.
- **Forward Looking:** Control is related to the future though it lives in the present. It is the present over which control is exercised with a view to guard against future loss and wastage which may arise due to deviations from plans, policies, programs and schedules, etc.
- **All Level Exercise:** Control, like all other managerial functions, is exercised at all levels of Management. Its nature and degree may change according to the level but it is to be performed throughout the organisation. It is a non-interfering process. It does not curtail the right of an individual or of a group.
- **Employee Behaviour:** Control guides and integrates the employee's behaviour towards attaining organisational goals. It guides the employees to work according to the predetermined standards, motivating and instructing them in achieving the organisational goals. Supervising will help in integrating their behaviour towards attaining the goals of the enterprise.
- **Anticipating Probable Changes:** Changes can be anticipated via information collected. Reports and information from people working on different jobs will enable the management to anticipate that:
 - ♦ It is economically realistic.
 - ♦ It is accurate - timely - objective and comprehensive.
 - ♦ It focuses on strategic control points

5. BENEFIT OF CONTROL SYSTEM

5.1 At this specific point, it should be agreed that control is vital to an organisation. However, in what ways? The following points will make this clearer:

- **Proper Action:** Control gives the correct picture of the nature of corrective action to be taken. Taking corrective action may lead to modification of planning, organizing and directing. If anything is wrong with planning, organizing and directing, it is brought to light through the process of control.
- **Decision Making:** Control is basic to decision making. According to W.T. Lerome, "Control is needed both to simplify the making of subsequent decisions and to ensure the realization of the

objectives implicit in the original long range policy decisions". The process of control is complete only when corrective action is taken.

- **Consistency:** Control enables top Management to get the feedback information which helps them to ensure that the decision taken at the lower levels are consistent with the policies and the interest of the enterprise. The modern trend towards decentralization, calls for a systematic attempt for controlling.
- **Coordination:** Control facilitates co-ordination by keeping the routine activities and efforts within the fixed boundaries established by the pre-determined goals and objectives. It also provides guidance to each member of the organisation to move towards common goals through co-ordinated directions.
- **Positive Impact:** The existence of a control system has a positive impact on the behavior of employees who tend to be more cautious as their performance is being observed by the Manager or compared with the pre-determined goals. It keeps the subordinates under check and brings discipline among them. Employees, knowing that they are being observed, will try to work more efficiently and according to standards.
- **Detection of Weaknesses:** Control highlights omissions (if any) and makes it possible to take corrective measures. Control keeps a check on other functions for ensuring successful management. It is the control function of management that reveals and brings necessary feedback for indicating managerial weaknesses and determination of remedial actions. It helps the management in knowing which department needs more attention.
- **Proper Implementation of Plans:** Control through the feedback information will enable the Management for the proper implementation of plans. Plans are related to the future and the controlling process will provide adequate information to management so that these plans are implemented in a proper manner.

CONTROL SYSTEM IN REFERENCE TO NGO

1. PURPOSE

The purpose of organisational control is to ensure the safekeeping of assets (such as cash and equipment), to maintain productivity along the lines of the non-profit mission statement, to produce reliable and relevant financial records (i.e., relevant to important decisions), other reports (including the budget and financial statements) and keep communications open on the various issues of control.

2. NEED FOR CONTROL

The need for organizational control arises out of the split between those who contribute to the non-profit and those who make decisions and run the operations. Those who contribute, do not have day-to-day information. In the business or for profit making world, the split is between the owners and top managers. Owners do not generally have the day-to-day information equal to the Managers. One concern is that, Managers will take advantage of their in-depth information and follow their own self-interest rather than the wishes of the owners. In the non profit world, similar split takes place. Those providing the funds do not have in-depth knowledge of how their money is being used or misused.

Another need for management control arises out of the distance between top management and the employees. Managers cannot and should not supervise every activity of employees. Thus, top management needs control techniques to realize such things as productivity along the lines of the mission statement.

Another need for control arises because of the fact that beneficiaries being one of the important stakeholders have no direct or indirect control over the operations of an NGO. Hence, this also focuses on the need for effective control system in an NGO.

3. PROCESS OF CONTROL

While understanding the concept of control we have understood that the process of control involves the following steps:

3.1 Establishment of Standards: Control logically begins with “setting up of standards”. These provide the established criteria of desired performances for evaluating both individual and organizational performance. The criteria of desired performance vary according to the nature of activities. Standards should not be vague and should be understandable by all the persons concerned. This step may include –

- Formulation of Budget :
 - ♦ Preparation & finalization of budget for various programs and activities.
 - ♦ Preparation of operational budgets (monthly or quarterly) on the basis of yearly approved budgets.
- Formulation & adoption of various policies and it includes:
 - ♦ Financial Policy
 - ♦ Human Resource Policy
 - ♦ Administrative Policy etc

3.2 Measurement of Actual Performance: This is done for the purpose of evaluation. Measurement of actual performance should be done as accurately as possible. Managers and supervisors should adopt suitable methods of measurement of performance and this may include -

- Accounting of Financial transactions
- Documentation of the conduct of the programs
- Preparation of both financial and activity report on the basis of records maintained by the organization.

3.3 Comparing the results with the Pre-determined Standards: After the standards are set and performance is accurately measured, the next step is comparing them to see if there exists any variation between the two. When actual performance is equal to the expected performance, there is no need for controlling action. This is an ideal situation, which rarely exists. In case of difference between the actual performance and the desired performance, the Manager should use his judgment to determine the significance of this difference. This is the most important aspect of control and is also known as the tools for organisation control. This may include :

- Budgetary control
- In-built internal control system
- Policy compliance report
- Audit: Internal and Statutory
- Obtaining reports from the field and Management information system
- Evaluation and assessment

3.4 Taking Corrective Actions: Control process would not be complete if corrective actions are not taken. An effective control system should produce more than a red flag; it must also contain procedures to determine means of correcting the deviations. Corrective action calls for the removal or adjustment of causative factors, with a view to put in the performance on a proper track. Also, corrections should be undertaken promptly as soon as deviations are detected to avoid accumulated loss. It should also be noted that not all deviations need correction. Such action may be either remedial (which is taken after the wrong has been done) or preventive (measures taken well in

advance). It is obvious that the latter is preferred to the former. Those having the authority over the actual performance must put the corrective action into effect. As such, the control process ends with such proper corrective action. Some of the corrective actions may include:

- Modifications in the approved budget
- Amendment in the policy documents.
- Taking corrective actions for re-building the internal control system
- Bringing about changes in terms of reference to Internal Auditors.
- Initiating disciplinary action against staff.

FINANCIAL STATEMENTS AND REPORTING REQUIREMENTS OF NGO

1. INTRODUCTION

- 1.1 Charitable organisations, do not have any statutory obligation towards the form and content of the financial statement. The law governing charitable institutions is more than 100 years old and they do not have any prescribed framework for preparation of financial statements, as in the case of companies registered under the Companies Act, 2013.

2. VARIOUS STAKEHOLDERS

- 2.1 The preparation of financial statements in a transparent, intelligible and user friendly manner is very important. A lot of people depend on the results/performances of the charitable organisations. People as well as the society at large also have a right to be apprised of the financial state of affairs. Some of the important stakeholders of charitable organisations are as under :

- i) **The General members:** The general members in some sense are the real owners of the organisation. The general members have the right to be informed about the financial affairs of the organisation, assuring them that it is working towards the vision and mission and the assets of the societies are properly managed and protected.
- ii) **The Management Committee:** The management committee or the trustees need to analyse the financial functions in order to take future decisions as well as review the current activities. In a charitable organisation, all the trustees or board members may not have a financial background. Therefore, it is important that annual statements are prepared in a comprehensive as well as understandable form.
- iii) **The Beneficiaries:** The beneficiaries are the most important stakeholders but unfortunately very little information is disseminated to them. The development sector is trying to come up with various measures for participation of the beneficiaries in the financial functioning of the organisation. Some organisations have started preparing village level statements which are displayed in each village in the local language.
- iv) **The Donors:** The donors being the source of finances have a right to the annual statements assuring them that their funds were properly utilized. Proper preparation of statements will also help in impressing the prospective donors.
- v) **Government Agencies:** The Trust laws or the Societies Registration Act 1860 has not prescribed any criteria for the presentation of annual accounts. However various other Government Agencies such as Ministry of Home Affairs for FCRA and the Income Tax department have specific reporting requirement.

3. PREPARATION OF THE BALANCE SHEET

3.1 The assets and liabilities side of the balance sheet can be classified as under :

- **Assets**
 - ♦ Fixed Assets
 - ♦ Investments
 - ♦ Cash and Bank Balances
 - ♦ Loans and Advances
 - ♦ Other Current Assets
 - ♦ Losses & Expenditures (to the extent carried over)
- **Liabilities**
 - ♦ Corpus Fund
 - ♦ General Fund (unrestricted funds)
 - ♦ Restricted Funds (funds earmarked for specific purposes)
 - ♦ Designated Fund
 - ♦ Endowment Fund
 - ♦ Assets Fund
 - ♦ Unutilised grants
 - ♦ Loans (Secured/unsecured)
 - ♦ Current liabilities

3.2 **Balance Sheet can be prepared in two forms:** The traditionally horizontal and the trendy vertical (*Refer Annexure-23*) for the suggested format of Balance Sheet). Most charitable organisational Balance Sheets are prepared in the Horizontal form. This has two sections: right and left. Assets are shown on the right side and liabilities are shown on the left. The vertical form of Balance sheets are mostly prepared by the corporate sector and is rarely seen in the charitable organisations. It has two sections : Sources of Funds and Application of Funds. In any case, the Auditor should ensure proper clarification of the following :

- i) **Corpus Fund:** Corpus fund is analogous to the equity share capital of a company. However, since profits cannot be distributed in a charitable organisation, no member has a right or claim over the corpus fund. Corpus fund should be properly classified and the addition and earning from corpus fund should be clearly stated.
- ii) **General Fund:** General fund is the unrestricted fund available with the organisation. Such fund should be distinguished from designated fund.
- iii) **Restricted Fund:** Restricted fund is the fund which can be used for a particular purpose(s) as may be specified by the donors or any law.
- iv) **Designated Fund:** Designated fund is the fund set aside by the trustees/ board of directors out of unrestricted or general funds for future purposes of a project of the organisation. Designated

funds are different from the restricted funds, in the sense that the restriction is not external or imposed by the donors. Such funds should be separately classified in the balance sheet.

- v) **Endowment Fund:** Endowment fund is another category of restricted fund, where the fund is kept intact but the income earned from it is required to be used for a specific purpose as per the restriction created by the donors or trustees/board members.
- vi) **Assets Fund:** Many charitable organisations write off 100% of their capital expenditure in their Income & Expenditure account. As a result, the capital asset is extinguished from the books of account. However to give a proper reflection of the state of affairs, the assets are shown in the Balance Sheet by creating asset fund on the liability side. These assets fund are gradually reduced by deduction of depreciation from both the sides of the balance sheet.
- vii) **Fixed Asset:** Fixed assets are required to be segregated in terms of the corpus assets and the assets purchased for project purposes. Project assets normally should be supported by asset fund on the liability side. The balance sheet with the help of suitable schedules should provide all the details in this regard.
- viii) **Investment:** Investment of a charitable organisation may represent the unutilised closing balance of various project funds. The investment may also represent long time corpus fund or endowment fund. The balance sheet should provide with the help of necessary schedule the proper segregation in this regard. Even project investment should be shown separately for each project.
- ix) **Loans & Advances:** Loans and Advances in a charitable organisation could include revolving fund loan and advances made for project purposes. There may be advances of administrative nature such as staff advance, travel advance, etc. Proper segregation with the help of schedules of all such advances should be shown.
- x) **Cash & Bank Balances:** Cash and Bank Balances should reflect the closing balance of all the bank accounts at the head office as well as the project places. Similarly, cash in hand should also reflect the break-up at various places.

4. INCOME & EXPENDITURE ACCOUNT

- 4.1 Income & Expenditure Account (I&E) is the account prepared by an NPO at the end of the year showing all income & expenditure. It was noted that all receipts are not income and all payments are not expenditure. Therefore, an I&E Account may not provide the correct picture of the activities of the NPO during the year, unless the NPO is treating all restricted grants as a part of the I&E Account. A model format of I&E Account is enclosed herewith in *Annexure 24*.

5. RECEIPTS & PAYMENTS ACCOUNT

- 5.1 In the light of the discussion so far it becomes very important that a Receipts & Payments Account (R&P) is properly prepared. A receipts & payments account can be more informative than an Income & Expenditure Account (I&E). As because all receipts including restricted grants may not get reflected in an I&E Account.

- 5.2 Receipts & Payments Account is like a cash flow statement and provides detail of all the receipt and payment made during the year irrespective of the use or nature.
- 5.3 Under FCRA also, the reporting is required to be made on the basis of R&P Account. However it is suggested that a R&P Account should be prepared for the entire organisation not only for FC contribution. A model format of R&P Account is enclosed herewith in *Annexure 25*.

6. OTHER FINANCIAL STATEMENTS

- 6.1 Apart from the Balance Sheet, Income and Expenditure Account and Receipts and Payments Account are also normally prepared at the end of the year. The suggested formats of the following types of statements have been provided in the *Annexures*.
- Format of General Fund, *Annexure-26*
 - Format of Corpus Fund, *Annexure-27*
 - Format of Asset Fund Account, *Annexure-27*
 - Format of Fixed Asset Schedule, *Annexure-28*
 - Format of Cash and Bank Balances as on 31.03.XXXX, *Annexure 29*
 - Format of Loans and Advances as on 31.03.XXXX, *Annexure-30*
 - Format of Current Liabilities and Provision as on 31.03.XXXX, *Annexure 31*
 - Format of Cash Flow Statement, *Annexure-32*
 - Format of Investment Status, *Annexure-33*

7. FINANCIAL NARRATIVE REPORT

- 7.1 It has been noticed that the programme or narrative report submitted by NPOs some times do not correspond with the financial report.
- 7.2 It is suggested that the half yearly/annual narrative report should be in terms of the budget heads and tangible activities taken during that period. On the other hand long term narrative report such as project period report should be in terms of achievements and fulfillment of the objectives. A financial narrative report is a report, which provides explanatory value to the various expenditures undertaken during a reporting period. A suggestive format to such report has been annexed in *Annexure-34*.

8. PROGRAMME/NARRATIVE REPORT

- 8.1 The narrative report or the Programme Report for an NPO is equally important and it should be structured in the following manner :
- Programme objectives

- Activities undertaken
- Comparison of actual and planned activities.
- Impact Assessment both qualitative and quantitative.
- Future activity perspectives.

Kindly see *Annexure-35* for a suggested format of Programme Report.

9. PROJECT VARIANCE REPORT

9.1 It is important that all NPOs prepare proper variance report at the end of each quarter and at the end of the year. It may be noted that budgeting is a part of the planning process and budget variance analysis is a part of the monitoring process.

9.2 A variance report should be prepared for both the income side as well as the expenditure side. A suggested format is provided in *Annexure 36*.

10. LEGAL COMPLIANCE REPORT

10.1 Legal compliances under various act and statutes are compulsory in nature. Therefore, NPOs should be very careful about the legal compliances during the year under various statutes. The management of the NPO should come out with a legal compliance report every year. A format is provided in *Annexure-37*.

11. MANAGEMENT RESPONSIBILITY REPORT

11.1 NPOs generally work on grants and public resources; therefore, it is important that all such resources are used in a responsible and accountable manner. The conduct of the functionaries and staff should also be ethical and within the policy framework of the organisation. Conflict of interest related transactions should be avoided and declaration should be given if there are such transactions. It is suggested that the management of the NPO should come out with a responsibility report at the end of the year. A format is provided in *Annexure-38*.

SUMMING UP NOTES

- The financial statements prepared should be transparent and user friendly.
- NPOs should be very careful about the legal compliances during the year under various statutes.
- A management responsibility report should be prepared at the end of the year so as to depict the usage of funds in responsible and accountable manner.

SUGGESTED NOTES/DISCLOSURES IN FINANCIAL STATEMENTS AND AUDIT REPORT

1. SUGGESTED NOTES AND DISCLOSURES

1.1 The notes and disclosures normally required are as under:

- Method and charge of depreciation,
- Cost/ market value of investments
- Contingent liabilities
- Retirement benefits
- Valuation and verification of fixed assets
- Valuation of investments etc.
- Related party disclosure

1.2 In addition to the above, NPOs should consider the following :

- i) A note about the method of accounting and accounting assumptions taken.
- ii) In certain project based charitable organisations, the assumption of going concern may not be relevant. This can happen in the case of charitable organisations funded by a single donor. If the project funds are stopped, then the project as well as the organisation may cease to exist. Similarly, under the FCRA law, the charitable organisation may be banned from receiving foreign grants. The Auditor should provide proper notes in this regard.
- iii) The Auditor should report that the expenditures were in conformity with the objects of the society such as :
 - a) Relief of the victims of natural calamities.
 - b) Empowerment and rehabilitation of poverty stricken and street children into the main stream of the society.
 - c) Gender equity and women development.
 - d) The welfare of urban slum dwellers.
- iv) The Auditors' report should provide that the project taken on behalf of the donors were implemented according to the approved budgets and variations if any were within the permissible limits.
- v) A note should also be provided on the contribution received in kind and the method of accounting and valuation followed.
- vi) A note with regard to income generated by the communities and the local contributions received should be provided.

- vii) A note on project assets distinguishing them from the corpus assets should be provided.
- viii) Fund and project wise segregation of investments, assets and liabilities.
- ix) Details of the restricted and other funds with contractual obligation, if any
- x) Conflict of Interest or related party transactions, such as salary and other benefits to functionaries, use of properties by functionaries, consultancy contracts to related or interested persons etc.

SUMMING UP NOTES

- Adequate notes and disclosures should be made for transparency.
- The utilization of funds from own sources and project funds should be properly highlighted.

ACCOUNTING TREATMENT OF CSR EXPENDITURE AS PER ICAI

1. INTRODUCTION

- 1.1 As per Section 135(5) of Companies Act 2013, “The Board of every company which meets the limits prescribed under Section 135(1) shall ensure that the company spends, in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years.
- 1.2 If the company fails to spend such amount, the Board shall, in its report made shall specify the reasons for not spending the amount and, unless the unspent amount relates to any ongoing project referred transfer such unspent amount to a Fund specified in Schedule VII, **within a period of six months of the expiry of the financial year”**.
- 1.3 As per the law, CSR expenditures can be made in various ways apart from direct expenditure, the other form of expenditure are provided below :
- Direct expenditure on charitable activities as per Schedule VII;
 - Grant to Trust or Society;
 - Transfer to other corporates under pooling of expenditure;
 - Donation to Govt. recognised funds where 100% tax relief is available.

We need to understand the accounting & recognition of expenditures when they are incurred directly and by contribution to others. The ICAI has provided detailed guidelines in this regards, which have been provided in *Annexure-39*.

2. ACCOUNTING & RECOGNITION WHEN CONTRIBUTION IS MADE TO SPECIFIED FUNDS

- 2.1 When a company gives donation under CSR to Government recognised funds where tax relief is available, such contribution/ donation is made to a fund specified in Schedule VII to the Act, and the same would be treated as an expense for the year and charged to the statement of profit and loss.

- 2.2 However, for income tax purposes such CSR contribution shall not be treated as expenditure in the light of the amendments made to section 37 of the Income Tax Act. The same CSR contribution shall be treated as expenditure if it can be claimed under any other section of the Income Tax Act.

3. ACCOUNTING & RECOGNITION WHEN CONTRIBUTION IS MADE TO REGISTERED NPOs

- 3.1 When the company gives contribution or grants under CSR to registered NPOs including its own foundation, such contribution or grants shall also be treated as expenditure for the year and charged to the statement of profit and loss. However, for Income Tax purposes such CSR contribution shall not be treated as expenditure in the light of the amendments made to section 37 of the Income Tax Act. The same CSR contribution shall be treated as expenditure if it can be claimed under any other section of the Income Tax Act. Similarly, if CSR expenditure is made in any other manner, for instance through pooling of expenditure, the expenditure should be charged to the statement of profit and loss.

4. WHEN EXPENDITURE IS INCURRED DIRECTLY INCLUDING ASSETS

- 4.1 In case, where an expenditure of revenue nature is incurred on any of the activities mentioned in Schedule VII to the Act by the company on its own, the same should be charged as an expense to the statement of profit and loss. In case the expenditure incurred by the company is of such nature, which may give rise to an 'asset', a question may arise as to whether such an 'asset' should be recognised by the company in its balance sheet. In this context, it would be relevant to note the definition of the term 'asset' as per the Framework for Preparation and Presentation of Financial Statements issued by the Institute of Chartered Accountants of India.

As per the Framework, an 'asset' is a “resource controlled by an enterprise as a result of past events from which future economic benefits are expected to flow to the enterprise”. Hence, in cases where the control of the 'asset' is transferred by the company, e.g., a school building is transferred to a Gram Panchayat for running and maintaining the school, it should not be recognised as 'asset' in its books and such expenditure would need to be charged to the statement of profit and loss as and when incurred. In other cases, where the company retains the control of the 'asset' then it would need to be examined whether any future economic benefits accrue to the company. Invariably future economic benefits from a 'CSR asset' would not flow to the company as any surplus from CSR cannot be included by the company in business profit's in view of Rule 6(2) of the Companies (Corporate Social Responsibility Policy) Rules, 2014.

5. ACCOUNTING ISSUES WHEN COMPANY SUPPLIES ITS OWN GOODS OR SERVICES

- 5.1 In some cases, a company may supply goods manufactured by it or render services as CSR activities. In such cases, the expenditure incurred should be recognised when the control on the goods

manufactured by it is transferred or the allowable services are rendered by the employees. The goods manufactured by the company should be valued in accordance with the principles prescribed in Accounting Standard (AS) 2, Valuation of Inventories. The services rendered should be measured at cost. Indirect taxes (like excise duty, service tax, VAT or other applicable taxes) on the goods and services so contributed will also form part of the CSR expenditure.

6. WHEN THE COMPANY RECEIVES CSR GRANTS

- 6.1** In some cases, the company may receive CSR grant, for instance through pooling of CSR expenditure with other companies. Where a company receives a grant from other companies for carrying out CSR activities, the CSR expenditure should be measured net of the grant. In other words, such grant received on behalf of other companies cannot be considered for computing 2% requirement of CSR.

ACCOUNTING TREATMENT OF CSR INCOME AS PER ICAI

1. INTRODUCTION

1.1 A company may have income from CSR projects and activities. ICAI has provided detailed guidelines in this regard which is provided in *Annexure-39*. In nut shell the issues relating to treatment of income are as under :

- a. Such income should be treated as income in the profit and loss account but cannot be treated as business income.
- b. An immediate liability should be created against such income to nullify the effect of treating it as income in the profit and loss account.
- c. Such income cannot also be included for the computation of the mandatory 2% requirement

2. RECOGNITION OF INCOME UNDER CSR

2.1 Rule 6(2) of the Companies (Corporate Social Responsibility Policy) Rules, 2014, requires that “the surplus arising out of the CSR projects or programs or activities shall not form part of the business profit of a company”. The term 'surplus' ordinarily means excess of income over expenditure pertaining to an entity or an activity. Thus, in respect of a CSR project, programme, or activity, it needs to be determined whether any surplus is arising from it. A question would arise as to whether such surplus should be recognised in the statement of profit and loss of the company. It may be noted that paragraph 5 of Accounting Standard (AS) 5, “Net Profit or Loss for the Period, Prior Period Items and Changes in Accounting Policies”, inter alia, requires that all items of income which are recognised in a period should be included in the determination of net profit or loss for the period unless an accounting standard requires or permits otherwise.

2.2 As to whether the surplus from CSR activities can be considered as 'income', the Framework for Preparation and Presentation of Financial Statements issued by the Institute of Chartered Accountants of India, defines 'income' as “increase in economic benefits during the accounting period in the form of inflows or enhancements of assets or decreases of liabilities that result in increases in equity, other than those relating to contributions from equity participants”. Since the surplus arising from CSR activities is not arising from a transaction with the owners, it would be considered as 'income' for accounting purposes.

In view of the aforesaid requirement, any surplus arising out of CSR project or programme or activities shall be recognised in the statement of profit and loss and since this surplus cannot be a part of business profit of the company, the same should immediately be recognised as liability for CSR expenditure in the balance sheet and recognised as a charge to the statement of profit and loss.

Accordingly, such surplus would not form part of the minimum 2% of the average net profits of the company made during the three immediately preceding financial years in pursuance of its Corporate Social Responsibility Policy.

PRESENTATION & DISCLOSURE IN FINANCIAL STATEMENTS

1. INTRODUCTION

1.1 A company should suitably present and disclose the financial information pertaining to CSR. The ICAI has provided detailed guidelines in this regard (refer *Annexure-39*). In a nutshell, the issues related to treatment of income are as under:

- a) As per the instructions under Schedule III to the Companies Act, 2013, CSR expenditure should be disclosed by way of a note to the statement of profit and loss account.
- b) However, as a prudent and recommended practice, all CSR expenditures should be recognised as a separate line item 'CSR Expenditure' in the profit and loss account.
- c) Further, the breakup of CSR expenditures should be provided as a note to the profit and loss account.
- d) The note on CSR expenditure should provide:
 - i. gross amount required to be spent during the year
 - ii. amount actually spent during the year, including acquisition of assets
 - iii. detail of any related party disclosure under AS 18
 - iv. If there is any provision against contractual liability under CSR

2. PRESENTATION AND DISCLOSURE IN FINANCIAL STATEMENTS

2.1 The schedule III of the companies Act 2013 provides “General Instructions for Preparation of Statement of Profit and Loss”. Under these instructions, a company should disclose the amount of expenditure on the CSR activities by way of a note to the statement of profit or loss. From the perspective of better financial reporting and in line with the requirements of Schedule III, it is recommended that all expenditures on CSR activities that qualify to be recognised as expense should be recognised as a separate line item as 'CSR expenditure' in the statement of profit and loss. Further, the relevant note should disclose the break-up of various heads of expenses included in the line item 'CSR expenditure'.

2.2 The notes to accounts relating to CSR expenditure should also contain the following:

- (a) Gross amount required to be spent by the company during the year.
- (b) Amount spent during the year on:

	CSR activities	In cash	Yet to be paid in cash	Total
(i)	Construction/acquisition of any asset			
(ii)	On purposes other than (i) above			

The above disclosure to the extent relevant, may also be made in the notes to the cash flow statement, where applicable.

- (a) Details of related party transactions, e.g., contribution to a Trust.
- (b) Where a provision is made in accordance with paragraph 8 above the same should be presented as per the requirements of Schedule III to the Companies Act, 2013. Further, movements in the provision during the year should be shown separately.

A HOLISTIC AND SUSTAINABLE FUNDRAISING PLATFORM (Indiadonates.in) FOR FUNDING NGOS

1. INTRODUCTION

- 1.1 There are a plethora of crowdfunding platforms currently in India, raising funds for personal emergencies, creative projects, disaster management, technological advancement, etc. But most of the platforms stand for individual efforts, and rarely for projects or NGOs who are working on grassroot level. In India, there are roughly 2.3 NGOs for every 1000 rural individuals, which shows the exponential growth of the social sector in the last few decades. But oftentimes these NGOs are cash-trapped, working in difficult topography without access to proper channels to create visibility, around the work that they are doing. One of the bottlenecks that FMSF identified was the lack of financial hygiene and resource building capacity.
- 1.2 These small and medium-sized NGO's although work relentlessly on multiple social issues, are heavily dependent on external funding and spent a large chunk of their time devising ways to get government grants, funds, and donations, without a strategy or dedicated resource in place. FMSF realizes that without adequate funds many of the unique initiatives conceptualized by these NGOs cannot get implemented and thereby lose the momentum of social change. To bridge this void, FMSF has come up with an alternate fundraising solution (www.indiadonates.in) that would professionally cater to the financial needs of NGOs through a crowdfunding online platform. Indiadonates.in is a platform where NGOs can raise funds for their innovative projects from public, CSR and payroll giving. The uniqueness of this platform is that the funds are utilized within the given parameters and the assurance for it comes from FMSF. The core competence of FMSF lies in managing program funds and has the best of the infrastructural facility with high-end tools and customised software to ensure accountability of funds. FMSF provides a framework for end-to-end transparency for raising and utilization of funds.
- 1.3 Currently Indiadonates.in works under eight thematic issues, ranging from Disability, Disaster & Response, Education, Elderly Care, Environment, Health, Income Generation, Water & Sanitation.
- 1.4 Within these thematic areas Indiadonates.in has partnered with 34 non-governmental organizations from across India, following due diligence to administer them within the crowdfunding system of Indiadonates.in.

2. OFFERINGS

Apart from providing a crowdfunding platform for our partners Indiadonates also provides institutional fundraising options such as CSR and Payroll Giving.

2.1 Corporate Social Responsibility (CSR)

India is the first country in the world to make CSR mandatory, following an amendment to, The Companies Act 2013, in April 2014. As per the amendment, businesses can invest their profits in areas as prescribed under Schedule VII of the Act. However, one of the pressing concerns for corporate organizations to fulfill its CSR commitment has been in finding the right kind of NGOs that are aligned to their CSR goals. Indiadonates.in provides just the right kind of platform with a pool of credible NGOs spread across the country. These NGOs have been selected through a rigorous due-diligence process and have been assessed on their financial management capacity and program management system. Indiadonates.in would facilitate the process of selecting projects, which are within the focus areas of the corporate organization. Indiadonates.in would be involved in grant management, monitoring and reporting in order to ensure that the project is successfully implemented. There is a strong inbuilt monitoring and reporting mechanism through which the NGOs have to report back on the activities implemented and fund utilization status. Thus, through this platform, corporate organizations which has to fulfill its CSR commitments can easily choose NGOs and projects accredited by indiadonates.in.

2.2 Through Payroll giving, employees of different organizations and companies can willingly support a development project through Indiadonates. It will be an organized monthly activity where the stipulated amount agreed upon by the employee is deducted from the employee's salary directly. The aggregate of such amount will be directly transferred to the project they wish to support.

3. CAPACITY BUILDING

3.1 Apart from supporting NGOs to raise funds through this platform, Indiadonates also provides a unique opportunity for NGOs to capacitate themselves on fundraising tools and techniques. Indiadonates believes that for a sustainable program, a sustainable resource base is pertinent. Most often, it has been observed that NGOs primarily small and medium-size do not have a well-charted fundraising or communication strategy. This magnifies the problem of not being able to generate sustainable funding.

3.2 Indiadonates offers unique and customised courses, workshops and training programs to NGOs to develop and build their capacity in the areas of sustainable resource mobilisation. Through such programs, NGOs would be able to develop fundraising and communication strategy for their projects and organizations. Indiadonates will organize such programs for its partners by

collaborating with experts within and outside the organization. The specialized programs will help to provide hands-on training so that the partners can generate sustainable strategies and become self-reliant in the long run.

- 3.3** Indiadonates.in is legally held by DevPro Trust which is part of the FMSF family and is driven by the same core values of accountability as that of FMSF. DevPro was established in the year 2001 and has the objective of social change through innovative project interventions. Ultimately, it strives to ensure that there is change in people's lives. DevPro is a tax exempt charity with exemptions under section 12A of Income Tax Act. It also has licence under sec. 80G of Income Tax Act which allows donors to claim income tax benefit. DevPro also has FCRA license to receive foreign donations and contributions.

For further details, one could reach Indiadonates team at info@indiadonates.in or visit their portal www.indiadonates.in.

MINISTRY OF HOME AFFAIRS NOTIFICATION

New Delhi, the 7th March, 2019

G.S.R.199(E). — In exercise of the powers conferred by section 48 of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010), the Central Government hereby makes the following rules further to amend the Foreign Contribution (Regulation) Rules, 2011, namely:-

(i) Short title and commencement.-

- (1) These rules may be called the Foreign Contribution (Regulation) Amendment Rules, 2019.
- (2) They shall come into force on the date of their publication in the Official Gazette.

(ii) In the Foreign Contribution (Regulation) Rules, 2011,-

- in rule 2, in sub-rule 1, after clause (a), the following clause shall be inserted, namely:- “(aa) “bank account” means a bank account in a core banking compliant bank, which is integrated with the Public Financial Management System (PFMS)”;
- in rule 6, after the word “Government”, the following words shall be inserted, namely:- “by uploading details electronically online”;
- in rule 7, in sub-rule (1), after the word “apply”, the following words shall be inserted, namely:- “electronically online”;
- in rule 9, -

(A) in sub-rule (1), -

- (a) for clause (a), the following clause shall be substituted, namely:- “(a) An application for certificate of registration by a person under sub-section (1) of section 11, for acceptance of foreign contribution shall be made electronically online in Form FC-3A and an application for obtaining prior permission by a person under sub-section (2) of section 11, for acceptance of foreign contribution, shall be made electronically online in Form FC-3B.”;

(b) in clause (e), for the letters and figure “FC-6”, the letters and figure “FC-6D” shall be substituted;

(B) in sub-rule (2), in clause (e), for the letters and figure “FC-6”, the letters and figure “FC-6D” shall be substituted;

(C) in sub-rule (4), -

1. in clause (a), for the letters, figures, brackets and words “Rs.1000/- (One Thousand only)”, the letters, figures, brackets and words “Rs.3000/- (Three Thousand rupees only)” shall be substituted;
2. in clause (b), for the figures, brackets and words “2000/- (Two Thousand only)”, the letters, figures, brackets and words “Rs.5000/- (Five Thousand rupees only)” shall be substituted;

in rule 12, -

1. in sub-rule (2), for the words, letters and figures “to the Central Government in Form FC-3”, the words, letters and figures “to the Central Government electronically online in Form FC-3C” shall be

substituted;

2. in sub-rule (4), for the letters, figures, brackets and words “Rs.500/- (Five Hundred only)”, the letters, figures, brackets and words “Rs.1500/- (One Thousand Five Hundred rupees only)” shall be substituted;
3. in sub-rule (8),-
 - (a) after the words “requisite fee”, the letters, figures, brackets and words “and with late fee of Rs.5000/- (Five Thousand rupees only)” shall be inserted;
 - (b) for the words “four months” the words “one year” shall be substituted;

in rule 17A, -

- (2) the words, letters and figure “in Form FC-6” shall be omitted;
- (3) in item (i), after the word “Act”, the words, letters and figures “in Form FC-6A” shall be inserted;
- (4) in item (ii), after the word “authorities”, the words, letters and figures “in Form FC- 6B” shall be inserted;
- (5) in item (iii), -
 - (a) after the word “number”, the words, letters and figures “in Form FC-6C” shall be inserted;
 - (b) the word “and” occurring at the end shall be omitted;
- (6) after item (iii), the following item shall be inserted, namely:- “(iiia) bank and/or branch of the bank for the purpose of utilising the foreign contribution after it has been received in Form FC-6D; and”;
- (7) in item (iv), after the word “Act”, the words, letters and figures “in Form FC-6E” shall be inserted;
 - for forms FC-1 to FC-6, the following forms shall be substituted, namely:-

FORM FC – 4**[See rule 17]**

Darpan ID*** _____

The Secretary to the Government of India,
 Ministry of Home Affairs,
 Foreigners Division (FCRA Wing)
 Major Dhyan Chand National Stadium, India Gate, New Delhi-110002

***Note: - Furnishing of Darpan ID shall be optional.

Subject: Account of Foreign Contribution (FC) for the year ending on the 31st March _____

1. FCRA registration/ prior permission number and date:

2. Details of receipt of foreign contribution:

1. Foreign Contribution received in cash/ kind (value):

1. Brought forward foreign contribution at the beginning of the year (Rs.):

2. Income during the year*:

1. Interest:

2. Other receipts from projects/ activities:

S.No	Name and location project/ activity	Year of commencement of project/ activity	Income during the year (Rs.)
1			
Total			

3. Foreign Contribution received during the financial year:

1. Directly from a foreign source:

2. From a local source:

4. Total Foreign Contribution (a+b+c) (Rs.):

i.e. interest accrued on foreign contribution, or any other income derived from foreign contribution, e.g. sale proceeds from assets created from foreign contribution, or interest thereon during the year, income from projects/ activities.

2. (a) Donor wise detail of foreign contribution received:

S.No	Name of donor	Institutional/ Individual	Details of the donor: official address ; email address; website address	Purpose for which donation received (social, cultural, educational, economic or religious)	Specific Activity/ project	Amount in Rs
(1)	(2)	(3)	(4)	(5)	(6)	(7)

(b) Cumulative purpose wise amount of all foreign contribution donations received:

3. Details of utilisation of foreign contribution:

1. Details of activities/projects for which foreign contribution has been received and utilised (in rupees)

S.No	Name of project/ activity	Address /location	Previous Balance		Receipt during the year		Utilised		Balance	
			In cash	In kind	In cash	In kind	In cash	In kind	In cash	In kind
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)

2. Details of utilisation of foreign contribution:

1. Total Utilisation** for projects as per aims and objectives of the association (Rs.):

2. Total administrative expenses as provided in rule 5 of the Foreign Contribution (Regulation) Rules, 2011 (Rs.):

** It is affirmed that the utilisation of foreign contribution is not in contravention of the provisions contained in the Foreign Contribution (Regulation) Act, 2010 (42 of 2010) and more particularly in section 9 and section 12 of the Act which, inter-alia, states that the acceptance of foreign contribution is not likely to affect prejudicially:

1. the sovereignty and integrity of India; or
2. the security, strategic, scientific or economic interest of the State; or
3. the public interest; or
4. freedom or fairness of election to any Legislature; or
5. friendly relations with any foreign State; or
6. harmony between religious, racial, social, linguistic or regional groups, castes or communities.
7. Total purchase of fresh assets (Rs.)

S.No	Activity in the name of Association	Details	Purpose	Total (in Rs.)
(i)	Creation of movable assets			
(ii)	Creation of Immovable assets			
	Total			

8. FC transferred to other associations

S.No	Name of Association	Date	Purpose	Amount
(1)	(2)	(3)	(4)	(5)
Total				

9. Total utilisation in the year (Rs.) (b+c+d):

10. Details of unutilised foreign contribution:

1. Total FC invested in term deposits (Rs.)

Sr.No	Details	Total (in Rs)
(i)	Opening Balance of FD	
(ii)	FD made during the year	
(iii)	Less: realisation of previous FD	
	Closing balance of FD	

2. Balance of unutilised foreign contribution, in cash/bank, at the end of the year (Rs):

1. Cash in hand:
2. in FC designated bank account:
3. in utilisation bank account(s):

11. Details of foreigners as Key functionary / working / associated:

12. Details of Land and Buildings remained unutilised for more than two years:

S.No	Location of Land and Building	Year of acquisition	Purpose of acquisition	Reason of unutilisation
(1)	(2)	(3)	(4)	(5)
Total				

13. (a) Details of designated FC bank account for receipt of Foreign Contribution (As on 31st March of the year ending):

Name of the Bank	Branch Address (with PIN code)	Phone No.	E-mail	IFSC Code	Account No. Account	Date of Opening
(1)	(2)	(3)	(4)	(5)	(6)	(7)

(b) Details of all utilisation bank accounts for utilisation of Foreign Contribution (As on 31st March of the year ending):

Name of the Bank	Branch Address (with PIN code)	Phone No.	E-mail	IFSC Code	Account No. Account	Date of Opening
(1)	(2)	(3)	(4)	(5)	(6)	(7)

Declaration

I hereby declare that the above particulars furnished by me are true and correct.

I also affirm that the receipt of foreign contribution and its utilisation have not been violative of any of the provisions of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010), and the rules, notifications or orders issued thereunder from time to time and the foreign contribution was utilised for the purpose(s) for which the association was granted registration/ prior permission by the Central Government.

Place:

Date:

[Name of the Chief Functionary
(Chairperson/President/Secretary/CEO/MD) in block letters]
(Seal of the Association)

Certificate to be given by Chartered Accountant

I/We have audited the account of (*name of _____ Association and its full address including State, District and Pin Code, if registered society, its registration number and State of registration*) for the financial year ending the 31st March and examined all relevant books and vouchers and certify that according to the audited account:

1. the brought forward foreign contribution at the beginning of the financial year was Rs. ;
2. foreign contribution of / worth Rs. was received by the Association during the financial year ;
3. interest accrued on foreign contribution and other income derived from foreign contribution or interest thereon of/ worth Rs. _____ was received by the Association during the financial year ;
4. the balance of unutilised foreign contribution with the Association at the end of the financial year _____ was Rs. _____ ;
5. Certified that the Association has maintained the accounts of foreign contribution and records relating thereto in the manner specified in section 19 of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010) read with rule 17 of the Foreign Contribution (Regulation) Rules, 2011.
6. The information in this certificate and in the enclosed Balance Sheet and statement of Receipt and Payment is correct as checked by me/us.
7. The association has utilised the foreign contribution received for the purpose(s) it is registered/ granted prior permission under the Foreign Contribution (Regulation) Act, 2010 (42 of 2010).

Place:

Date:

Signature of Chartered Accountant
(Seal, Address and Registration number)

TEXT OF SECTION 12 OF FCRA 2010

Grant of Certificate of Registration

12. (1) An application by a person, referred to in section 11 for grant of certificate or giving prior permission, shall be made to the Central Government in such form and manner and along with such fee, as may be prescribed.

1. On receipt of an application under sub-section (1), the Central Government shall, by an order, if the application is not in the prescribed form or does not contain any of the particulars specified in that form, reject the application.
2. If on receipt of an application for grant of certificate or giving prior permission and after making such inquiry as the Central Government deems fit, it is of the opinion that the conditions specified in sub-section (4) are satisfied, it may, ordinarily within ninety days from the date of receipt of application under sub-section (1), register such person and grant him a certificate or give him prior permission, as the case may be, subject to such terms and conditions as may be prescribed:

Provided that in case the Central Government does not grant, within the said period of ninety days, a certificate or give prior permission, it shall communicate the reasons therefor to the applicant:

Provided further that a person shall not be eligible for grant of certificate or prior permission, if his certificate has been suspended and such suspension of certificate continues on the date of making application.

3. The following shall be the conditions for the purposes of sub-section (3), namely:-
 1. the person making an application for registration or grant of prior permission under sub-section (1) :-
 1. is not fictitious or benami;
 2. has not been prosecuted or convicted for indulging in activities aimed at conversion through inducement or force, either directly or indirectly, from one religious faith to another;
 3. has not been prosecuted or convicted for creating communal tension or disharmony in any specified district or any other part of the country;
 4. has not been found guilty of diversion or mis-utilisation of its funds;
 5. is not engaged or likely to engage in propagation of sedition or advocate violent methods to achieve its ends;

6. is not likely to use the foreign contribution for personal gains or divert it for undesirable purposes;
 7. has not contravened any of the provisions of this Act
 8. has not been prohibited from accepting foreign contribution;
2. the person making an application for registration under sub-section (1) has undertaken reasonable activity in its chosen field for the benefit of the society for which the foreign contribution is proposed to be utilised;
 3. the person making an application for giving prior permission under sub-section (1) has prepared a reasonable project for the benefit of the society for which the foreign contribution is proposed to be utilised;
 4. in case the person being an individual, such individual has neither been convicted under any law for the time being in force nor any prosecution for any offence pending against him;
 5. in case the person being other than an individual, any of its directors or office bearers has neither been convicted under any law for the time being in force nor any prosecution for any offence is pending against him;
 6. the acceptance of foreign contribution by the person referred to in sub-section (1) is not likely to affect prejudicially –
 1. the sovereignty and integrity of India; or
 2. the security, strategic, scientific or economic interest of the State; or
 3. the public interest; or
 4. freedom or fairness of election to any Legislature; or
 5. friendly relation with any foreign State; or
 6. harmony between religious, racial, social, linguistic, regional groups, castes or communities;
 7. the acceptance of foreign contribution referred to in sub-section (1), –
 1. shall not lead to incitement of an offence;
 2. shall not endanger the life or physical safety of any person
 8. Where the Central Government refuses the grant of certificate or does not give prior permission, it shall record in its order the reasons therefor and furnish a copy thereof to the applicant:

Provided that the Central Government may not communicate the reasons for refusal for grant of

certificate or for not giving prior permission to the applicant under this section in cases where there is no obligation to give any information or documents or records or papers under the Right to Information Act, 2005 (22 of 2005).

9. The certificate granted under sub-section (3) shall be valid for a period of five years and the prior permission shall be valid for the specific purpose or specific amount of foreign contribution proposed to be received, as the case may be.

FCRA PUBLIC NOTICE FOR CONDONATION OF DELAY IN FILING OF RETURN

No.963913/JS(F)/2017

Government of India
Ministry of Home Affairs
Foreigners Division (FCRA Wing)

MDC National Stadium
New Delhi, the August 01, 2019

PUBLIC NOTICE

Subject : Exemption from the provisions of section 14(3) of the Foreign Contribution (Regulation) Act, 2010.

Section 18 of The Foreign Contribution (Regulation) Act, 2010 read with rule 17 of The Foreign Contribution (Regulation) Rules, 2011 provides for submission of Annual Returns by all associations who have been granted certificate of registration or prior permission.

2. The Central Govt. vide notification dated 14th December, 2015 made it mandatory for all associations having certificate of registration or prior permission to file their Annual Returns (ARs) only in electronic format on the web portal fcraonline.nic.in. Before issuance of this notice all the FCRA services were granted to various NGOs through physical mode. Several NGOs could not file their ARs in time despite opportunities given to them earlier.

3. For non-submission of ARs, FCRA registration of many associations was cancelled under section 14 of the FCRA, 2010. Consequent to such cancellation, the associations are no more eligible for registration or grant of prior permission for a period of three years from the date of cancellation of their certificate. Representations requesting restoration of such registrations have been received from associations. Many such associations have also applied afresh for registration which was refused on account of their debarment for three years.

4. In view of repeated representations made by many such associations, it has been decided to give a one-time exemption in public interest to such associations from the restrictive condition of section 14(3) to enable them to apply for registration within three months from the issuance of this notice. Government has further decided that for uploading missing ARs on the FCRA Portal, no penalty shall be imposed.

Contd.../2-



::2::

5. This exemption is a one-time measure and available only to those associations whose certificates have been cancelled only because of non-filing of ARs. In case of other violations of the provisions of the FCRA, 2010 which are compoundable as per notification issued No. S.O. 2291(E) dated 05.06.2018 read with corrigendum No. S.O. 3716(E) dated 27.07.2018 the associations shall have to ensure that these violations except non-submission of ARs are compounded before making fresh application for grant of registration or prior permission.


(Santosh Sharma)
Director (FCRA)
Tele. 23077510

TEXT OF SECTION 12AA OF THE INCOME TAX ACT 1961

Procedure for registration.

- 12AA. (1) The [Principal Commissioner or] Commissioner, on receipt of an application for registration of a trust or institution made under clause (a) [or clause (aa) [or clause (ab)]] of sub-section (1)] of section 12A, shall –
- (a) call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about the genuineness of activities of the trust or institution and may also make such inquiries as he may deem necessary in this behalf; and
 - (b) after satisfying himself about the objects of the trust or institution and the genuineness of its activities, he –
 - (i) shall pass an order in writing registering the trust or institution;
 - (ii) shall, if he is not so satisfied, pass an order in writing refusing to register the trust or institution, and a copy of such order shall be sent to the applicant :

Provided that no order under sub-clause (ii) shall be passed unless the applicant has been given a reasonable opportunity of being heard.

[(1A) All applications, pending before the 25[Principal Chief Commissioner or] Chief Commissioner on which no order has been passed under clause (b) of sub-section (1) before the 1st day of June, 1999, shall stand transferred on that day to the [Principal Commissioner or] Commissioner and the [Principal Commissioner or] Commissioner may proceed with such applications under that sub-section from the stage at which they were on that day.]

- (2) Every order granting or refusing registration under clause (b) of sub-section (1) shall be passed before the expiry of six months from the end of the month in which the application was received under clause (a) [or clause (aa) [or clause (ab)]] of sub-section (1)] of section 12A.]
- (3) Where a trust or an institution has been granted registration under clause (b) of sub section (1) [or has obtained registration at any time under section 12A [as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996)]] and subsequently the [Principal Commissioner or] Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution:

Provided that no order under this sub-section shall be passed unless such trust or institution has been given a reasonable opportunity of being heard.]

- (4) Without prejudice to the provisions of sub-section (3), where a trust or an institution has been granted registration under clause (b) of sub-section (1) or has obtained registration at any time under section 12A [as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996)] and subsequently it is noticed that the activities of the trust or the institution are being carried out in a manner that the provisions of sections 11 and 12 do not apply to exclude either whole or any part of the income of such trust or institution due to operation of sub-section (1) of section 13, then, the Principal Commissioner or the Commissioner may by an order in writing cancel the registration of such trust or institution:

Provided that the registration shall not be cancelled under this sub-section, if the trust or institution proves that there was a reasonable cause for the activities to be carried out in the said manner.]

**PUBLIC NOTICE FOR SUBMISSION & APPROVAL REGARDING
CHANGE IN KEY FUNCTIONARIES**

F.No.II/21022/36 (0207)/2015-FCRA-II

Government of India Ministry of Finance

Foreigners Division (FCRA Wing)

MDC National Stadium

New Delhi-110001

Date: 07.06.2019

Sub: Online submission and approval from the Ministry of Home Affairs before effecting any change in the list of office bearers/key functionaries of FCRA registered associations.

1. All persons who have been granted a certificate of registration under section 11 & 12 of the Foreigners Contribution (Regulation) Act, 2010 have reported details of their office bearers/key functionaries while applying for registration under the Act. It is noticed that some associations/persons, having been registered under the Act, have changed their office bearers/key functionaries without approval from the Ministry of Home Affairs and without updating this data on a real time basis through the online application meant for change of these details.
2. All associations/persons who have been granted a certificate of registration and who have effected any change/modification in the details of their office bearers/ key functionaries after their registration are hereby called upon to submit online application for additions/deletion/change of details in the statutory FORM FC-6E about such office bearers/key functionaries within one month from the date of issue of this Public Notice, failing which penal action shall be initiated under the appropriate provisions of the Foreign Contribution (Regulation) Act, 2010 and the Foreign Contribution (Regulation) Rules, 2011.
3. It may also be noted that the online application for any service must be signed by the chief functionary of the association and the name of the chief functionary/signatory must also be reflected in the list of office bearers/key functionaries.
4. All associations registered under the FCRA may take note of the above notice to ensure compliances with the provisions of the FCRA, 2010.

(Santosh Sharma)

Director (FCRA)

Tel: 23077504

FCRA RULES AMENDMENT 2019 NOTIFICATION
MINISTRY OF HOME AFFAIRS NOTIFICATION

New Delhi, the 7th March, 2019

G.S.R.199(E).- In exercise of the powers conferred by section 48 of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010), the Central Government hereby makes the following rules further to amend the Foreign Contribution (Regulation) Rules, 2011, namely:-

1. Short title and commencement. -

- (1) These rules may be called the Foreign Contribution (Regulation) Amendment Rules, 2019.
- (2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Foreign Contribution (Regulation) Rules, 2011, -

- (i) in rule 2, in sub-rule 1, after clause (a), the following clause shall be inserted, namely:- “(aa) “bank account” means a bank account in a core banking compliant bank, which is integrated with the Public Financial Management System (PFMS)”;
- (ii) in rule 6, after the word “Government”, the following words shall be inserted, namely:- “by uploading details electronically online”;
- (iii) in rule 7, in sub-rule (1), after the word “apply”, the following words shall be inserted, namely:- “electronically online”;
- (iv) in rule 9, -
 - (a) in sub-rule (1), -
 - (A) for clause (a), the following clause shall be substituted, namely:-
 “(a) An application for certificate of registration by a person under sub-section (1) of section 11, for acceptance of foreign contribution shall be made electronically online in Form FC-3A and an application for obtaining prior permission by a person under sub-section (2) of section 11, for acceptance of foreign contribution, shall be made electronically online in Form FC-3B.”;
 - (B) in clause (e), for the letters and figure “FC-6”, the letters and figure “FC-6D” shall be substituted;
 - (b) in sub-rule (2), in clause (e), for the letters and figure “FC-6”, the letters and figure “FC-6D” shall be substituted;
 - (c) in sub-rule (4), -
 - (A) in clause (a), for the letters, figures, brackets and words “Rs.1000/- (One Thousand only)”, the letters, figures, brackets and words “Rs.3000/- (Three Thousand rupees only)” shall be substituted;
 - (B) in clause (b), for the figures, brackets and words “2000/- (Two Thousand only)”, the letters,

figures, brackets and words “Rs.5000/- (Five Thousand rupees only)” shall be substituted;

(v) in rule 12, -

- (a) in sub-rule (2), for the words, letters and figures “to the Central Government in Form FC-3”, the words, letters and figures “to the Central Government electronically online in Form FC-3C” shall be substituted;
- (b) in sub-rule (4), for the letters, figures, brackets and words “Rs.500/- (Five Hundred only)”, the letters, figures, brackets and words “Rs.1500/- (One Thousand Five Hundred rupees only)” shall be substituted;
- (c) in sub-rule (8),-
 - (A) after the words “requisite fee”, the letters, figures, brackets and words “and with late fee of Rs.5000/- (Five Thousand rupees only)” shall be inserted;
 - (B) for the words “four months” the words “one year” shall be substituted;

(vi) in rule 17A, -

- (a) the words, letters and figure “in Form FC-6” shall be omitted;
- (b) in item (i), after the word “Act”, the words, letters and figures “in Form FC-6A” shall be inserted;
- (c) in item (ii), after the word “authorities”, the words, letters and figures “in Form FC-6B” shall be inserted;
- (d) in item (iii), -
 - (A) after the word “number”, the words, letters and figures “in Form FC-6C” shall be inserted;
 - (B) the word “and” occurring at the end shall be omitted;
- (e) after item (iii), the following item shall be inserted, namely:-
 - “(iiia) bank and/or branch of the bank for the purpose of utilising the foreign contribution after it has been received in Form FC-6D; and”;
- (f) in item (iv), after the word “Act”, the words, letters and figures “in form FC-6E” shall be inserted;

**CBDT CIRCULAR CONDONATION OF DELAY FOR
FORM NO. 10 AND FORM NO. 9A UNDER SECTION 119(2)(B)**

Circular No. 10/2019

F.No.197/55/2018-ITA-I
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

North Block, New Delhi

22nd May 2019

Sub: Condonation of delay in filing of Form No. 10B for years prior to AY 2018-19- reg.

- Under the provisions of section 12A of Income Tax Act, 1961 (hereinafter 'Act') where the total income of a trust or institution as computed under the Act without giving effect to the provisions of section 11 and section 12 exceeds the maximum amount which is not chargeable to Income Tax in any previous year, the accounts of the trust or institution for that year have to be audited by an accountant as defined in the Explanation below sub-section (2) of section 288 and the person in receipt of the income is required to furnish along with the return of income for the relevant assessment year the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.
- As per Rule 17B of the Income Tax Rules, 1962 (hereafter 'Rules') the audit report of the accounts of such a trust or institution is to be furnished in Form No. 10B. As per Rule 12(2) of the Rules, such audit report is to be furnished electronically. The failure to furnish such report in the prescribed form along with the return of income results in disentitlement of the trust from claiming exemptions under sections 11 and 12 of the Act.
- Representations have been received by the Board/field authorities stating that Form No. 10B could not be filed along with the return of income for AY 2016-17 and AY 2017-18. It has been requested that the delay in filing of Form No. 10B may be condoned. Previously vide instruction in F. No. 267/482/77-IT(part) dated 09.02.1978, the CBDT had authorized the ITO to accept a belated audit report after recording reasons in cases where some delay has occurred for reasons beyond the control of the assessee.
- Accordingly, in supersession of earlier Circular/Instruction issued in this regard, and with a view to expedite the disposal of applications filed by such trusts or institutions for condoning of the delay in filing Form 10B and in exercise of the powers conferred under section 119(2) of the Act, the Central Board of

Direct Taxes hereby directs that:

- (i) The delay in filing of Form no. 10B for AY 2016-17 and AY 2017-18, in all such cases where the Audit Report for the previous years has been obtained before the filing of return of income and has been furnished subsequent to the filing of the return of income but before the date specified under section 139 of the Act is condoned.
- (ii) In all other cases of belated applications in filing Form No. 10B years prior to AY 2018-19, the Commissioner of Income Tax are authorized to admitted such applications for condonation of delay u/s 119(2)(b) of the Act. The Commissioner will while entertaining such belated applications in filing Form No. 10B shall satisfy themselves that the assessee was prevented by reasonable cause from filing such application within the stipulated time. Further, all such applications shall be disposed off by 30.09.2019.

(Rajeswari R.)

Under the Secretary to the Government of India

SECTION 164 OF INCOME-TAX ACT, 1961

Charge of tax where share of beneficiaries unknown

164. (1) Subject to the provisions of sub-sections (2) and (3), where any income in respect of which the persons mentioned in clauses (iii) and (iv) of sub-section (1) of section 160 are liable as representative assesseees or any part thereof is not specifically receivable on behalf or for the benefit of any one person or where the individual shares of the persons on whose behalf or for whose benefit such income or such part thereof is receivable are indeterminate or unknown (such income, such part of the income and such persons being hereafter in this section referred to as “relevant income”, “part of relevant income” and “beneficiaries”, respectively), tax shall be charged on the relevant income or part of relevant income at the maximum marginal rate :

Provided that in a case where —

- (i) none of the beneficiaries has any other income chargeable under this Act exceeding the maximum amount not chargeable to tax in the case of an association of persons or is a beneficiary under any other trust; or
- (ii) the relevant income or part of relevant income is receivable under a trust declared by any person by will and such trust is the only trust so declared by him; or
- (iii) the relevant income or part of relevant income is receivable under a trust created before the 1st day of March, 1970, by a non-testamentary instrument and the Assessing Officer is satisfied, having regard to all the circumstances existing at the relevant time, that the trust was created bona fide exclusively for the benefit of the relatives of the settler, or where the settler is a Hindu undivided family, exclusively for the benefit of the members of such family, in circumstances where such relatives or members were mainly dependent on the settler for their support and maintenance; or
- (iv) the relevant income is receivable by the trustees on behalf of a provident fund, superannuation fund, gratuity fund, pension fund or any other fund created bona fide by a person carrying on a business or profession exclusively for the benefit of persons employed in such business or profession, tax shall be charged on the relevant income or part of relevant income as if it were the total income of an association of persons:

Provided further that where any income in respect of which the person mentioned in clause (iv) of sub-section (1) of section 160 is liable as representative assessee consists of, or includes, profits and gains of business, the preceding proviso shall apply only if such profits and gains are receivable under a trust declared by any person by will exclusively for the benefit of any relative dependent on him for support and maintenance, and such trust is the only trust so declared by him.

164. (2) In the case of relevant income which is derived from property held under trust wholly for charitable or religious purposes, or which is of the nature referred to in sub-clause (iia) of clause (24) of section 2, or which is of the nature referred to in sub-section (4A) of section 11, tax shall be charged on so much of the relevant income as is not exempt under section 11 or section 12, as if the relevant income not so exempt were the income of an association of persons:

Provided that in a case where the whole or any part of the relevant income is not exempt under section 11 or section 12 by virtue of the provisions contained in clause (c) or clause (d) of sub-section (1) of section 13, tax shall be charged on the relevant income or part of relevant income at the maximum marginal rate.

164. (3) In a case where the relevant income is derived from property held under trust in part only for charitable or religious purposes or is of the nature referred to in sub-clause (iia) of clause (24) of section 2 or is of the nature referred to in sub-section (4A) of section 11, and either the relevant income applicable to purposes other than charitable or religious purposes (or any part thereof) is not specifically receivable on behalf or for the benefit of any one person or the individual shares of the beneficiaries in the income so applicable are indeterminate or unknown, the tax chargeable on the relevant income shall be the aggregate of –

- (a) the tax which would be chargeable on that part of the relevant income which is applicable to charitable or religious purposes (as reduced by the income, if any, which is exempt under section 11) as if such part (or such part as so reduced) were the total income of an association of persons; and
- (b) the tax on that part of the relevant income which is applicable to purposes other than charitable or religious purposes, and which is either not specifically receivable on behalf or for the benefit of any one person or in respect of which the shares of the beneficiaries are indeterminate or unknown, at the maximum marginal rate:

Provided that in a case where –

- (i) none of the beneficiaries in respect of the part of the relevant income which is not applicable to charitable or religious purposes has any other income chargeable under this Act exceeding the maximum amount not chargeable to tax in the case of an association of persons or is a beneficiary under any other trust; or
- (ii) the relevant income is receivable under a trust declared by any person by will and such trust is the only trust so declared by him; or
- (iii) the relevant income is receivable under a trust created before the 1st day of March, 1970, by a non-testamentary instrument and the Assessing Officer is satisfied, having regard to all the circumstances existing at the relevant time, that the trust, to the extent it is not for charitable or religious purposes, was created bona fide exclusively for the benefit of the relatives of the settler, or where the settler is a Hindu undivided family, exclusively for the benefit of the members of such family, in circumstances where such relatives or members were mainly dependent on the

settler for their support and maintenance, tax shall be charged on the relevant income as if the relevant income (as reduced by the income, if any, which is exempt under section 11) were the total income of an association of persons :

Provided further that where the relevant income consists of, or includes, profits and gains of business, the preceding proviso shall apply only if the income is receivable under a trust declared by any person by will exclusively for the benefit of any relative dependent on him for support and maintenance, and such trust is the only trust so declared by him :

Provided also that in a case where the whole or any part of the relevant income is not exempt under section 11 or section 12 by virtue of the provisions contained in clause (c) or clause (d) of sub-section (1) of section 13, tax shall be charged on the relevant income or part of relevant income at the maximum marginal rate.

Explanation 1. — For the purposes of this section, —

- (i) any income in respect of which the persons mentioned in clause (iii) and clause (iv) of sub-section (1) of section 160 are liable as representative assessee or any part thereof shall be deemed as being not specifically receivable on behalf or for the benefit of any one person unless the person on whose behalf or for whose benefit such income or such part thereof is receivable during the previous year is expressly stated in the order of the court or the instrument of trust or wakf deed, as the case may be, and is identifiable as such on the date of such order, instrument or deed ;
- (ii) the individual shares of the persons on whose behalf or for whose benefit such income or such part thereof is received shall be deemed to be indeterminate or unknown unless the individual shares of the persons on whose behalf or for whose benefit such income or such part thereof is receivable, are expressly stated in the order of the court or the instrument of trust or wakf deed, as the case may be, and are ascertainable as such on the date of such order, instrument or deed.

Explanation 2. — [Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989]

CBDT CIRCULAR ON DELAYED FILING OF INCOME TAX RETURN

F.No. 173/193/2019-ITA-I
 Government of India-
 Ministry of Finance
 Department of Revenue
 Central Board of Direct Taxes
 New Delhi,

Dated: 23 April, 2019

To,
The Pr. DGIT (Systems),
New Delhi.

Subject: Clarification with regard to the time allowed for filing of return of income subsequent to the insertion of Clause (ba) in sub-section 1 of section 12A of the Income –Tax Act, 1961.

Sir,

Undersigned is directed to refer to the representation (s) received on above mentioned subject stating that while processing of ITR-7 for the A.Y. 2018- 19, in respect of the belated returns filed u/ s 139(4) of the Income Tax Act, 1961 (Act), the following is being communicated u/s 143(1)(a) of the Act:-

“as per section 12A(1)(ba) of the Income -tax Act , 1961 the person in receipt of the income has furnished the return of income for the previous year in accordance with the provisions of sub-section (4A) of section 139, within the time allowed under that section. Otherwise the exemption u/s-11 i.e. sr. no 4(i) and 4 viii in schedule Part BTI is not allowed.”

1. Based on this, exemption u/s 11 of the Act has been denied to otherwise eligible trust, thereby creating huge demand.
2. In the matter, the memorandum explaining the relevant provisions of the Finance Bill, 2017 reads as under:

“as per the existing provisions of said section, the entities registered under section 12AA are required to file return of income under sub- section (4A) of section 139, if the total income without giving effect to the provisions of sections 11 and 12 exceeds the maximum amount which is not chargeable to income-tax. However, there is no clarity as to whether the said return of income is to be filed within time allowed u/ s 139 of the Act or otherwise. In order to provide clarity in this regard , it is proposed to further amend section 12A so as to provide for further condition that the person in receipt of the income chargeable to income- tax shall furnish the return of income within the time allowed under section 139 of the Act.

These amendments are clarificatory in nature.

These amendments will take effect from 1st April, 2018 and will, accordingly, apply in relation to assessment year 2018-19 and subsequent years."

3. Additionally, an excerpt of circular 02/2018 dated 15.02.2018 "Explanatory Notes to the Provisions of the Finance Act, 2017" on insertion of clause (ba) in Sub section (1) of section 12A is quoted as under:
"the entities registered under section 12AA are required to file return of income under sub-section (4A) of section 139 of the Income -tax Act, if the total income without giving effect to the provisions of sections 11 and 12 exceeds the maximum amount which is not chargeable to income-tax. Amendment to section 12A of the Income-tax has been made so as to provide for additional condition that the person in receipt of the income chargeable to income-tax shall furnish the return of income within the time allowed under section 139 of the Income -tax Act."
4. Thus, for a trust registered U/s 12AA of the Act to avail the benefit of exemption u/s 11 shall inter-alia file its return of income within the time allowed u/s 139 of the Act. Accordingly, orders u/s 143(1)(a) in those cases in which demand has been raised on this issue may please be rectified.

These issues with the approval of Chairman (CBDT).

(Vinay Sheel Gautam)

JCIT (OSD) (ITA-I) Telefax: 011-23093070

E-mail: vinaysheel.gautam@gov.in

Copy to:-

The Pr. CCIT(Exemptions), New Delhi.

SEC. 11 VS. SEC. 10(23C)(iv), (v), (vi) & (via)

Notes:

- 1) For university/educational institution/hospitals falling under section 10(23) (iiiab), 10(23) (iiiac), 10(23) (iiiad) & 10(23) (iiiie) : There is neither any requirement of any approval to be taken nor there is any operational formalities to be complied with except the submission of Income Tax Return.
- 2) We have, therefore, compared the applicable operational framework as applicable for claiming the benefit of SEC. 11 VS. SEC. 10(23C)(iv), (v), (vi) & (via).

Broader issue	Basis of Difference	Section 12AA	Section 10(23C)(iv), (v), (vi) & (via)
Registration	a) When is Application required to be made?	Required to be made by all NGOs which wishes to take the benefit under this section.	The approval is required for educational institutions/hospital/funds, etc. which falls under 10(23C)(iv) 10(23C)(v) 10(23C)(vi) 10(23C)(via) i.e. having aggregate receipt of more than Rs.1.00 Crore or any fund/institution established for charitable purpose or any trust/institution wholly for public religious purpose or wholly for public religious charitable purposes.
	b) Form for the above application	Form 10A	For 10(23C)(iv) & 10(23C)(v) – Form 56 For 10(23C)(vi) & 10(23C)(via) – Form 56D
	c) Time limit for filing of application	No time limit. However, in view of sec 12AA(2), exemption be available from the immediately following AY to FY in which appl. is made.	On/before 30th Sept. of the relevant Assessment Year
			Section 10(23C)(iv), (v), (vi) & (via)
	d) Time limit for approval	Within 6 months from the end of the month in which application is received [s.12AA(2)]	Within 12 months from the end of the month in which application was received
	e) Time period for exemption	Lifetime	Lifetime Circular No. 7/2010 [F.No. 197/21/2010-ITA-I] Dated 27-10-2010
	f) Exemption shall be effective from	The relevant assessment year immediately following the financial year in which the application is made	The year in which it is granted and thereafter.
	g) Approval Authority	CIT (Exemptions)	CIT (Exemptions) As per notification number SO675(E) dt 5th March, 2015

	h) Application for registration/ approval	Lies to Appellate Tribunal	Lies to Appellate Tribunal
	I Cancellation of registration/ approval	a) the activities of the trust or institution are not genuine, or;	Same
		b) the activities are not being carried out in accordance with the objects of the trust or institution.	Same
		c) Operation of applicability of Sec. 13(1) which provides that activity of the trust being carried out in such manner that :	
		I its income does not ensure for the benefit of general public;	The exemptions for that particular year shall not be forfeited but the CIT shall have the power to withdraw the approval in the light of acting beyond stated objects.
		ii) it is for the benefit of any particular religious community or caste	The exemptions for that particular year shall not be forfeited but the CIT shall have the power to withdraw the approval in the light of acting beyond stated objects.
		iii) any income or property of the trust is applied for the benefit of specified persons like author of trust, trustees, etc.; or	The exemptions for that particular year shall not be forfeited but the CIT shall have the power to withdraw the approval in the light of acting beyond stated objects
		iv) its funds are invested in prohibited modes	Same
		iv) its funds are invested in prohibited modes	If the fund/institution has not applied its income in accordance with the provision contained in Clause a of 3rd proviso i.e. if it fails to apply 85% of the income and has not opted for the accumulation for 5 years as provided in the act.
Income	A) Nature of income	Income from trust property including income from voluntary contributions	All Income, no condition that income has to be from trust property.
	B) Treatment of Corpus Donation	<i>W.e.f. 01/04/1989 Corpus Donation is a part of income excluded from the computation of total income u/s. 11(1)(d) of the Income Tax Act, 1961.</i>	No exemption
	C) Anonymous Donation	The amount received towards anonymous donation would taxable @ 30% (+surcharge+ education cess) [u/s. 115BBC(3)].	Same

Application of Income	A) Calculation of application of income	1) Amount applied <ul style="list-style-type: none"> • Revenue Expenses • Capital Expenses 	Same
		2) Depreciation will not be considered as application of income w.e.f. 01/04/2015 (AY 2015-16) if the asset has been claimed as application of income	Same
	B) Disallowances	<i>Non-deduction of TDS 30% payment disallowed or deducted but not but shall be allowed when paid by due date of TDS is paid (w.e.f Asst. Year furnishing return 2019-20) Applies to capital expenses as well</i>	Same
		<i>if payment is made in 100% of the application cash Exceeding disallowed [w.e.f. AY 2019- Rs.10,000/- 20] Permanent disallowance Applies for capital expenses as well</i>	Same
Minimum Spending & Statutory Accumulation	Minimum Spending	85% of the Income	85%
	Statutory Accumulation	15% of the Income	15%
Deemed Application	Option – I If spending is less than 85%	To spend in subsequent year and in the year in which received	Not Available
Accumulation	Accumulation	5 years	Yes
Form for exercising Option & Accumulation	Form for applying Deemed Application	Form 9A to be submitted within the due date	Not Applicable
	Accumulation for 5 years	i) form 10 to be submitted within the due date & return has also to be filed within due date	i) The present act does not provide the process of applying for accumulation as well as the condition for submitting the same and filing the return within the due date.
		ii) Out of the accumulated amount the fund cannot be transferred to another NGO.	ii) Out of the accumulated amount, the fund cannot be transferred to another NGO.
Audit	Requirement	<ul style="list-style-type: none"> • If total income exceeds the maximum amount which is not chargeable to tax without giving effect to the provisions of Section 11 and 12, shall get its account audited. 	<ul style="list-style-type: none"> • If total income exceeds the maximum amount which is not chargeable to tax without giving effect to the provisions of Section 10, shall get its account audited.
	Format	<ul style="list-style-type: none"> • Audit Report :Form 10B (Rule 17B) [S. 12A(1)(B)] 	<ul style="list-style-type: none"> • Audit Report: Form 10BB (Rule 16CC)

Submission Income Return	Requirement	<ul style="list-style-type: none"> Section 139(4A) : If total income exceeds the of maximum amount which is not chargeable to tax Tax without giving effect to the provisions of Section 11 and 12, it is mandatory to file the return of Income. 	<ul style="list-style-type: none"> Section 139(4C) : If total income exceeds the maximum amount which is not chargeable of Section 10, it is mandatory to file the return of Income.
	Income Tax Return	<ul style="list-style-type: none"> Income Tax Return : ITR 7 	<ul style="list-style-type: none"> Income Tax Return : ITR 7
	Due date u/s. 139(4C)	<ul style="list-style-type: none"> Due date of Filing Return is as per section 139(1), i.e. 30th September of the Assessment Year 	<ul style="list-style-type: none"> Due date of Filing Return is as per section 139(1) ,ie. 30th September of the Assessment Year
Restriction on business like activities		<ul style="list-style-type: none"> Incidental business activities is allowed for all categories of NGOs, except the last category i.e. Advancement for General Public Utility, provided separate set of books of accounts are maintained. 	<ul style="list-style-type: none"> Incidental business activities is allowed in all the cases provided separate set of books of accounts are maintained.
		<ul style="list-style-type: none"> Business restrictions as provided in Sec. 2(15) is applicable to the last category NGOs. 	<ul style="list-style-type: none"> Similar restriction is applicable for the funds/ institutions falling under 10(23C) (iv) & 10(23C)(v). No such restriction applies to Education & Health Institutions falling under 10(23C) (vi) & 10(23C)(via).
Withdrawal of Exemption		<p>Exemption shall be withdrawn if:-</p> <ul style="list-style-type: none"> Its income does not ensure for the benefit of general public It is for the benefit of any particular religious community or caste Any income or property of the trust is applied for benefit of specified persons like author of trust, trustees, etc.; (pl. refer sec.13(2) for the situations providing deemed application for the benefit of the specified person.) Its funds are invested in prohibited modes. 	<ul style="list-style-type: none"> There is no provision for withdrawal of provision on year to year basis. There are provisions for withdrawing the approval under the specified situations.

**CBDT CIRCULAR CONDONATION OF DELAY FOR
FORM NO. 10 AND FORM NO. 9A UNDER SECTION 119(2) (B)**

Circular No. 7/2018

F.No.197/55/2018-ITA-I
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

North Block, New Delhi
20th December 2018

Condonation of delay under section 119(2)(b) of the Income-tax Act, 1961 in filing of Form no. 10 and Form No. 9A for AY 2016-17

Under the provisions of section 11 of the Income-tax Act, 1961 (hereafter Act') the primary condition for grant of exemption to trust or institution in respect of income derived from property held under such trust is that the income derived from property held under trust should be applied for the charitable purposes in India. Where such income cannot be applied during the previous year, it has to be accumulated and applied for such purposes in accordance with various conditions provided in the section.

The Finance Act, 2015 amended section 11 and section 13 of the Act with effect from 01.04.2016 (A.Y. 2016-17). Consequently, Income-tax Rules, 1962 (hereafter 'Rules') were also amended vide the Income-tax (1st Amendment) Rules, 2016. As per the amended provisions of the Act read with rule 17 of the Rules, while 15% of the income can be accumulated indefinitely by the trust or institution, 85% of income can only be accumulated for a period not exceeding 5 years subject to the conditions, inter alia, that such person submits the prescribed Form No. 10 electronically to the Assessing Officer within the due date specified under section 139(1) of the Act.

Further, where the income from the property held under trust and applied to charitable or religious purposes falls short of 85% of the income derived during the previous year for the reason that the income has not been received during that year or any other reason, then on exercise of the option by submitting in Form No.9A electronically by the trust/institution on or before the due date of furnishing the return of income, such income shall be deemed to have been applied for charitable or religious purpose.

Representations have been received by the Board/ field authorities stating that the Form No. 9A and Form

No.10 could not be filed in the specified time for AY 2016- 17, which was the first year of e-filing of these forms. It has been requested that the delay in filing of Form No. 9A and Form No. 10 for AY 2016-17 may be condoned under section 119(2) (b) of the Act.

Accordingly, in supersession of earlier Circular/Instruction issued in this regard, with a view to expedite the disposal of applications filed by trusts for condoning the delay and in exercise of the powers conferred under section 119(2)(b) of the Act, the Central Board of Direct Taxes hereby authorizes the Commissioners of Income- tax, to admit belated applications in Form No. 9A and Form No.10 in respect of AY 2016-17 where such Form No. 9A and form No.10 are filed after the expiry of the time allowed under the relevant provisions of the Act.

The Commissioners will, while entertaining such belated applications in Form No. 9A and Form No.10, satisfy themselves that the assessee was prevented by reasonable cause from filing of applications in Form No. 9A and Form No.10 within the stipulated time. Further, in respect of Form No. 10 the Commissioners shall also satisfy themselves that the amount accumulated or set apart has been invested or deposited in any one or more of the forms or modes specified in sub section (5) of section 11 of the Act.

(Vinay Sheel Gautam)

Under Secretary to the Government of India

FCRA RULES AMENDMENT 2019 NOTIFICATION
MINISTRY OF HOME AFFAIRS
NOTIFICATION

New Delhi, the 7th March, 2019

G.S.R.199(E).- In exercise of the powers conferred by section 48 of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010), the Central Government hereby makes the following rules further to amend the Foreign Contribution (Regulation) Rules, 2011, namely:-

1. Short title and commencement. -

- (1) These rules may be called the Foreign Contribution (Regulation) Amendment Rules, 2019.
- (2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Foreign Contribution (Regulation) Rules, 2011, -

- (i) in rule 2, in sub-rule 1, after clause (a), the following clause shall be inserted, namely:- “(aa) “bank account” means a bank account in a core banking compliant bank, which is integrated with the Public Financial Management System (PFMS)”;
- (ii) in rule 6, after the word “Government”, the following words shall be inserted, namely:- “by uploading details electronically online”;
- (iii) in rule 7, in sub-rule (1), after the word “apply”, the following words shall be inserted, namely:- “electronically online”;
- (iv) in rule 9, -
 - (a) in sub-rule (1), -
 - (A) for clause (a), the following clause shall be substituted, namely:-
 “(a) An application for certificate of registration by a person under sub-section (1) of section 11, for acceptance of foreign contribution shall be made electronically online in Form FC-3A and an application for obtaining prior permission by a person under sub-section (2) of section 11, for acceptance of foreign contribution, shall be made electronically online in Form FC-3B.”;
 - (B) in clause (e), for the letters and figure “FC-6”, the letters and figure “FC-6D” shall be substituted;
 - (b) in sub-rule (2), in clause (e), for the letters and figure “FC-6”, the letters and figure “FC-6D” shall be substituted;
 - (c) in sub-rule (4), -
 - (A) in clause (a), for the letters, figures, brackets and words “Rs.1000/- (One Thousand only)”, the letters, figures, brackets and words “Rs.3000/- (Three Thousand rupees only)” shall be substituted;

- (B) in clause (b), for the figures, brackets and words “2000/- (Two Thousand only)”, the letters, figures, brackets and words “Rs.5000/- (Five Thousand rupees only)” shall be substituted;
- (v) in rule 12, -
- (a) in sub-rule (2), for the words, letters and figures “to the Central Government in Form FC-3”, the words, letters and figures “to the Central Government electronically online in Form FC-3C” shall be substituted;
 - (b) in sub-rule (4), for the letters, figures, brackets and words “Rs.500/- (Five Hundred only)”, the letters, figures, brackets and words “Rs.1500/- (One Thousand Five Hundred rupees only)” shall be substituted;
 - (c) in sub-rule (8),-
 - (d) after the words “requisite fee”, the letters, figures, brackets and words “and with late fee of Rs.5000/- (Five Thousand rupees only)” shall be inserted;
 - (e) for the words “four months” the words “one year” shall be substituted;
- (vi) in rule 17A, -
- (a) the words, letters and figure “in Form FC-6” shall be omitted;
 - (b) in item (i), after the word “Act”, the words, letters and figures “in Form FC-6A” shall be inserted;
 - (c) in item (ii), after the word “authorities”, the words, letters and figures “in Form FC-6B” shall be inserted;
 - (d) in item (iii), -
 - (A) after the word “number”, the words, letters and figures “in Form FC-6C” shall be inserted;
 - (B) the word “and” occurring at the end shall be omitted;
 - (e) after item (iii), the following item shall be inserted, namely:-

“(iiiia) bank and /or branch of the bank for the purpose of utilising the foreign contribution after it has been received in Form FC-6D; and”; (f) in item (iv), after the word “Act”, the words, letters and figures “in Form FC-6E” shall be inserted;
- (vii) for forms FC-1 to FC-6, the following forms shall be substituted, namely:-

“Proforma 'AA'

(See rules 9, 12, Forms FC-3A, FC-3B and FC-3C)

[To be executed by each office bearer and key functionary and member individually on non-judicial stamp paper of Rs.10/- and attested by a Notary Public or 1st Class Magistrate]

AFFIDAVIT

I,(name of the Chief Functionary / Chairperson/ President/Secretary/ Chief Executive Officer/ Managing Director/office bearer/key functionary/member), son/daughter/wife of, resident of, having Aadhaar Number /PAN Card Number / Passport Number / Voter Identity Card Number/ Driving License Number as the

identity proof, do hereby solemnly affirm on oath that I am the Chief Functionary / Chairperson/ President/Secretary/ Chief Executive Officer/ Managing Director/ office bearer/ key functionary/ member (whichever is applicable) of (Name of the applicant organisation), having its registered office at ..., and I have read and understood the provisions of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010) and confirm that all the conditions as stipulated in sub-section (4) of section 12 of the said Act are fulfilled.

2. I also undertake to report to the Secretary to the Government of India, Ministry of Home Affairs, Foreigners Division (Foreign Contribution Regulation Act Wing) about any violation of the provisions of sub-section (4) of section 12 of the Foreign Contribution (Regulation) Act, 2010 by the applicant organisation or any of its members or office bearers or key functionaries that comes to my knowledge. 3. I also understand that submission of any false or misleading information shall be punishable under the applicable law.

Place: _____

Date: _____

Deponent

VERIFICATION

I,, above named deponent do hereby verify that the contents of the aforesaid paragraphs 1 to 3 are true to the best of my knowledge and nothing has been concealed therefrom. Verified at on this the day of

Place: _____

Date: _____

Deponent".

[F. No. II/21022/23(35)/2019-FCRA-III]

ANIL MALIK, Jt. Secy.

Note: The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide notification number G.S.R. 349(E), dated the 29th April, 2011 and subsequently amended vide G.S.R. 292 (E), dated the 12th April, 2012, G.S.R. 966(E), dated the 14th December, 2015 and G.S.R. 199(E), dated the 7th March, 2019.

LIST OF BANKS INTEGRATED WITH PFMS

1 Abu Dhabi Commercial Bank	31 Karnataka Bank
2 Allahabad Bank	32 Karur Vysya Bank
3 Allahabad Up Gramin Bank	33 Kotak Mahindra Bank
4 Andhra Bank	34 Madhya Bihar Gramin Bank
5 Andhra Pragathi Grameena Bank	35 Manipur State Co-op.bank Ltd.
6 Axis Bank	36 New India Co-operative Bank Ltd
7 Bank Of Bahrain And Kuwait	37 Nkgsb Co-op Bank Ltd
8 Bank Of Baroda	38 Oriental Bank Of Commerce
9 Bank Of India	39 Punjab And Sind Bank
10 Bank Of Maharashtra	40 Punjab National Bank
11 Bassein Catholic Co-op.bank Ltd.	41 Rbl Bank
12 Bombay Mercantile Co-op.bank Ltd.	42 South Indian Bank
13 Canara Bank	43 Standard Chartered Bank
14 Catholic Syrian Bank Ltd.	44 State Bank Of India
15 Central Bank Of India	45 Syndicate Bank
16 Citibank	46 Tamilnad Mercantile Bank Ltd
17 City Union Bank Ltd	47 The Cosmos Co-operative Bank Ltd.
18 Corporation Bank	48 The Federal Bank Ltd
19 Dcb Bank Limited	49 The Jammu And Kashmir Bank Ltd
20 Dena Bank	50 The Kalupur Commercial Co. Op. Bank Ltd.
21 Deutsche Bank	51 The Lakshmi Vilas Bank Ltd
22 Dhanlaxmi Bank Ltd	52 The Saraswat Co-operative Bank Ltd
23 Hdfc Bank Ltd	53 The Shamrao Vithal Co-operative Bank Limited
24 Hsbc	54 Tjsb Sahakari Bank Limited
25 Icici Bank Ltd	55 Uco Bank
26 Idbi Bank Ltd	56 Union Bank Of India
27 Indian Bank	57 United Bank Of India
28 Indian Overseas Bank	58 Vijaya Bank
29 Indusind Bank Limited	59 Yes Bank Ltd
30 Jharkhand Gramin Bank	

AUDIT COMMITTEE AGENDA TEMPLATE

S.No.	Topic	Duration	Methodology	Preparation Material
1	Welcome & Roll Call	9:00 – 9:15		
2	Confirmation of Minutes of the previous meeting	9:15 – 09:30	Discussion led by Chair	Minutes of Meeting
3	Matters arising from the Minutes	09:30 – 09:45	Discussion led by Chair	Minutes of Meeting
4	Presentation of Audited Financial Statements and discussion there on Review significant Accounting and Reporting issues as per Auditors Report Response from the Management Review annual Financial Statements	09:45- 11:00	Brief update by Auditor followed by Discussion	Draft Audit Report & Financial Statements
5	Tea / Coffee Break	11:00- 11:15		
6.	Presentation of Audited Financial Statements and discussion there on Contd Review cash flow, budget vs. actual income & expenditure Executive closed session separately with External Auditors Recommend acceptance of Audit Report and adoption of Financial Statements to the Board	11:15- 11:45	Discussion Led by Chair	Draft Audit Report & Financial Statements Cash flow, Budget variance analysis
7.	Appointment of External Auditors Review proposed Audit scope & approach Review the performance Rotation of Auditors Ascertain & confirm independence (Including related parties) Recommend to the Board terms of engagement & remuneration	11:45- 13:15	Discussion led by Chair	Proposal by the External Auditors
8	Lunch Break	13:15-13:45		
9.	Review of Internal Audit Report Review TOR, plans & approach Ensure there are no limitations Review appointments processes & effectiveness Review the Report Executive closed session separately with Internal Auditors	13:45- 14:00 14:00- 14:15	Update from Internal Auditors Discussion Led by Chair	Draft Internal Audit Report
10.	Risk Management and Internal Control Review implementations of risk management policies Review implementations of Audit recommendation action plan Review if any additional risk observed during the period & mitigation plans	14:15-15:15	Discussion led by Chair	Audit Reports & other documents prepared by the Management
11.	Any other matter with the permission of Chair	15:15-15:45	Discussion led by Chair	
12.	Tea / Coffee Closure	15:45 -16:00		

TERMS OF REFERENCE (ToR) TEMPLATE

I. Budgeting and Financial Planning

- Develop an annual operating budget with staff;
- Approve the budget within the Finance Committee;
- Monitor adherence to the budget;
- Set long-range financial goals along with funding strategies to achieve them;
- Develop multi-year operating budgets that integrate strategic plan objectives and initiatives;
- Present all financial goals and proposals to the board of directors for approval.

II. Reporting

- Develop useful and readable financial report formats with staff;
- Work with staff to develop a list of desired reports noting the level of detail, frequency, deadlines, and recipients of these reports;
- Work with staff to understand the implications of the reports;
- Present the financial reports to the full board.

III. Internal Controls and Risk Management

- Create, approve, and update (as necessary) policies that help ensure the assets of the organization are protected;
- Ensure policies and procedures for financial transactions are documented in a manual, and the manual is annually reviewed and updated;
- Ensure approved financial policies and procedures are being followed;
- Assess risks, devise action plans, implement those plans and monitor the mitigation plan.

IV. Audits and Investments

- Identify and shortlist auditor;
- Review the draft audit report presented by the auditor;
- Present the audit report to the entire Board;
- Reviewing the management recommendation letter from the auditor and ensuring follow up on any issues mentioned;
- Draft an investment policy;
- Ensure provisions of the investment policy are followed;
- Take necessary actions like timely review of the policies, etc.

Finance Committee Agenda Template

Sr.	Topic	Duration	Methodology	Preparation Material
1	Welcome & Roll Call	8:30 – 8:45	Welcome by the Chair (who is generally the Treasurer)	Minutes of the meeting
2	Confirmation of Minutes of the previous meeting	8:45 – 9:00	Discussion presided by the Chair	Minutes of the meeting
3	Matters arising from the Minutes	9:00 – 9:15	Discussion presided by the Chair	Minutes of the meeting
4	Planning and Budgeting Process Review of existing operational budget Review of annual financial statements Review of Budget v/s actual expenditure	9:15-10:15	Update and explanation by the Finance Head Discussion presided by the Chair	Current year Budget Financial Statements
5	Tea/Coffee Break	10:15- 10:30		
6	Planning and Budgeting Process (contd...) Review the variance analysis between budget and expenditure Develop annual operational budget for the next year Present the financial goals, proposals and budget for the next Financial Year to the Board	10:30- 12:00	Discussion presided by the Chair Presented by the Head of Finance	Current year Budget Financial Statements Variance Analysis Report
7	Reporting Review the existing quarterly/ half-yearly and annually reporting financial report formats Compare the organization's format with various donors formats If needed, finalize the best, comprehensive financial report format to be followed and seek the Board's approval Present the latest financial report to the Board	12:00-13:00	Brief explanation on the existing financial formats Discussion presided by the Chair Key input from Chief Functionary and Head of Finance	Existing financial report format Financial Report
8	Lunch	13:00 -3:45		
9	Internal Controls and Risk Management Review the implementation of finance policy, the human resource policy, and other policy documents Review the implementation of existing risk management policy Review additional risks observed, during the reporting period and the mitigation plan	13:45-14:45	Discussion presided by the Chair in coordination with the Finance Head (For this part of the meeting, the HR Head can be a special Invitee)	Finance Manual HR Manual Manual on Risk Management

10	Investment Review the investment policy Review investments made in the current year Analyze adherence to the provisions of the policy	14:45- 15:45	Discussion presided by the Chair	Investment Policy
11	Tea/Coffee Break	15:45-16:00		
12	Audit Review of the audit report Review management letter issued by the auditor and follow up on these issues by the organization	16:00- 16:30	Presented by Head of Finance Presented by the auditor (The auditor can be invited for this session as a special invitee)	Audit report Existing Auditor's Agreement Financial Statement
13	Any other matter with the permission of the Chair	16:30- 17:00	Discussion presided by the Chair	
14	Closure	17:00	Closure by the Chair	

**The Time allocated is only indicative.*

HR COMMITTEE: TERMS OF REFERENCE (ToR) TEMPLATE

1. Organizational Structure

- To review the organizational structure and make recommendations on the changes to the Board.

2. Recruitment and Selection

- To identifying the need for human resource in the organization
- To review the job descriptions
- To recruit the best people for the organization - interviewing, screening and selecting

3. Induction and Capacity Building

- To review, monitor and make recommendations regarding the orientation process
- To develop a time bound induction plan for the new recruits
- To develop an annual calendar for staff capacity building- internal and external (depending on the area to be covered and expertise available internally)

4. Staff Appraisal and Performance Review

- To develop a plan and methodology to be followed for review process
- To review the performance for the previous year against the responsibilities assigned
- To review mid-year in consultation with the Chief Functionary the performance against that in the year

5. CEO Evaluation

- To conduct an assessment of the performance of the Chief Functionary, ideally once in two years.
- To draw a plan and methodologies to be followed for evaluation process.
- To communicate the results of the evaluation to the Board for its review and then to the Chief Functionary.

6. Compensation Review

- To oversee, review and approve (annually or as per the guidelines of the organization) the salary structure for Chief Functionary, senior staff and employees of the organization.

7. Human Resource Policies

- To review the organization's human resource policy for consistency with the organization's mission, vision, values, goals and needs and recommends amendments, additions or deletions as appropriate to the Board.

8. Succession Planning:

- To review management's succession plan for the executives and senior management.
- To develop and build second line leadership in the organization\

PROGRAMME COMMITTEE: TERMS OF REFERENCE (ToR) TEMPLATE

Purpose: To ensure that the objectives of each program are achieved with delivery of qualitative results

Functions:

1. Handling strategic issues related to programs

- Understand and address issues that has major implications on program implementation
- Ensure the program scope aligns with the requirements of key stakeholders
- Provide guidance to those directly involved in the program
- Oversee the feasibility study, implementation plan, monitoring and evaluation and exit plan of the program

2. Approving change and documentation

The Program Committee has to discuss and approve (in consultation with the Board) recommendations on the following issues:

- Change in Program scope or activities
- Budget and budget constraints
- Program Schedules
- Program Deliverables
- Risk assessment and risk control strategies
- Quality management

3. Monitoring and reviewing activities related to programs

The Program Committee is responsible for the ongoing management of the Program, such as regular monitoring, reporting, providing feedbacks, following up if recommendations has been integrated or not, etc.

HUMAN RESOURCE POLICY TEMPLATE

1. Definitions

This section outlines both legal and non-legal definitions for the purpose of providing clarity on the terms used in the policy.

2. Functions (Roles & Responsibilities)

2.1 Management - A summary description of the roles and responsibilities of core management of the organization.

2.2. Staff - Staff may have different expectations, duties, terms and conditions of employment and accountabilities. Policies should indicate the roles and responsibilities for the following types of employees:

- a. Full-time staff
- b. Term appointments
- c. Part-time appointments
- d. Probationary Appointments
- e. Casual or Contractual employees

2.3. Board - The Board has a role to play regarding Human Resource Management of an organization. That role should be outlined both in the Board policy as well as in the organizational human resource policy.

3. Standards of Conduct

3.1. Conflict of Interest Guidelines

- The extent of Conflict of Interest Guidelines is dependent on the type of organization.
- Conflict of Interest Guidelines may differ for management, employees, board members. Guidelines might outline or indicate:
 - ◆ Obligations
 - ◆ Use of property
 - ◆ Disclosure of information
 - ◆ Feasibility of acceptance of hospitality or other benefits
 - ◆ Soliciting or acceptance of economic benefit or preferential treatment

3.2. Confidentiality

- Employees may be required to sign confidentiality agreements / statements for the purposes of information handling. If this is the case, the policy may indicate that a particular level of Security Clearance is required

3.3. Privacy

- Employee files are to be kept confidential – the process to ensure confidentiality should be outlined.
- Privacy statements should include the process for employee access to and use of confidential and private information.

3.4. Complaint/Grievance Resolution

- Complaint resolution process guidelines could include timeframes, responsibilities and possible mechanisms.
- Formal and informal complaint processes may be described.

4. Employment Practices

4.1. Recruitment, Selection, Appointment Practices

- Who is authorized to make selection and where approvals are required
- What competitive processes are to be followed?
- Procedures around conducting reference checks

4.2. Orientation and Induction

- Induction plan and schedule for new recruits
- Documents to be provided for orientation

4.3. Probationary Period

- Who all are eligible for probation
- Time frame for employee's probationary periods
- Performance evaluation process at the end of the probationary period

4.4. Anti-discrimination/ Equal Opportunity

- Guidelines for equality and fair practices in the organization

4.5. Discrimination and Harassment

- Defining the acts to be covered under discrimination & harassment
- Procedure for handling such issues
- Consequences of indulging in such acts

5. Termination of Employment

5.1. Notice of Resignation

- To whom resignation is to be given
- Timeline for submitting resignation

5.2. Discipline by Suspension or Dismissal

- Procedures for Suspension in the incident of employee misconduct
- Processes for disciplinary action should be outlined

5.3. Terminations

- Processes and circumstances for layoff and termination may be outlined in the policy

5.4. Retirement

- Age for retirement
- Procedure to be followed for retiring employees.

5.5. Exit Interviews

- Exit interviews between management and employees are often a important feedback for the organization. The process of conducting the interview may be outlined in the organization policy.

6. Hours of Work/Leave

6.1. Hours of work

- Hours of work for staff / employees would include the normal work week and the work day schedule
- Any processes for time recording and management would be indicated in this section, as would any repercussions regarding attendance
- The definition of “Overtime”, who it applies to, and the structure for compensation or payment options would be outlined in this section

6.2. Annual Leave

- Eligibility for annual leave will be specific to classification of employee and may be subject to a probationary period
- Include procedures for vacation accrual, scheduling, vacation pay and vacation carry over

6.3. Statutory Holidays

- Designated statutory holidays, statutory holiday entitlement and their application for employees
- Any recognition or accommodation of other religious or cultural holidays should be included

6.4. Special Leave

- Guidelines for other types of leave may be included

6.5. Maternity Leave / Paternity Leave

- Eligibility of employees for Maternity and Paternity leave
- Procedure and time frame for Maternity and Paternity leave

6.6. Medical Leave

- Procedures for the sick leave for full and part time employees

7. Compensation & Employee Administration

7.1. Pay Administration

- Processing pay or pay administration procedures, including any pay deductions, pay frequency and salary increases would be outlined in this section
- This may include notes on maintenance of the pay system

7.2. Job Descriptions

- Standardized job descriptions may be found within the policy itself
- Wherein the job descriptions are not included a policy may reflect how the descriptions will be developed and used by employers and employees
- In the case of Bands, job descriptions may be provided for all Band Officers / Councilors

7.3. Performance Evaluations

- Procedures outlining performance reviews may include timeframes (annual, bi-annual reviews), reports and evaluations, signing, and keeping of records

7.4. Travel & Expenses

- Provision for work related travel and expenses should be outlined
- Organizations and communities may refer to federal (Treasury Board) or provincial standard rates

8. Benefits

8.1. Insurance and other benefits

- Where insurance is provided to employees – this information would be provided

8.2. Pension

- Any possible employer contributions to pensions, as well as the terms of those contributions will be outlined in writing

8.3. Payroll deductions

- Type of deductions to be outlined

9. Training and Development

- Providing opportunities to the staff for capacity building, which may include internal on-the-job training, written instructions such as standard operating procedures, coaching, external training and courses for the development of the staff.

10. Work Environment

10.1. Safe and Healthy Work Environment

- To include any regulations with regard to the work place, including but not limited to:
 - ◆ Occupational safety
 - ◆ Workplace violence
 - ◆ Drug or alcohol policies
 - ◆ Smoking

RELATED PARTY QUESTIONNAIRE

S No. Question Response

1. Do you or any related party of yours have any material interest, direct or indirect, in any completed or pending transaction?
2. Have you or any related party of yours been indebted to the organization at any time during your tenure with the organization? Please exclude amounts due for purchases on usual trade terms and for ordinary travel and expense advances.
3. If you have management control of another entity which could significantly affect the operating results or financial position of organization, please indicate the nature of the relationship.
4. Please list all organizations of which either you or a related person is/are Director, Trustee, Service Provider or Member.
5. Please list all organizations of which either you or a related person is an officer or employee.

Signature:

Date:

Name:

Designation:

I hereby declare that the answers to the foregoing questions are correctly stated to the best of my knowledge and belief.

I. Definitions for Purposes of This Questionnaire

- a) **Related Person:** A related person means the same as defined in Income Tax Act 1961 and Companies Act 2013. Definition of Relative is given under Sec 2(77) of the Companies Act, 2013. As per the Ministry of Corporate Affairs Notification issued on the 31st March, 2014, a person shall be deemed to be the relative of another, if he or she is related to another in the following manner, namely: -

- (1) Father: Provided that the term "Father" includes step-father.
- (2) Mother: Provided that the term "Mother" includes the step-mother.
- (3) Son: Provided that the term "Son" includes the step-son.
- (4) Son's wife.
- (5) Daughter.

- (6) Daughter's husband.
- (7) Brother: Provided that the term “Brother” includes the step-brother;
- (8) Sister: Provided that the term “Sister” includes the step-sister.

The Income Tax Act 1961 defines a 'person' as:

An individual, A Hindu undivided family, A Company, A firm, An association of persons or a body of individuals, whether incorporated or not, A local authority, and Every artificial juridical person, not falling within any of the preceding.

- b) **Control:** Means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a specified party whether through ownership, by contract, or otherwise.
- c) **Management:** Means any person(s) having responsibility for achieving the objectives of the organization and the concomitant authority to establish the policies and make the decisions by which such objectives are to be pursued. It would normally include members of the Board of Directors, the President, Secretary, Treasurer and Vice-President in charge of an organization and other individual persons who perform similar policy-making functions.
- d) **Disclosure:** Means disclosure by the Director who has conflict interest of:
 - The existence and nature of the Director's conflicting interest, and
 - All facts known to the Director respecting the subject matter of the transaction that an ordinarily prudent person would reasonably believe to be material to a judgment as to whether or not to proceed with the transaction.

TEMPLATE OF A CONFLICT OF INTEREST POLICY

1. Preamble/Introduction

This section shall deal with the introduction of the policy. It shall mention the situations leading to conflict of interest and the need for the policy on conflict of interest.

2. Aim

This section shall mention the aim of the policy for better understanding of the policy to the reader

3. Scope

This section shall define the overall applicability of the policy. It shall mention all the individuals and the office bearers who are covered under the policy.

4. Objectives

The objectives of the policy as per the organizational context shall be mentioned in the policy.

5. Definitions

The policy shall also incorporate the definitions of the technical words in the policy for better understanding of the policy to ensure that the reader infers the same meaning to a statement with which it was incorporated in the policy.

6. Procedures

The procedure for the management of conflict of interest shall be duly mentioned in detail. It shall describe the process for identification of the conflict of interests and the disclosure procedure. It shall deal with all the required actions to be performed, or not to be performed by an individual in case of conflict of interest.

7. Violations of Policy

The policy shall also describe the procedure to be adopted in case a violation to the policy is identified.

8. Reviews and amendment

The document shall also describe the procedure for review and amendments of this policy.

9. Declaration

The last page of the policy document shall contain a declaration stating the date of the adoption of the policy in the organization which shall be duly signed by the Board members which represent the acceptance of the policy by the members.

SAMPLE FORMAT OF GENDER POLICY

1. **About the Organization**
2. **Rationale for Gender Policy**
3. **Goal and Objective of the Policy**
4. **National and international trends (keeping the Gender and Development agenda in consideration)**
5. **Scope of the policy**
 - 5.1 Brief description of the Policy
 - 5.2 Goals and Objectives of the Policy
 - 5.3 Guiding Principles/ Issues taken up in the Policy
 - 5.3.1 Recruitment and Retention**
 - A. Likely sub-areas along with the detail of activities covered under the Principle/Issue
 - B. The team responsible for implementing this principle (for example HR Head)
 - C. Likely Action plan in case of any breach of the principle
 - 5.3.2 Promotion and Growth**
 - A. Likely sub-areas along with the detail of activities covered under the principle/Issue
 - B. The team responsible for implementing this principle
 - C. Likely Action plan in case of any breach of the principle
 - 5.3.3 Training and Development**
 - A. Likely sub-areas along with the detail of activities covered under the principle/Issue
 - B. The team responsible for implementing this principle
 - C. Likely Action plan in case of any breach of the principle
 - 5.3.4 Termination / Resignation**
 - A. Likely sub-areas along with the detail of activities covered under the principle/Issue
 - B. The team responsible for implementing this principle
 - C. Likely Action plan in case of any breach of the principle

5.3.5 Safety, and Freedom from Violence

- A. Likely sub-areas along with the detail of activities covered under the principle/Issue
- B. The team responsible for implementing this principle
- C. Likely Action plan in case of any breach of the principle

5.3.6 Equal participation in the Management and Governance

- A. Likely sub-areas along with the detail of activities covered under the principle/Issue
- B. The team responsible for implementing this principle
- C. Likely Action plan in case of any breach of the principle

6. Formation of Gender Committee and its detailed Functions including

- A. Process of formation, Mandate, list of committee members, meetings
- B. Description of likely roles & responsibilities, rotation of members
- C. Implementation Framework for any new change forwarded by the committee

7. Detail of Action Plan in case of identified Gaps

8. Follow up Mechanism

9. Reporting of significant impact of the Policy in the day to day operations

FORMAT OF BALANCE SHEET

Particulars	Schedule	Previous year	Current year
SOURCES OF FUNDS			
Unutilised Grant	I		
Corpus Fund	II		
General Fund	III		
Asset Fund Account	IV		
TOTAL			
APPLICATION OF FUNDS			
Fixed Assets	V		
Gross Block			
less : Depreciation			
Net Block			
Current Asset, Loans & Advances			
Cash & Bank Balance	VI		
Loans & Advances	VII		
Less: Current Liabilities & Provisions	VIII		
Expenses Payable			
other liabilities			
Net Current Asset			
TOTAL			

Significant Accounting Policies and Notes forming an integral part of Accounts

As per Report of even date Chartered Accountant

Signatures of

Partner (M.No.)

Director

Chairman

Treasurer

Member

Place Date

FORMAT OF INCOME AND EXPENDITURE ACCOUNT

Particulars	Previous year	Current year
INCOME		
Grant Received Bank		
Interest		
Sale of Fixed Asset		
Other Income/Donations		
TOTAL		
EXPENDITURE		
<u>Programme Costs</u>		
<u>HIV /AIDS Programme</u>		
Salary and Benefits		
Documentation, Information, Study and Action Research		
Workshops		
Rural Development Networking		
Travel Costs		
Capacity Building		
<u>Slum Development Programme</u>		
Salary and Benefits		
Documentation, Information, Study & Action		
Research Workshops		
Rural Development		
Networking		
Travel Costs		
Capacity Building		
Total		
<u>Coordination and Administration Costs</u>		
Office running expenses Capital Costs		
Office Rent		
Salary and benefits		
Vehicle Running and maintenance		
Audit fee		
5Total		
Excess of Income or Expenditure transferred to Gen eral/unrestricted fund		

Significant Accounting Policies and Notes forming an integral part of Accounts

As per Report of even date Chartered Accountant

Signatures of

Partner

Director

Chairman

Treasurer

Member M.NO.

Place Date

FORMAT OF RECEIPTS & PAYMENTS ACCOUNT

Particulars	Previous year	Current year
RECIEPTS		
Opening Balance		
Cash		
Bank		
Grant Received		
Bank Interest		
Sale of Fixed Asset		
Other Income/Donations Loans & Advances		
TOTAL		
PAYMENTS		
<u>Programme Costs</u>		
<u>HIV /AIDS Programme</u>		
Salary and Benefits		
Documentation, Information, Study and Action Research		
Workshops		
Rural Development Networking		
Travel Costs		
Capacity Building		
<u>Slum Development Programme</u>		
Salary and Benefits		
Documentation, Information, Study & Action		
Research Workshops		
Rural Development		
Networking		
Travel Costs		
Capacity Building		
<u>Coordination and Administration Costs</u>		
Office running expenses Capital Costs		
Office Rent		
Salary and benefits		
Vehicle Running and maintenance		
Audit fee		
Total		

Significant Accounting Policies and Notes forming an integral part of Accounts

As per Report of even date Chartered Accountant

Signatures of

Partner

Director

Chairman

Treasurer

Member M.NO.

Place Date

FORMAT OF GENERAL FUND

GENERAL FUND							
	Schedule	Previous year			Current year		
		Foreign Contribution	Local Contribution	Total	Foreign Contribution	Local Contribution	Total
Opening Balance Add/less Excess/Deficit of Income & Expenditure	IIIA/IIIB						
Closing Balance							

FORMAT OF CORPUS FUND

CORPUS FUND			
		Previous year	Current year
	Opening Balance Add: Contribution received Add: Interest		
	Closing Balance	0	0

FORMAT OF ASSET FUND ACCOUNT

ASSET FUND ACCOUNT		
	Previous year	Current year
Opening Balance		
Add: Asset purchased		
Total	0	0
Less: Value of assets sold Depreciation		
Total	0	0
Closing Balance	0	0

FORMAT OF FIXED ASSET SCHEDULE

Fixed Asset Schedule											
Fixed Assets	Rate of Dep%	Gross Block				Depreciation Block			Net Block		
		Cost as at 1.04.2008	Additions	Sales	Cost as at 31.3.XXXXX	Dep upto 1.04.XXXXX	Adj. for sales	Dep. Current year	Dep upto 31.3.XXXXX	W.d.v as on 31.3.XXXXX	W.d.v as on 31.3.XXXXX
1. Office Premises											
2. By Grants											
3. Local											
4. Contribution											
5. Total											
6. Previous year											

FORMAT OF CASH AND BANK BALANCES AS ON 31.03.XXXX

Particulars	Previous year	Current year
Cash & Bank Cash in hand		
Foreign contribution Local contribution		
Balance in saving banks accounts Foreign Contribution Account Local contribution Account		
Balance in term deposit account Foreign Contribution Account Local contribution Account		
Total	XX	XX

FORMAT OF LOANS AND ADVANCES AS ON 31.03.XXXX

Particulars	Previous year	Current year
Loan and Advances Security deposits Prepaid Expenses		
Amount recoverable in cash or kind		
Foreign Contribution Account Local Contribution Account		
Total		

FORMAT OF CURRENT LIABILITIES & PROVISIONS AS ON 31.03.XXXX

Particulars	Previous year	Current year
Expenses Payable Other liabilities		
Total		

FORMAT OF CASH FLOW STATEMENT

INCOME				
	June Qtr	Sept. Qtr.	Dec Qtr.	Mar Qtr.
Income from operation				
Donations				
Grants				
Income from Investments				
Bank Interest				
Other Cash Receipt				
TOTAL INCOME (A)				
EXPENDITURE				
	June Qtr	Sept. Qtr.	Dec Qtr.	Mar Qtr.
Project 1				
Programme cost -				
Administration Cost				
Project 2				
Programme Cost -				
Administration cost -				
Coordination & Administration cost				
Cost Item				
Cost Item				
TOTAL C&A expenditure				
TOTAL EXPEN DITURE (B)				
Quarterly Surplus or Deficit (C)= A -B				
Opening Cash & Bank Balance (D)				
Quarterly Surplus or Deficit (C)				
Ending Cash & Bank Balance D -C				

FORMAT OF INVESTMENT STATUS

INVESTMENT STATUS						
LONG TERM INVESTMENTS	Amount	LONG TERM INVESTMENTS	Rate of Interest	Amount	Date of Investment	Date of Maturity
Endowment Grant		NSC VII				
Corpus		Debenture of IDBI				
Fixed Asset grant		Bond of Maharashtra Gov.				
Unrestricted Current Grant						
Restricted Current Grant						
Total		TOTAL				
SHORT TERM INVESTMENTS						
Unrestricted Current Grant		UTI US 64 Bonds				
Restricted Current Grant		Post office saving Bank				
Cash & Bank Balance		Cash & Bank Balance				
Total		TOTAL				
Grand Total		Grand Total				

Note:-It is assumed that the investment stated above is approved investment as per Section 11(5) of the income tax act.

Long Term Investment - means investment for the period exceeding six month period Short Term Investment - means investment for the period below six month

SUGGESTIVE FORMAT OF FINANCIAL NARRATIVE REPORT

INTRODUCTION:

This report provides an explanatory value to the audited finance report or the half-year ended 31st March, 05. This report may be read with the financial statements.

OVERVIEW:

The sustainable development programme is being undertaken in the coastal villages of Orissa. Under this programme integrated efforts are being made towards capacitating the villagers in identifying sustainable sources for livelihood.

The financial expenditure under this programme are mainly divided into five broad categories, they are as under:

(1) Direct programme support	50%
(2) Programme technical assistance	10%
(3) Programme implementation	24%
(4) Administrative expenses	16%
(5) Capital Expenditure	Non recurring

STATEMENT OF EXPENSES

DESCRIPTION	BUDGET AMOUNT	ACTUAL EXPENSES	VARIANCE
A. Direct Programme support			
(i) Sustainable Fishing	1,50,000.00	1,23,000.00	27,000.00
(ii) Sustainable Agriculture	2,00,000.00	2,64,000.00	(64,000.00)
(iii) Sustainable Forestry	1,00,000.00	1,00,000.00	NIL
(iv) Sustainable Institution Building	2,00,000.00	2,00,000.00	NIL
B. Programme Technical Assistance			
(i) Technical Fees	22,000.00	12,000.00	10,000.00

(ii) Seminar and Workshop	60,000.00	64,000.00	(4,000.00)
(iii) Research Material & Equipment	48,000.00	NIL	(48,000.00)

C. Programme Implantation

(i) Programme Admn. Salaries	2,00,000.00	2,00,000.00	NIL
(ii) Travel and Conveyance	1,12,000.00	1,19,000.00	(7,000.00)

D. Administrative Expenses

(i) Admn. Salaries	1,60,000.00	1,60,000.00	NIL
(ii) Telephone	1,00,000.00	1,00,000.00	NIL
(iii) Stationary & Consumable	25,000.00	25,000.00	NIL
(iv) Postage & Courier	1,30,000.00	1,30,000.00	NIL
(v) Hospital	-	3,000.00	(3,000.00)

EXPENDITURE ANALYSIS:

The financial statement provides the details of expenditure against all the above- mentioned broad heads. As it can be seen that under each head the amount available at the beginning of the period, amount spent during the period and the amount available at the end of the period have been provided. Details of under/ over utilisation in comparison to the budgeted amount has also been provided in the statement.

(1) Direct Programme Support: The allocated budget under this head for the period was ` 6.50 lakhs under the following broad sub-heads:

(i) Sustainable fishing	1.50 lakhs
(ii) Sustainable agriculture	2.00 lakhs
(iii) Sustainable forestry	1.00 lakhs
(iv) Community institution building	2.00 lakhs

i) Sustainable fishing: Under this head out of the allocated amount of 1.50 lakhs only ` 1.23lakhs was spent. The main reason for the under utilisation to the extent of ` 0.27 lakhs was due to the inability of the contractor to complete the 'fish drying rack' within the contracted time. However, the rack was completed in the month of April and the same amount will be accounted in the next period.

74000.00 spent under the head fishing net revolving fund, were transferred to a legally registered SHG. This SHG has been formed by the fishermen of ten nearby villages. It was heartening to know that the SHG could give a matching contribution of `74000.00. This SHG provides low interest loans to around 75 fishermen families.

ii) **Sustainable Agriculture:** Under this head there was an over utilisation to the extent of `0.64 lakhs largely due to the sudden increase in the cost of ten borewells which were dug during the period. `34000.00 and 26000.00 were given to 2 group of SHG towards vegetable cultivation and poultry. The experience of supporting small SHG in this village has been very promising. The x village revolving fund has grown 5 fold in last 3 years without any external support. The delinquency rate is also below 3%, which is extraordinary good. `34000.00 was spent on a pilot project on organic manure.....

(2) **Programme Technical Assistance:** Under this head expenditure, pertaining to technical assistance was incurred: `12000.00 for technical fees to the agricultural university for testing of soil and identification of the appropriate seed in this area. The expenditure was `10000.00 less than the budgeted amount as the local people could convince the local authorities to get the work done on cost-to-cost basis. `64000.00 spent under the head 'workshop and seminar' was actually on exposure visit of 30 farmers to the All India Agricultural Trade symposium. In fact, the farmers' federation was able to establish an export-marketing tie up with an international organisation during the visit...

(3) **Programme Implementation:** Under this head the salary and travel costs of the programme manager and the project officer are incurred. The travel expenditure was slightly higher by `7000.00 because of the annual insurance expenditure against the vehicle. This incidentally was due during this project period.

(4) **Administrative Expenses:** Under this head, following expenses are incurred:

Salaries	10000.00
Telephone	2000.00
Stationary & Consumable	4000.00
Postage/courier	1000.00
Hospitality	3000.00

There was no variation under this head, except `3000.00 spent under the head of hospitality, occasioned by visit from a donor representative.

(5) **Capital Expenditure:** `15000.00 has been incurred under this head as one time expenditure. The budget allocation was `15000.00 but actually 34000.00 was spent on purchase of a two wheeler for the project officer. The initial idea was to purchase a second hand two wheeler for `15000.00 but later on the management decided to purchase a new two wheeler. The additional amount was paid from the general reserves of the organisation and only `15000.00 has been charged to the programme.

FORMAT OF PROGRAM REPORT

(The report should present the various program activities undertaken by the organisation individually in preferably the following manner)

1.1 Program Objectives

1.2 Activities Undertaken :

(Summary of the individual activities (program specific) undertaken during the year.)

1.3 Comparison of Planned Activities with the Actual Activities with corresponding changes in the expenditure and the reasons for the deviation :

Program Cost Head	Budgeted	Actual	Planned Activity	Actual Activity	Deviation	Reasons for Deviation
Direct Program Support						
Program Technical Assistance						
Program Implementation						
Administration Expenses						

1.4 Impact Assessment :

- Quantitative Assessment :
- Qualitative Assessment :

1.5 Future Activity Perspective

FORMAT OF PROJECT VARIANCE REPORT

INCOME				
	Budgeted	Actual	Deviation %age	Notes to variance
Income from operation				
Donations				
Grants				
Income from Investments				
Bank Interest				
TOTAL INCOME				
EXPENDITURE				
	Budgeted	Actual	Deviation %age	Notes to variance
Cost Item				
Cost Item				
Cost Item				
Cost Item				
Cost Item				
Co-ordination & Admin. cost				
Cost Item				
Cost Item				
Cost Item				
Capital Cost				
Contingencies				
TOTAL EXPENDITURE				
Surplus/Deficit transferred to grant account				

Note: - This Format can be further segregated for the suitable reporting period.

FORMAT OF LEGAL COMPLIANCE REPORT

LEGAL COMPLIANCE REPORT (Operational)

CHECK LIST

	Details	Due dates for filing return or depositing tax	Date of compli - ance	Remark
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INCOME TAX

TDS	Various monthly deposit of TDS or issue of certificate			
ADVANCETAX	Quarterly deposits			
RETURNS	Annual Returns Audit Report Other compliances			
FCRA				

	Filing of FC -4 Other legal compliances			
SERVICE TAX				
	Deposit of tax Half yearly returns			

OTHER COMPLIANCES

	Societies/ Companies return Contractual Obligations Other Compliances			
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RESPONSIBILITY STATEMENT BY THE MANAGEMENT*(Example of statement for the Responsibility Statement)*

1. The total funds mobilised during the year amounted to out of which self-generated and internal accruals amounted to The organisation is dependent of external support to the extent of %.
2. The total application of funds amounted to ` out of which the administrative components was ` which is %.
3. There were no complaints received from employees, stakeholders or members during the year.
4. There were no transactions or contracts with related parties and the conflict of interest policies of the organisations has been complied with.
5. The total remuneration, fees or other payments to board members and trustees amounted to ` which is %.
6. The Annual Accounts have been prepared on the basis of the Accounting policies adopted by the organisation with compliance to Accounting Standards wherever necessary.
7. Sufficient care has been taken for the maintenance of Accounts as per the Income Tax Act 1961 and Foreign Contribution Regulation Act 2010.
8. The Statutory Auditors have performed their task in an independent manner and the management letter submitted by the Statutory Auditors has been considered by the management.
9. Internal Audit has been conducted for the organisation.
10. During day to day operations of the organisation, ethical accountability, value of money and environmental concerns has been given highest priority.
11. As required under sec 13(3) of the Income Tax Act 1961, no part of the income during the previous year has been applied and used directly for the benefit of :
12. The author or founder of the institution.
13. Any person who has made a substantial
14. The organisation was not involved in any business activities in violation of section 2(15) of the Income Tax Act.
15. The staff service rules were followed and all the social security measures were complied with.
16. The following steps were taken towards enhancing the participation of marginal stakeholders and beneficiaries during the year.

GUIDANCE NOTE ON ACCOUNTING FOR EXPENDITURE ON CORPORATE SOCIAL RESPONSIBILITY ACTIVITIES

(ISSUED BY INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA (ICAI) ON MAY 15, 2015)

GN (A) 34

Guidance Note on Accounting for Expenditure on Corporate Social Responsibility Activities (Issued May 15, 2015)

(The Council of the Institute of Chartered Accountants of India (ICAI) has issued this *Guidance Note on Accounting for Expenditure on Corporate Social Responsibility Activities*, which comes into effect from the date of its issuance. Pending finalisation of the Guidance Note, as it was under discussion with the relevant authorities, the Corporate Laws & Corporate Governance Committee had issued 'Frequently Asked Questions on the provisions of Corporate Social Responsibility under Section 135 of the Companies Act 2013 and Rules thereon' which, inter alia, provided an interim guidance with regard to certain accounting issues. On issuance of this Guidance Note on Accounting for Expenditure on Corporate Social Responsibility Activities, the FAQs related to areas covered by the Guidance Note stand withdrawn.)

Introduction

1. Section 135 of the Companies Act, 2013 (the Act), requires the Board of Directors of every company having a net worth of Rupees 500 crore or more, or turnover of Rupees 1,000 crore or more or a net profit of Rupees 5 crore or more, during any financial year, to ensure that the company spends in every financial year at least 2% of the average net profits of the company made during the three immediately preceding financial years on Corporate Social Responsibility (CSR) in pursuance of its policy in this regard. The Act requires such companies to constitute a Corporate Social Responsibility Committee which shall formulate and recommend to the Board a Corporate Social Responsibility Policy which shall indicate the CSR activities to be undertaken by the company as specified in Schedule VII to the Act.

Objective

2. The objective of this Guidance Note is to provide guidance on recognition, measurement, presentation and disclosure of expenditure on activities relating to corporate social responsibility.

Scope

3. What constitutes CSR activities is specified in Schedule VII to the Act. Reference is also invited to the circular issued by the Ministry of Corporate Affairs (MCA) No. 21/2014 dated October 24, 2014. Accordingly, the Guidance Note does not deal with identification of activities that constitute CSR activities but only provides guidance on accounting for expenditure on CSR activities in line with the requirements of the generally accepted accounting principles including the applicable Accounting Standards.

Definitions

4. For the purpose of this Guidance Note, the definitions mentioned at sl. nos. (a) to (f) are reproduced from the Companies Act, 2013, and the Companies (Corporate Social Responsibility Policy) Rules, 2014 and in the event of any change in the Act or the Rules made thereunder, these definitions shall stand automatically revised/modified to that extent:

(a) **Any financial year:** “any financial year” referred under sub-section (1) of Section 135 of the Act read with Rule 3(2) of Companies CSR Rule, 2014, implies 'any of the three preceding financial years'. (Clarification vide MCA General Circular No. 21/2014)

(b) **Average Net Profit:** Average Net Profit is the amount as calculated in accordance with the provisions of Section 198 of the Companies Act, 2013.

(c) **Financial Year:** “financial year”, in relation to any company or body corporate, means the period ending on the 31ST day of March every year, and where it has been incorporated on or after the 1ST day of January of a year, the period ending on the 31st day of March of the following year, in respect whereof financial statement of the company or body corporate is made up:

Provided that on an application made by a company or body corporate, which is a holding company or a subsidiary of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Tribunal may, if it is satisfied, allow any period as its financial year, whether or not that period is a year:

Provided further that a company or body corporate, existing on the commencement of this Act, shall, within a period of two years from such commencement, align its financial year as per the provisions of this clause;

(d) **Net Profit:** “net profit” means the net profit of a company as per its financial statement prepared in accordance with the applicable provisions of the Act, but shall not include the following, namely:-

(i) any profit arising from any overseas branch or branches of the company, whether operated as a separate company or otherwise; and

(ii) any dividend received from other companies in India, which are covered under and complying with the provisions of section 135 of the Act:

Provided that net profit in respect of a financial year for which the relevant financial statements were prepared in accordance with the provisions of the Companies Act, 1956, (1 of 1956) shall not be required to be recalculated in accordance with the provisions of the Act:

Provided further that in case of a foreign company covered under these rules, net profit means the net profit of such company as per profit and loss account prepared in terms of clause (a) of sub-section (1) of section 381 read with section 198 of the Act.

(e) **Net worth:** “net worth” means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation;

(f) **Turnover:** “turnover” means the aggregate value of the realisation of amount made from the sale,

supply or distribution of goods or on account of services rendered, or both, by the company during a financial year;

(g) Spend: The term 'spend' in accounting parlance generally means the liabilities incurred during the relevant accounting period

5. Rule 4 of the Companies (Corporate Social Responsibility Policy) Rules, 2014, requires that the CSR activities that shall be undertaken by the companies for the purpose of Section 135 of the Act shall exclude activities undertaken in pursuance of its 'normal course of businesses. The Rules also specify that CSR projects or programmes or activities that benefit only the employees of the company and their families shall not be considered as CSR activities in accordance with the requirements of the Act. Such programmes or projects or activities, that are carried out as a pre-condition for setting up a business, or as part of a contractual obligation undertaken by the company or in accordance with any other Act, or as a part of the requirement in this regard by the relevant authorities cannot be considered as a CSR activity within the meaning of the Act. Similarly, the requirements under relevant regulations or otherwise prescribed by the concerned regulators as a necessary part of running of the business, would be considered to be the activities undertaken in the 'normal course of business' of the company and, therefore, would not be considered CSR activities.

Recognition and Measurement of CSR Expenditure in Financial Statements

Whether Provision for Unspent Amount required to be created?

6. Section 135 (5) of the Companies Act, 2013, requires that the Board of every eligible company, "shall ensure that the company spends, in every financial year, at least 2% of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy". A proviso to this Section states that "if the company fails to spend such amount, the Board shall, in its report ... specify the reasons for not spending the amount".
7. Further, Rule 8(1) of the Companies (Corporate Social Responsibility Policy) Rules, 2014, prescribes that the Board Report of a company under these Rules shall include an annual report on CSR, containing particulars specified in the Annexure to the said Rules, which provide a Format in this regard.
8. The above provisions of the Act clearly lay down that the expenditure on CSR activities is to be disclosed only in the Board's Report in accordance with the Rules made thereunder. In view of this, no provision for the amount which is not spent, i.e., any shortfall in the amount that was expected to be spent as per the provisions of the Act on CSR activities and the amount actually spent at the end of a reporting period, may be made in the financial statements. The proviso to section 135 (5) of the Act, makes it clear that if the specified amount is not spent by the company during the year, the Directors' Report should disclose the reasons for not spending the amount. However, if a company has already undertaken certain CSR activity for which a liability has been incurred by entering into a contractual obligation, then in accordance with the generally accepted principles of accounting, a provision for the amount representing the extent to which the CSR activity was completed during the year, needs to be recognised in the

financial statements.

9. Where a company spends more than that required under law, a question arises as to whether the excess amount 'spent' can be carried forward to be adjusted against amounts to be spent on CSR activities in future period. Since '2% of average net profit of immediately preceding three years' is the minimum amount which is required to be spent under section 135 (5) of the Act, the excess amount cannot be carried forward for set off against the CSR expenditure required to be spent in future.

Other Considerations in Recognition and Measurement

10. A company may decide to undertake its CSR activities approved by the CSR Committee with a view to discharge its CSR obligation as arising under section 135 of the Act in the following three ways:
 - a) making a contribution to the funds as specified in Schedule VII to the Act; or
 - b) through a registered trust or a registered society or a company established under section 8 of the Act (or section 25 of the Companies Act, 1956) by the company, either singly or along with its holding or subsidiary or associate company or along with any other company or holding or subsidiary or associate company of such other company, or otherwise ; or (c) in any other way in accordance with the Companies (Corporate Social Responsibility Policy) Rules, 2014, e.g. on its own.
11. In case a contribution is made to a fund specified in Schedule VII to the Act, the same would be treated as an expense for the year and charged to the statement of profit and loss. In case the amount is spent in the manner as specified in paragraph 10 (b) above the same will also be treated as expense for the year by charging off to the statement of profit and loss. The accounting for expenditure incurred by the company otherwise e.g. on its own would be accounted for in accordance with the principles of accounting as explained hereinafter.

CSR activities carried out by the company covered under paragraph 10(c)

12. In cases, where an expenditure of revenue nature is incurred on any of the activities mentioned in Schedule VII to the Act by the company on its own, the same should be charged as an expense to the statement of profit and loss. In case the expenditure incurred by the company is of such nature which may give rise to an 'asset', a question may arise as to whether such an 'asset' should be recognised by the company in its balance sheet. In this context, it would be relevant to note the definition of the term 'asset' as per the Framework for Preparation and Presentation of Financial Statements issued by the Institute of Chartered Accountants of India. As per the Framework, an 'asset' is a "resource controlled by an enterprise as a result of past events from which future economic benefits are expected to flow to the enterprise". Hence, in cases where the control of the 'asset' is transferred by the company, e.g., a school building is transferred to a Gram Panchayat for running and maintaining the school, it should not be recognised as 'asset' in its books and such expenditure would need to be charged to the statement of profit and loss as and when incurred. In other cases, where the company retains the control of the 'asset' then it would need to be examined whether any future economic benefits accrue to the company. Invariably future economic benefits from a 'CSR asset' would not flow to the company as any surplus from CSR

cannot be included by the company in business profits in view of Rule 6(2) of the Companies (Corporate Social Responsibility Policy) Rules, 2014.

13. In some cases, a company may supply goods manufactured by it or render services as CSR activities. In such cases, the expenditure incurred should be recognised when the control on the goods manufactured by it is transferred or the allowable services are rendered by the employees. The goods manufactured by the company should be valued in accordance with the principles prescribed in Accounting Standard (AS) 2, Valuation of Inventories. The services rendered should be measured at cost.. Indirect taxes (like excise duty, service tax, VAT or other applicable taxes) on the goods and services so contributed will also form part of the CSR expenditure.
14. Where a company receives a grant from others for carrying out CSR activities, the CSR expenditure should be measured net of the grant.

Recognition of Income Earned from CSR Projects/Programmes or During the Course of Conduct of CSR Activities

15. Rule 6(2) of the Companies (Corporate Social Responsibility Policy) Rules, 2014, requires that “the surplus arising out of the CSR projects or programs or activities shall not form part of the business profit of a company”. The term 'surplus' ordinarily means excess of income over expenditure pertaining to an entity or an activity. Thus, in respect of a CSR project, programme, or activity, it needs to be determined whether any surplus is arising therefrom. A question would arise as to whether such surplus should be recognised in the statement of profit and loss of the company. It may be noted that paragraph 5 of Accounting Standard (AS) 5, Net Profit or Loss for the Period, Prior Period Items and Changes in Accounting Policies, inter alia, requires that all items of income which are recognised in a period should be included in the determination of net profit or loss for the period unless an Accounting Standard requires or permits otherwise. As to whether the surplus from CSR activities can be considered as 'income', the Framework for Preparation and Presentation of Financial Statements issued by the Institute of Chartered Accountants of India, defines 'income' as “increase in economic benefits during the accounting period in the form of inflows or enhancements of assets or decreases of liabilities that result in increases in equity, other than those relating to contributions from equity participants”. Since the surplus arising from CSR activities is not arising from a transaction with the owners, it would be considered as 'income' for accounting purposes.
16. In view of the aforesaid requirement any surplus arising out of CSR project or programme or activities shall be recognised in the statement of profit and loss and since this surplus cannot be a part of business profits of the company, the same should immediately be recognised as liability for CSR expenditure in the balance sheet and recognised as a charge to the statement of profit and loss. Accordingly, such surplus would not form part of the minimum 2% of the average net profits of the company made during the three immediately preceding financial years in pursuance of its Corporate Social Responsibility Policy.

Presentation and Disclosure in Financial Statements

17. Item 5 (A)(k) of the General Instructions for Preparation of Statement of Profit and Loss under Schedule III to the Companies Act, 2013, requires that in case of companies covered under Section 135, the amount of expenditure incurred on 'Corporate Social Responsibility Activities' shall be disclosed by way of a note to the statement of profit and loss. . From the perspective of better financial reporting and in line with the requirements of Schedule III in this regard, it is recommended that all expenditure on CSR activities, that qualify to be recognised as expense in accordance with paragraphs 10-14 above should be recognised as a separate line item as 'CSR expenditure' in the statement of profit and loss. Further, the relevant note should disclose the break-up of various heads of expenses included in the line item 'CSR expenditure'.

18. The notes to accounts relating to CSR expenditure should also contain the following:

- a) Gross amount required to be spent by the company during the year.
- b) Amount spent during the year on:

	Particulars	In cash	Yet to be paid in cash	Total
(i)	Construction/acquisition of any asset			
(ii)	On purposes other than (i) above			

The above disclosure, to the extent relevant, may also be made in the notes to the cash flow statement, where applicable.

- c) Details of related party transactions, e.g., contribution to a trust controlled by the company in relation to CSR expenditure as per Accounting Standard (AS) 18, Related Party Disclosures.
- d) Where a provision is made in accordance with paragraph 8 above the same should be presented as per the requirements of Schedule III to the Companies Act, 2013. Further, movements in the provision during the year should be shown separately.



Financial Management Service Foundation

"ACCOUNTABILITY HOUSE", A-5, Sector-26, NOIDA 201301

Tel: 00-91-120-4773200, Fax: 00-91-120-4773227

E-mail: fmsf@fmsfindia.org; Website: www.fmsfindia.org