

# INTERface



Vol. XV

Annual Issue

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## Highlights:

- NGOs having activity outside India
- Filing of Returns and Allied Compliance under Income Tax
- Accounting Treatment of Project Grants
- CSR Provisions under Section 135

and many more.....

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## *Between Us ....*

### Contentment

A crow lived in the forest and was absolutely satisfied in life. But one day he saw a swan. "This swan is so white," he thought, "and I am so black. This swan must be the happiest bird in the world." He expressed his thoughts to the swan. "Actually," the swan replied, "I was feeling that I was the happiest bird around until I saw a parrot, which has two colors. I now think the parrot is the happiest bird in creation." The crow then approached the parrot. The parrot explained, "I lived a very happy life until I saw a peacock. I have only two colors, but the peacock has multiple colors."

The crow then visited a peacock in the zoo and saw that hundreds of people had gathered to see him. After the people had left, the crow approached the peacock. "Dear peacock," the crow said, "you are so beautiful. Every day thousands of people come to see you. When people see me, they immediately shoo me away. I think you are the happiest bird on the planet."

The peacock replied, "I always thought that I was the most beautiful and happy bird on the planet. But because of my beauty, I am entrapped in this zoo. I have examined the zoo very carefully, and I have realized that the crow is the only bird not kept in a cage. So for past few days I have been thinking that if I were a crow, I could happily roam everywhere."

Many times we also have the same problem. We make unnecessary comparison with others. It brings sadness since we see only one dimension. We don't value what we have received from God. This all leads to unhappiness. We should learn to be happy in what we have instead of looking at what we don't have. Person who is satisfied with what he/she has is the happiest person in the world.



Saijay Babu



## Acknowledgment

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

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# I. Legal Section

**Budget 2016 far reaching Implications on Cancellation of 12AA Registration**

**FCRA no longer applicable to Companies with Foreign Shareholding**

**Overview of the Recent Amendments in FCRA Law**

**Amended Procedure for renewal of FCRA Registration**

**Online Filing of Annual Return under FCRA**

**How to prepare statement of Income and Accumulation**

**What is “Substantially Financed by Government”**

**Filing of returns and Allied Compliance under Income Tax**

**NGOs having activity outside India**



# BUDGET 2016 FAR REACHING IMPLICATIONS ON CANCELLATION OF 12AA REGISTRATION

## 1. INTRODUCTION

**1.1** The Finance Bill 2016 has added a new Chapter XII-EB "SPECIAL PROVISIONS RELATING TO TAX ON ACCRETED INCOME OF CERTAIN TRUSTS & INSTITUTIONS". The proposed law will have far reaching implications on the following:

- (i) Cancellation of 12AA Registration
- (ii) Dissolution of Society, Trust or Company
- (iii) Conversion of a Exempt entity into a Non Exempt entity

The proposed sections 115TD, 115TE & 115TF provide for taxation of 'accreted income' (the fair market value of the assets minus liabilities) at the maximum marginal rates.

## 2. OVERVIEW OF THE PROPOSED AMENDMENTS

**2.1** The Finance Bill 2016 has added new sections 115TD, 115TE & 115TF which propose to tax the 'accreted income' of an organization registered under section 12AA of the Income Tax Act. The summary of the proposed amendments is as under:

- The accreted income of an

organization shall be subjected to tax at the maximum marginal rates under three circumstances:

- (i) If the organization gets converted into any form which is not eligible under section 12AA
- (ii) If the organization gets merged into any entity which is not eligible under section 12AA
- (iii) If the organization, in case of dissolution, fails to transfer its assets to exempt entities under section 12AA & section 10(23C) (iv), (v), (vi) & (via).

- Further under the following circumstances the entity will be deemed to be have been converted into a non exempt entity:

- (i) If the registration of the organization under section 12AA is cancelled
- (ii) If the objects of the organization are amended in violation of the conditions of the registration and a fresh application under section 12AA is not made.
- (iii) If the objects of organization are amended in violation of the conditions of the registration and a fresh application under section 12AA is made and rejected.

- The income of the organization for that year and the accreted income shall be subjected to tax at the maximum

marginal rate. Once the tax is charged under this section, no other provision of tax shall apply.

- The 'accreted income' shall be the fair market value of the assets minus liabilities on the specified date. The method of valuation of fair market value may be prescribed through appropriate rules.
- The tax shall be payable within 14 days of (i) receipt of cancellation order (ii) end of the previous year in which object clause were modified (iii) receipt of cancellation order against any fresh application for 12AA registration (iv) date of merger (v) at the end of 12 months from the month in which dissolution has taken place.
- In case of delay in payment of tax interest @ 1% per month shall be charged.
- In case of non- payment of taxes the provisions of collection and recovery shall apply accordingly.
- The total recovery of taxes, interest or penalties should not exceed the value of the assets.

### 3. FUNDAMENTAL & PRIMA FACIE ISSUES

#### 3.1 The following fundamental & prima facie issues have been noticed:

- (i) The amendments propose to tax the market value of the net worth of the organization without factoring many fundamental issues. The assets created out of otherwise exempted income should not have been taxed. For example, why should the organization pay tax for assets created out of dividend or agricultural income which are exempted for all. The implication

of this provision should have been confined only to the income against which exemptions under section 11 were claimed and assets thereof.

- (ii) It is important to underline the fact that the mandate of Income Tax Act is confined to taxing 'income' only. It cannot tax assets held as legal obligations. A charitable organization may hold assets as legal obligations which are not reflected as liabilities and such obligations cannot be taxed and therefore the terms of transfer of assets cannot be ignored.
- (iii) This provision applies only to organizations registered under section 12AA, therefore all organizations registered under section 10(23C)(iv), (v), (vi) & (via) shall not be covered under this provision. Such provision probably is in violation of Article 14 of the Constitution since differential treatment is proposed for organization registered under section 12AA and others registered under section 10(23C)(iv), (v), (vi) & (via).
- (iv) This amendment will have **retrospective implications** in some cases. For example a charitable organization in existence since independence having created all its assets prior to 01.04.1973 out of voluntary contribution should not be subjected to this provision as voluntary contribution was an exempted income prior to 01.04.1973. In other words, prior to 01.04.1973 voluntary contribution was not considered as income at all.
- (v) As per this provision, the entire corpus and capital assets shall be

subjected to tax, which is against the Judicial precedence where it has been held that corpus donation would be an exempted income even for organizations not registered under section 12AA.

- (vi) There is a presumption that if an organization has not paid any taxes in the past, then all its accreted income is subject to tax. There are many provisions under which charitable organizations are required to pay taxes. For example:
- a) Anonymous under section 115BBC
  - b) Business activity under section 11(4A)
  - c) Tax for violation in investment beyond section 11(5)
  - d) Tax for forfeiture of exemption under section 13(8)
  - e) Tax for forfeiture of exemption for providing benefit to Trustees and Board Members under section 13(1), (2), (3) etc.

Any asset created out of the above incomes will result in double taxation.

- (vii) Similarly many organizations take 12AA registration after many years of paying taxes. In the past, prior to Finance Act 2014, there was no provision for condonation of delay in applying for 12AA registration and organization had to pay taxes. For those organizations also, it is unfair to tax the accreted income.
- (viii) The corpus of an organization is normally funded through tax money of the founders and therefore such contributions are always exempted. If the proposed amendment becomes a law, then all such

corpus will also be subjected to tax.

#### **4. THE BACKGROUND BEHIND THIS AMENDMENT**

**4.1** One possible reason for such amendment could be the litigation between the Income Tax Department and *Escorts Heart Institute and Research Centre (EHIRC)*. *EHIRC* had transferred its assets to Fortis Healthcare of Rs. 585 crore by converting the charitable organization into a Commercial Company. The matter is still sub *judice*.

**4.2** The law pertaining to conversion of charitable organization into commercial organization is very obscure in our country. There was an apprehension that the properties of charitable organizations might be usurped by unscrupulous promoters through its conversion into a commercial organization. Under the prevailing law, on conversion at most the income of past few years could be taxed. The assessing officer is empowered to reopen the assessments of few years only. The proposed amendments attempt to address such anomalies in a confused manner.

#### **5. THE ASSUMPTION OF CONVERSION INTO COMMERCIAL ENTITY ITSELF IS QUESTIONABLE**

**5.1** This amendment will open up a Pandora's Box with regard to the nature of Societies, Trust and Companies. The proposed amendments assume that a charitable organization is entitled to convert itself into a commercial entity;

**a charitable organization normally cannot convert itself into a commercial entity unless it has survived only on the conditional capital contribution of the promoters which is not permissible under current law.** A trust under the Indian law, in any case, is irrevocable and therefore all its properties are set aside irrevocably for public charitable/religious purposes. Therefore unless there is a revocable trust (which cannot get 12AA registration) there is no question of converting it into a commercial entity. However, one needs to study the constitution and law of Societies and Companies where further complexities have been created by the Companies Act 2013.

## **6. CONVERSION ALLOWED UNDER COMPANIES ACT 2013**

**6.1** The Rules 21 and 22 of the Companies (Incorporation) Rules 2014 allow conversion of a section 8 company (a charitable company) into a commercial company. It is difficult to understand how a charitable organization under any law can be converted into a commercial entity. A charitable organization is essentially a Trustee on behalf of public at large. It may be noted that a Trustee is a mere executant and does not have the power to make any constitutional changes. Once funds are set aside for public charitable or religious purposes they cannot revert back to commercial purposes. The voluntary contributions collected from public at large are specifically for public charitable purposes and nobody has the right to change the purpose at any time in future.

**6.2** Therefore, if conversion is allowed under Companies Act 2013 then it only implies that the section 8 company will extinguish all its assets and income for public charitable purposes and there upon it can be converted into a commercial entity.

**6.3** Prior to the enactment of Income Tax Act 1961 mixed and joint trust were permissible i.e. the property of the trust can be used for both commercial and charitable purposes and exemptions could be claimed for the charitable portion. Such trusts are no longer permissible.

**6.4** It can be legally debated whether a trust can be formed with the condition that the property of the trust can be used for charitable purposes for x number of years and at the end of the period the property will go back to the settler. Legally there is no bar in creating a trust where the property is not given but income from property is given for a specified period. But probably Income Tax registration under section 12AA will be questioned. Further, even if registration under section 12AA is provided there is no reason why the initial property granted by the settler be taxed on cancellation.

## **7. IT WILL INCREASE LITIGATIONS AND CONTROVERSIES**

**7.1** The proposed amendments provide unfettered powers to the assessing officer to raise huge tax demands in case of cancellation under section 12AA(3). This provision should not have been linked with cancellation under section

12AA (3) as against all cancellation the department can raise huge tax demands and create hardship to the assesses. There are old organizations where the income may not be considerable but the market value of properties may be astronomical. In such cases raising huge demands based on cancellation under 12AA(3), may not be advisable. This provision should have been confined only to conversion into a commercial entity. In case of cancellation under section 12AA(3), the assets do not necessarily cease to be for public charitable or religious purposes. This is an untenable assumption that cancellation of 12AA(3) results in a commercial entity.

- Assets held in fiduciary capacity as legal obligations shall be subjected to the embedded obligations attached, therefore necessary clarity should be provided.
- The deeming provision by virtue of which all cancellation under section 12AA(3) are implicated under this provision is too harsh and unfair, particularly when the cancellation is made on frivolous or technical reasons.
- This provision should also be linked to organization registered under section 10(23C)(iv), (v), (vi) & (via) otherwise any organization will be motivated to get an approval under these sections before conversion. It will only encourage misuse of provisions.

## 8. CONCLUDING REMARKS

**8.1** These proposed amendments could have been handled with better application of mind on the part of the law makers. We continue to suffer from complex and controversial provisions which keep on coming in the name of rationalization and simplification.

**8.3** To sum up, the proposed amendments are a poor execution of an apprehension misunderstood.

**8.2** The following amendments or provisos are needed to make some sense out of the proposed changes:

- The taxation should be confined only to the extent of the income against which exemption were claimed.
- Assets created out of corpus donations and settler's contribution should be kept out of the implications of such provisions.

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# FCRA NO LONGER APPLICABLE TO COMPANIES WITH FOREIGN SHAREHOLDING

## 1. INTRODUCTION

**1.1** The Finance Bill 2016 has proposed radical changes to the Foreign Contribution (Regulation) Act, 2010. It has amended section 2(1)(j)(vi) to exclude Indian Companies with foreign shareholding in excess of 50%. It may be noted that prior to this amendment all Indian Companies with more than 50% shareholding by foreigners were treated as foreign source and FCRA law was applicable.

**1.2** Ironically under this law Indian companies like ICICI Bank or Infosys were not entitled to give donations even to their own foundations without FCRA prior permission or registration.

## 2. PROPOSED AMENDMENTS

**2.1** The Part xiii to the Finance Bill 2016 has proposed the following amendments:

### **AMENDMENT TO THE FOREIGN CONTRIBUTION (REGULATION) ACT, 2010**

In the Foreign Contribution (Regulation) Act, 2010, in section 2, in sub-section (1), in clause (j), in sub-clause (vi), the following proviso shall be inserted and shall be deemed to have been inserted with effect from the 26th September,

2010, namely:—

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

**2.2** By virtue of this amendment FCRA law will not apply even if the nominal value of share capital of a company held by foreigners exceeds 50 per cent at the time of making contributions provided the foreign investment is within the limit specified under the Foreign Exchange Management Act, 1999 or the rules or regulations made there under.

**2.3** Therefore for all practical purposes, Indian Companies where more than 50 percent of shareholding is by a foreign source will be exempted from definition of “Foreign Source” as all Indian Companies have to comply with the limits set by FEMA for foreign investment.

### **3. RETROSPECTIVE DATE OF APPLICABILITY AND CONDONATION**

**3.1** The amended law shall be applicable with retrospective effect from 26th September, 2010. In other words, all donations/ grant given by such companies since 26th September, 2010 in violation of FCRA will be condoned. There were many companies who had violated the FCRA Law by providing grant to various Indian Organizations without FCRA registration or prior permission. This amendment will provide a great relief to such companies as well as NGOs.

### **4. MEANING OF 'FOREIGN SOURCE' UNDER FCRA**

**4.1** Unlike the term 'foreign contribution' which has been defined specifically, the term 'foreign source' is given only an inclusive definition in FCRA. The statutory definition of 'foreign source' as per section 2(1)(j) of FCRA, 2010 after incorporating the amended proviso is as follows :

- (j) "foreign source" includes, —
- (i) the Government of any foreign country or territory and any agency of such Government;
  - (ii) any international agency, not being the United Nations or any of its specialised agencies, the World Bank, International Monetary Fund or such other agency as the Central Government may, by notification, specify in this behalf;
  - (iii) a foreign company;
  - (iv) a corporation, not being a foreign company, incorporated in a foreign country or territory;
  - (v) a multi-national corporation

referred to in sub-clause (iv) of clause (g);

(vi) a company within the meaning of the Companies Act, 1956, and more than one-half of the nominal value of its share capital is held, either singly or in the aggregate, by one or more of the following, namely:—

- (A) the Government of a foreign country or territory;
- (B) the citizens of a foreign country or territory;
- (C) corporations incorporated in a foreign country or territory;
- (D) trusts, societies or other associations of individuals (whether incorporated or not), formed or registered in a foreign country or territory;
- (E) foreign company;

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

- (vii) a trade union in any foreign country or territory, whether or not registered in such foreign country or territory;
- (viii) a foreign trust or a foreign foundation, by whatever name called, or such trust or foundation mainly financed by a foreign country or territory;
- (ix) a society, club or other association



of individuals formed or registered outside India;

(x) a citizen of a foreign country.”

**4.2** As is evident, the term “foreign source” has not been defined exhaustively. The Act has given an inclusive definition of the term ‘foreign source’ and that includes the sources mentioned in clauses (i) to (x). It may be noted that under clause (vi) above, a foreign source includes an Indian company if more than 50% of its share capital is held by persons covered under foreign source. However, by virtue of Finance Bill 2016 this clause shall not be applicable to those companies whose foreign shareholding is within the limits specified for foreign investment under the Foreign Exchange Management Act, 1999.

## **5. CONCLUDING REMARKS**

**5.1** This amendment is a much needed correction of an anomaly which were existing by mistake in the FCRA Act. The Act when it was amended in 2010 consciously changed the definition of a foreign company with the intent to exclude all Indian companies with more than 50% foreign shareholding. It may be noted that in the FCRA Act 1976 the definition of a foreign company included all Indian companies with more than 50% foreign shareholding.

**5.2** However, probably by oversight the definition of foreign source was not amended and due to such partial amendment, the FCRA law technically continued to apply to all Indian companies with more than 50% foreign shareholding.

**5.3** It is a positive change and it will provide an opportunity to all charitable organizations (including those without FC registration) to access corporate grants and CSR funds. Many of the larger corporates of India have more than 50% foreign shareholding and they were compelled to work with FC registration organizations only. FC registered organizations constitute a small portion of the NPOs sector, therefore this amendment will promote wider and greater reach of corporate grants to NPOs.

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# OVERVIEW OF THE RECENT AMENDMENTS IN FCRA LAW

## 1. INTRODUCTION

**1.1** Recently there has been far reaching changes in the law and procedure pertaining to Foreign Contributions under the Foreign Contribution (Regulation) Act 2010 (FCRA). The Government of India, Ministry of Home Affairs has notified major amendments to the Foreign Contribution (Regulation) Rules 2011 (FCRR). By virtue of the notification dt. 14.12.2015 the amended rules shall be known as Foreign Contribution (Regulation) Rules 2015. The notification and the amendments are provided in **Annexure 1**. In the following paras, a summary of the amendments made by the new rules has been provided.

## 2. SINGLE FORM FOR REGISTRATION, PRIOR PERMISSION & RENEWAL

**2.1** The application form for applying for registration, prior permission and renewal has been merged together. A new Form FC-3 has been provided for all the above three processes. It may be noted that the Form FC-3 earlier was used only for applying for registration; Form FC-4 earlier was used for applying for prior permission and Form FC-5 for the purposes of renewal.

**2.2** With effect from 14.12.2015 all submissions have become online. In other words, there is no requirement of sending hard copies to the FCRA department. Earlier some forms were required to be filed online followed by hard copies and some forms were filed in hard copies only. Now onwards all forms have to be submitted online with no provision for sending hard copies.

**2.3** The applications are required to be digitally signed or the scanned signatures and the seal of the organisation can also be uploaded.

**2.4** All payments can be made online electronically through payment gateway as may be specified by the Central Government.

## 3. LIST OF NEW FORMS

**3.1** The list of new forms and their purposes is provided as under:

**Form FC-1** Intimation for gift received from relative by an individual or FC received by candidates for election (**Annexure 2**)

**Form FC-2** Prior permission to accept Foreign Hospitality (**Annexure 3**)

**Form FC-3** Application for Registration/  
Prior Permission/ Renewal

**Form FC-4** Annual Return

**Form FC-5** Transfer to unregistered  
Organisations/Persons

**Form FC-6** For intimation to the Central  
Govt. regarding change of  
designated bank account,  
utilization account, name/  
address/aims/objectives/  
key members

#### **4. COMPULSORY ANNUAL UPLOADING OF FINANCIAL INFORMATION WITHOUT ANY FINANCIAL LIMIT**

**4.1** All persons / organisations who have been granted registration or prior permission shall have to upload their financial information on their website or on the website as may be specified by the Central Government. It may be noted that earlier, only those organisations, who had received more than One Crore Rupees in a year were required to upload the financial information in public domain. After the amended law all organisations without any financial limit shall have to upload financial information in public domain.

**4.2** The financial information shall include Receipt & Payment Account, Income & Expenditure Account and Balance Sheet. Such information shall have to be uploaded within 9 months of the closure of the financial year.

**4.3** For the organisations having receipt of more than one Crore Rupees. during the financial year 2014-15 and have

not uploaded the information by 14th December, 2015, shall have to upload the financial information as mentioned herein above and the last date for uploading remained is 31st December, 2015. It is to be noted that though the last date of submission of Annual Return for the year 2014-15 has been extended to 15th March, 2016 but no such extension is given for uploading the financial information.

#### **5. COMPULSORY QUARTERLY UPLOADING OF GRANT INFORMATION WITHOUT ANY FINANCIAL LIMIT**

**5.1** Further, on quarterly basis all persons/ organisations who have been granted registration or prior permission shall have to upload their financial information pertaining to the donor and the detail of grants received. Such information should be uploaded on their website or on the website as may be specified by the Central Government. It may be noted that the amended rule does not provide any relaxation to smaller NGOs.

**5.2** After the amended law all organisations without any financial limit shall have to upload financial information in website. The information to be uploaded includes:

- (i) Detail of the donors
- (ii) Amount received
- (iii) The date of receipt

The information should be uploaded within 15 days following the last day of the quarter in which the funds were received.

**5.3** It may be noted that all the organisations have to upload 1st quarter financial information ( i.e for the period from October,15 to December,15) by 15th of January, 2016.

## **6. BANKS TO REPORT WITHIN 48 HOURS TO CENTRAL GOVERNMENT**

**6.1** The banks shall report to the Central Government within forty-eight hours any transaction in respect of receipt or utilisation of any foreign contribution by any person whether or not such person is registered or granted prior permission under the Act.

**6.2** It may be noted that the banks are required to report all kinds of FC funds received irrespective of the fact, whether the recipient organisation is registered under FCRA or not. In other words it shall be the responsibility of the bank to act as a watchdog to the Central Government and report all such foreign contribution which have been received without prior permission or registration, in addition to the foreign contribution received by registered organisations or through prior permission.

## **7. THE ANNUAL RETURN FORM HAS BEEN CHANGED TO FC-4**

**7.1** Annual Return shall be filed in Form FC-4 and not FC-6. There is no requirement to sent the hard copies of the Form and the financial statements. The organisation has to upload scanned copies of Receipt & Payment Account, Income & Expenditure Account and

Balance Sheet. The Form FC-4 have to be filed within 9 months of the closure of the Financial Year, i.e. before 31st December.

**7.2** All organisations who have successfully filed form FC-6 on or before 14th December 2015 for the year 2014-15, are not required to file in the new form FC-4. **However, all organisations who have not filed form FC-6 on or before 14th December 2015 for the year 2014-15, are required to file in the new form FC-4.** It may further be noted that those who file in Form FC-4 are not required to send hard copies to the FCRA Department. The last date for filing the annual return for the year 2014-15 in the new Form FC-4 has been extended to 15th March 2016.

## **8. NO SEPARATE FORM FOR FOREIGN ARTICLES OR SECURITIES**

**8.1** The Form FC-7 & FC-8 which were for Foreign Articles and Foreign Securities respectively have been deleted. Now onwards if an organisation receives any Foreign Article and/or Foreign Security then it has to separately file Form FC-1. There is no need to file nil Form FC-1 if the organisation has not received any Foreign Articles and Foreign Security.

**8.2** It may be noted that if any organisation has received Foreign Article or Foreign Security and has not submitted the return by 14th December, 2015, then they have to submit FC-1 within 31st December, 2015 and there is no extension of submission for intimation in FC-1 for receipt of any Foreign Article/ Foreign Security.

## **9. ORGANISATIONS FILING NIL RETURN NEED NOT SUBMIT FINANCIAL STATEMENTS**

**9.1** Those organisations who have not received/utilized any Foreign Contribution are also required to file nil returns in Form FC-4. However, such organisations where foreign contribution has not been received or utilised during a financial year, it shall not be required to enclose:

- Certificate from Chartered Accountant
- Income and Expenditure Statement
- Receipt and Payment Account
- Balance Sheet

In other words only a nil Form FC-4 is required to be filed.

**9.2** It may further be noted that the above exemptions shall not be available even if there is some utilisation of foreign funds without receiving any foreign contribution during the year. In other words, both receipt and utilisation should be nil during the previous year.

## **10. NO APPROVAL REQUIRED FOR CHANGE IN DESIGNATED BANK ACCOUNT**

**10.1** The new rule allows change of designated Bank Account. It may be noted that earlier, for change in designated Bank Account, prior approval of the FCRA Department was necessary.

**10.2** Now onwards such change can be made without permission and only an intimation is required to be filed electronically online in Form FC-6 within 15 days of such change.

## **11. NO APPROVAL REQUIRED FOR MORE THAN 50% CHANGE IN BOARD MEMBERS**

**11.1** The new rule allows change of Board Members or Key Personnel without prior approval. It may be noted that earlier, in certain cases, for change of more than 50% in the Board or the Governing Body, prior approval of the FCRA Department was necessary. The change of 50% shall be considered from the list of Board members submitted at the time of application for FC registration or prior permission.

**11.2** Now onwards such change can be made without permission and only intimation is required to be filed electronically online in Form FC-6 within 15 days of such change.

## **12. NO APPROVAL REQUIRED FOR CHANGE IN AIMS AND OBJECTIVES**

**12.1** The new rule allows change in Aims and Objectives of the organisation without prior approval. It may be noted that earlier, for change in the Aims and Objectives of the organisation, prior approval of the FCRA Department was necessary. It is implied that the change of objectives should be within the broader objects approved by the FCRA Department at the time of registration. For instance, a charitable organization cannot become religious organisation without prior approval of the authorities. Or an organisation cannot take up prohibited/restricted objectives, for example, doing activity of political nature, without approval of the authorities.

**12.2** Now onwards such permissible change can be made without prior approval and only intimation is required to be filed electronically online in Form FC-6 within 15 days of such change.

**13.3** Now onwards such change can be made without permission and only an intimation is required to be filed electronically online in Form FC-6 within 15 days of such change.

**13. NO APPROVAL REQUIRED FOR CHANGE IN ADDRESS WITHIN THE STATE**

**14. FILING OF RENEWAL IN FORM FC-3**

**13.1** The new rule allows change in the address of the organisation within the State. It may be noted that earlier, for change in the address of the organisation, intimation was required to be sent to the FCRA Department.

**14.1** The renewal application has to be again made by all the organisations including those who have already applied in the old Form FC-5. All organisations have to file the renewal application by 30th June 2016, electronically in Form FC-3 at the website - <https://fcraonline.nic.in>.

**13.2** It may be noted that, earlier also such change was permissible without any prior approval; only an intimation was required to be sent. However, earlier whenever a change between District or State happened there was normally a requirement to file a fresh application for registration.

On 29 th March 2016, Ministry of Home Affairs again a circular regarding validity and renewal of registration under FCRA 2010, wherein the last date for applying for renewal of registration was extended to 30 th June, 2016. See **Annexure 8**.

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**[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II,  
SECTION 3, SUB-SECTION (i)]**

**GOVERNMENT OF INDIA  
MINISTRY OF HOME AFFAIRS**

**New Delhi, the 14.12.2015**

**NOTIFICATION**

G.S.R. (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. i. These rules may be called the Foreign Contribution (Regulation) Amendment Rules, 2015.
- ii. They shall come into force on the date of their publication in the Official Gazette.
2. In the Foreign Contribution (Regulation) Rules, 2011 (hereinafter referred to as the principal rules), -

(i) in rule 9.-

(a) in sub-rule(1).-

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

A. “(a) An application for registration, or an application for obtaining prior permission by a person under section 11, for acceptance of foreign contribution, shall be made electronically online in Form FC-3.

B. for clauses (b) and (c), the following clause shall be substituted, namely :-

“(b) The applicant shall upload the signed or digitally signed application along with scanned documents as specified by the Central Government from time to time”:

C. in clause (e), for the words “on plain paper”, the words “electronically online in form FC-6” shall be substituted;

(b) in sub-rule (2), -

A. clauses (a), (b) and (c) shall be omitted;

B. in clauses (e), for the words “on plain paper “, the words “electronically online in form FC-6” shall be substituted;

C. in sub-rule (4), in clause(d), the following words shall be inserted at the end, namely :- “or through online electronic payment gateway as specified by the Central Government”;

(ii) in rule 12, –

- (a) in sub-rule (2), for the letters and figure “FC-5”, the letters and figure “FC-3” shall be substituted;
- (b) sub-rule (3) shall be omitted;
- (c) in sub-rule (5), the following words shall be inserted in the end, namely:-  
“or through on line electronic payment gateway as specified by the Central Government”;

(iii) for rule 13, the following rule shall be substituted, namely:-

**“13. Declaration of receipt of foreign contribution.-**

- a) A person who has been granted a certificate of registration or prior permission shall place the audited statement of accounts on receipts and utilisation of the foreign contribution, including income and expenditure statement, receipt and payment account and balance sheet for every financial year beginning on the first day of April within nine months of the closure of the financial year on its official website or on the website as specified by the Central Government
- b) A person receiving foreign contribution in a quarter of the financial year shall place details of foreign contribution received on its official website or on the website as specified by the Central Government within fifteen days following the last day of the quarter in which it has been received clearly indicating the details of donors, amount received and date of receipt.”

(iv) for rule 16, the following rule shall be substituted, namely:-

**“16. Reporting by banks of receipt of foreign contribution.-**

The bank shall report to the Central Government within forty-eight hours any transaction in respect of receipt or utilisation of any foreign contribution by any person whether or not such person is registered or granted prior permission under the Act.”;

(v) in rule 17, -

- (a) for sub-rule (1), the following sub-rule shall be substituted, namely:-  
“(1) Every person who receives foreign contribution under the Act, shall submit a signed or digitally signed report electronically on line in Form FC-4 with scanned copies of income and expenditure statement, receipt and payment account and balance sheet for every financial year beginning on the 1st day of April within nine months of the closure of the financial year.”;
- (b) in sub-rule (2), for the letters and figure “FC-6”, the letters and figure “FC-4” shall be substituted;
- (c) in sub-rule (3), for the letters and figure “FC-7”, the letters and figure “FC-1” shall be substituted;
- (d) in sub-rule (4), for the letters and figure “FC-8”, the letters and figure “FC- 1” shall be

substituted;

(e) in sub-rule (6), for the letters and figure "FC-7", the letters and figure "FC-4" shall be substituted;

(f) in sub-rule (8), the following proviso shall be inserted, namely:-

"Provided that where foreign contribution has not been received or utilised during a financial year, it shall not be required to enclose certificate from Chartered Accountant or income and expenditure statement or receipt and payment account or balance sheet with Form FC-4.";

(vi) after rule 17, the following rule shall be inserted, namely'-

**"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.";

(vii) in rule 18. for the letters and figure "FC-9", the letters and figure "FC-1" shall be substituted;

(viii) in rule 24,-

- (a) in sub-rule(1), for the letters and figure "FC-10", the letters and figure "FC-5" shall be substituted;
- (b) in sub-rule (4), for the letters and figure "FC-6", the letters and figure "FC-4" shall be substituted;

(ix) for Forms FC-1to FC-10, the following Forms shall be substituted namely;

\*\*\*\*\*



**FORM FC-1**

[See rule 6, 17 and 18]

**The Secretary to the Government of India,  
Ministry of Home Affairs,  
Foreigners Division (FCRA Wing)  
NDCC-II Building, Jai Singh Road  
New Delhi – 110001**

**Subject:** Intimation to the Central Government of receipt of foreign contribution by way of gift from relative by an individual / Foreign Contribution in the form of Articles/ Securities/ by a candidate for Election [section 21 of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010):

Sir,

I, ..... as an individual/ association/ company registered under Companies Act 1956/ Companies Act 2013, hereby gives intimation of

Receipt of foreign contribution by way of gift from relative	Yes/ No
Foreign Contribution (Articles) Account	Yes/ No
Foreign Contribution (Securities) Account	Yes/ No
Receipt of foreign contribution by a candidate for Election	Yes/ No

**Part A**

(To be filled by applicant giving intimation of receipt of foreign contribution by way of gift from relative)

1. Name of the recipient in full (in block letters):
2. Date of birth:
3. Name of Father/Spouse:
4. Contact details of the recipient
  - (a) Address:
  - (b) Telephone and mobile number with STD code
  - (c) e-mail address
5. Permanent Account Number (PAN) of the recipient in India:
6. Amount of foreign contribution received, if it exceeds Rs. 1 lakh or equivalent in a financial year:
7. Number of the Bank Draft or telegraphic transfer or other communication including the Bank Details:
8. Details of the relative
  - (a) Name:
  - (b) Nationality
  - (c) Country of residence
  - (d) e-mail address

- (e) Passport Number  
(f) Relationship with the recipient

### DECLARATION

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

Place:

Date:

Signature of the applicant  
(Name, in block letters)

### Part B

(To be filled by applicant giving intimation about Foreign Contribution (Articles) Account/ Foreign Contribution (Securities) Account)

#### 1. Details of the applicant:

- (i) Name in full:  
(ii) Contact Details:  
    (a) Address  
    (b) Official Telephone No.(with STD code):  
    (c) Official e-Mail address  
(iii) FCRA Registration/Prior Permission number and date, if any  
(iv) PAN (Permanent Account Number) of the Association:

#### 2. Details of articles

Date	Name of article (s)	Description	Name and address of the person from whom received	Purpose	Quantity	Approximate value (Rs.)	Mode of Utilisation/ Disposal (if disposed to whom)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)

#### 3. Details of securities

Date	Nature of security received	Name and address of the person from whom received	Nominal value (Rs.)	Market value (Rs.)	Reserve bank of India permission details	Mode of Utilisation/ Disposal (if disposed to whom)
(1)	(2)	(3)	(4)	(5)	(6)	(7)

### DECLARATION

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

Place:

Date:

Signature of the Applicant  
(Name of the applicant in block letters)  
Official Seal

### Part C

(To be filled for giving intimation to the Central Government of Receipt of Foreign Contribution received by a candidate for Election [section 21 of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010)])

1. Name in full:
2. Date of birth:
3. Name of father/spouse:
4. Contact details
  - (a) Address:
  - (b) e-mail address
  - (c) telephone and mobile number (with STD code)
5. Date on which duly nominated as a candidate for election to a Legislature and particulars of Legislature: (See section 21 of the Act)
6. Details of foreign contribution received within one hundred and eighty days immediately preceding the date on which duly nominated as a candidate for election

Foreign contribution received as cash/ article/ securities	Value (Rs.)	Purpose	Donor name, address and email address	Individual Donor nationality	Relationship with donor	Utilisation details
(1)	(2)	(3)	(4)	(5)	(6)	(7)

### DECLARATION

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

Place:

Date:

Signature of the candidate  
(Name, in block letters)

**FORM FC-2**

[See rule 7(1)]

**The Secretary to the Government of India,  
Ministry of Home Affairs,  
Foreigners Division (FCRA Wing)  
NDCC-II Building, Jai Singh Road  
New Delhi – 110001**

**Subject:** Application for seeking prior permission of the Central Government to accept foreign hospitality.

**[Note:** 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.]

1. Name in full:
2. Date of Birth:
3. Name of father/husband:
4. Contact details:
  - (a) Address:
  - (b) Telephone and mobile number with STD code:
  - (c) e-mail address
5. Passport particulars (if already in possession):
6. Status: - (a) Member of Legislature (b) Office bearer of a political party (c) Judge of Supreme Court/High Court (d) Government servant (e) Employee of a Corporation or any other Body owned or controlled by Govt
7. Details of hospitality proposed to be availed

Names of cities/ countries for which hospitality is to be accepted	Duration of stay From/ To	Purpose of visit	Nature of hospitality to be accepted		Duration of hospitality to be accepted on hospitality (Rs.)	Approximate expenditure to be incurred	Remarks
			In Cash	In Kind			
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)

8. Particulars of host(s): -

Nature of Host – I individual / Organization	Full name	Nationality / Passport Number	Profession	Address	E-mail address	Fixed line telephone number (with code); Mobile Number
(1)	(2)	(3)	(4)	(5)	(6)	(7)

9. Nature of connection/relationship with the host and/or foreign source extending the hospitality:
10. Letter from the host regarding the details of hospitality to be extended and Recommendation Letter from the organisation to which the applicant belongs are to be enclosed.

### **DECLARATION**

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

Place:

Date:

Signature of the applicant  
(Name, in block letters)

**FORM FC - 3**

[See rule 9 (1) (a) / rule 12]

No \_\_\_\_\_

Date \_\_\_\_\_

**The Secretary to the Government of India,  
Ministry of Home Affairs,  
Foreigners Division (FCRA Wing)  
NDCC-II Building,  
Jai Singh Road, New Delhi – 110001**

**Subject:** Application for 'registration' / 'prior permission' / 'renewal' under section 11 (1) & (2) / section 16 of the Foreign Contribution (Regulation) Act, 2010 for the acceptance of foreign contribution by an Association having definite cultural, economic, educational, religious or social programme:

Sir,

I \_\_\_\_\_, as an individual/ Hindu Undivided Family/ association/company registered under Companies Act 1956 / Companies Act, 2013, furnish the following details and apply for approval of the Central Government for the acceptance of foreign contribution under sub-section (1) / (2) of section 11/ Section 16 of the Act for

(a)	Registration	Yes/ No
(b)	Prior permission	Yes/ No
(c)	Renewal	Yes/ No

## 1. Details of the applicant/Association:

- (a) Name in full:
- (b) Address:
- (c) Telephone No. of the Association (with STD code) :
- (d) E-mail address of the association :
- (e) Official Website address, if any :
- (f) Telephone and mobile (with STD code) of the Chief Functionary:

## 2. Details of registration:

- (a) Name of the Act like Societies Registration Act, 1860, Indian Trust Act, 1882, Companies Act, 1956/Companies Act, 2013, etc under which the association is registered:
- (b) Number, date and place of Registration:  
(Self-certified copy of the registration certificate to be enclosed):
- (c) PAN (Permanent Account Number) of the Association:
- (d) FCRA Regn no. & date (in case of renewal) – copy of certificate to be enclosed:

## 3. Nature of Association:

- (a) religious (b) cultural (c) economic (d) educational (e) social

**Note:** If a religious Association, state whether (a) Hindu (b) Sikh (c) Muslim (d) Christian (e) Buddhist (f) Others.

4. Main aim(s) & object(s) of the Association:  
(enclose self-certified copy of relevant pages of the Memorandum of Association and/or the Articles of Association, showing aims and objects of association) :

5. (a) Details of the key functionaries of the Association :

Name	Name of father/spouse	Nationality	Aadhar No., if any	Occupation	Designation in the Association	Relationships with other member(s) of Executive Council/ Governing body/ Office bearers	Contact Details: Office Address; Residential Address; e-mail address; Landline no; mobile no.
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)

(b) If any of the above is a foreigner (including PIO/OCI card holder), details there of

Name	Date and Place of birth	Passport number	Address in the foreign country	Whether a person of Indian origin	PIO/ OCI Card Number, if any	If resident in India, date from which residing in India
(1)	(2)	(3)	(4)	(5)	(6)	(7)

6. Amount of fee paid (Rs.):

7. Whether any current Key functionary of the Association has, in the discharge of his/her official functions or private conduct:

- (a) been convicted by any court of law :
- (b) under prosecution for any offence pending against him/her:
- (c) been found guilty of diversion or misutilisation of funds of the Association or any other Association in the past :
- (d) has been prohibited from accepting foreign contribution :
- (e) is a current Key functionary of any other association :
- (f) is a current Key functionary of any other association against whom an order under section 13 or 14 of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010) has been passed :

**Note:** If any of the replies to (a) to (f) above is “yes”, then full details of the case must be given

8. Whether the applicant Association :

- (a) is a branch / unit / associate of a foreign based organisation or another association already registered or granted prior permission under the Act. If so, name, address of the organization and registration number/ prior permission number and date :
- (b) attracts section 10 of the Act and if so, details of the order passed by the Central Government under section 11(3) of the Act:
- (c) has been directed in terms of section 9 (d) of the Act to seek prior permission by the Central Government. If so, the number and date of the relevant order:
- (d) had earlier been proceeded against as per provision of the Foreign Contribution (Regulation) Act, 1976 (49 of 1976)/ Foreign Contribution (Regulation) Act 2010 (42 of 2010), if so, the details thereof :

9. (a) Details of designated FC bank account for receipt of Foreign Contribution:

Name of the Bank	Branch Address (with PIN code)	IFSC Code	Account No.
(1)	(2)	(3)	(4)

(b) Details of all utilization bank accounts for utilization of Foreign Contribution (To be filled by applicant applying for renewal of registration):

Name of the Bank	Branch Address (with PIN code)	IFSC Code	Account No.
(1)	(2)	(3)	(4)

#### DECLARATION AND UNDERTAKING

(a) I hereby declare that the information furnished above is true and correct;  
And I undertake:

- (b) that the receipt of foreign contribution and its utilization shall not be violative of any of the provisions of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010) / rules, notifications / orders issued there under from time to time;

Place:

Date:

Signature of the Chief Functionary  
[Name of the Chief Functionary in block letters]  
(Seal of the Organisation/Association)

**Note:** Applicants seeking registration are also to enclose audited statement of accounts and activity report of the association for the last three years.



**FORM FC - 4**

[See rule 9 (1) (a) / rule 12]

No \_\_\_\_\_

Date \_\_\_\_\_

**The Secretary to the Government of India,  
Ministry of Home Affairs,  
Foreigners Division (FCRA Wing)  
NDCC-II Building,  
Jai Singh Road, New Delhi – 110001**

**Subject:** Account of Foreign Contribution for the year ending on the 31st March \_\_\_\_\_

Sir,

1. FCRA registration/ prior permission number and date:
2. Details of receipt and utilisation of foreign contribution:
  - (i) Foreign Contribution received in cash/ kind (value)

(a)	Brought forward foreign contribution at the beginning of the year (Rs.)	
(b)	Interest or other receipt during the year*	
(c)	Foreign Contribution received during the financial year	
	(i) Directly from a foreign source	
	(ii) As transfer from a local source	
(d)	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

- (ii) (a) Donor wise detail of foreign contribution received in excess of Rupees 20,000:

Sl.No.	Name of the donor(s)	Institutional/ Individual	Details of the donor: official address; e-mail address; Website address	Purpose(s) for which received	Amount (Rs.)
(1)	(2)	(3)	(4)	(5)	(6)

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

- (iii) Details of utilization of foreign contribution:

(a)	Total Utilisation** for projects as per aims and objectives of the association (Rs.):	
(b)	Total Administrative Expenses as provided in Rule 5, FCRR 2011 (Rs.):	
(c)	Total invested in term deposits (Rs.):	
(d)	Total purchase of fresh assets (Rs.):	
(e)	Total utilization in the year (Rs.) (a+b+c+d):	

\*\*It is affirmed that the utilisation of foreign contribution is not in contravention of the provisions contained in FCRA, 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

(A) the sovereignty and integrity of India; or

(B) the security, strategic, scientific or economic interest of the State; or

(C) the public interest; or

(D) freedom or fairness of election to any legislature; or

(E) friendly relations with any foreign State; or

(F) harmony between religious, racial, social, linguistic or regional groups, castes or communities

(iv) Balance of unutilized foreign contribution, in cash/bank, at the end of the year(Rs):

(v) Total number of foreigners working (salaried/ in honorary capacity):

3. (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)	IFSC Code	Account No.
(1)	(2)	(3)	(4)

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

Name of the Bank	Branch Address (with PIN code)	IFSC Code	Account No.
(1)	(2)	(3)	(4)

### 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 utilization have not been violative of any of the provisions of the Foreign Contribution (Regulation) Act, 2010, rules, notifications/ orders issued there under from time to time and the foreign contribution was utilized for the purpose(s) for which the association was granted registration/ prior permission by the Central Government

Place:

Date:

Signature of the Chief Functionary  
(Name of the Chief Functionary 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:

- (i) the brought forward foreign contribution at the beginning of the financial year was Rs. \_\_\_\_\_;
- (ii) foreign contribution of / worth Rs. \_\_\_\_\_ was received by the Association during the financial year \_\_\_\_\_;
- (iii) 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 \_\_\_\_\_;
- (iv) the balance of unutilised foreign contribution with the Association at the end of the financial year \_\_\_\_\_ was Rs. \_\_\_\_\_;
- (v) 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.
- (vi) The information in this certificate and in the enclosed Balance Sheet and statement of Receipt and Payment is correct as checked by me/us.
- (vii) The association has utilized the foreign contribution received for the purpose(s) it is registered/ granted prior permission under Foreign Contribution (Regulation) Act, 2010

Place:

Date:

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

**FORM FC - 5**

[See rule 24 (1)]

**The Secretary to the Government of India,  
Ministry of Home Affairs,  
Foreigners Division (FCRA Wing)  
NDCC-II Building, Jai Singh Road  
(Opposite Jantar Mantar)  
New Delhi – 110001**

**Subject:** Application for seeking permission for transfer of foreign contribution to other un-registered persons.

Sir,

I \_\_\_\_\_, on behalf of the Association \_\_\_\_\_ apply for seeking permission of the Central Government under the proviso to section 7 of Foreign Contribution (Regulation) Act, 2010 (42 of 2010) for transfer of foreign contribution to other un-registered persons, as per details given below:

1. FCRA registration/ prior permission Number and date of the applicant/ transfer or association:
2. Details of the recipient /transferee association:
  - (i) Name in full:
  - (ii) Contact Details
    - (a) Address:
    - (b) Official Telephone No. of the Association (with STD code):
    - (c) Official e-Mail address:
    - (d) Telephone and mobile number of the Chief Functionary (with STD code):
  - (iii) PAN (Permanent Account Number) of the Association:
3. Details of registration of recipient /transferee association:
  - (a) Name of the Act like Societies Registration Act, 1860, Indian Trust Act, 1882, Companies Act, 1956/ Companies Act, 2013, etc under which the association is registered:
  - (b) Registration number, date and place of registration:  
(self-certified copy of the registration certificate to be enclosed)
4. Amount of Foreign contribution to be transferred:
5. Purpose for the proposed transfer of foreign contribution
6. Bank details and exclusive FCRA designated account number opened by the recipient, in which FC is proposed to be transferred:

Name of the Bank	Branch Address (with PIN code)	IFSC Code	Account No.
(1)	(2)	(3)	(4)

I hereby declare that the information furnished above is true and correct.

Signature of the Chief Functionary  
[Name of the Chief Functionary in block letters]  
(Seal of the Association)

**Note:**

- (i) Every application shall be accompanied by a declaration from the transferor Association to the effect that—
  - (a) the amount proposed to be transferred during the financial year is less than ten per cent of the total value of the foreign contribution received by him during the financial year;
  - (b) the transferor shall not transfer any amount of foreign contribution until the Central Government approves such transfer.
- (ii) Both the transferor and the recipient shall be responsible for ensuring proper utilisation of the foreign contribution so transferred and such transfer of foreign contribution shall be reflected in the returns in Form FC-4 to be submitted by both the transferor and the recipient.

**FORM FC - 6**

[See rule 9 and 17A]

**The Secretary to the Government of India,  
Ministry of Home Affairs,  
Foreigners Division (FCRA Wing)  
NDCC-II Building, Jai Singh Road  
New Delhi – 110001**

**Subject:** Intimation under Rule 9 and Rule 17 A of the Foreign Contribution (Regulation) Rules, 2010 (42 of 2010) to the Central Government regarding Change of designated bank account, Utilisation Account, name/ address/ aims/ objectives/ Key members in respect of the association granted registration/ prior permission under Foreign Contribution (Regulation) Act, 2010:

Sir,

I,..... as an individual/ association/ company hereby submit the following intimation as required under Rule 17A of the Foreign Contribution (Regulation) Rules, 2011:

Change of name and/ or aims and objects of the association	Yes/ No
Change of address within the State for which registration/ prior permission granted under the above Act	Yes/ No
Change of designated bank/ branch/ bank account number for receipt and utilization of foreign contribution	Yes/ No
Opening of Utilisation Bank Account for the purpose of utilization of foreign contribution	Yes/ No
Change in more than 50% Key members of the association	Yes/ No

1. FCRA Registration/ Prior Permission number and date of the association:
2. Official telephone number of the association:
3. E-mail address of the association:
4. Telephone/ mobile number of the Chief Functionary of the association:

**Part A**

**(To be filled by applicant giving intimation regarding Change of name and/ or aims and objects of the association)**

- (i) Amended/ changed name of the association as recorded with local/ relevant authority
  - (ii) Amended/ changed aims and objects of the association as recorded with local/relevant authority
- (Self-certified copy of amendment approved by local/relevant authority to be enclosed)

**Part B**

**(To be filled by applicant giving intimation regarding Change of address within the same State from which granted registration/ prior permission under FCRA, 2010 Act)**

New Address of the association:

**Part C**

**(To be filled by applicant giving intimation regarding Change of designated bank branch of the bank/ account number for receipt and utilization of foreign contribution)**

Details of the new designated bank account of the association for receipt and utilization of foreign contribution

Name of the Bank	Branch Address (with PIN code)	IFSC Code	Account No.
(1)	(2)	(3)	(4)

(self-certified copies of letter from the existing bank and the new bank regarding the change to be enclosed)

**Part D**

**(To be filled by applicant giving intimation of opening of Utilisation Bank Account(s) for the purpose of utilization of foreign contribution)**

Name of the Bank	Branch Address (with PIN code)	IFSC Code	Account No.
(1)	(2)	(3)	(4)

**Part E**

**(To be filled by applicant giving intimation regarding change in more than 50% of key members of the association)**

Details of all the key members of the association after change in 50 per cent or more of the original key members, as reported in the application for grant of registration/prior permission/renewal of registration of the association under FCRA, 2010:

Name	Name of father/ spouse	Nationality	Aadhar No., if any	Occupation	Designation in the Association	Relationships with other member(s) of Executive Council/ Governing body/ Office bearers	Contact Details: Office Address; Residential Address; e-mail address; Landline no; mobile no.
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)

If any of the above is a foreigner (including PIO/OCI card holder), details thereof

Name	Date and Place of birth	Passport number	Address in the foreign country	Whether a person of Indian origin	PIO/ OCI Card Number, if any	If resident in India, date from which residing in India
(1)	(2)	(3)	(4)	(5)	(6)	(7)

I hereby affirm that the information furnished above is true and correct and

- (a) Change of name and/ or aims and objects; address of the association has been duly recorded with the concerned registering authority
- (b) The resolution of the governing body has been passed before effecting the changes
- (c) The Bank authorities have been duly informed about change in the designated bank account / opening of Utilisation account
- (d) None of the key members has been appointed in violation of section 12(4) of Foreign Contribution (Regulation) Act 2010

(strike out whichever is not applicable)

Signature of the Chief Functionary  
[Name of the Chief Functionary in block letters]  
(Seal of the Association)".



**F. No. II/21022/36(027)/2015-FCRA-II**

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

1<sup>st</sup> Floor, NDCC-II Building,  
Jai Singh Road, New Delhi – 110001.

Dated the 29<sup>th</sup> March, 2016.

**NOTICE**

**Regarding Validity and Renewal of Registration under FCRA, 2010**

Ministry of Home Affairs is mandated to administer Foreign Contribution (Regulation) Act, 2010 . Section 12(6) of the Act provides that registration of the association shall be valid for a period of five years from the date of registration.

2. With respect to validity and renewal of existing Registrations under Foreign Contribution (Regulation) Act, 2010, with the approval of competent authority, exercising the powers vested under Section 50 of FCRA 2010, following have been decided :-

- (i) To extend the validity of registration certificate of all the associations whose registration certificates are expiring on or before 30<sup>th</sup> September, 2016 upto 31<sup>st</sup> October, 2016; and
- (ii) To extend the time for applying for renewal of registration upto 30<sup>th</sup> June, 2016.

3. All concerned are requested to take note of the above decisions and take further necessary action in this regard accordingly.

  
(G.K. Dwivedi)

Joint Secretary to the Government of India  
Tel. 23438034

# AMENDED PROCEDURE FOR RENEWAL OF FCRA REGISTRATION

## 1. INTRODUCTION

- 1.1** Recently there has been far reaching changes in the law and procedure pertaining to Foreign Contributions under the Foreign Contribution (Regulation) Act 2010 (FCRA).

The Government of India, Ministry of Home Affairs has notified major amendments to the Foreign Contribution (Regulation) Rules 2011 (FCRR). By virtue of the notification dt. 14.12.2015 the amended rules shall be known as Foreign Contribution (Regulation) Rules 2015. The notification and the amendments are provided in **Annexure 1** of **“OVERVIEW OF THE RECENT AMENDMENTS IN FCRA LAW”**. In the following paras, a summary of the amendments made by the new rules has been provided.

## 2. RECENT AMENDMENT TO THE RENEWAL PROCEDURE OF FC REGISTRATION

### 2.1. Submission of renewal application in FC-3

- (a) The application for renewal has to be submitted in FC-3 together with the filing fees of Rs.500/-, six months prior to the date of expiry of FC certificate.
- (b) This form has to be submitted online

together with all the attachments and there is no requirement of sending hardcopy to the FCRA Department.

- (c) The applications are required to be digitally signed or the scanned signatures and the seal of the organisation can also be uploaded. However the facility for using digital signature is not activated, as of now.
- (d) All payments can be made online electronically through payment gateway as may be specified by the Central Government.

### 2.2 Multiyear project concept deleted

The concept of multi-years project organisation has been done away with. Now all the organisations have the same time limit to submit the renewal application. It may be noted earlier organisations having multiyear project were required to apply one year prior to the date of expiry of FC certificate.

### 2.3 Organisations who have already submitted the renewal application has to resubmit the application:

- (a) All the organisations need to submit application for renewal online including the organisations who have already furnished the application in hard copies. The

time limit for submission has been extended to 15th March, 2016.

- (b) The Ministry of Home Affairs, FCRA Wing, Government of India issued a circular dated 14th December 2015. Through this circular it has been notified that all application for renewal of FCRA Registration has to be made again afresh online at the website- <https://fcraonline.nic.in>. A copy of the said circular has been enclosed in **Annexure (a-i)** herewith.

#### 2.4. Some organisations are not required to pay the renewal fee again:

As discussed above, the form and procedure for filing the application for renewal of FCRA registration has been changed. The filing date has also been extended to 15.03.2016. All organisations who have completed 5 years or more after FCRA registration have to make online filing again. A filing fee of Rs. 500/- is required to be paid along with Form FC-3. However, many organisations who have already paid the filing fee are not required to make the payment again. It may be noted that FCRA Department has provided the list of organisations who are not required to make any further payment. The list can be downloaded from the following web link- [https://fcraonline.nic.in/home/pdf\\_doc/associations.pdf](https://fcraonline.nic.in/home/pdf_doc/associations.pdf)

#### 2.5. The information and document to be uploaded with form FC-3:

For a sample filled Form FC-3 kindly see **Annexure (b)**. In addition to the form the following information and documents are required to be uploaded.

The following documents in PDF format should be uploaded:

Sl. No	Document Name	Max. Size Limit of PDF document
1.	Registration Certificate of Association	1 MB
2.	Memorandum of Association/Trust Deed	5 MB
3.	FCRA Registration Certificate of association issued by MHA	1 MB

The scanned image of signature of Chief Functionary and image of Seal of the Association which are saved in JPG/JPEG format are also required to be uploaded:

Sl. No	Instruction for Images
1.	Image Dimension of Signature should be 140(Width) × 60(Hight) Pixel only.
2.	Ensure that the size of the scanned signature image is not more than 50 KB.
3.	Image Dimension of Seal of Association should be 140 (Width) / 60 (Hight) Pixel only.
4.	Ensure that the size of the scanned image of Seal of Association is not more than 100 KB

### 3. OVERVIEW OF ADDITIONAL INFORMATION REQUIRED TO BE GIVEN IN THE NEW FORM FC-

- 3.1 It has been noticed that the new Form FC-3 requires many additional information which were not necessary in the old Form FC-5. An overview of additional information required to be given in the new Form FC-3 is as under:

**In point No. 1 of the Form FC-3,** the following additional information is required to be provided:

- (a) Website address of the association, if any

**In point No. 2 of the Form FC-3,** the following clauses have been added:

- (a) Name of the Act like Societies Registration Act, 1860, Indian Trust Act, 1882, Companies Act, 1956 / Companies Act, 2013, etc. under which the association is registered.

**In point No. 4 of the Form FC-3,** main Aim(s) & Object(s) of the Association are required to be provided.

**In point No. 5(a) of the Form FC-3,** the following additional details are required to be furnished with regard to the Key Functionaries:

- (i) Aadhaar no. (if any)
- (ii) Residential Address
- (iii) Landline No.
- (iv) Mobile No.

**In point No. 5(b) of the Form FC-3,** additional details regarding Foreigners, PIO/ OCI Card holders are required to be furnished.

**In point No. 7 of the Form FC-3,** the following details of Key Functionary is required to be furnished:

- (a) Been convicted by any court of law;
- (b) Under prosecution for any offence pending against him/her;
- (c) Been found guilty of diversion or mis-utilisation of funds of the Association or any other Association in the past;
- (d) Has been prohibited from accepting

foreign contribution;

- (e) Is a current Chief Patron, Chief Functionary or member of the Executive Committee / Governing Council / Office bearer of any other association;
- (f) Is a current Chief Patron, Chief Functionary or member of the Executive Committee / Governing council / Office bearer of any other association against whom an order under section 13 or 14 of the Foreign contribution (Regulation) Act, 2010 (42 of 2010) has been passed.

**Note:** If any of the replies to (a) to (f) above is “yes”, then full details of the case must be given.

**In point No. 8 of the Form FC-3,** the following specific details of the applicant are required to be submitted:

- (a) Is a branch/unit/associate of a foreign based organization or another association already registered or granted prior permission under the Act If so, name and address of the organization;
- (b) Attracts section 10 of the Act and if so, details of the order passed by the Central Government under section 11(3) of the Act;
- (c) Has been directed in terms of section 9(d) of the Act to seek prior permission by the Central Government. If so, the number and date of the relevant order;
- (d) Had earlier been proceeded against as per provision of the Foreign Contribution (Regulation) Act, 1976 (49 of 1976) / Foreign Contribution (Regulation) Act 2010 (42 of 2010).

**In point No. 9(a) of the Form FC-3,** the following details of the FC Designated Bank Account is required to be furnished:

- (a) Account No.
- (b) Name of the Bank
- (c) Branch Address(with Pincode)
- (d) IFS Code

**In point No. 9(b) of the Form FC-3,** the following details of the FC Multiple Utilisation:

- (a) Bank Account
- (b) Account No.
- (c) Name of the Bank
- (d) Branch Address(with Pincode)
- (e) IFS Code

#### **4. OVERVIEW OF THE INFORMATION WHICH ARE NOT REQUIRED TO BE FURNISHED IN THE AMENDED FC-3 FORM**

**4.1** The new FC-3 form has deleted some of the requirements which were earlier mandatory, an overview is as under:

- There is no requirement of providing details of FC receipt & utilisation since inception with yearly break up as was required in Point 4 & 5 of old FC-5 form;
- There is no requirement of giving reason for seeking renewal certificate as required as per Point (7) of old FC-5 form;
- There is no requirement of providing information whether the organisation has been blacklisted and/or from any Government, Statutory Bodies as was required under Point No.(9) of the old FC-5.

#### **5. OTHER OPERATIONAL ISSUES WHILE UPLOADING FC-3**

##### **5.1 Registration details in the case of a Trust :**

While filing up FC 3 form online, we have to select various options from the drop down list. This list includes registration under The Indian Trust Act, 1882, registration under Societies act etc. as well as u/s. 12 of Income Tax Act, 1961. The organisation is required to provide the Act under which it is registered.

In our opinion, the charitable trusts are not registered under The Indian Trust Act, 1882, therefore, it creates problem. There are four options available and for the time being all trusts may select registration under 12A of the Income Tax Act and to provide the necessary details of registration as per Income tax Act, 1961. The website needs to be corrected in this regard.

##### **5.2 Payment of fees from local fund:**

The NGO might have an online banking facility from local fund and therefore, the issue arises whether the renewal fees of Rs.500/- can be paid from bank account out of local fund, if online payment facility is not available in the designated FC bank account.

In our opinion, renewal fees can be paid from the local fund as there is no specific requirement of payment of renewal fees from FC fund only. Such expenditure towards statutory payments should be booked in the local books of account only.

### 5.3 Key Functionaries:

Point 5(a) of the FC-3 form requires details of Key Functionaries and while filing up the form online we have to select the designation of key functionaries from the drop down list which includes the various position of the office bearers as well as Chief Functionary. Now the confusion arises if a member of the board is eligible under two categories i.e. a person is Secretary as well as Chief Functionary then whether one should select Secretary or Chief Functionary. In our opinion in such cases we should select the formal official position as per record, i.e. "Secretary". It may also be noted that in any case the information of Chief Functionary is separately required while submitting online form.

5.4 Point No. 7 of the FC-3 form requires certain details of current Key Functionary including the name of the institution in which he/she is also a member and other details. The use of the words Key Functionary creates confusion whether all the Board members are required to be reported again. In our opinion, since the language used is in singular, under this point one should give details only for Chief Functionary and not for all the Board members.

5.5 Point No. 7 of the FC-3 Form requires the details of associate organisation registered under FCRA. However the word 'associate' is not defined. The intent of the rule seems that information pertaining branches or sub-ordinate units of the organisation may be reported. However, there is a need for clarity on the term 'Associate'.

### 6. LIMITED VALIDITY OF FCRA REGISTRATION & RENEWAL

6.1 The new FCRA 2010 has limited the validity of the registration certificate for a period of 5 years. It may be noted that in the old law FCRA registration was virtually permanent in nature unless it was revoked. FCRA 2010 provides for renewal of registration of organisations after every 5 years. The provision of section 16 of FCRA 2010 on renewal of registration is as under:

#### ***"16. Renewal of Registration :***

- (1) Every person who has been granted a certificate under section 12 shall have such certificate renewed within six months before the expiry of the period of the certificate.*
- (2) The application for renewal of the certificate shall be made to the Central Government in such form and manner and accompanied by such fee as may be prescribed.*
- (3) The Central Government shall renew the certificate, ordinarily within ninety days from the date of receipt of application for renewal of certificate subject to such terms and conditions as it may deem fit and grant a certificate of renewal for a period of five years:*

*Provided that in case the Central Government does not renew the certificate within the said period of ninety days, it shall communicate the reasons therefore to the applicant.*



*Provided further that the Central Government may refuse to renew the certificate in case where a person has violated any of the provisions of this Act or rules made hereunder”*

## **7. WILL THE ORGANISATIONS REGISTERED UNDER THE OLD ACT APPLY FOR RENEWAL IMMEDIATELY**

**7.1** Yes. The Act has provided relief of renewal to all the existing organisations for the first 5 years from the date of FCRA 2010 coming into force. In other words, all existing organisations have to renew their registration at the end of the period of 5 years from the date when of FCRA 2010 came into force, i.e., 1st May, 2011. This implies that the renewal of registration of all the existing organisations will become due on 1st May 2016. Therefore, the due date for filing renewal application was one or before 31st October 2015. However, this date has been extended to 30th June, 2016.

## **8. WHAT HAPPENS IF NO RENEWAL APPLICATION IS MADE**

**8.1** Rule 12(6) provides that in case no application for renewal of registration is received or such application is not accompanied by the requisite fee, the validity of the certificate of registration of such person shall be deemed to have ceased from the date of completion of

the period of five years from the date of the grant of registration. For example, if no application is received or is not accompanied by the renewal fee, the validity of the registration certificate valid/issued on the 1st May 2011 shall be deemed to have lapsed with effect from the close of the day on 30th April, 2016.

## **9. WHAT HAPPENS IF THERE IS A DELAY IN MAKING RENEWAL APPLICATION**

**9.1** In case an organisation fails to apply for renewal within the due date, its registration shall become invalid. However, the Central Government may condone the delay if satisfactory reasons for not submitting the renewal application are provided. Such delay should not be later than 4 months after the expiry of the original certificate of registration.

## **10. WHAT HAPPENS IF THE REGISTRATION CERTIFICATE LAPSES FOR FAILURE TO APPLY FOR RENEWAL**

**10.1** In case an organisations fails to apply for renewal within the due date or fails to make a delayed application as discussed above, its registration shall become invalid. In such circumstances the organisation cannot apply for renewal. However, it can apply for normal registration under FCRA 2010 as per Rule 9 of FCRR, 2011.

## **11. WHAT IS THE TIME LIMIT FOR GRANT OF RENEWAL**

**11.1** The Central Government shall renew the certificate, ordinarily within ninety days from the date of receipt of application for renewal of registration subject to such terms and conditions as it may deem fit and grant a certificate of renewal for a period of five years.

In case the Central Government does not renew the certificate within the said period of ninety days, it shall communicate the reasons therefore to the applicant. Further the Central Government may refuse to renew the certificate in case where a person has violated any of the provisions of this Act or Rules made thereunder.

\*\*\*\*\*



**NOTIFICATION FOR EXTENSION OF FC REGISTRATION RENEWAL DATE**

**F. No. II/21022/23(76)/2015-FCRA-III**

**Government of India**

**Ministry of Home Affairs**

**Foreigners Division (FCRA Wing)**

NDCC-II Building, (Opposite Jantar Mantar)

Jai Singh Road, New Delhi

Dated 14th December 2015

Important Notice

**Important Notice**

**for Renewal of Registration under FCRA, 2010**

In continuation of this Ministry's Circular of even number dated 28.07.2015, it is informed to all concerned that for facilitating faster processing and disposal of cases and also to bring transparency, it was decided by this Ministry to prepare and launch new website for FCRA related services. Now, the website has been launched with effect from 14.12.2015. Consequently applications for registration, prior permission, renewal of registration, giving intimations of various types, filing of annual returns etc has been made fully online. The applicants will not be required to file hard copies of the applications and the fee shall also be paid online through payment gateway. Certain amendments to Foreign Contribution (Regulation) Rules, 2010 (FCRA, 2010) has also been carried out. The amended Rules are placed on the new website.

1. As per the provisions contained in FCRA, 2010 and Foreign Contribution (Regulation) Rules, 2011, all those who were granted certificate of registration on or before 01.05.2011 were required to file application for renewal on or before 31.10.2015.
2. In view of launch of new website, it has been decided to extend the last date of filing of application for renewal of registration certificate to 15.03.2016.
3. In order to process and dispose of the requests for renewal of registration expeditiously, it has also been decided that all applications seeking renewal, including those who have submitted applications in old Form, may apply afresh online for grant of renewal of registration under FCRA, 2010 and pay the requisite fee through payment gateway. However, the associations whose names appear in the list annexed may only fill online form. They need not pay the required fee as the Demand Draft submitted by them has since been credited in to Government account. The demand drafts submitted by others are being returned by post.

Sd/=

(G. K. Dwivedi)

Joint Secretary to the Government of India

Tel: 011-2343-8034

**F. No. II/21022/36(027)/2015-FCRA-II**

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

1<sup>st</sup> Floor, NDCC-II Building,  
Jai Singh Road, New Delhi – 110001.

Dated the 29<sup>th</sup> March, 2016.

**NOTICE**

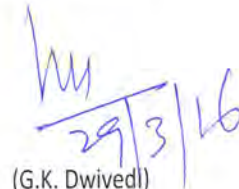
**Regarding Validity and Renewal of Registration under FCRA, 2010**

Ministry of Home Affairs is mandated to administer Foreign Contribution (Regulation) Act, 2010. Section 12(6) of the Act provides that registration of the association shall be valid for a period of five years from the date of registration.

2. With respect to validity and renewal of existing Registrations under Foreign Contribution (Regulation) Act, 2010, with the approval of competent authority, exercising the powers vested under Section 50 of FCRA 2010, following have been decided :-

- (i) To extend the validity of registration certificate of all the associations whose registration certificates are expiring on or before 30<sup>th</sup> September, 2016 upto 31<sup>st</sup> October, 2016; and
- (ii) To extend the time for applying for renewal of registration upto 30<sup>th</sup> June, 2016.

3. All concerned are requested to take note of the above decisions and take further necessary action in this regard accordingly.

  
29/3/16

(G.K. Dwivedi)

Joint Secretary to the Government of India  
Tel. 23438034

**FILLED SAMPLE OF FORM FC-3****FORM FC - 3**

[See rule 9 (1) (a) / rule 12]

No \_\_\_\_\_

Date \_\_\_\_\_

**The Secretary to the Government of India,  
Ministry of Home Affairs,  
Foreigners Division (FCRA Wing)  
NDCC-II Building,  
Jai Singh Road, New Delhi – 110001**

**Subject:** Application for 'registration' / 'prior permission' / 'renewal' under section 11 (1) & (2) / section 16 of the Foreign Contribution (Regulation) Act, 2010 for the acceptance of foreign contribution by an Association having definite cultural, economic, educational, religious or social programme:

Sir,

I \_\_\_\_\_, as an individual/ Hindu Undivided Family/ association/company registered under Companies Act 1956 / **Companies Act, 2013**, furnish the following details and apply for approval of the Central Government for the acceptance of foreign contribution under sub-section (1) / (2) of section 11/ Section 16 of the Act for

(a)	Registration	Yes/ No
(b)	Prior permission	Yes/ No
(c)	Renewal	Yes/ No

## 1. Details of the applicant/Association:

- (a) Name in full: Asia Society for Social Relief
- (b) Address: Plot No.-100, XYZ Street, Dist. Koraput, Odisha, India, PIN-753001
- (c) Telephone No. of the Association (with STD code) : 06742424731
- (d) E-mail address of the association : abc@gmail.com
- (e) Official Website address, if any : www.asiasocietyforsocialrelief.in
- (f) Telephone and mobile (with STD code) of the Chief Functionary: 9999999999

## 2. Details of registration:

- (a) Name of the Act like Societies Registration Act, 1860, Indian Trust Act, 1882, Companies Act, 1956/Companies Act, 2013, etc under which the association is registered: Societies Registration Act, 1860
- (b) Number, date and place of Registration: Koraput, Odisha  
(Self-certified copy of the registration certificate to be enclosed):

(c) PAN (Permanent Account Number) of the Association: AXXXX3333T

(d) FCRA Regn no. & date (in case of renewal) – copy of certificate to be enclosed: 100384256 dt. 24.08.1992

3. Nature of Association: Social

(a) religious (b) cultural (c) economic (d) educational (e) social

Note: If a religious Association, state whether (a) Hindu (b) Sikh (c) Muslim (d) Christian (e) Buddhist (f) Others.

4. Main aim(s) & object(s) of the Association: To work towards relief to poor...

(enclose self-certified copy of relevant pages of the Memorandum of Association and/or the Articles of Association, showing aims and objects of association) :

5. (a) Details of the key functionaries of the Association :

Name	Name of father/ spouse	Nationality	Aadhar No., if any	Occupation	Designation in the Association	Relationships with other member(s) of Executive Council/ Governing body/ Office bearers	Contact Details: Office Address; Residential Address; e-mail address; Landline no; mobile no.
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)

(b) If any of the above is a foreigner (including PIO/OCI card holder), details thereof

Name	Date and Place of birth	Passport number	Address in the foreign country	Whether a person of Indian origin	PIO/ OCI Card Number, if any	If resident in India, date from which residing in India
(1)	(2)	(3)	(4)	(5)	(6)	(7)

6. Amount of fee paid (Rs.): Rs. 500.00

7. Whether any current Key functionary of the Association has, in the discharge of his/her official functions or private conduct:

(a) been convicted by any court of law : No

(b) under prosecution for any offence pending against him/her: No

- (c) been found guilty of diversion or misutilisation of funds of the Association or any other Association in the past : No
- (d) has been prohibited from accepting foreign contribution : No
- (e) is a current Key functionary of any other association : No
- (f) is a current Key functionary of any other association against whom an order under section 13 or 14 of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010) has been passed : No

**Note:** If any of the replies to (a) to (f) above is “yes”, then full details of the case must be given

8. Whether the applicant Association :

- (a) is a branch / unit / associate of a foreign based organisation or another association already registered or granted prior permission under the Act. If so, name, address of the organization and registration number/ prior permission number and date : No
- (b) attracts section 10 of the Act and if so, details of the order passed by the Central Government under section 11(3) of the Act: No
- (c) has been directed in terms of section 9 (d) of the Act to seek prior permission by the Central Government. If so, the number and date of the relevant order: No
- (d) had earlier been proceeded against as per provision of the Foreign Contribution (Regulation) Act, 1976 (49 of 1976)/ Foreign Contribution (Regulation) Act 2010 (42 of 2010), if so, the details thereof : No

9. (a) Details of designated FC bank account for receipt of Foreign Contribution:

Name of the Bank	Branch Address (with PIN code)	IFSC Code	Account No.
(1)	(2)	(3)	(4)
<b>State Bank of India</b>	<b>XXX, Kolkata-700001</b>	<b>SBIN-00626</b>	<b>0343434343</b>

(b) Details of all utilization bank accounts for utilization of Foreign Contribution (To be filled by applicant applying for renewal of registration):

Name of the Bank	Branch Address (with PIN code)	IFSC Code	Account No.
(1)	(2)	(3)	(4)
<b>State Bank of India</b>	<b>XXX, Kolkata-700001</b>	<b>BIN-00626</b>	<b>0434343434</b>

### DECLARATION AND UNDERTAKING

- (c) I hereby declare that the information furnished above is true and correct;

And I undertake:

- (d) that the receipt of foreign contribution and its utilization shall not be violative of any of the provisions of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010) / rules, notifications / orders issued there under from time to time;

Place:

Date:

Signature of the Chief Functionary  
[Name of the Chief Functionary in block letters]  
(Seal of the Organisation/Association)

**Note:** Applicants seeking registration are also to enclose audited statement of accounts and activity report of the association for the last three years.

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# ONLINE FILING OF ANNUAL RETURN UNDER FCRA

## 1. INTRODUCTION

**1.1** Recently there has been far reaching changes in the law and procedure pertaining to Foreign Contributions under the Foreign Contribution (Regulation) Act 2010 (FCRA). The Government of India, Ministry of Home Affairs has notified major amendments to the Foreign Contribution (Regulation) Rules 2011 (FCRR). By virtue of the notification dt. 14.12.2015 the amended rules shall be known as Foreign Contribution (Regulation) Rules 2015. The notification and the amendments are provided in **Annexure 1** of **“OVERVIEW OF THE RECENT AMENDMENTS IN FCRA LAW”**.

**1.2** The Annual Return form for online filing of FCRA return also has been changed. The new form is FC-4. It may be noted that earlier online returns were filed in the Form FC-6 which has now been replaced by Form FC-4. In **Annexure (a)** a filled in sample of Form FC-4 has been provided. There are other major changes in the various FCRA forms and online filing requirements; for further details you may visit the website- <https://fcraonline.nic.in>.

## 2. LIST OF NEW FORMS

**2.1** The list of new forms and their purposes is provided as under:

**Form FC-1** - Intimation for gift received from relative by an individual/ Foreign Contribution in the form of Articles/Securities, by candidates for election

**Form FC-2** - Prior permission to accept Foreign Hospitality

**Form FC-3** - Application for Registration/Prior Permission/Renewal

**Form FC-4** - Annual Return

**Form FC-5** - Transfer to unregistered Organisations/Persons

**Form FC-6** - For intimation to the Central Govt. Regarding Change of designated bank account, utilisation account, name/address/ aims/objectives/Key members

### 3. EXTENSION OF DATE FOR FILING OF ANNUAL RETURN UNDER FCRA UNDER FORM FC-4

**3.1** The Ministry of Home Affairs, FCRA Wing, Government of India has issued a circular dated 22nd December 2015. Through this circular, it has been notified that all annual returns for the year 2014-15 shall be filed in Form FC-4 by 15th March, 2016. It may be noted that the Form of annual return has been changed from FC-6 to FC-4. The returns have to be filed online at the website- <https://fcraonline.nic.in>. There is no further requirement for sending the hard copies as was necessary earlier. A copy of the said circular has been enclosed herewith in **Annexure (b)**.

**3.2** Annual Return shall be filed in Form FC-4 and not FC-6. There is no requirement to send the hard copies of the Form and the financial statements. The organisation has to upload scanned copies of Receipt & Payment Account, Income & Expenditure Account and Balance Sheet. The Form FC-4 have to be filed within 9 months of the closure of the Financial Year, i.e. before 31st December.  
**12.2. (The return filing date has been extended upto 15th March 2016 for the Financial Year 2014-15 only.)**

**3.3** All organisations who have successfully filed form FC-6 on or before 14th December 2015 for the year 2014-15, are not required to file the new form FC-4 again. However, all organisations who have not filed form FC-6 on or before 14th December 2015 for the year 2014-15, are required to file in the new form FC- 4. It may further be noted

that those who file in Form FC-4 are not required to send hard copies to the FCRA Department. The last date for filing the annual return for the year 2014-15 in the new Form FC-4 has been extended to 15th March 2016.

### 4. COMPULSORY ANNUAL UPLOADING OF FINANCIAL INFORMATION WITHOUT ANY FINANCIAL LIMIT

**4.1** All persons / organisations who have been granted registration or prior permission shall have to upload their financial information on their website or on the website as may be specified by the Central Government. It may be noted that earlier, only those organisations, who had received more than One Crore Rupees in a year were required to upload the financial information in public domain. After the amended law, all organisations without any financial limit shall have to upload financial information in public domain.

**4.2** The financial information shall include Receipt & Payment Account, Income & Expenditure Account and Balance Sheet. Such information shall have to be uploaded within 9 months of the closure of the financial year.

**4.3** Those organisations who have receipt of more than One Crore Rupees during the financial year 2014-15 and have not uploaded the information, as explained in para 4.2, by 14th December, 2015 and the last date for uploading remains 31st December, 2015. It is to be noted that though the last date of submission of Annual Return for the year 2014-15 has been extended to 15th March,



2016 but no such extension is given for uploading the financial information.

## **5. COMPULSORY QUARTERLY UPLOADING OF GRANT INFORMATION WITHOUT ANY FINANCIAL LIMIT**

**5.1** Further, on quarterly basis all persons/ organisations who have been granted registration or prior permission shall have to upload their financial information pertaining to the donor and the detail of grants received. Such information should be uploaded on their website or on the website as may be specified by the Central Government. It may be noted that the amended rule does not provide any relaxation to smaller NGOs.

**5.2** After the amended law, all organisations without any financial limit shall have to upload financial information in website. The information to be uploaded includes:

- (i) Detail of the donors
- (ii) Amount received
- (iii) The date of receipt

The information should be uploaded within 15 days following the last day of the quarter in which the funds were received.

**5.3** It may be noted that all the organisations have to upload 1st quarter financial information ( i.e for the period from October,15 to December,15) by 15th of January, 2016.

**5.4** Ministry of Home Affairs issued a circular dated 3rd March, 2016 wherein

it was clarified that those organizations who do not have its own official website, may intimate their receipts of foreign contribution on the Ministry's website- <http://fcraonline.nic.in> See **Annexure (c)**

## **6. BANKS TO REPORT WITHIN 48 HOURS TO CENTRAL GOVERNMENT**

**6.1** The banks shall report to the Central Government within forty-eight hours any transaction in respect of receipt or utilisation of any foreign contribution by any person whether or not such person is registered or granted prior permission under the Act.

**6.2** It may be noted that the banks are required to report all kinds of FC funds received irrespective of the fact, whether the recipient organisation is registered under FCRA or not. In other words, it shall be the responsibility of the bank to act as a watchdog to the Central Government and report all such foreign contribution which has been received without prior permission or registration, in addition to the foreign contribution received by registered organisations or through prior permission.

## **7. FORM NO. FC-1 FOR FOREIGN ARTICLES OR SECURITIES**

**7.1** The Form FC-7 & FC-8 which were for Foreign Articles and Foreign Securities respectively have been deleted. Now onwards if an organisation receives any Foreign Article and/or Foreign Security then it has to separately file Form FC-1. There is no need to file nil Form FC-1 if the organisation has not received any Foreign Articles and Foreign Security.

**7.2** It may be noted that if any organisation has received Foreign Article or Foreign Security and has not submitted the return by 14th December, 2015, then they have to submit FC-1 within 31st December, 2015 and there is no extension of submission for intimation in FC-1 for receipt of any Foreign Article/ Foreign Security.

## **8. ORGANISATIONS FILING NIL RETURN NEED NOT SUBMIT FINANCIAL STATEMENTS**

**8.1** Those organisations who have not received/utilized any Foreign Contribution are also required to file nil returns in Form FC-4. However, such organisations where no foreign contribution has been received or utilised during a financial year, it shall not be required to enclose:

- Certificate from Chartered Accountant
- Income and Expenditure Statement
- Receipt and Payment Account
- Balance Sheet

In other words, only a nil Form FC-4 is required to be filed.

**8.2** It may further be noted that the above exemptions shall not be available even if there is some utilisation of foreign funds without receiving any foreign contribution during the year. In other words, both receipt and utilisation should be nil during the previous year.

## **9. THE INFORMATION AND DOCUMENT TO BE UPLOADED WITH FORM FC-4**

**9.1** For a sample filled Form FC-4 kindly see **Annexure (a)**. In addition to the form the following information and documents

are required to be uploaded. The following documents in PDF format should be uploaded.

<b>Sl. No</b>	<b>Document Name</b>	<b>Max. Size Limit of PDF document</b>
<b>1.</b>	Duly signed and seal Chartered Accountant Certificate (with C.A registration number)	1 MB
<b>2.</b>	Declaration Certificate of Chief Functionary	1 MB
<b>3.</b>	Audited Statement of Accounts (It should contain Payment Account, Income and Expenditure Statement, and Balance Sheet)	50 MB
<b>4.</b>	Statement of Account fom Bank duly certified by the officer of such bank	10 MB

**9.2** The scanned image of signature of Chief Functionary and image of Seal of the Association which are saved in JPG/ JPEG format are also required to be uploaded:

<b>Sl. No</b>	<b>Instruction for Images</b>
<b>1.</b>	Image Dimension of Signature should be 140 (Width) × 60 (Hight) Pixel only.
<b>2.</b>	Ensure that the size of the scanned signature image is not more than 50 KB.
<b>3.</b>	Image Dimension of Seal of Associationshould be 140(Width) / 60(Hight) Pixel only
<b>4.</b>	Ensure that the size of the scanned image of Seal of Association is not more than 100 KB

## **10. SOME ISSUES WHICH REQUIRE CLARITY IN NEW FORM FC-4**

**10.1** Under the Point No. 2(i), it is required to provide details of FC receipts both in cash and kind (value). However, no separate segregation has been made for FC receipt in kind contribution in the table given in Point No. 2. In other words, the break-up of the foreign contribution received does not include foreign contribution received in kind. In our opinion, the value of contribution received in kind should be included at both the places. Further, appropriate notes should be provided in the audited financial statements in such cases. It is suggested that separate disclosure of 'in kind' contribution should be made in the certificate given by the Chartered Accountant.

**10.2** FC forms require attachment of certified copies of bank statement within 10 MB but does not clarify whether this will include only designated bank account or it will also include all the utilized bank accounts. In our opinion the certified copy of the designated bank account only is required to be uploaded.

**10.3** The amendment in rule 17 also provides intimation in FC-1 for contribution received in article and securities. However, no time limit has been provided. Presently FC-1 is also being used for intimation of receipt of gifts for personal uses and it needs to be submitted within 30 days from the date of receipt of such contribution. However, no such time limit is provided for submitting FC-1 for FC contribution

received in Kind and in Securities. In our opinion, the date for filing of FC-4 should also be followed for filing of FC-1 statement for the purposes of filing return towards contribution received in Kind and in Securities.

**10.4** Rule 17(5) still provides that every report submitted under sub-Rule 2 to 4 has to be duly certified by Chartered Accountant. The report under sub-Rule 2 to 4 includes Annual Return in Form FC-4 as well as intimation to be given for foreign articles & securities in FC-1. Hence as the implication of this Rule even FC-1 submitted for foreign articles & securities shall also be supported by certificate from CA.

## **11. ADDITIONAL CLAUSES FOR CERTIFICATION BY CA**

**11.1** There is a change in the format of CA certificate and the present format includes following two additional certifications:

- i. "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 ....."
- ii. "The association has utilized the foreign contribution received for the purpose(s) it is registered/granted prior permission under Foreign Contribution (Regulation) Act. 2010."

**11.2** Hence, it is to be noted that the Auditor has to additionally certify income from foreign contribution as well as the

utilisation of FC fund for the purpose for which the organisation is registered under FCRA.

## **12. PENALTY FOR DELAYED FILING OF ANNUAL RETURN**

**12.1** The FCRA department, Ministry of Home Affairs (Foreigners Division-FCRA) has issued notification No. II/21022/23(49)/2012-FCRA-III, dt. 26th April, 2013 through which it has provided stringent penalties for delayed filing of annual return in Form FC-6.

**12.2** It may be noted that currently the last date of filing Form FC-6 is 31st December (The return filing date has been extended upto 15th March 2016 for the Financial Year 2014-15 only.), i.e. nine months from the end of the financial year. The penalties proposed are as under:

- 2% of the amount received or Rs.10,000/- whichever is higher, if the delay is within by 90 days.
- 3% of the amount received or Rs.25,000/- whichever is higher, if the delay is between 90 to 100 days.
- 5% of the amount received or Rs.50,000/- whichever is higher if the delay is more than by 180 days, plus Rs. 500 per day for every day beyond 180 days.

Copy of the above notification is enclosed herewith as **Annexure (c)**.

**12.3** Now the issue, whether this notification for penalty is applicable only for the delayed filing of FC-4 or it shall also applicable for delayed filing of FC-1 for reporting foreign contribution in articles & securities, needs to be examined.

## **13. INSTRUCTIONS ISSUED BY FCRA DEPARTMENT**

**13.1** The Ministry of Home Affairs, Government of India has issued instructions with regard to filing of annual online returns. The instructions are provided in **Annexure (d)**.

\*\*\*\*\*

**FILLED SAMPLE OF FORM FC-4****FORM FC - 4**

[See rule 9 (1) (a) / rule 12]

No \_\_\_\_\_

Date \_\_\_\_\_

**The Secretary to the Government of India,  
Ministry of Home Affairs,  
Foreigners Division (FCRA Wing)  
NDCC-II Building,  
Jai Singh Road, New Delhi – 110001**

**Subject:** Account of Foreign Contribution for the year ending on the 31st March \_\_\_\_\_

**Sir,**

1. FCRA registration/ prior permission number and date: **09333303333 dt. 30.04.1999**
2. Details of receipt and utilisation of foreign contribution:
  - (i) Foreign Contribution received in cash/ kind (value)

(a)	Brought forward foreign contribution at the beginning of the year (Rs.):	<b>100000.00</b>
(b)	Interest or other receipt during the year* :	<b>10000.00</b>
(c)	Foreign Contribution received during the financial year	
	(iii) Directly from a foreign source :	<b>100000.00</b>
	(iv) As transfer from a local source :	<b>100000.00</b>
(d)	Total Foreign Contribution (a+b+c) (Rs.) :	<b>310000.00</b>

\* 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.

- (ii) (a) Donor wise detail of foreign contribution received in excess of Rupees 20,000:

Sl. No	Name of the donor(s)	Institutional/ Individual	Details of the donor: of- ficial address; e-mail address; Website address	Purpose(s) for which received	Amount (Rs.)
(1)	(2)	(3)	(4)	(5)	(6)
	<b>XY Foundation</b>	<b>Institutional</b>	<b>1204, XY Street, Social 300000.00 New York, USA</b>	<b>Social</b>	<b>300000.00</b>

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

(iii) Details of utilization of foreign contribution:

(a)	Total Utilisation** for projects as per aims and objectives of the association (Rs.):	<b>100000.00</b>
(b)	Total Administrative Expenses as provided in Rule 5, FCRR 2011 (Rs.):	<b>10000.00</b>
(c)	Total invested in term deposits (Rs.):	<b>100000.00</b>
(d)	Total purchase of fresh assets (Rs.):	<b>100000.00</b>
(e)	Total utilization in the year (Rs.) (a+b+c+d):	<b>210000.00</b>

\*\*It is affirmed that the utilisation of foreign contribution is not in contravention of the provisions contained in FCRA, 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

- (A) the sovereignty and integrity of India; or
- (B) the security, strategic, scientific or economic interest of the State; or
- (C) the public interest; or
- (D) freedom or fairness of election to any legislature; or
- (E) friendly relations with any foreign State; or
- (F) harmony between religious, racial, social, linguistic or regional groups, castes or communities

(iv) Balance of unutilized foreign contribution, in cash/bank, at the end of the year(Rs):  
**100000.00**

(v) Total number of foreigners working (salaried/ in honorary capacity): **2**

3. (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)	IFSC Code	Account No.
(1)	(2)	(3)	(4)
<b>State Bank of India</b>	<b>XXX, Kolkata-700001</b>	<b>SBIN-00626</b>	<b>0343434343</b>

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

Name of the Bank	Branch Address (with PIN code)	IFSC Code	Account No.
(1)	(2)	(3)	(4)
<b>Bank of India</b>	<b>XXX, Kolkata-700001</b>	<b>BIN-00626</b>	<b>0434343434</b>

### 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 utilization have not been violative of any of the provisions of the Foreign Contribution (Regulation) Act, 2010, rules, notifica-

tions/ orders issued there under from time to time and the foreign contribution was utilized for the purpose(s) for which the association was granted registration/ prior permission by the Central Government.

Place:

Date:

Signature of the Chief Functionary  
(Name of the Chief Functionary in block letters)  
(Seal of the Association)

**Certificate to be given by Chartered Accountant**

I/We have audited the account of XYZ Charitable Society (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 2015 and examined all relevant books and vouchers and certify that according to the audited account:

- (i) the brought forward foreign contribution at the beginning of the financial year was Rs. 100000.00;
- (ii) foreign contribution of / worth Rs. 100000.00 was received by the Association during the financial year 2014-15;
- (iii) interest accrued on foreign contribution and other income derived from foreign contribution or interest thereon of/worth Rs. 10000.00 was received by the Association during the financial year 2014-15;
- (iv) the balance of unutilised foreign contribution with the Association at the end of the financial year 2014-15 was Rs. 100000.00;
- (v) 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.
- (vi) The information in this certificate and in the enclosed Balance Sheet and statement of Receipt and Payment is correct as checked by me/us.
- (vii) The association has utilized the foreign contribution received for the purpose(s) it is registered/ granted prior permission under Foreign Contribution (Regulation) Act, 2010.

Place:

Date:

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

**ONLINE ANNUAL FILING OF RETURN UNDER FCRA  
F. No. II. 21022/23(76)/2015-FCRA-III  
Government of India  
Ministry of Home Affairs  
Foreigners Division  
(FCRA Wing)**

NDCC-II Building, Jai Singh Road  
New Delhi-110001  
Dated 22nd December 2015

**Importance Notice  
for filing of annual returns under FCRA, 2010**

The Government has amended the Foreign Contribution (Regulation) Rules, 2011 through Foreign Contribution (Regulation) Amendment Rules, 2015 which have been notified on 14.12.2015. The amended rules prescribes, inter-alia, filing of annual return of recent and utilisation of foreign contribution in Form FC-4 online with scanned copies of income and expenditure statement, receipt and payment account and balance sheet. Consequently, filing of annual returns by associations registered under FCRA, 2010 has been made online at the website: <https://fcraonline.nic.in> with uploading of scanned copies of said documents.

2. In view of launch of new website with new form FC-4, it has been decided to extend the last date of filing annual return for the financial year 2014-2015 to 15th March 2016.

Sd/-  
(G. K. Dwivedi)  
Joint Secretary to the Government of India  
Tel. : 011-2343-8034



रजिस्ट्री सं० डी० एल०-33004/99

REGD. NO. D. L.-33004/99



# भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

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गृह मंत्रालय

अधिसूचना

नई दिल्ली, 26 अप्रैल, 2013

का.आ. 1070(अ).—केन्द्रीय सरकार, विदेशी अभिदाय (विनियमन) अधिनियम, 2010 (2010 का 42) की धारा 41 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए विनिर्दिष्ट करती है कि नीचे दी गई सारणी के स्तंभ (4) में विनिर्दिष्ट अधिकारी अधिनियम के अधीन कोई अभियोजन संस्थित करने से पूर्व उक्त सारणी के स्तंभ (2) में विनिर्दिष्ट अपराधों का उक्त सारणी के स्तंभ (3) में विनिर्दिष्ट रकम का संदाय करने पर शमन कर सकेगा, अर्थात् :-

## सारणी

क्रम सं.	अपराध	शास्ति की रकम	शमन करने के लिए सक्षम प्राधिकारी
(1)	(2)	(3)	(4)
1.	प्रत्येक वर्ष 31 दिसम्बर के पश्चात् नब्बे दिन तक विवरणी प्रस्तुत न करना।	वित्त वर्ष के दौरान प्राप्त रकम की दो प्रतिशत या दस हजार रुपए, जो भी अधिक हो, की शास्ति।	गृह मंत्रालय के विदेशी प्रभाग का विदेशी अभिदाय (विनियमन) अधिनियम खंड का प्रभारी निदेशक या उपसचिव।
2.	प्रत्येक वर्ष 31 दिसम्बर के पश्चात् इक्यानवें दिन के पश्चात् एक सौ अस्सी दिन तक विवरणी प्रस्तुत न करना।	वित्त वर्ष के दौरान प्राप्त रकम की तीन प्रतिशत या बीस हजार रुपए, जो भी अधिक हो, की शास्ति।	गृह मंत्रालय के विदेशी प्रभाग का विदेशी अभिदाय (विनियमन) अधिनियम खंड का प्रभारी निदेशक या उपसचिव।
3.	प्रत्येक वर्ष 31 दिसम्बर के पश्चात् एक सौ अस्सी दिन के पश्चात् विवरणी प्रस्तुत न करना।	वित्त वर्ष के दौरान प्राप्त रकम की पांच प्रतिशत या पचास हजार रुपए, जो भी अधिक हो, के साथ एक सौ अस्सी दिन के पश्चात् विलंब के प्रत्येक दिन के लिए पांच सौ रुपए की शास्ति।	गृह मंत्रालय में विदेशी प्रभाग का विदेशी अभिदाय (विनियमन) अधिनियम खंड का प्रभारी निदेशक या उपसचिव।

[सं. II/21022/23(49)/2012-एफसीआरए-III]

1706 GI/2013

(1)

वी. वमलनमंग, संयुक्त सचिव

## MINISTRY OF HOME AFFAIRS

## NOTIFICATION

New Delhi, the 26th April, 2013

**S.O. 1070(E).**—In exercise of the powers conferred by sub-section (1) of section 41 of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010), the Central Government hereby specifies that the officer specified in column (4) of the Table below, may, before institution of any prosecution under this Act, compound the offences specified in column (2) of the said Table on payment of the amount specified in column (3) of the said Table, namely :—

TABLE

S. No.	Offences	Amount of penalty	Officer competent for compounding
(1)	(2)	(3)	(4)
1.	Non-furnishing of return upto ninety days after 31st December every year.	Penalty of two per cent of the amount received during the Financial year or rupees ten thousand, whichever is higher.	The Director or Deputy Secretary in charge of the Foreign Contribution (Regulation) Act Wing of Foreigners Division in the Ministry of Home Affairs.
2.	Non-furnishing of return after ninety one days upto one hundred and eighty days after 31st December every year.	Penalty of three per cent of the amount received during the Financial year or rupees twenty thousand, whichever is higher.	The Director or Deputy Secretary in charge of the Foreign Contribution (Regulation) Act Wing of Foreigners Division in the Ministry of Home Affairs.
3.	Non-furnishing of return after one hundred and eighty days after 31st December every year.	Penalty of five per cent of the amount received during the Financial year or rupees fifty thousand, whichever is higher. with rupees five hundred per day of delay after one hundred and eighty days.	The Director or Deputy Secretary in charge of the Foreign Contribution (Regulation) Act Wing of Foreigners Division in the Ministry of Home Affairs.

[No. II/21022/23(49)/2012-FCRA-III]

V. VUMLUNMANG, Jt. Secy.

## INSTRUCTIONS ISSUED BY MINISTRY OF HOME AFFAIRS, FCRA WING REGARDING FILING OF ANNUAL RETURN

### 1. FCRA Online-Annual Returns

Go to Ministry of home affairs website by typing in address of web browser, <http://fcraonline.nic.in> the following screen will be displayed.

The screenshot shows the FCRA Online Forms page. On the left, under 'FCRA Online FORMS', there is a list of applications:
 

- Application for intimation to the Central Government of receipt of Foreign Contribution (FC-1)
- Application for FCRA Hospitality (FC-2)
- Application for FCRA Annual Returns (FC-4)
- Application for seeking permission for foreign contribution to other persons (FC-5)
- Application for Change Name/Bank/Utilisation Bank (FC-6)

 A callout box with the text 'Click here to apply for FC4 (Annual Returns)' points to the 'Application for FCRA Annual Returns (FC-4)' link.

On the right, under 'INFORMATION DESK', there is a 'Welcome to FCRA' message and a 'TRACK my application' link. At the bottom, there is a note: 'Best Viewed in Chrome At A Resolution Of 1024 X 768 Or Higher. (You may send e-Mail to [deft@nic.in](mailto:deft@nic.in) for any suggestions and queries regarding FCRA Act, 2008. And for any problem in filing online application send an e-Mail to [clshema@nic.in](mailto:clshema@nic.in)). Maintained by National Informatics Centre Chennai provided by Ministry of Home Affairs, Government of India.'

#### 1.1 Login

After Clicking on **Application for FCRA Annual Returns (FC-4)** from the previous screen, the following screen will be displayed.

The screenshot shows the FCRA Login page. At the top, there is a black header with 'FCRA' in white. Below the header, there is a login form with the following fields:
 

- User Id: MTET2007
- Password: [Redacted]
- Access Code: H X K 9

 There are two buttons: 'Login' and 'Reset'. Below the buttons, there is a link: 'Sign up for a new account'. A callout box with the text 'Please Enter your userid and password' points to the login form. Another callout box with the text 'Click here for Login' points to the 'Login' button.

### 1.1 .1 FCRA Annual Returns

After Login, the following screen will be displayed.

Application for filing of FCRA Annual Returns by associations

**FORM FC-A**  
(See rule 6)

* 1. Details of the Association:	
*(a) Name in full:	Mamatha Theological And Educational Trust
*(b) FCRA Registration Number:	094420892
*(c) FCRA Registration Date:	03-05-2001
* 2. Contact Details of Association:	
*(d) Address:	SekelavarguBennarghata Road
*(e) District:	Bangalore
*(f) State:	Karnataka
*(g) PIN Code:	
* 3. FC Receipt Account Details of Association:	
*(h) Account Number:	21164
*(i) Bank Address:	Koramangla, Bangalore/Karnataka-560034
*(j) District:	Bangalore
*(k) State:	Karnataka
*(l) PIN Code:	
* 4. FC Annual Returns:	
*(m) Annual Return:	<a href="#">click here to filing annual return for the block year 2014-2015</a>

Click here for Continue...

### 1.1 .2 FCRA Annual Returns

After Clicking Respective link from Previous Screen, the following screen will be displayed.

Application for Filing of FCRA Annual Returns by associations

Instructions: FC Received Purpose Wise, Donor Wise, Utilization, FC Bank Account, FC Utilization Bank Accounts, Upload Documents, Final Submit, Signer

FCRA Annual Returns M

**Instructions for filing and submitting FC-A(Annual Return) Application:**

- Application has divided into parts such as FC Received, Purpose Wise, Donor Wise, Utilization, FC Bank Account, FC Utilization Bank Accounts and Upload Documents.
- Please fill all parts of application before clicking on Final Submit.
- Please ready with the following documents which are saved in PDF format and available for uploading.
 

Sl. No	Document Name	Maximum Size Limit of PDF Document
1.	Duly signed and not (Chartered Accountant/Certified Public Accountant) (CA registration number)	1 MB
2.	Declaration Certificate of Chief Functionary.	1 MB
3.	Duly signed and not (Chartered Accountant/Certified Public Accountant) and Registered Income tax and Return, Bank	10 MB
4.	Statement of Account from Bank duly certified by the officer of each bank.	10 MB
- Please also ready with the images of Chief Functionary signature and Seal of the Association.
 

Sl. No	Document Name
1.	Signature of the officer
2.	Seal of the officer (Signature should be 1.5x(1/3) inch x 1.5(1/3) inch)
3.	Seal of the officer (Signature should be 1.5x(1/3) inch x 1.5(1/3) inch)
4.	Seal of the officer (Signature should be 1.5x(1/3) inch x 1.5(1/3) inch)
- You can not fill any details before filing the FC Received Details. So, first fill the FC Received details and click on Save Data button.
- Once you have filled all the parts, you can click on Final Submit. It shows you the information that you have filled and Final Submit button.
- You can check whether all particulars are correct or not. In case of any mistake, you can go back to that part and edit the information.
- You may send e-Mail to [dc-fcra\[at\]nic\[dot\]in](mailto:dc-fcra[at]nic[dot]in) for any suggestions and queries regarding FC(R) Act, 2010.
- And, for any technical problem in filing online application send an e-Mail to [clsherna\[at\]nic\[dot\]in](mailto:clsherna[at]nic[dot]in).

Click here for Start



### 1.1 .3 FCRA Annual Returns-FC Received

After Clicking on FC Received Menu , the following screen will be displayed.

**Application for Filing of FCRA Annual Returns by associations**

Instructions | **FC Received** | Purpose Wise | Donor Wise | Utilization | FC Bank Account | FC Utilization Bank Accounts | Upload Documents | Final Submit | Logout

**\* 1. Details of the Association:**

(\*) Name:

(\*) S.S. Number:

(\*) UEN:

**\* 2. Details of receipt and utilization of foreign contribution:**

(\*) Financial Year:

(\*) Interest or other receipt during the year:

(\*) Foreign Contribution received during the financial year: (i) Directly from foreign source:  (ii) As transfer from a local source:

(\*) Total Foreign Contribution:

Yearly INTEREST OR OTHER RECEIPT DURING THE YEAR: Interest accrued on foreign contribution, or any other income derived from foreign contribution, e.g. site proceeds from assets created from foreign contribution, or interest therein during the year.

Click here for go to FC Received Form

Click here for Save Data

### 1.1 .4 FCRA Annual Returns-Purpose Wise

After Click on Purpose Wise tab, the following screen will be displayed.

**Application for Filing of FCRA Annual Returns by associations**

Instructions | FC Received | **Purpose Wise** | Donor Wise | Utilization | FC Bank Account | FC Utilization Bank Accounts | Upload Documents | Final Submit | Logout

(\*) Foreign source:

(\*) Distribution details received:

(\*) Financial Year:

(\*) Purpose for which received:

(\*) Contribution received (Rs.):

Amount has been added successfully.

Amount	Add	Delete
100000.0000	<input type="button" value="Edit"/>	<input type="button" value="Delete"/>
100000.0000	<input type="button" value="Edit"/>	<input type="button" value="Delete"/>
100000.0000	<input type="button" value="Edit"/>	<input type="button" value="Delete"/>
100000.0000	<input type="button" value="Edit"/>	<input type="button" value="Delete"/>
100000.0000	<input type="button" value="Edit"/>	<input type="button" value="Delete"/>
<b>\$ Total</b>		

Click here for go to Purpose Wise Form

Click here for go to next Menu Tab

Click here for Add details

Click here for Edit/delete Details

### 1.1.5 FCRA Annual Returns-Donor Wise

After Click on Donor Wise menu, the following screen will be displayed.

Click here for go to Donor Wise Form

Annual Return Filing of FCRA Annual Returns by associations

Instructions | FC Received | Purpose Wise | Donor Wise | Utilization | FC Bank Account | FC Utilization Bank Accounts | Upload Documents | Final Submit | Logout

\* (ii) (a) Donor wise detail of foreign contribution received in excess of Rupees 20,000:

2014-2015

Click here for Add Donor

Add Donor

Click here for Choose Donor(Existing)

Choose Donor

(i) Institutional/Individual: Institutional

(ii) Details of the donor:

(i) Official Address: (Min 20 characters)

(ii) Donor Country: Afghanistan

(iii) e-mail id:

(iv) Website address:

(v) Purpose for which received: -select-

(vi) Amount (Rs.): 0.00

Add

Next

S. No.	Donor Name	Donor Type	Country	Address	Bank Id	Website Url	Purpose	Amount
--------	------------	------------	---------	---------	---------	-------------	---------	--------

### 1.1.5 FCRA Annual Returns-Donor Wise-Add Donor

After Click on Add Donor Link from previous Screen, the following screen will be displayed.

One Record Inserted

Add New Donors of the association

Close

(i) Name of Donor: Kumar

(ii) Type of Donor: Individual

(iii) Official Address of the donor: SOUTH INDIA (Min 20 characters)

(iv) Donor's Country: India

(v) e-mail id: kumar@gmail.com

(vi) Website address: (Min 20 characters)

Click here for Add Details

Add

Srual No.	Registration Number	Donor Name	Institution/Individual	Country	Official Address of the Donor	e-mail Address of the Donor	Website Address of the Donor	Edit
1	094120928	Shank Kumar	Institutional	India	NBCC 23 MEA Delhi	sk@pnsl.com		Edit

Click here for Edit Details

### 1.1 .5 FCRA Annual Returns-Donor Wise-Add Donor

After Click on Choose Donor Link from previous Screen, the following screen will be displayed.

Click here for select Donor

FCRA Donor List

Close

Select

Sr. No	Registration No	Donor Name	Institutional/Individual	Country	Official Address of the Donor	e-mail Address of the donor	Website Address of the donor	
1	094420892R	Nitesh Kumar	Institutional	India	NDCC 2 MHA Delhi	nnt@gmail.com		
2	094420892R	Kumar	Individual	India	South Delhi	nnt@gmail.com	http://www.website.com	

Select Anyone Existing Donor

### 1.1 .5 FCRA Annual Returns-Donor Wise

After Select Donor from choose donor link from previous Screen, the following screen will be displayed.

Application for Filing of FCRA Annual Returns by associations

Instructions FC Received Purpose Wise Donor Wise Utilisation FC Bank Account FC Utilisation Bank Account Upload Documents Final Submit Logout

\*(4).(a) Donor wise detail of foreign contribution received in excess of Rupees 20,000:

\*(a) Back year: 2014-2015

Add Donor Choose Donor

\*(b) Name of Donor: Kumar

\*(c) Institutional/Individual: Individual

\*(d) Details of the donor:

(i) Official Address:

(ii) Donor Country: India

(iii) e-mail id: nnt@gmail.com

(iv) Website address: http://www.website.com

\*(e) Purpose for which received: Cultural

\*(f) Amount (Rs.): 000000.00

Add Next

Click here for go to Next Menu Tab

Sr. No.	Donor Name	Donor Type	Country	Address	Email ID	Website URL	Purpose	Amount
1	Kumar	Individual	India	South	nnt@gmail.com	http://www.website.com	Cultural	000000.00

Click here for Add Details

### 1.1 .6 FCRA Annual Returns-Utilization

After Click on Utilization Menu, the following screen will be displayed.

**Application for Filing of FCRA Annual Returns by associations**

Instructions FC Received Purpose Wise Donor Wise Utilization FC Bank Account FC Utilization Bank Accounts Upload Documents Final Submit Logout

**\* (iii). Details**

Block year: 2014-2015

\* (a) Total Utilization: 100000.00

\* (b) Total Assets: 100000.00

\* (c) Total Income in term deposits (Rs.): 100000.00

\* (d) Total purchase of bank assets (Rs.): 100000.00

\* (e) Total utilization in the year (or years): 100000.00000

Notes: TOTAL UTILIZATION: It is affirmed that the utilization of foreign contribution is not in contravention of the provisions mentioned in sections 11(1) and Section 12(1)(b) of the Act which states that the acceptance of foreign contribution is not likely to affect prejudicially (a) the sovereignty and integrity of India; or (b) the security, strategic, scientific or economic interest of the State; or (c) the public interest; or (d) freedom or freedom of election to any legislature; or (e) friendly relations with any foreign State; or (f) harmony between religious, racial, social, linguistic or regional groups, castes or communities.

\* (f) Return of unutilized foreign contribution, in whole/part, at the end of the year(s): 100000.00

\* (g) Total number of foreigners working (stayed) in beneficiary projects: 20

Save Data Next

Click here for go to Utilization

Click here for go to Next Menu Tab

Click here for save Data

### 1.1 .7 FCRA Annual Returns-FC Bank Account

After Click on FC Bank Account Form Menu, the following screen will be displayed.

**Application for Filing of FCRA Annual Returns by associations**

Instructions FC Received Purpose Wise Donor Wise Utilization FC Bank Account FC Utilization Bank Accounts Upload Documents Final Submit Logout

**\* (iii). Details of details**

Block year: 2014-2015

\* (a) Account No: 140201041104104

\* (b) Bank Name: Associated Bank

\* (c) Branch name and Address: New Delhi

\* (d) Town/City: Delhi

\* (e) State: Delhi

\* (f) District: Delhi

\* (g) Pin Code: 110001

\* (h) IFSC Code: 0140201041104104

Save Data Next

Click here for go to FC Bank Account Form

Click here for go to Next Menu Tab

Click here for save Data



After Click on Save Data Button from previous Screen, the following screen will be displayed for updating (if any correction required).

#### 1.1.8 FCRA Annual Returns-FC Utilization Bank Account

**Application for Filing of FCRA Annual Returns by associations**

Instructions | FC Return | Purpose Wise | Donor Wise | Utilization | FC Bank Account | FC Utilization Bank Accounts | Upload Documents | Final Submit | Logout

Record has been saved successfully!

**\*3(b). Details of all Utilization bank accounts for utilization of Foreign Contribution (As on 31st March of the year ending):**

Block year: 2014-2015 ▼

\*3(i) Annual No.  (only 0-9 are allowed)

\*3(ii) Bank Name:  ▼

\*3(iii) Branch name and Address:

\*3(iv) Town/City:  (Max 100 characters (only A-Z, 0-9 and space are allowed))

\*3(v) State:  ▼

\*3(vi) District:  ▼

\*3(vii) Pin Code:  (00-0 (characters) allowed)

\*3(viii) IFSC Code:

Click here for go to Next Menu Tab

Sl.No.	Account Number	Name of the bank	Branch Address	Town/City	State	District	PIN Code	IFSC Code	Edit	Delete
1	785(211009160920	Anantha Dico Coop Central Bank	Anantha Prasad	AP	Anantha Prasad	Guntur	522200	ANAP0010003	<input type="button" value="Edit"/>	<input type="button" value="Delete"/>

Click here for Edit/Delete Record

### 1.1 .8 FCRA Annual Returns-FC Utilization Bank Account

After Click on FC Utilization Bank Account Menu, the following screen will be displayed.

**Application for Filing of FCRA Annual Returns by associations**

Instructions FC Received Purpose Wise Donor Wise Utilization FC Bank Account FC Utilization Bank Accounts Upload Documents Final Submit Logout

**\*1(b). Details of all Utilization bank accounts for utilization of Foreign Contribution/As on 31st March of the year ending:**

Bank year: 2014-2015

\*1(a) Account No: 00000000000000000000 (Auto: N/A as already)

\*1(b) Bank Name: Accountant Genl Corp Central Bank

\*1(c) Branch name and Address: 00000000000000000000

\*1(d) Town/City: 00000000000000000000

\*1(e) State: 00000000000000000000

\*1(f) District: 00000000000000000000

\*1(g) Pin Code: 000000 000000 (8 digit characters allowed)

\*1(h) IFSC Code: 00000000000000000000

Save Data Next

Click here for go to FC Utilization Bank Account Form

Click here for go to Next Menu Tab

Click here for save Data

### 1.1.9 FCRA Annual Returns-Upload Documents

After Click on Upload Documents menu tab , the following screen will be displayed

**Application for Filing of FCRA Annual Returns by associations**

Instructions FC Received Purpose Wise Donor Wise Utilization FC Bank Account FC Utilization Bank Accounts Upload Documents Final Submit Logout

**Upload FC-Return Documents**

Bank Year: 2014-2015

Upload/View Return

Click here for go to Upload Documents Form

Click here for Upload Documents

**Please Note: Please Note:**

Our message, it is noted that any of the uploaded document is incorrect or irrelevant to FC-I form of the preceding year, the same will be considered as non-submission of Annual Return and violation of FCRA 2012. This will also attract provisions of Gazette Notification SO 1070(E) dated 28/04/2012.

### 1.1 .9 FCRA Annual Returns-Upload Documents

After Click on Upload/View Returns button from previous screen, the following screen will be displayed

**Application for Filing of FCRA Annual Returns by associations**

Instructions	FC Received	Purpose Wise	Donor Wise	Utilisation	FC Bank Account	FC Utilisation Bank Accounts	Upload Documents	Final Submit	Logout
--------------	-------------	--------------	------------	-------------	-----------------	------------------------------	------------------	--------------	--------

Upload FC-Returns Documents

Bank Year: 2014-2015

DOCUMENTS FOR UPLOADING OF FCRA RETURN		
Signature of chief Functionary	Choose File: sf_2014101001.jpg	Max. 10KB Allowed (JPG Format)
Seal of the Association	Choose File: shama2001.jpg	Max. 10KB allowed (JPG Format)
Copy signed and not notarized accountants certificate (in L.A. signature account)	Choose File: shama2001.jpg	Max. 1 MB allowed (JPG Format)
Declaration Certificate of Chief Functionary	Choose File: Initiation001.pdf	Max. 1 Mb allowed (PDF Format)
Audited Statement of Accounts (It Should Include Receipt and Payment Account, Income and Expenditure Statement, and Balance Sheet)	Choose File: recommedat...0001.pdf	Max. 10 MB allowed (PDF Format)
Statement of Account from Bank duly certified by the officer of each bank	Choose File: Initiation001.pdf	Max. 10 MB allowed (PDF Format)

Click here for uploading Documents

Click here for browsing Document

### 1.1 .9 FCRA Annual Returns-Upload Documents

After Click on Upload Documents button from previous Screen , the following screen will be displayed with Successfully uploading Documents Message

**Application for Filing of FCRA Annual Returns by associations**

Instructions	FC Received	Purpose Wise	Donor Wise	Utilisation	FC Bank Account	FC Utilisation Bank Accounts	Upload Documents	Final Submit	Logout
--------------	-------------	--------------	------------	-------------	-----------------	------------------------------	------------------	--------------	--------

The page at 10.25.200.20 says:

Documents has been uploaded successfully

☐ Prevent this page from creating additional dialogs.

Uploading Documents Message!  
Click here for Continue...

### 1.1 .9 FCRA Annual Returns-Upload Documents

After Click on Ok button in Successfully Message Alert from Previous Screen , the following screen will be displayed

**Application for Filing of FCRA Annual Returns by associations**

Instructions | FC Received | Purpose Wise | Donor Wise | Utilization | FC Bank Account | FC Utilization Bank Accounts | Upload Documents | Final Submit | Logout

Upload FC-Return Documents

Block Year: 2014-2015  
Upload/View Returns

DOCUMENTS FOR UPLOADING OF FCRA RETURN	
Signature of Chief Functionary	View Document Remove
Seal of the Association	View Document Remove
Duly signed and self-Certified Accountant Certificate (with C.A registration number)	View Document Remove
Declaration Certificate of Chief Functionary	View Document Remove
Audited Statement of Accounts (It should include Receipt and Payment Account, Income and Expenditure Statement, and Balance Sheet)	View Document Remove
Statement of Account from Bank duly certified by the officer of each bank	View Document Remove

Next

Click here to go to Next Menu Tab

Click here for View Document

Click here for remove Uploaded Documents

Please Note  
If of any usage, it is found that any of the uploaded document is incorrect, considered as non-submission of Annual Return and submission of FCRA 10/00/0000

### 1.1 .10 FCRA Annual Returns-Final Submit

After Click on Final Submit menu tab , the following screen will be displayed

**Application for Filing of FCRA Annual Returns by associations**

Instructions | FC Received | Purpose Wise | Donor Wise | Utilization | FC Bank Account | FC Utilization Bank Accounts | Upload Documents | Final Submit | Logout

**Form FC-4**  
(See rule 17(1))

The Secretary to the Government of India,  
Ministry of Home Affairs,  
Foreigners Division (FCRA Wing),  
"First Floor, NDC-02 Building,"  
1, JAI BHANG Road,  
New Delhi - 110001

**Subject:** Account of Foreign Contribution for the year ending on the 31st March

1. FCRA registration/permit number and date: (00420047, 01/01/01/2001)

2. Details of receipt and utilization of foreign contribution:

3. Foreign Contribution received in cash/Kindly state:

(a) Foreign Contribution received at the beginning of the year (Rs.)	500000000
(b) Income or other receipt during the year	500000000
(c) Foreign Contribution received during the financial year	500000000
(d) Unrecovered from a foreign source	000000000
(e) Unrecovered from a local source	000000000
(f) Total Foreign Contribution (a+b+c+d+e+f) (Rs.)	1500000000

\* i.e. amount received on foreign contribution, or any other receipt derived from foreign contribution, e.g. sale proceeds from assets obtained from contribution, or interest income during the year.

Preview PDF Application

### 1.1 .10 FCRA Annual Returns-Final Submit

**Application for Filing of FCRA Annual Returns by associations**

Instructions FC Received Purpose Wise Donor Wise Utilization FC Bank Account FC Utilization Bank Accounts Upload Documents Final Submit Logout

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

Sl.No	Name of Bank of donors	Branch Address With pincode	IFSC Code	Account No
1	Industrial Bank	100, Galle, Galle, Galle	SL0000000000	1402012401210014

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

Sl.No	Name of Bank of donors	Branch Address With pincode	IFSC Code	Account No
1	Aswathi Uthayakumar Charitable Trust	Indraprastha, AP, Indraprastha, Varanasi	4040000000	7604010000000000

**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 utilization have not been violative of any of the provisions of the Foreign Contribution (Regulation) Act, 2010, for the purpose for which the association was granted registration/prior permission by the Central Government.

**Final Submit**

Click here for final submission

Select Check box and enter place in down textbox

Note:- After Final Submit, you can not modify application details

### 1.1 .10 FCRA Annual Returns-Final Submit

After Final Submit from previous screen, the following screen will be displayed.

**Application for Filing of FCRA Annual Returns by associations**

Instructions FC Received Purpose Wise Donor Wise Utilization FC Bank Account FC Utilization Bank Accounts Upload Documents Final Submit Logout

**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 utilization have not been violative of any of the provisions of the Foreign Contribution (Regulation) Act, 2010, for the purpose for which the association was granted registration/prior permission by the Central Government.

**Final Submit** **Print Application**

Your Application has been submitted successfully to Ministry of Home Affairs.

Note: Your Data has been final submitted.

Click here for print out of your application



# HOW TO PREPARE STATEMENT OF INCOME AND ACCUMULATION

(FOR ORGANISATIONS REGISTERED UNDER SECTION  
12AA OF INCOME TAX ACT)

## 1. INTRODUCTION

**1.1** It is sometimes confusing to draw a Statement of Computation of Income. Some common mistakes and confusion arise in the following area:

**-Whether 15% accumulation can be charged against the income irrespective of deficit or surplus:** In other words, some organisations get a deficit after charging 15% accumulation which is incorrect, as explained hereunder.

**-Whether corpus donation should be included in income or be excluded:** Normally corpus donation is not considered as income. However, if the definition of 'income' as defined under section 2(24)(iia) of the Income Tax Act, 1961 is referred, then corpus donation is also included as a part of income. Corpus donation should be a part of income under section 11(1) and subsequently be deducted under section 11(1)(d) as deemed utilisation.

(a) There are two sections under which corpus donation is exempted. The first section is section 11(1)(d), if the corpus donation is claimed as exempt under section 11(1)(d) then it should be first included in total income under section 11(1).

(b) However, under section 12(1) corpus donation has also been specifically excluded from the scope of income. If the provisions of section 12(1) are applied then section 11(1)(d) does not remain relevant and corpus donation is not included in the income under Section 11(1). Therefore, two interpretations are possible :

i. Corpus Donation should be included as a part of income and then be deducted under section 11(1)(d) to that extent, in such computation the 15% indefinite accumulation available to the assessee will be higher.

ii. Corpus Donation is excluded for the purposes of section 11(1) by virtue of the exclusion from income created under section 12(1).

*In our opinion 15% accumulation should not be availed on corpus donation though it is a technical possibility as per the law explained above.*

**-Expenditure incurred to earn the income: Such expenditure normally are not treated as application towards charitable purposes;** the income

should be derived only after deducting such expenditures. In other words, all charge against income should be deducted first in order to derive the income available for charitable purposes. It will include fund raising expenditure.

**-Administrative and establishment expenditures:** Such expenditures are normally treated as application towards charitable purposes, unless such expenditure can be separately identified and be treated as distinct from application for charitable purposes. There are cases where it has been held that administrative and establishment expenditures should be treated as application for charitable purposes.

**-Expenditure on incidental business activity or income generation activity:** The income as well as expenditure from such activity should be separately accounted and the net surplus or deficit should be added to the income available for application.

**-Income from Restricted Grant:** The restricted grant or legal obligations are not treated as income. However, any income (such as interest) from such fund should be treated as a part of income under section 11(1). The income may be applied for the restricted purposes, if any, with suitable notes.

**-Expenditure towards Capital Assets:** The entire amount applied on creating capital assets should be treated as application for charitable purposes. No further depreciation will be available on such assets. However, depreciation

shall be available on all those assets which have not been charged against income in the past.

**-Income from Sale of Assets:** The gross receipt should be treated as income, subject to 85% application. Alternatively, the benefits of section 11(1A) can also be claimed. It may be noted that under section 11(1A) optional tax benefits can be availed by reinvesting the sale proceed in purchase another capital asset. In such cases a distinction has to be made between assets which were charged as 100% application in the year of purchase and assets which are depreciated over the years.

**-Any loan given to beneficiaries towards advancement of the objectives:** It is also treated as applied towards charitable purposes and should be treated as expenditure.

**-Any grant given to another organisation:** Any grant given to another organisation is exempt under the Income Tax Act is also treated as applied towards charitable purposes and should be treated as expenditure. The utilisation of expenses and unspent balance against such grant is not required to be recorded in the books of the donor organisation. The disbursement of grant itself is treated as application towards charitable purposes provided it is for similar objectives.

## 2. HOW TO COMPUTE 15% INDEFINITE ACCUMULATION

**2.1 15% of Gross income should be charged against the unspent portion and not the entire income:** The Supreme Court of India Additional Commissioner of Income

*Tax & Anr. Vs. A.L.N. Rao Charitable Trust* (1995) 129 CTR (SC) 205: (1995) 216 ITR 697 (SC): (1995) 83 TAXMAN 252 held that Sec. 11(1)(a) operates on its own. By its operation, two types of income earned by the trust during the previous year from its properties are given exemption from income-tax,

- i. that part of the income of previous year which is actually spent for charitable or religious purposes in that year; and
- ii. out of the unspent accumulated income of the previous year 25% (now 15%) of such total property income or Rs. 10,000, whichever is higher, can be permitted to be accumulated by the trust, earmarked for such charitable or religious purposes. In other words, the available surplus or 15% shall be accumulated, 15% accumulation cannot be charged against income when the final result is deficit.

**One can accumulate 15% of the 'Total Income' before deducting applications, the quantum of application cannot exceed the unspent balance.**

**2.2 15% of Gross Income before Application shall be accumulated under section 11(2) :**

The Supreme Court of India in *CIT v. Programme for Community Organisation* [1997] 116 TAXMAN 608 (SC) affirmed the decision of the Kerala High Court in *CIT v. Programme for Community Organisation* [1997] 228 ITR 620 that trust was entitled to exemption under section 11 at 25 per cent of its total income derived, not on amount remained after expending money on charitable purposes out of its total income. It may be noted that earlier the amount permissible for accumulation was 25% which was reduced to 15% by Finance Act, 2001.

**2.3 A suggested statement of computation for the purposes of Income Tax is provided in *Annexure 1*.**

\*\*\*\*\*



## STATEMENT OF COMPUTATION OF INCOME

<b>Particulars</b>	<b>Amount (Rs.)</b>	<b>Amount (Rs.)</b>
<b><u>Source of Total Income</u></b>		
Income from Donation & Contribution	XXX	
Gross Surplus* from incidental income generation activities	XXX	
Income from incidental business activities		
Capital Gains**	XXX	
Interest /Dividend Income from investments	XXX	
Corpus Donation***	XXX	
Any other Income	XXX	
Total of Income		XXX
<b>Balance</b>		XXX
<b>Less : Expenditure towards earning such income</b>	XXX	
<b>Income available for application under Section 11(1)</b>		XXX
<b><u>Application of Income</u></b>		
Payment to and Provision for employees	XXX	
Administrative & Establishment Expenses	XXX	
Auditor's remuneration	XXX	
Depreciation	XXX	
Capital Gains** (not sale consideration) as Deemed Application under Section 11A	XXX	
Corpus Donation*** (deemed application) u/s. 11(1)(d)	XXX	
Any other application towards charitable purposes (including both revenue and capital nature)	XXX	
Inter Charity Donation	XXX	
Total of Application out of current year's income		XXX
<b>Surplus Income or (deficit)</b>		XXX
Less: Amount accumulated or set apart for application for charitable purpose being 15%**** u/s. 11(1)		XXX
<b>Surplus Income or (deficit)</b>		XXX

\* Subject to common cost and use of common infrastructure. Otherwise, net income should be reflected

\*\* To claim Capital Gain the entire amount of sale proceeds should be invested otherwise the appropriate fraction should be claimed.

\*\*\* The corpus donation can also be excluded in terms of section 12(1).

\*\* To claim Capital Gain the entire amount of sale proceeds should be invested other wise the appropriate fraction should be claimed.

\*\*\* The corpus donation can also be excluded in terms of section 12(1).

\*\*\*\* Maximum 15% accumulation or unspent balance to be reduced to nil, excluding corpus donation in the light of Section 12(1)

# WHAT IS “SUBSTANTIALLY FINANCED BY GOVERNMENT”

## 1. INTRODUCTION

- 1.1** The issue regarding substantial funding by government has always been confusing and debatable.
- 1.2** Under the Income Tax Act charitable organisations engaged in education or medical relief are totally exempted if such organisations are substantially funded by government. Under sub-clauses (iiiab) and (iiiac) of clause (23C) of section 10 of the Income Tax Act educational institutions and medical institutions are totally exempt from tax.
- 1.3** Under Right to Information Act also charitable organisations are treated as ‘Public Authority’ if they are substantially funded by the government. Such organisations are subjected to RTI laws and are under legal obligations to provide information to any Indian citizen. The RTI laws otherwise do not apply to charitable and religious organisations.
- 1.4** Therefore, it becomes important to understand what exactly the term “Substantially Financed by Government” as no clear definition was available under both the laws. And there were different opinion and decisions in this regard.
- 1.5** Last year a notification was issued by CBDT specifying 50% as the limit for determining substantial funding by Government for the purposes of sub-clauses (iiiab) and (iiiac) of clause (23C) of section 10. In other words, organisation receiving more than 50% of their grant/income from Government can avail Income Tax exemptions.
- 1.6** In the recent past this issue was raked up again in the case *CIT v. Indian Institute of Management* [2014] 49 taxmann.com 136/226 Taxman 301 (Kar.) where it was held that initial contribution and contribution in kind should also be considered for determining “Substantially Financed by Government”.
- 1.7** The NGOs have to be careful about the application of the term “Substantially Financed by Government”. At the same time it should also be understood that in general the NGO sector does not fall under the purview of Right to Information Act.

## 2. NOTIFICATION BY CBDT

- 2.1** CBDT has issued Notification No. 79/2014 [F.NO. 142/12/2014-TPL] /SO

3168(E), DATED 12-12-2014 regarding substantial finance by Government for the purposes of sub-clauses (iiiab) and (iiiac) of clause (23C) of section 10. Under this section institutions are exempted from income tax by virtue of government funding. The notification inserted Rule 2BBB which is as under:

**“2BBB.Percentage of Government Grant for considering university, hospital etc. as substantially financed by the Government for the purposes of clause (23C) of section 10.**

For the purposes of sub-clauses (iiiab) and (iiiac) of clause (23C) of section 10, any university or other educational institution, hospital or other institution referred therein, shall be considered as being substantially financed by the Government for any previous year, if the Government grant to such university or other educational institution, hospital or other institution exceeds 50% of the total receipts including any voluntary contributions, of such university or other educational institution, hospital or other institution, as the case may be, during the relevant previous year.”

### **3. KARNATAKA HIGH COURT DECISION**

**3.1** In the case *CIT v. Indian Institute of Management* [2014] 49 taxmann. com 136/226 Taxman 301 (Kar.) where it was held that initial contribution and contribution in kind should also be considered for determining “Substantially Finance by Government”. It was held that word ‘wholly or substantially financed by Government’

cannot be confined only to annual grants as apart from providing annual grant. If Government grants land, invests money in building and infrastructure and also running educational institution all that has to be taken into consideration to decide whether institution is wholly or substantially financed by Government in order to become eligible to claim exemption under section 10(23C) (iiiab). In this case, the organisation was allowed tax benefit only because it was substantially funded by the Government long back in the past.

**3.2** In this case the annual grant received by the institution was less than 10%, however, it was held that the initial contribution and the non-cash contribution such as land, cannot be ignored. The case raises fundamental questions such as :

- i. Whether initial support from government will make an institution exempted forever
- ii. For assessment purposes will the financial figures which are 30 – 40 year old be relevant
- iii. How to assess non cash contribution

### **4. PHFI CASE**

**4.1** In the case *Kishan Lal vs. Public Health Foundation of India*, CIC/ SG/C/2011/001273 /17356 the Central Information Commission (CIC), while allowing a complaint, ruled that Public Health Foundation of India (PHFI) is a public authority under the Right to Information (RTI). PHFI had received land free of cost from various state governments; PHFI received Rs. 65 crore from the central which was one

third of the total initial cost of Rs 200 Crore. The remaining amount (about Rs 135 crore) was raised from outside the Government, namely, Melinda & Bill Gates Foundation (Rs 65 crore) and from high net-worth individuals.

- 4.2** The annual funding from government was less than 10%, therefore, it argued that it was not substantially funded by government which was rejected by Central Information Commission (CIC). In other words, the word 'substantial' was not denoted the meaning which could be considered as majority or more than 50%. The Commission in its wisdom treated 'considerable' funding also as substantial.

## **5. PUBLIC AUTHORITY AS PER CIC, HIMACHAL PRADESH**

- 5.1** The Himachal State Information Commission (SIC) has ruled that all "substantially" financed NGOs (receiving over Rs 1 crore from state or government grants) are covered under the definition of public authority under the Right to Information (RTI) Act, 2005 and such organisations must make their annual 'income and expenditures' public. In an order passed by the division bench comprising of Chief Information Commissioner Bhim Sen and Information Commissioner K D Batish, it was held that the Himachal Pradesh Voluntary Health Association (HPVHA) was a public authority under RTI. The SIC directed the organisation to appoint its public information officer (PIO) within 10 days. The SIC observed that as per the provisions of the Comptroller and Auditor General (CAG) Act 1971, HPVHA

was eligible for audit by the CAG. Hearing a complaint filed by Deepak Sharma, the SIC analysed the funding details of the HPVHA, which was over Rs 1.22 crore during 2008-2009. The SIC also ruled that in cases where the state does not provide substantial grants (Rs 25 lakh or less) to NGOs, the state or a government agency will be appointed as public authority, which will be required to provide information. The SIC further observed that -

*"If an NGO is not substantially financed by the government and also raises funds by collections from public contribution and it performs functions of a public nature that are ordinarily performed by the government or its agency, it is desirable that the NGO voluntarily place maximum information regarding its activities on its website".*

- 5.2** This landmark order is likely to have wide implications for the government-funded NGOs and organisations run on public contributions. The judgment does not provide for a percentage of Government fund. Any NGO receiving more than 1 Crore shall fall under RTI even if such grant is a small portion of its funding. The ruling in other words implies that '1 Crore or 50% of total funding' both or any one will attract RTI law.

## **6. WHAT IS PUBLIC AUTHORITY**

- 6.1** It may be noted that, RTI is applicable to all "Public Authority" as defined under section 2(h)(d)(ii) of the RTI Act. NGOs are also included provided they are substantially funded by the

Government. The definition of “Public Authority” is as under:

“public authority” means any authority or body or institution of self- government established or constituted—

- a. by or under the Constitution;
- b. by any other law made by Parliament;
- c. by any other law made by State Legislature;
- d. by notification issued or order made by the appropriate Government: and includes any—
  - i. Body owned, controlled or substantially financed;
  - ii. Non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government.

**6.2** However, the Act did not define the phrase ‘substantially financed’. This significant order of the SIC clarifies the financial limit of falling in the category of a “Public Authority”. The notification issued by CBDT should provide some reference in this regard.

## **7. CONCLUDING REMARKS**

**7.1** In the light of the above rulings it seems that the term “Substantially Financed by Government” is yet to be defined and resolved. It is important that distinction is drawn between the following:

- The initial land and funding provided by the government
- The annual grant received from the Government

**7.2** It is important to distinguish between the initial contribution by the government and the recurring contribution. An organization should not be allowed tax exemptions only because the land and initial contribution was made by the government 20 or 30 years ago. If such organization become privately funded and managed then they should be made accountable and subjected to tax compliance which is applicable to other organizations.

**7.3** The decisions of various Right To Information (RTI) are with regard to the ambit of public authority which are accountable public at large, such analogy should not be applied to take tax exemptions. However, under RTI Act, the law becomes applicable if the NGO works in partnership with the Government, particularly if the grant exceeds Rs. 1 crore irrespective of the scale and size of the NGO.

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# FILING OF RETURNS AND ALLIED COMPLIANCE UNDER INCOME TAX

## 1. FILING OF RETURN

**1.1** 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.

**1.2** 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. Such returns are to be filed with the Income tax Officer or the Assessing Officer under whose local jurisdiction they fall. 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.

**1.3** 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)ae) 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. 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.

**1.4** Upto the Assessment Year 2015-16, the organisations claiming exemption under sub-section (iiiab) & (iiic) 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 had proposed that these organisations shall also have to file their Income Tax Return u/s. 139 w.e.f. 2016-17.

**1.5** The last date of filing of return is 30th September of the Assessment Year.

## **2. DELAYED SUBMISSION OF RETURN OF INCOME**

**2.1** An organisation which fails to furnish its return of income within the due date can still submit its return of income any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier. For instance, a return of income for the financial year 2013-14 can be submitted upto 31st March, 2016.

**2.2** Under section 272A(2)(e), any voluntary organisation which fails to furnish the return of income which is required to be furnished under sub-sections (4A) and (4C) of section 139 or fails to furnish it within the time allowed and in the manner required under that sub-section, it shall pay by way of penalty a sum of Rs. 100 per day during which the failure continues before imposing such penalty, an opportunity of being heard shall be given to the organisation.

**2.3** The Finance Act, 2015 had provided that:

- (a) In order to claim the benefit of accumulation of income for five years, Form 10 has to be submitted within the time limit provided for submitting the return u/s. 139(1) and also in such cases Return of Income has to be filed in time by the organisation.
- (b) The option in terms of explanation 2 to Section 11 has to be exercised in writing and has to be submitted before the expiry of time limit as provided u/s. 139(1), though in such case the submission of return can be delayed.

## **3. SUBMISSION OF RETURN**

**3.1** 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.

**3.2** Signature can be put through digital signature or submitting the verification of the return in Return Form ITR-7 & then send the same to Income Tax Centralized processing Centre, Prestige Alpha, No. 48/1 & 48/2, NH-7, Basapura, Bengaluru, Karnataka- 560100 after signature.

## **4. SPECIFIC ISSUES CONCERNING ITR - 7**

**4.1** This is a return in common with -

- (a) political party
- (b) scientific research association
- (c) news agency
- (d) institution subject to section 10(23A), 10(23B) & 10(23C) (iv) / (v) / (vi)
- (e) university, college & other institutions as referred in section 35

- Hence all the clauses of the return may not be applicable to NGO registered under section 12A

**4.2** As income of the NGO is computed in commercial sense, therefore there is no requirement to fill up Schedule HP / CG, etc.

### **4.3 New inclusion in ITR-7**

- (a) Name of the project / institution run by the assessee –



- Name of the school / name of the hospital, if any
- Nature of activity to be selected as Charitable, Religious, Research, News Agency, Professional Bodies, Trade Union, Political, Electoral Trust, others.
- Under each nature of activity classification to be made –

like under charitable activity we have to select Education, Medical Relief or Relief to the Poor and so on

(b) Specific declaration

whether our activity includes advancement of any other object of General Public Utility;

- whether commercial in nature &
- whether the actual receipt exceeds Rs.25.00 Lacs

(c) Details regarding approval of project u/s. 35 of the IT Act.

(d) Details regarding change in the object / activity during the year.

(e) Details of registration under FCRA & amount of foreign contributions received

(f) Details of foreign assets including foreign bank account.

(g) Disclosure of Corpus Fund & Non-Corpus Fund Balance.

(h) Amount applied to charitable or religious purpose to be disclosed under the following separate heads:-

- Revenue Account
- Capital Account
- Repayment of Loan

(i) In the clause “Amount deemed to have been applied to charitable or religious purposes in India during the previous year as per Clause(2) of Explanation to Section 11(1)”

- whether the option to be exercised in writing before due date to the Assessing Officer is to be selected as “yes” or “no”. Therefore the assessee has to submit the option letter to the respective ward and then only return shall be submitted.

## 5. SUBMISSIONS OF OPTION LETTER/ ACCUMULATION REQUEST

**5.1** Option letter: Option letter to spend in subsequent year or in the year of receipt should be filed before the due date of furnishing return by way of a simple letter. However e-filing of return requires declaration whether the option letter has already submitted to the Assessing Officer or not. Hence it is advised that, before submitting Income Tax return, option letter should be filed with the Assessing Officer so that the declaration given at the time of online submission of return becomes correct.

**5.2** Accumulation Request: Previously Form 10 was required to be submitted in hardcopy, preferably before the due date of submission of return. However, w.e.f 01/04/2014, it has become mandatory to upload online Form 10 for accumulation of income u/s. 11(2).

## 6. ONLINE FILING OF AUDIT REPORT IN FORM 10B



**6.1** With effect from Assessment year 2013-14, it has also become mandatory to upload online audit report in Form 10B.

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

**7.1** 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.

**8. FILING OF RETURN BY UNREGISTERED ORGANISATIONS**

**8.1** Charitable / Religious Organisations, which are not registered u/s 11 or u/s 10(23C) of the Income Tax Act do not enjoy any exemption on their income. Hence, they are liable to file a 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. Such organisations should file their income-tax return in ITR-7.

**8.2** It may also be noted that Trust for private purposes or private beneficiaries should not file return in ITR-7.

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# NGOS HAVING ACTIVITY OUTSIDE INDIA

## 1. OVERVIEW OF THE LEGAL ISSUES AND PROVISIONS

- 1.1** Under the provisions of Income-tax Act, 1961, income applied on activities outside India is not eligible for exemption unless the following conditions are satisfied:
- (a)** The charitable organisation happens to be a trust created before 1-4-1952 or it is engaged in promotion of international welfare in which India is interested;
  - (b)** Central Board of Direct Taxes (CBDT) has by general or special order granted the exemption for carrying out such activities.
- 1.2** An organisation can apply to the CBDT for permission to work outside India. The applications seeking approval u/s 11(1)(c) may be submitted in the office of Member(IT), Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, North Block, New Delhi.
- 1.3** With regard to the Earthquake in Nepal, the Central Board of Direct Taxes had decided to fast track all applications made u/s 11(1)(c) of the Income Tax Act, 1961 seeking approval for rendering help to the victims of earthquake in Nepal. The Department endeavored to process these applications within two working days of receiving the completed applications. The documents that were required to be attached are provided in **Annexure 1.**
- 1.4** All organisations should verify whether an enabling clause to work outside India is present in the Constitution/Trust Deed/Memorandum of Association. An organization should see that the area of operation is not specifically restricted to a particular district, state or India as a country. In such cases it will not be permissible for them to work outside India without amending the Constitution. In case the Constitution is silent about the area of operation, such organisation may work outside India by passing a special resolution if there is no restrictive clause with regard to area of operation.
- 1.5** It may be noted that if an organisation incurs expenditure outside India in contravention of section 11(1)(c), then the entire exemption will not be lost. Income to the extent not applied in India will not be eligible for exemption and will be taxed.
- 1.6** Further, existence of a clause in the registration document which provides

for activities outside India, would not disentitle the organisation from claiming income tax exemptions. The provisions of section 11(1)(c) are attracted only if actual expenditure is incurred outside India.

**1.7** Foreign Contribution Act, 2010 (FCRA) is silent regarding expenditure to be incurred in foreign country or activity outside India. However, the Charter for NGOs provided by FCRA department specifically states that activities outside India cannot be conducted with FC Funds, the Charter for NGOs is provided in **Annexure 2**. Further, it specifically provides that if the funds are transferred to another NGO, it can be given only to another FC registered NGO. Therefore, it is advisable to seek permission from FCRA Department to work outside India. FCRA Department may provide specific or general permission u/s. 50 of the Foreign Contribution Regulation Act, 2010 (FCRA).

**1.8** In order to have a formal transfer of funds and relief material from one country to another, it is advisable to obtain the necessary permission from the Consulate of that Country in India and also inquire about the local laws applicable for such activity.

## **2. ACTIVITIES OUTSIDE INDIA NOT EXEMPTED**

**2.1** Under section 11(1)(c) of the Income-tax Act, any income applied on activities outside India is not eligible for exemption.

**2.2** A charitable organisation cannot have activity outside India unless it happens to be a trust created before 1-4-1952 or it is engaged in promotion of international welfare in which India is interested. In other words, NGOs registered after 1-4-1952 are not allowed to have any international activity unless such activity is specifically exempted by CBDT. Provisions of section 11(1)(c) are as under :

**(c)** income derived from the property held under trust—

**(i)** created on or after the 1st day of April, 1952, for a charitable purpose which tends to promote international welfare in which India is interested, to the extent to which such income is applied to such purposes outside India, and

**(ii)** for charitable or religious purposes, created before the 1st day of April, 1952, to the extent to which such income is applied to such purposes outside India :

**Provided** that Board, by general or special order, has directed in either case that it shall not be included in the total income of the person in receipt of such income;" From the above provisions, it is clear that organisations created after 1-4-1952 are not empowered to do activities outside India. However, CBDT in certain circumstances may direct by a general or special order permitting certain activities, which tend to promote international welfare in which India is interested.

### **3. SECTION 10(23C) IS SILENT ABOUT THE PLACE OF ACTIVITY**

**3.1** In India NGOs can be registered under Income Tax Act, both under section 10(23C)(vi) and also under section 12AA. NGOs of national importance are granted registration under section 10(23C). It may be noted that unlike section 11(1)(c) the third proviso to section 10(23C)(vi) does not mention the words “in India” with regard to application of funds for charitable and religious purposes. Therefore, it raises the question whether NGOs registered under section 10(23C) can have some activities outside India. The Supreme Court gave a landmark judgment in American Hotel & Lodging Association Educational Institute v. CBDT [2006] 206 CTR (Delhi) 601/[2007] 289 ITR 46 (Delhi). In this case, the assessee NGO was a branch office of an American NGO. It was not doing any charitable activity in India and all its income in India was repatriated to USA.

**3.2** The Supreme Court was of the opinion that exemption under section 10(23C) was not available if all the activities were outside India though section 10(23C) does not specifically make it mandatory that the activities be done in India. In other words, the Supreme Court opined that NGOs registered under section 10(23C) should primarily have activities in India to claim exemptions. The Court observed that the absence of words “In India” does not automatically imply “anywhere in the world”. In the light of this ruling, it may be concluded that NGOs registered under section 10(23C)(vi) are also required to have activities in India only; however, in the light of the

observation of the Supreme Court they may have some activity outside India as there is no specific bar on working outside India under section 10(23C)(vi).

**3.3** Therefore, one needs to distinguish between an NGO registered under section 12A and section 10(23C), the former cannot have any activity outside India, without prior permission of CBDT, but the latter may have some activity outside India because section 10(23C) is silent about the location of activities and the Supreme Court opined that such NGOs should primarily be working in India. Therefore, in either case, to avail tax exemptions in India, the dominant purpose and activity should remain inside India.

### **4. INCOME SHOULD NOT ONLY BE APPLIED FOR CHARITABLE PURPOSES BUT ALSO APPLIED IN INDIA**

**4.1** In the case of Director of Income-tax (Exemption) v. National Association of Software & Services Companies [2012] 21 taxmann.com 213 (Delhi) the High Court of Delhi held that the income of the trust should not only be applied for charitable purposes, but also applied in India to such purposes. It was observed that the interpretation that the words ‘in India’ qualifies only the words ‘such purposes’ would not only be contrary to the plain grammatical meaning of section 11(1)(a) but also render the provisions of section 11(1)(c) redundant and otiose. If it was accepted that income of trust can be applied even outside India so long as the charitable purposes are in India, then there is no need for a trust which

tends to promote international welfare in which India is interested and was created on or after 1-4-1952 to apply to the CBDT for a general or special order for exemption.

*medically treat a person outside India. Or it cannot import medicine from outside India but can buy imported medicine from a dealer in India*

**4.2** The High Court interpreted the natural grammatical meaning of the words “to the extent to which such income is applied to such purposes in India” appearing in section 11(1)(a) of the Act. The High Court observed that the word “applied” is a verb in the past tense used in a transitive form followed by words “such purposes” and “India” qualified with two prepositions “to” and “in”. This being the case, the words should be read as applicable to charitable purposes and also applied in India to such purposes.

**4.3** The assessee’s contention, that “in India” qualifies only the phrase “such purposes” so that only the purposes are geographically confined to India, was not acceptable to the High Court. The Court observed that if such meaning was assigned to the words, it would disturb the natural or grammatical interpretation of the words, “to the extent to which such income is applied to such purposes in India”. For this purpose the Court relied on a few rules of interpretation laid down in the cases of Jugal Kishore Saraf v. Rao Cotton Co. Ltd. AIR 1955 SC 376; Kanai Lal Sur v. Paramnidhi Sadhukhan AIR 1957 SC 907 and Union of India v. Rajiv Kumar [2003] 6 SCC 516.

*The implication of this decision is that expenditure cannot be made outside India, for example an NGO cannot*

## **5. SUPPORTING STUDENTS TO STUDY OUTSIDE INDIA**

**5.1** In case of Jamsetji Tara Trust v. Joint Director of Income-tax (Exemption) Range-II [2014] 44 taxmann.com 447 Mumbai Tribunal held that education grant given to Indian students for studying abroad fulfils conditions of application of money in order to claim exemption under section 11.

## **6. WILL ACTIVITIES OUTSIDE INDIA RESULT IN FORFEITURE OF ENTIRE INCOME?**

**6.1** It may be noted that if an NGO, registered under section 12A incurs expenditure outside India in contravention of section 11(1)(c), then the entire exemption will not be lost. Income to the extent not applied in India will not be eligible for exemption. The provisions of section 11(1)(c) do not attract forfeiture over the entire income unlike the provisions of section 13(1). In other words, if an NGO is willing to pay taxes to the extent of its activities outside India, then to that extent it can have such activities. The total forfeiture of income is not possible because applying funds outside India has not been envisaged as a reason for forfeiture under section 13(1)(a) to 13(1)(d). In the case of CIT v. State Bank of India [1988] 169 ITR 298 (Bom.) the trust had applied income outside India and the income to that extent only was subjected to tax.

## 7. WILL A CLAUSE OF ACTIVITIES OUTSIDE INDIA IN THE TRUST DEED INVITE FORFEITURE?

**7.1** If there is a clause in the trust deed which provides for activities outside India, it would not disentitle the organisation from claiming exemption. **The provisions of section 11(1)(c) are attracted only if actual expenditure is incurred outside India. Section 11(1)(c) cannot be invoked only on the ground that the trust deed provides for activities outside India.**

**7.2** In the case of CIT v. State Bank of India [1988] 169 ITR 298 (Bom.), one of the issues was whether a trust for charitable purposes in India and abroad can claim exemption from its income where the trustees have discretion to apply the income either in India or abroad? The trust deed provided, at the discretion of the trustees, to give 45 per cent of the income to the University of Athens. It was held that the trust was eligible for exemption even though it provided for application of income abroad. However, the portion of income actually applied abroad or accumulated for application abroad was not exempt.

**7.3** Similarly, in CWT v. Trustees of the Nizam's Religious Endowment Trust [1977] 108 ITR 229 (AP), it was held that the charitable or religious expenditure incurred in India will not be affected by a provision for activities outside India or even actual expenditures abroad. Exemptions towards activities in India remain intact and in the case of a clause in the trust deed empowering the trust to have activities outside India, there

is no impact. And in the case of trust having activities outside India, the exemptions will be denied to the extent of the income applied outside India.

**7.4** Further it has been held that only the existence of other objects can not affect the charitable status of a Trust or NGOs in the case of Digamber Jain Society for Child Welfare v. DGIT (Exemptions) [2010] 228 CTR (Delhi) 517. In the case of Ewing Christian College Society v. Chief CIT [2009] 318 ITR 160 (All.), it was held that the objective to serve the church and nation would not mean that the society was not existing solely for educational purposes; therefore, any additional object clauses normally should not affect the charitable status of a trust or NGO.

## 8. TRANSFER OF FCRA FUNDS TO OTHER COUNTRIES

**8.1** In the light of the discussions, it is important to understand whether FCRA funds could be transferred to other countries. In this context, it should be noted that the transfer of funds to other countries should be distinguished into 2 categories:

- (i) Transfer of funds by an NGO to its own overseas branch or project.
- (ii) Transfer of funds to NGOs of other countries.

**8.2** Generally Indian NGOs are not permitted to have activities or branches outside India, therefore, having branches and transferring FCRA funds is not permissible in general.

**8.3** Foreign Contribution Act, 2010 (FCRA) is silent regarding expenditure to be incurred in foreign country or activity outside India. However, the Charter for NGOs provided by FCRA department specifically states that activities outside India cannot be conducted with FC Funds, the Charter for NGOs is provided in Annexure 2. Further, it specifically provides that if the funds are transferred to another NGO, it can be given only to another FC registered NGO. FCRA provides that no funds can be transferred to NGOs which are not registered under FCRA. The FCRA Act has not envisaged the possibility of transferring funds to NGOs in other countries and therefore, without any exception it bars the transfer of FC funds to NGOs which are not registered under FCRA.

**8.4** It is advisable to seek permission from FCRA Department to work outside India. FCRA Department may provide specific or general permission u/s. 50 of the Foreign Contribution Regulation Act, 2010 (FCRA). Once the exemption is received then only FC fund should be used for working in Nepal.

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## **DOCUMENTS REQUIRED TO BE FURNISHED WHILE SEEKING EXEMPTION U/S 11(1)(C) OF THE INCOME-TAX ACT, 1961**

- 1) Certified Copies of Trust Deed, Articles of Association, Memorandum of Association (as applicable) and PAN Card
- 2) Copy of order granting registration u/s 12AA of the Income Tax Act
- 3) Amount in INR and year in which it is proposed to be remitted/ incurred
- 4) In case money is to be remitted, a note on the purpose for remitting the money giving the details of remittee and the manner in which the sum remitted is generally proposed to be utilized
- 5) to be utilized
- 6) Copies of the latest IT Return along with Account Statements
- 7) Copy of the latest Assessment orders, if any in last five years
- 8) Details of pending prosecution launched by Income Tax Department, if any
- 9) Details of any proceeding initiated/pending for violation of FCRA regulations, if any

E-mail id, phone number, fax number and complete address were also required for correspondence.



**CHARTER FOR ASSOCIATIONS WHO HAVE BEEN GRANTED  
PRIOR PERMISSION OR REGISTRATION UNDER FCRA**

- An association granted prior permission or registration under the repealed Foreign Contribution (Regulation) Act, 1976 shall be deemed to have been registered or granted prior permission, as the case may be, under the Foreign Contribution (Regulation) Act, 2010 (FCRA, 2010) and such registration shall be valid for a period of 5 years from the 1st May, 2011, i.e., up to the 30th April, 2016.
- Every certificate of registration granted under FCRA, 2010 shall be valid for a period of five years from the date of its issue.
- Every certificate of registration shall have to be renewed. The application for renewal is to be made online in Form FC-3 along with the prescribed fee, six months before the date of expiry of the certificate of registration. In case, no application for renewal of registration is received or such application is not accompanied by the requisite fee, the validity of the certificate of registration shall be deemed to have ceased from the date of completion of the period of five years from the date of the grant of registration.
- An association granted prior permission or registration under the FCRA, 2010 should receive the foreign contribution in the same exclusive designated Bank Account mentioned in the order granting prior permission or registration. This account number would be the same as has been intimated by the organisation in their application for prior permission/registration. Deposit of any local fund in this bank account is not allowed. One or more accounts in one or more scheduled banks may be opened for utilizing the foreign contribution provided that no funds other than foreign contribution shall be received or deposited in such account or accounts. Section 17 of the FCRA, 2010 may please be referred.
- Foreign contribution cannot be mixed with local funds being handled by the organisation.
- An association granted prior permission or registration is required to carry out the activities, for which foreign contribution is received, in India only and the amount should not be utilised for purposes other than for which it is received.
- Any fixed asset acquired out of the foreign contribution and any article received in kind from the foreign source should be in the name of the association and not in the name of any individual in the association.
- Not more than 50% of the foreign contribution shall be defrayed to meet administrative expenses of the association. What constitutes 'administrative expenses' has been defined in Rule 5 of the Foreign Contribution (Regulation) Rules, 2011 (FCRR, 2011).
- Any foreign contribution or any income arising out of it shall not be used for speculative business. What constitutes 'speculative business' has been defined in Rule 4 of FCRR, 2011.
- An association granted prior permission or registration should maintain a separate set of accounts and records, exclusively for foreign contribution received and utilised. If the foreign contribution relates only to articles/ foreign securities, the intimation shall be submitted online in Form FC-1.
- Every account giving details of the receipt and purpose-wise utilisation of the FC, including the interest earned on the FC amount, should be maintained on an yearly basis,

commencing on the 1st day of April each year, and every such yearly account is to be submitted online, in the prescribed Form FC – 4 and uploaded therewith the income and expenditure statement, balance sheet and statement of receipt and payment, duly certified by a chartered accountant, within nine months of the closure of the year, i.e., before 31st December. A copy of a statement of account from the bank where the exclusive foreign contribution account is maintained by the person, duly certified by an officer of such bank should also be uploaded. The cash book and ledger account is to be maintained on double entry basis, where the FC relates to currency received and utilised. The annual return in Form FC-4 shall reflect the foreign contribution received in the exclusive bank account and include the details in respect of the funds transferred to other bank accounts for utilisation.

- The accounting statements shall have to be preserved by the NGO/association for a period of six years.
- Even if no FC is received during a year, a 'Nil' return is required to be filed online in Form FC-4 within the prescribed time limit. However, certificate from Chartered Accountant or I&E statement or R&P account or balance sheet is not required to be uploaded.
- Associations granted registration or prior permission are required to place audited statement of accounts on receipt and utilisation of the foreign contribution, including income and expenditure statement, receipt and payment account and balance sheet for every financial year beginning on the first day of April within nine months of the closure of the financial year on its official website or on the website as specified by the Central Government.
- Associations receiving foreign contribution in a quarter of the financial year shall place details of foreign contribution received on its official website or on the website as specified by the Central Government within fifteen days following the last day of the quarter in which it has been received clearly indicating the details of donors, amount received and date of receipt.
- No FC should be transferred to an association which has not obtained either prior permission or registration under FCRA or to any person or association, prohibited under FCRA from receiving any FC. However, if the foreign contribution is proposed to be transferred to a person who has not been granted a certificate of registration or prior permission by the Central Government, the person concerned may apply online in Form FC-5 for permission to the Central Government to transfer a part of the foreign contribution, not exceeding ten per cent, of the total value of the foreign contribution received. The donor shall not transfer any foreign contribution until the Central Government has approved the transfer. Any transfer of foreign contribution shall be reflected in the returns in Form FC-4 by the transferor and the recipient.
- Intimation for Change of name, address, registration, nature of activities or aims and objectives of an association, replacing 50% or more of the office bearers of the association, bank and/or bank account number and opening of bank account for utilisation of foreign contribution should be intimated online in Form FC-6 and uploading requisite documents within 15 days of effecting the change.
- All associations granted registration or prior permission under FCRA, 2010 shall be required to adhere to Good practice guidelines of Financial Action Task Force (FATF) as at Annexure.

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## II. Finance Section

**Accounting Treatment of Project Grants**

**Legal and Accounting Treatment of Depreciation & Types of Assets**

# Accounting Treatment of Project Grants

## 1. UNDERSTANDING THE INCOME OF NPOs

**1.1** The traditional understanding of income is that it should constitute inflows which are unconditionally available or increment in assets or decrease in liability, at the end of the year. The income of an NPO would generally include the following:

- Voluntary Contributions/Donations
- Unrestricted Grants
- Income from business or incidental activities
- Consultancy
- Interest and dividend
- Fund raising activity, one-time events
- Membership fees
- Other miscellaneous income

## 2. ACCOUNTING OF PROJECT GRANTS

**2.1** Understanding the exact legal and accounting treatment of project grants is a matter of importance as the entire amount of grant may be treated as taxable income in case of any violation of the Income Tax Act. The recent changes in the income tax act and the provisions of the Direct Tax Code (DTC) may have serious impact on NPOs if proper

accounting and legal treatment is not made with regard to project grants. Some of the legal concerns of project grant being treated as taxable income are:

- A charitable organisation can be treated as a commercial entity if its business activity exceeds 20% of the total receipts in a year. In such circumstances, the gross receipt of entire voluntary contribution received can be subjected to tax.
- Under the proposed provisions of DTC, an NPO shall have to pay taxes on its income if it is unable to spend at least 85% of its income in the year.

**2.2** In both the above circumstances, an NPO will have to pay taxes on the gross amount of voluntary contribution received. Currently, most of the NPOs in the country treat project grants as voluntary contribution. Therefore, it becomes important to understand the exact legal and accounting treatment of project grants, especially whether they should be treated as voluntary contribution or legal obligations.

**2.3** Specific project grants which are bound by contractual obligations should not be treated as voluntary contribution. A contractual legal obligation therefore, should not be treated as income as well. Therefore, a legal obligation should not be treated as income in the Income and Expenditure account, an income to the organisation can only be determined after the execution of the legal obligation. It is suggested that all restricted grants should be shown on the liability side of the balance sheet and any application from such grant should be reflected as a schedule to the balance sheet. An organisation is suggested to prepare Consolidated Resources & Application A/c. The formats of suggested financial statements are annexed herewith.

**2.4** The concept of income and accounting treatment as per International Accounting Standards and Accounting Standards issued by the Institute of Chartered Accountants of India (ICAI) is discussed in the following paras.

### **3. CONCEPT OF INCOME AS PER ICAI IN THIS REGARD**

**3.1** Framework for the Preparation and Presentation of Financial Statements issued by the Institute of Chartered Accountants of India (ICAI) defines income as follows:

*“Income is 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.”*

**3.2** The Framework further explains income as follows:

*“73. The definition of income encompasses both revenue and gains. Revenue arises in the course of the ordinary activities of an enterprise and is referred to by a variety of different names including sales, fees, interest, dividends, royalties and rent.”*

**3.3** As per the Framework, the income is recognised as follows:

*“ 91. Income is recognised in the statement of profit and loss when an increase in future economic benefits related to an increase in an asset or a decrease of a liability has arisen that can be measured reliably. This means, in effect, that recognition of income occurs simultaneously with the recognition of increases in assets or decreases in liabilities (for example, the net increase in assets arising on a sale of goods or services or the decrease in liabilities arising from the waiver of a debt payable).”*

*“92. The procedures normally adopted in practice for recognizing income, for example, the requirement that revenue should be earned, are applications of the recognition criteria in this Framework. Such procedures are generally directed at restricting the recognition as income to those items that can be measured reliably and have a sufficient degree of certainty.”*

**3.4** Going by the definition of income provided by ICAI, there should be an increase in economic benefits either in the form of inflows or enhancement of assets or decrease in liability. In other words, there should be an enhancement of the assets (net of liabilities) which does not happen in case of a restricted grant. A restricted grant comes with an equal liability which is legally enforceable. Therefore, it may not be correct to treat it as income as there is no increment in the equity or the net worth of the organisation, which is a necessity to come under the definition of income.

#### **4. INDIAN AND INTERNATIONAL ACCOUNTING STANDARDS**

**4.1** The relevant Accounting Standard in India is AS 12 which is titled Accounting of Government Grants. The corresponding International Accounting Standard with the same nomenclature is IAS 20. Both the Accounting Standards talk about the recognition of grant as income. According to these standards every donation or grant is an income because it results in enhancement of assets.

However, in practice, certain donations and grants are not recognised as income in the Income and Expenditure Account. For example, grants of the nature of promoters contribution as per Accounting Standard (AS) 12 issued by the ICAI are recognised as capital grants and recognised in equity and not recognised in the Income and Expenditure Account.

**4.2** However, the corresponding International Accounting Standard,

namely, IAS 20, recognises all grants as income irrespective of whether they are of the nature of promoter's contribution. In that sense, AS 12 currently is not recognising capital grants as income, therefore, is not in consonance with IAS 20 which does not distinguish between revenue and capital receipts.

**4.3** On careful analysis of both the accounting standards, it can be seen that they are silent about restricted grants or legal obligations. It is important to study another International Accounting Standards i.e. IAS 41 which is on Agriculture. In IAS 41 the criteria for recognition as income is provided. It may be noted that IAS 41 clearly states that if any income is subject to any future obligation, then it should be recognised only after such future obligation is resolved.

**4.3** It is important to draw inference from IAS 41 which apparently is not in congruence with IAS 20 and even the International Accounting Standards Board (IASB) is contemplating a comprehensive reconsideration of IAS 20. For instance, IAS 41.10 defines special criteria for the recognition of the agricultural assets as income, which are as under:

- the asset is controlled by the enterprise as a result of past events;
- it is probable that future economic benefits associated to the asset will flow into the enterprise; and
- the fair value or the acquisition/production cost can be measured reliably.

**4.4** Further, IAS 41.35 allows the recognition of an income only when the conditions imposed for giving the subvention are fulfilled. Moreover, the existence of an obligation of reimbursing the grant is not allowed.

**4.5** In the light of the above, a restricted grant does not envisage any economic benefit flowing into the organisation at the inception itself. Secondly, if the recognition of the revenue is permissible only after the conditions are fulfilled, then no revenue would be left. Therefore, going by IAS 41 restricted grant cannot be considered as income.

**4.6** In any case from an accounting and income tax perspective anything to be accounted as income must actually be available to the organization unconditionally.

## **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 Statement (I&E) because all receipts including restricted grants may not get reflected in an I&E statement.

**5.2** Receipts & Payments Account is like a cash flow statement and provides the 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 and not only for FC contribution. A model format of R&P Account is enclosed herewith in **Annexure 1**.

## **6. INCOME & EXPENDITURE ACCOUNT**

**6.1** Income & Expenditure Account is the account prepared by an NPO at the end of the year showing all income & expenditure. It is a well-accepted fact that all receipts are not income and all payments are not expenditure. Therefore, 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 given in **Annexure 2**.

## **7. GRANT ACCOUNT OR FUND ACCOUNT**

**7.1** When a restricted grant is not treated as income, then it becomes very important to prepare proper grant account or fund account. When a project grant is received, it is treated as a liability and all payments and expenditures made out of it are directly debited to this account. At the end of the year an independent statement of inflow and application out of this account is prepared.

**7.2** If independent project accounts are prepared treating them as separate fiscal entities, then it will be possible to know the closing bank balance, investment and assets available against each



such project. Under the conventional reporting, we do not provide project wise bank balances and investments. As a result the exact status of each project is not available. For instance, the NPO may have overall positive bank balance but some projects might be having negative cash balance because of inter-project transfers.

**7.3** For accounting purposes the restricted fund should be recognised on the basis of receipt. The expenditure should be charged on cash or accrual basis depending on the method of accounting followed by the organisation.

**7.4** The total activities of an NPO can only be assessed if the I&E Account and other Grant or Fund Accounts are seen at the end of the year in one consolidated statement. It may so happen that an NPO may not have significant income but is handling large amount of restricted funds. Therefore, it is of utmost importance that principle of Fund Accounting is followed for accounting as well as reporting of project activities. See **Annexure 3**.

## **8. CONSOLIDATED RESOURCES AND APPLICATIONS (CRA) STATEMENT**

**8.1** It is advisable that a consolidated statements should be prepared comprising both the I & E Account and other Grant and Fund Accounts to provide a holistic picture of the total funds mobilised during the year (including both income and restricted grants) and the application made towards charitable purposes.

**8.2** However, a grant received from a donor, might relate to a period, say for 3 years. In such an instance, it is advisable that the CRA Statement reflects only that part of the grant that has been applied during the year.

**8.3** A Receipts & Payments Account is not a proper statement for assessing the annual activities of an NPO, because it may include certain payments or expenditure which are not towards charitable purposes. It may also include receipts and payments which are towards the corpus or capital of the organisation and not intended to be applied for charitable purposes. Kindly see **Annexure 4** for a model format of Consolidated Resources and Applications (CRA) Statement.

**8.4** It should be noted that the entire Income and Expenditure Account should be merged with various projects and funds to the extent applied during the year. In other words, amount only to the extent applied during the year is shown on the income/resource side. The application and expenditures are shown as per actual.

**8.5** Currently, many NPOs prepare the same Consolidated Resources and Applications Statement in the name of I&E Account, by treating restricted grant as income. However, it is important that income and other receipts are distinguished. Therefore, it is advisable to prepare a CRA Statement on the basis of the above principles.



## 9. BALANCE SHEET

**9.1** Balance Sheet is a statement signifying the financial position of an organisation on a particular date. Normally a Balance Sheet is drawn at the end of the year to know the financial status of an entity. 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 be 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

**9.2** Balance Sheet can be prepared in two forms i.e. horizontal and vertical form. Most charitable organisations Balance Sheets are prepared in the Horizontal form. The vertical form of Balance sheet is mostly prepared by the corporate sector and is rarely seen in the charitable organisation. A model format of Balance Sheet is given in **Annexure 5**.

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## FORMAT OF RECEIPTS & PAYMENTS ACCOUNT

RECEIPTS	Previous year	Current year
Opening Balance:		
- Cash		
- Bank		
Grant Received		
Bank Interest		
Sale of Fixed Asset		
Other Income/Donations Loans & Advances		
<b>TOTAL</b>		

PAYMENTS	Previous year	Current year
<b><u>Programme Costs</u></b>		
<b><u>HIV /AIDS Programme</u></b>		
Salary and Benefits		
Documentation, Information, Study and		
Action Research		
Workshops		
Rural Development		
Networking		
Travel Costs		
Capacity Building		
<b><u>Slum Development Programme</u></b>		
Salary and Benefits		
Documentation, Information, Study &		
Action Research		

Workshops		
Rural Development		
Networking		
Travel Costs		
Capacity Building		
<b><u>Coordination and Administration Costs</u></b>		
Office running expenses		
Capital Costs		
Office Rent		
Salary and benefits		
Vehicle Running and maintenance		
Audit fee		
<b><u>Loans and Advances</u></b>		
<b><u>Purchase of fixed assets</u></b>		
Closing Balances		
- Cash		
- Bank		
<b>TOTAL</b>		

**Significant Accounting Policies and  
Notes forming an integral part of Accounts**

As per Report of even date  
Chartered Accountant

Signatures of

Partner  
Member  
M. No:

Director

Chairman

Treasurer

Place:

Date :

### FORMAT OF INCOME & EXPENDITURE ACCOUNT

RECEIPTS	Previous year	Current year
<b>INCOME</b>		
Grant Received		
Bank Interest		
Sale of Fixed Asset		
Other Income/Donations		
<b>TOTAL</b>		

EXPENDITURE	Previous year	Current year
<b><u>Programme Costs</u></b>		
<b><u>HIV /AIDS Programme</u></b>		
Salary and Benefits		
Documentation, Information, Study and		
Action Research		
Workshops		
Rural Development		
Networking		
Travel Costs		
Capacity Building		

<b><u>Slum Development Programme</u></b>		
Salary and Benefits		
Documentation, Information, Study & Action		
Research		
Workshops		
Rural Development		
Networking		
Travel Costs		
Capacity Building		
<b>TOTAL</b>		

<b><u>Coordination and Administration Costs</u></b>		
Office running expenses		
Capital Costs		
Office Rent		
Salary and benefits		
Vehicle Running and maintenance		
Audit fee		
<b>TOTAL</b>		

<b>Excess of Income or Expenditure transferred to General/unrestricted fund</b>		
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**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 PROJECT ACCOUNT/GRANT ACCOUNT**

	Previous year	Current year
Opening Balance		
Grant Received		
Bank Interest		
Project related receipts		
<b>TOTAL</b>		

<b>EXPENDITURE</b>	Previous year	Current year
<b><u>Programme Costs</u></b>		
<b><u>HIV /AIDS Programme</u></b>		
Salary and Benefits		
Documentation, Information, Study and		
Action Research		
Workshops		
Rural Development		
Networking		
Travel Costs		
Capacity Building		

<b><u>Slum Development Programme</u></b>		
Salary and Benefits		
Documentation, Information, Study and		
Action Research		
Workshops		
Rural Development		
Networking		
Travel Costs		
Capacity Building		
<b>TOTAL</b>		

<b><u>Coordination and Administration Costs</u></b>		
Office running expenses		
Capital Costs		
Office Rent		
Salary and benefits		
Vehicle Running and maintenance		
Audit fee		
<b>TOTAL</b>		

<b>Closing/unutilised Balance</b> <b>(Supported by Project Balance Sheet)</b>		
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**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 CONSOLIDATED RESOURCES AND APPLICATION STATEMENT**

<b>RESOURCES</b>	<b>Previous year</b>	<b>Current year</b>
Grants to the extent applied		
Other projects & funds to the extent applied		
Income during the year		
Bank Interest		
Project related receipts		
Sale of Fixed Asset		
Other Income/Donations		
<b>TOTAL</b>		

<b>APPLICATION</b>	<b>Previous year</b>	<b>Current year</b>
<b><u>Programme Costs</u></b>		
<b><u>HIV /AIDS Programme</u></b>		
Salary and Benefits		
Documentation, Information, Study and		
Action Research		
Workshops		
Rural Development		
Networking		
Travel Costs		
Capacity Building		
<b>TOTAL</b>		

<b>Slum Development Programme</b>	<b>Previous year</b>	<b>Current year</b>
Salary and Benefits		
Documentation, Information, Study and		
Action Research		
Workshops		
Rural Development		
Networking		
Travel Costs		
Capacity Building		
<b>TOTAL</b>		



<b><u>Coordination and Administration Costs</u></b>		
Office running expenses		
Capital Costs		
Office Rent		
Salary and benefits		
Vehicle Running and maintenance		
Audit fee		
<b>TOTAL</b>		

<b>Excess/Deficit of Income over Expenditure transferred to general/unrestricted fund</b>		
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**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 BALANCE SHEET STATEMENT

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

#### 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:

# LEGAL AND ACCOUNTING TREATMENT OF DEPRECIATION & TYPES OF ASSETS

## 1. UNDERSTANDING DEPRECIATION

**1.1** Depreciation is again one of the most important accounting aspects which have to be understood properly. It normally implies the loss in the value of assets due to wear and tear and efflux of time. Let us understand this concept with the help of an illustration-

*“Nimhas is an established social activist and he has been working for more than a year. After one year of operations Nimhas was just making a common sense analysis of his financial status. He found that he had purchased various fixed assets such as Building, Vehicle, Furniture, Office Stationery, Electrical Equipments etc. On physical inspection he saw that these assets were not looking as good as they looked a year ago, constant use had taken a toll over these assets. However his Books of Account were showing them at the price at which they were purchased. He realistically felt that neither the assets were as good as they were on purchase nor would they realise the same amount if he tried to sell them. Therefore he felt that though no money had flowed out of the organisation, there was certainly a loss in the value of*

*the assets he possessed and therefore he frantically tried to make some accounting adjustment. Then he was told that what he had noticed was a normal business phenomenon and what he thinks as the loss in the value of asset is known as Depreciation in the accounting language.”*

**1.2** The basis and quantum of charging depreciation depends on the nature of the asset, its original cost, estimated useful life and residual scrap value at the end of the working life. Depreciation is normally charged either on straight line method or written down value method. Under straight line method, the original cost less the residual value at the end of the life of the asset is divided by the number of years of useful life and apportioned equally among the years.

Under written down value method, a fixed percentage is written off on the diminishing balance of the asset annually. Normally, depreciation is charged on all the assets including those purchased during the year for full year. Similarly, depreciation should not be charged on assets sold/discarded/written off during the year. However, w.e.f. 1-4-1998 as per Section 32(1) of the Income Tax Act, 1961, if the asset is acquired by the

assessee during the previous year and is put to use for a period of less than one hundred and eighty days in that previous year, the deduction in respect of such asset shall be restricted to fifty per cent of the amount of depreciation calculated for an asset. In other words, to claim depreciation for the complete year the assets must have been used for atleast six months in a year.

## **2. PURCHASE OF ASSETS ALLOWED AS APPLICATION**

**2.1** In case of NPOs, if project assets are purchased from the current year's income then the entire amount is treated as valid application of fund. In such circumstances, it becomes difficult to charge further depreciation as the value of the assets is reduced to nil by treating them as application of fund in the Income and Expenditure Account.

**2.2** It is advisable that the assets (which are written off in the year of purchase) should be reflected in the Balance Sheet at their normal value by creating an Asset Fund on the liability side of the Balance Sheet. Every year both the Asset Fund on the Liability side and the asset on the Asset side are reduced to the extent of depreciation, to provide a true and fair view of the assets.

## **3. TYPES OF ASSETS IN CASE OF NPOS**

**3.1** In case of NPOs the calculation and charge of depreciation will depend on the type of assets. Unlike commercial organisations, in an NPO, assets for the purposes of depreciation can be divided

into various categories.

**3.2** It may be noted that if assets are purchased towards charitable purposes and project work, then they are also treated as expenditure/application of funds. The implication of such treatment is that the assets become of zero value at the end of the year. Therefore, it becomes important to reinstate such assets in the balance sheet by creating an asset fund on the liability side.

**3.3** If the asset is purchased as an investment from past or present fund then it cannot be treated as application against current year's income.

**3.4** Therefore, both the source and purpose of an asset could be different in case of an NPO and therefore, the treatment of depreciation will also vary. For example, the following possibilities are there with regard to purchase of assets and its depreciation:

- i. Assets purchased out of general fund, corpus fund and other free reserves of the trust. In this case, depreciation shall be charged normally as the asset is not charged to the Income and Expenditure Account.
- ii. Corpus Assets purchased out of current years income and voluntary contributions which are available at the discretion of the trust. When a corpus asset is purchased or the NPO invests in an asset then it cannot be treated as application of fund. Therefore, depreciation shall

be provided normally as the asset will remain in the books at cost, subject to depreciation.

asset is not shown as expenditure in the income and expenditure account.

- iii. Project Assets purchased out of current years income and voluntary contributions which are available at the discretion of the trust. Project assets purchased are treated as expenditure/application of income. Therefore, the entire amount is charged to the Income and Expenditure Account and the asset value is reduced to Nil. Therefore, normally further depreciation is not charged. The assets are shown at full value in the first year by creating an asset fund on the Liability side. Both the asset fund and assets are reduced in subsequent years to the extent of depreciation. In this context, it may be noted that there are case laws where depreciation has been allowed over and above the 100% charge in the first year. In other words, 200% depreciation is allowed over the life of the asset. A legal analysis in this context is provided in **Annexure 1**.
- iv. Assets purchased out of restricted grants received specifically for the purchase of assets. In such cases when the assets are shown as utilized and charged to the restricted fund then the assets are shown at full value in the first year by creating an asset fund on the Liability side. Both the asset fund and assets are reduced in subsequent years to the extent of depreciation. It may be noted that a restricted grant is not treated as income. Therefore, the

#### **4. DEPRECIATION AS A VALID DEDUCTION BEFORE OR AFTER DETERMINING INCOME AVAILABLE**

**4.1** The income of charitable organisations is required to be computed as per the normal commercial principles and the rules of accountancy. It is being debated whether the amount of depreciation is required to be deducted first in order to arrive at the income available for application for charitable and religious purposes. Various Courts have held that depreciation is nothing but decrease in value of property through wear, deterioration or obsolescence and allowance is made for this purpose in book keeping, accountancy. If depreciation is not allowed as a necessary deduction for computing the income from the charitable institutions, then there is no way to preserve the corpus of the trust for deriving the income. In case of NPOs, the income should be the income in the real sense which can be applied to charitable purposes and from which surplus can arise if a part thereof is not applied to the objects of the trust. Viewed from this angle, it can be said that the deduction of depreciation is not only prudent but also essential for the purpose of arriving at income available for distribution for application to charity and the amount of depreciation was not the income available for application with the assessee. The relevant case is CIT v. Society of the Sisters of St. Anne [1984] 146 ITR 28 (Kar.).

## 5. DEPRECIATION RATES AND APPLICATION OF SECTION 32

**5.1** It has been clarified by the CBDT as well as in various cases that, the income of a charitable trust is not required to be computed in accordance with the provisions of the Act. It should be computed in accordance with the normal rules of accountancy in commercial sense. Therefore, the heads of income under section 14 and the depreciation rates provided under the Income-tax laws should not necessarily apply to a charitable or religious organisation. In CIT v. Sheth Manilal Ranchhoddas Vishram Bhavan Trust [1992] 198 ITR 598 (Guj.), the following issues were placed before the High Court:

*"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that, while computing income under section 11(1)(a) of the Income-tax Act, 1961, depreciation has to be allowed ?*

*2. Whether the Tribunal was right in law in holding that, having regard to the scheme of the Act, income referred to in section 11(1)(a) of the Act is to be computed not in accordance with the provisions of the Act but in accordance with the normal rules of accountancy under which the depreciation has to be allowed while computing such income under section 11(1)(a) of the Act?"*

**5.2** The Court held that the amount of depreciation debited to the accounts of the charitable institution had to be deducted to arrive at the income available for application to charitable and

religious purposes. It further observed that the income from the properties held under trust would have to be arrived at in the normal commercial manner without classification under the various heads set out in section 14. It held that the expression income had to be understood in the popular or general sense and not in the sense in which the income was arrived at for the purpose of assessment to tax by application of some artificial provisions either giving or denying deduction and, therefore, there was no reason why depreciation should not be allowed as deduction in order to determine the real income of the organisation.

**5.3** In CIT v. Institute of Banking [2003] 264 ITR 110 (Bom.) the Court held that the provisions of section 32 were not relevant for charitable organisations. Therefore, the conditions specified in section 34 were also not applicable and the assessee was entitled to depreciation, which could be considered as legitimate in order to compute the real income of the assessee on commercial principles. Hence, it is not necessary to strictly apply the provisions of section 32 or the rate of depreciation provided under the Act. However, there is nothing which prevents the organisation from applying the same rates or the provisions under normal commercial principle in a realistic sense.

## 6. DEPRECIATION WHERE THE COST OF ACQUISITION IS NIL

**6.1** It has been confirmed by the Bombay High Court in CIT v. Institute of Banking

Personnel Selection (IBPS) [2003] 264 ITR 110/131 Taxman 386 that depreciation has to be allowed on assets received as contribution without any cost. The Bombay High Court relied on the decision in DIT (Exemption) v. Framjee Cawasjee Institute [1993] 109 CTR (Bom.) 463, where it was held that the Tribunal was justified in law in directing the Assessing Officer to allow depreciation on assets received on transfer, when the assessee had not incurred the cost of acquiring the assets.

## **7. DEPRECIATION ON HOUSE PROPERTY - INCOME FROM HOUSE PROPERTY**

**7.1** The income from house property is not required to be computed under the head "Income from house property", therefore, the provisions of sections

22 to 25 shall not apply. Therefore, the income from house property should be computed on commercial basis as per normal rules of accounting where depreciation should also be allowed in determining the real income. In the case of CIT v. Society of the Sisters of St. Anne [1984] 146 ITR 28 (Kar.), it was held that depreciation allowance in respect of the trust property would be allowed. Also, notwithstanding the revenue's contention to the contrary, there is nothing in section 11 which debars a charitable institution from maintaining accounts on mercantile basis. That apart, if depreciation is not allowed as a necessary deduction for computing the income of the charitable institutions, then there is no way to preserve the corpus of the trust for deriving the income. Similar views were taken in the case of CIT v. Bhoruka Public Welfare Trust [1999] 240 ITR 513 (Cal.).

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## ANALYSIS OF DOUBLE DEDUCTION OF DEPRECIATION

In the past in many cases it was held that NPOs can claim double depreciation even if the entire cost of the asset was treated as application/ expenditure in the year of purchase. The issue of allowing further depreciation, even if the entire cost of the asset has been allowed in the year of purchase, has become a matter of further debate in the light of the recent case laws. In the case of *Commissioner of Income-tax, Hisar v. Market Committee, Pipli* [2011] 238 CTR 103 (Punj. & Har.) [2011] was held that such deduction was permissible. The court was of the view that depreciation in case of trusts was not a double deduction as it was not an expenditure; it only reduced the percentage of funds available for charitable or religious purposes. The court declined to accept the applicability of the Supreme Court ruling in *Escorts Ltd. v. Union of India* [1993] 199 ITR 43(SC). It may be noted that in Escorts case Supreme Court held that double depreciation was not permissible however, this ruling was in context of a commercial organisation where the facts and circumstances are different from an NPO, the Escorts case has been discussed later. In the *Market Committee* case (*supra*) it was held that allowing depreciation on the capital assets was legitimate, even when capital expenditure on acquisition of the corresponding assets had already been allowed as application of income for the purpose of allowing exemption under section 11 of the income-tax Act.

1. Almost simultaneously in another case the Cochin Tribunal in *DDIT(E), Range-II, Ernakulam vs. Adi Sankara Trust*, [2011] 12 taxmann.com105 (Cochin), [2011] 46 SOT 230 (Cochin) has given a decision contrary to the aforesaid Punjab & Haryana High Court ruling. The Tribunal applied the Supreme Court ruling in Escorts case (*supra*) and held that the additional deduction towards depreciation was not permissible as the WDV (Written Down Value) of the asset was nil by virtue of treating it as an expense, therefore, any further depreciation would amount to double deduction which is prohibited. The Tribunal further observed that if a grant is received for purchase of an asset then such grant is in any case exempted U/s. 11(1)(d) as corpus donation, in other words there would be no need to claim the capital expenditure as application of fund because the source of fund itself is not considered as income. The Tribunal was of the view that an asset can be charged against the income only once. If the asset was created out of capital receipt then such receipts are exempted therefore, no case for double depreciation should arise.



2. The observations of the Cochin Tribunal provide insight into the issue. However, both the Punjab and Haryana High Courts or the Cochin Tribunal should be seen from the perspective they bring into light.
3. As has been rightly pointed out that a capital asset if it is purchased from capital receipts then such receipts should be treated as corpus donation therefore, there would be no necessity to claim the initial deduction regarding the cost of the asset, because the corpus donations are exempted. In other words any assets which are not purchased from the income during the year shall only be eligible for depreciation in the normal course as its cost of acquisition is not nil. However, controversy is only with regard to those assets which are purchased for charitable purposes out of current year s income become zero value assets and the question arises whether such assets should be allowed further depreciation.
4. The Punjab High Court has ruled that even in case of those assets which are purchased for charitable purposes out of current year s income further depreciation shall be permissible. The possible rationale being: application towards for charitable purposes is not a chargeable expenditure, therefore, any assets created continues to be a resource available for charitable purposes. In such circumstances it is legitimate to allow diminution in the value of the available resources and assets in future. Further, in the case *Escorts Cardiac Diseases Hospital Society v. Assistant Director of Income-tax (Exemption), Trust Circle 2, New Delhi* [2012] 18 taxmann.com 104 (Delhi) it was held that depreciation is allowable on assets acquired by assessee even if such assets were treated as application earlier.
5. The Market Committee case *supra* held that such deduction was permissible because depreciation in case of trusts was not a double deduction as it was not expenditure; it only reduced the percentage of funds available for charitable or religious purposes. The issue here is that any reduction in the available funds for charitable or religious purposes enhances the corpus. The current law allows only 15% towards corpus every year any additional accumulation of similar nature is certainly a subject matter of debate. This issue needs to be debated from the point of view of whether the asset was created out of an income, deemed income, legal obligation or a capital receipt. In case of NPOs, when legal obligations and capital receipts are artificially treated as income then the need for double deduction becomes relevant.
6. In the decision in *CIT v. Munisuvrat Jain* 1994 Tax LR 1084, also it was held that the Tribunal was right in law in directing the Assessing Officer to allow depreciation on the assets the cost of which had been fully allowed as application of income under section 11 in the past years.
7. The debate of double deduction of depreciation is not of recent origin in *Director of*

*Income-tax (Exemption) v. Framjee Cawasjee Institute* [1993] 109 CTR (Bom.) 463, it was held that depreciation on depreciable assets had to be taken into account in computing the income of the trust although the amount spent on acquiring such assets had been treated as application of income of the trust in the year in which assets were acquired. In this case the following question was placed before the Bombay High Court:

“Whether, on the facts and in the circumstances of the case, the Tribunal was right in law directing the ITO to take depreciation into account in computing the income from depreciable assets when in fact the full capital expenditure had been allowed in the year of acquisition of these assets?”

8. In this case the Tribunal had explained the position by stating that when the ITO says that full expenditure has been allowed in the year of the acquisition of the assets, what he really means is that the amount spent on acquiring these assets had been treated as application of income of the trust in the year in which the income was spent in acquiring these assets. This does not mean that in computing income from those assets in subsequent years, depreciation in respect of those assets cannot be taken into account. The matter was held in favour of the assessee and depreciation was held to be deductible when the cost of the asset was already fully allowed as application.
9. In the above case the assessee also placed before the court the CBDT circular No. 5-P(LXX-6) of 1968, dated 19-6-1968. In the circular, it is clarified that in the case of a business undertaking held under trust its income will be income as shown in the accounts of the undertaking and that where the trust derives income from house property, interest on securities, capital gains or other sources, the income should be understood in its commercial sense.
10. Similar issues were debated in *CIT v. Institute of Banking* [2003] 264 ITR 110 (Bom.). The two issues which were debated in this case were:
  - (1) Whether depreciation was deductible when the cost of the asset was already fully allowed as application.
  - (2) Whether depreciation was deductible when the cost of acquisition to the assessee was nil.
11. Both the above issues were decided in favour of the assessee, thus, upholding the deductibility of depreciation in both the above-mentioned circumstances. The court held that the provisions of section 32 were not relevant for charitable organisations. Therefore, the conditions specified in section 34 were also not applicable and the assessee was entitled to depreciation, which could be considered as legitimate in order to compute the real income of the assessee on commercial principles.

12. In the light of the above discussion, it seems that there is a strong case for allowing depreciation on those assets which was created out of income as application because, if depreciation is not permitted then such assets cannot be replaced and the corpus will be eroded. However, such rational should apply only to those assets which can be considered as application of funds towards charitable purposes. For example, if an NPO constructs a building for dispensary then such building should be eligible for further depreciation. On the contrary, if the NPO creates any commercial assets for generating income then in the first place such assets cannot be treated as application for charitable purposes, therefore, the issue of double depreciation would not arise.

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## III. CSR Section

**CSR Provisions Under Section 135 (Read with Schedule VII)**

# CSR PROVISIONS UNDER SECTION 135 (READ WITH SCHEDULE VII)

## 1. PROVISIONS OF CSR UNDER SECTION 135

**1.1** The Companies Act, 2013 has enacted in Section 135 specifically for CSR. The provisions of CSR in nutshell are as under:

- It will apply to every company (including foreign company) having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a Net Profit of rupees five crore or more during any financial year.
- Such company shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more Directors, out of which at least one Director shall be an Independent Director. However, the requirement of Independent Director will not be applicable to those private and other companies which are not required to have Independent Director under section 149(4).
- The board of the company has to report the CSR policies, activities and the CSR Committee with its composition under section 134(3) (o).
- The CSR Committee has to formulate the CSR policy based on the specified activities provided in Schedule VII. Such policy has to be recommended to the board for approval.
- The CSR Committee shall plan, budget & recommend the CSR expenditures.
- The CSR Committee should monitor the policy and its implementation.
- The board should approved the CSR policy and also disclose such policy in the report of the Board.
- The board should ensure that the CSR policy and its content are placed on the website of the company, if any.
- The board should also ensure the implementation of CSR policy.
- The board should ensure that at least 2% of the average Net Profit of the company during the past 3 financial year, is spend on CSR.
- The company should give preference to local areas and areas around its operation for CSR activities.
- If the company fails to spend such amount of CSR then such failure with reasons should be reported

under section 134(3)(0).

- The average Net Profit for 3 years should be computed under the company law as per section 198. In other words, the profit for Income Tax purposes is not relevant.

**1.2 The text of Section 135 is as under:**

**“Corporate Social Responsibility.**

**135.** (1) Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a Net Profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more Directors, out of which at least one Director shall be an Independent Director.

(2) The Board’s report under sub-section (3) of section 134 shall disclose the composition of the Corporate Social Responsibility Committee.

(3) The Corporate Social Responsibility Committee shall,—

(a) formulate and recommend to the board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII;

(b) recommend the amount of expenditure to be incurred on

the activities referred to in clause (a); and

(c) monitor the Corporate Social Responsibility Policy of the company from time to time.

(4) The Board of every company referred to in sub-section (1) shall,—

(a) after taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose contents of such Policy in its report and also place it on the company’s website, if any, in such manner as may be prescribed; and

(b) ensure that the activities as are included in Corporate Social Responsibility Policy of the company are undertaken by the company.

(5) The Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two percent of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy:

*Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities*

*Provided further that if the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount* Explanation.—For the purposes of this section “average Net Profit” shall be calculated in accordance with the provisions of section 198.”

## **2. PERMISSIBLE ACTIVITIES UNDER SCHEDULE VII OF THE ACT**

**2.1** The Companies Act, 2013 under Section 135(3)(a) provides that the activities should be as per the list of activities provided under Schedule VII. In other words, the Act has provided a specific definition of the activities which can be conducted under CSR. The definition of “charitable purpose” under the Income Tax Act is not relevant for the purposes of CSR, though most of the activities can also be conducted under CSR. The scope of activities is restricted under CSR and is not as wide and discretionary as it is under the Income Tax Act. In fact the scope of activities under CSR was even more restricted when the

Act was enacted and the Schedule VII was amended and enlarged vide notification [File No. 1/15/2013-CL-V], dated 27-2-2014, w.e.f. 1-4-2014 (see **Annexure 1**). The permissible activities under CSR as per Schedule VII are discussed as under:

- (i) Eradicating hunger, poverty and malnutrition, promoting health care including preventive health care and sanitation **\*including contribution to the Swachh Bharat Kosh set-up by the Central Government for the promotion of sanitation (\* Inserted vide Notification dated 24.10.2014)** and making available safe drinking water;
- (ii) Promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly, and the differently abled and livelihood enhancement projects;
- (iii) Promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups;
- (iv) Ensuring environmental sustainability, ecological balance, protection of flora and fauna,

- |   |  |
|---|--|
| <p>animal welfare, agroforestry, conservation of natural resources and maintaining quality of soil, air and water <b><i>*including contribution to the Clean Ganga Fund set-up by the Central Government for rejuvenation of river Ganga; (* Inserted vide Notification dated 24.10.2014)</i></b></p> | <p>(viii) Contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government for socio-economic development and relief and welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women;</p>                      |
| <p>(v) Protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art;</p> <p>setting up public libraries; promotion and development of traditional arts and handicrafts;</p>  | <p>(ix) Contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government;</p> <p>(x) Rural development projects. <b><i>*slum area development. (* Inserted vide Notification G.S.R (E) 568 dated 06.08.2014)</i></b></p> |
| <p>(vi) Measures for the benefit of armed forces veterans, war widows and their dependents;</p> <p>(vii) Training to promote rural sports, nationally recognized sports, Paralympic sports and Olympic sports;</p>  | <p><b>2.2</b> The CSR activities have to be confined to the above areas only. The list of activities is very wide and includes sports, armed forces, environment, heritage, technology incubations, etc. in addition to health, education, women, old age, poor and rural development.</p>         |

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**PERMISSIBLE ACTIVITIES UNDER SCHEDULE VII**

**SCHEDULE VII**

(See section 135)

**ACTIVITIES WHICH MAY BE INCLUDED BY COMPANIES IN THEIR  
CORPORATE SOCIAL RESPONSIBILITY POLICIES**

Activities relating to:—

- (i) eradicating hunger, poverty and malnutrition, promoting health care including preventive health care and sanitation ***\*including contribution to the Swach Bharat Kosh set-up by the Central Government for the promotion of sanitation (\*Inserted vide Notification dated 24.10.2014)*** and making available safe drinking water;
- (ii) promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly, and the differently abled and livelihood enhancement projects;
- (iii) promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups;
- (iv) ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agroforestry, conservation of natural resources and maintaining quality of soil, air and water ***\*including contribution to the Clean Ganga Fund set-up by the Central Government for rejuvenation of river Ganga; (\*Inserted vide Notification dated 24.10.2014)***
- (v) protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional arts and handicrafts;
- (vi) measures for the benefit of armed forces veterans, war widows and their dependents;
- (vii) training to promote rural sports, nationally recognized sports, paralympic sports and Olympic sports;
- (viii) contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government for socio-economic development and relief and welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women;

- (ix) contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government;
- (x) Rural development projects. ***\*slum area development (\* Inserted vide Notification G.S.R (E) 568 dated 06.08.2014)***
1. Substituted by Notification [File No. 1/15/2013-CL-V], dated 27-2-2014\*, (***\*Corrigenda [F.No.1/18A/2013-CL-V], dated 31-3-2014.)*** w.e.f. 1-4-2014. Prior to their substitution, items (i) to (x) and the entries relating thereto read as under :
- i. eradicating extreme hunger and poverty;
  - ii. promotion of education;
  - iii. promoting gender equality and empowering women;
  - iv. reducing child mortality and improving maternal health;
  - V. combating human immuno-deficiency virus, acquired immunodeficiency syndrome, malaria and other diseases;
  - Vi. ensuring environmental sustainability;
  - Vii. employment enhancing vocational skills;
  - Viii. social business projects;
  - ix. contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or the State Governments for socio-economic development and relief and
  - X. funds for the welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women; and
  - Xi. such other matters as may be prescribed."

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## IV. Governance Section

**Governance Of Non-Profit Organizations (NPOs) - Importance  
Of Financial Governance**

# GOVERNANCE OF NON-PROFIT ORGANIZATIONS (NPOs) - IMPORTANCE OF FINANCIAL GOVERNANCE

## 1. WHAT IS GOVERNANCE?

Governance is a highly contextual concept. The process and practices that apply vary significantly given the environment in which they are applied. In the non-profit sector, representing stakeholder interests along with legal and constitutional accountability determines the governance to be applied. However, the size, shape, form and function of governance would vary greatly from one organization to another. Each organisation has to internalise and customize their governance system keeping in view the needs and aspirations of all stakeholders. Thus, governance is an area where one size does not fit all.

The Adrian Cadbury Committee Report defined governance as *“a system which directs and controls an organization”*. Thus, ‘governance’ refers to the mechanism which controls, directs and assumes the responsibility & accountability of all decisions and acts, for effectively achieving the goals of an organization.

In simple terms, governance is a transparent decision-making process in which the leadership of an organization in an effective and accountable way on the basis of shared value directs the resources and exercises power.

## 1.1. HOW IS THE GOVERNANCE OF NON-PROFIT ORGANIZATIONS (NPOS) DIFFERENT?

A non-profit organization works for public purposes. However, the funds and resources it uses are bequeathed for public purposes even if they are raised from private sources. Therefore, there is no concept of individual ownership or individual gain. NPOs work as trustees in fiduciary capacity. Governance in non-profits aims at fulfilling the expectations of different stakeholders in the most effective way.

Corporate governance refers to an economic, legal and institutional environment that allows companies diversify, grow, restructure and exit, and do everything necessary to maximise long term shareholder value (**Reference: DESIRABLE CORPORATE GOVERNANCE A CODE-Confederation of Indian Industry, April 1998**) The key to good corporate governance has been identified as a well-functioning, informed board of directors with greater disclosures, and better management practices. Corporate governance emphasizes the importance of having a board of excellent, professionally acclaimed non-executive directors who understand their dual role: of appreciating the issues put forward by management and of honestly discharging their fiduciary

responsibilities towards the company's shareholders as well as creditors.

Certain fundamental differences between non-profit and for-profit are provided below:

- For a for-profit, revenues come from customers who have willingly engaged with the business and gained some utility for themselves in the form of benefit from goods or services, whereas non-profit receives funds from donors who have no expectation in return.
- In case of for-profit, the governance lapses may primarily result in losses to owners (shareholders), but in case of non-profit any lapse in governance will result in a breach of public trust and may cause unforgivable detriment to the public causes for which the NPO exists.
- The directors of for-profit are part of the board as a result of their shareholding whereas the board of non-profit is an independent body and do not receive any remuneration from the organization for being board members.
- The directors of for-profit are more involved in growing the business and protecting the interest of shareholders and investors whereas the board members of non-profit guard as well as promote the vision and mission of the organization and at the same time protect the interest of different stakeholder groups.

## 1.2. FUNDAMENTAL CHARACTERISTICS OF NPOS

In order to understand the governance process of NPOs we need to understand the

fundamental characteristics of NPOs.

- Private Institutions** - Non-profit organizations deal with public funds for public utility purposes. However, for legal and practical purposes these are privately managed organizations. In other words, NPOs are privately held and privately managed organisations for public purposes.
- No structured evolution** - Generally, an individual or a group of like-minded individuals driven by a common cause come together and as they work together, there emerges a need to incorporate an entity for legal purposes.
- Self-governing** - Non-profits are private institutions therefore, they are self governing bodies. The members or the trustees of the NPOs have the legal right to determine their governance structure even though there are certain basic governance processes prescribed by the incorporation laws.
- Tax Exemption Status** – NPOs can get themselves registered under Section 12A of the Income Tax Act 1961 and avail tax exempt status.
- Deal with donated funds** – NPOs work in fiduciary capacity while implementing developmental projects. Therefore, they have a donor-wise accountability to manage records and report on the basis of individual projects and funds. When donors give funds to NPOs, it is important for them to be reassured that their donation will be responsibly used for its intended purpose. Hence, NPOs are accountable to the specific donors apart from being formally accountability to the state and other stakeholders. NPOs are also trust

holders on behalf of community and donors.

vi. **Legal accountability** - NPOs have to work strictly in conformity with the deed or agreement based on which the funds are received. Legally, it is not possible to deviate from the project agreement. The doctrine of Cy pres is an important legal principle for the NPOs, which means that if a charitable activity cannot be done in particular way specified by the donor then it may be done in a way as close as possible.

vii. **Voluntary nature** - The constitution and existence of NPOs is voluntary in nature. The members and the board/trustees work and participate without any personal interest. They work voluntarily without drawing any personal benefit. In this context, it may be noted that any personal benefit does not include any legitimate payment such as salary, wages, honorarium, consultancy, etc. against services rendered.

NPOs have huge outreach even in the remotest places where both public and private sector has been unable to reach. The Government has tapped this potential and partnered with NPOs to implement various developmental programmes for the benefit of the society. NPOs are crucial stakeholders in the development of the nation.

## 2. GOVERNANCE PRACTICES IN NPOs

### 2.1. DE-JURE GOVERNANCE

This form of governance has its origin in the legal framework. In India, NPOs can register under any of the three incorporation laws-

- As a Society under the Societies Registration Act, 1860
- As a Trust under the Indian Registration Act, 1908
- As a Section 8 Company under the Company Act, 2013

For NPOs registered as a society or a section 8 company, the governance compliances are high unlike trust which has less compliance to meet as it is self-regulated. However, for trusts which are registered under Charity Commissioner in Maharashtra and Gujarat, the compliance requirements are high. Further, in case of a trust, the trust deed is registered and not the trust. A registered trust is bound by the trust deed which cannot be easily amended.

NPOs are accountable to the laws under which they are enacted and avail subsequent registration. Further, the legal status of an organisation comes with legal obligations such as statutory audit of accounts, general and board meetings, filing of returns, adhering to the bye-laws, area of operation, election of office bearers, etc. All these are the de-jure aspects of the governance system of a voluntary organisation.

### 2.2. Desirable Governance

This type of governance system consists of desirable practices of good governance that are self-imposed and not legal obligation. The knowledge of such practices has been drawn from experiences with various organizations and institutions which have implemented and benefited from these practices. Some of these practices are given below:

- **Oversight functions of the board** - The board is not an omnipresent body so for all practical reasons a governance structure should be developed where the board is playing the ideal role, which is controlling as well as empowering the CEO and the management. Although, the board is the ultimate decision-making body, the management can be given certain operational level decision making authority with a clearly defined mandate where they are accountable to the board.

- **Segregation between Governance and Management** - The separation of governance and management involves a division of both duties and staff. Generally, the management runs the day-to-day operations of the organization, while the board sets policy, exercises oversight, and strategically guides the organization. One way to maintain the distinction between the governance and the management is to ensure that the same people do not perform both jobs. This ensures independent decision-making by the board.

- **Board Delegation** - As per John Carver's policy Governance Model, the board is accountable that the organization works, while the actual running of the organization is substantially in the hands of the management. All authorities granted by the board to the organization are actually personally granted to the CEO and the CEO is held accountable for meeting all expectations of the board for organizational performance.

- **Ensuring CEO's accountability** - As per John Carver's policy Governance Model,

the CEO is the only employee of the board. The CEO owes the board accurate, thorough and timely information about the organization, its environment and its activities. The CEO should be asked to provide quarterly/six monthly reports to the board regarding his/her work and involvement in the work of the organization. Further, processes like evaluation and appraisal of the CEO can also act as mechanisms for ensuring his/her accountability to the board.

- **Conflict of interest** - There should be a clearly defined policy to ensure that any conflict of interest is properly dealt with. Having a conflict of interest policy in place safeguards the organisation from any issue of conflict of interest by a person having substantial interest. Some recommended practices that can be followed in case of conflict of interest are - board members who have an actual or potential conflict of interest should not participate in discussions or vote on matters affecting transactions between the organization and the other group, staff members who have an actual or potential conflict should not be substantively involved in decision-making affecting such transactions, etc.

### 3. FINANCIAL GOVERNANCE

Financial Governance refers to financial oversight by the board of an NPO. The board is ultimately responsible for the acts of the organization. The management works on the basis of delegated authority of the board. Therefore, it is very important for the board to keep key controls and oversight in the area of financial management. The board is not supposed to undertake the role of management in terms of implementation but

need to keep an oversight/ control.

The following are certain key oversight/control the board may keep over the financial matters of the organization:

### **3.1. SETTING POLICIES**

The board needs to set clear policies in the areas of financial management. For example, every organization should have a financial protocol based on internal procedures and practices. This protocol has to be sanctioned by the board and the board needs to be assured that this document is followed in letter and spirit by the organization. The financial protocol should clearly mention the financial powers, procedures, documentations, internal control processes, etc. The more robust the protocol, the better will be the oversight and assurance level.

### **3.2. FINANCIAL DECISION-MAKING MATRIX**

The financial decision-making is one area where there is generally lot of confusion in NPOs. It is not clear which decisions should be brought for decision-making at board level and which decisions can be taken at the management level. Due to this lack of clarity, sometimes there is mismatch of expectations and that leads to misunderstanding between the board and the management. Therefore, it is very important to set up a matrix on the issues to be addressed by the board and the issues which can be decided at the management level. While setting of the decision-making matrix, it needs to be clear that the board is ultimately responsible for any decision taken by the management as well.

### **3.3. FINANCIAL REPORTING**

The board has to clearly specify the different internal report it requires on a periodic basis. Examples of some reports could be quarterly receipts and payments, budget versus actual statements (project-wise), legal compliance report, etc. These reports have to be drawn up in a simple format for easy understanding and consumption.

### **3.4. FINANCE COMMITTEE**

The board or at least few members of the board need to have a deeper engagement in the financial management aspects of the organization for better oversight. This is generally done through formation of a finance committee. The finance committee is a sub-committee of the board created for financial oversight. The finance committee consists of few board members, senior management and other experts. Generally, it is chaired by the Treasurer. The finance committee also acts as audit committee in many organizations.

### **3.5. INDEPENDENT AUDIT PROCESS**

Every NPO is legally mandated to get statutory audit done. In certain large organizations, internal audit is also practiced for greater oversight and control purposes. The board should ensure that the auditors are independent and do not have any interest in the organization. Therefore, rotation of auditors is a very good practice. The auditors should be accountable and report to the board, directly. It helps the board to understand the risks and financial issues clearly.



### **3.6. CONFLICT OF INTEREST**

The board should have a policy of conflict of interest. Generally, the conflict of interest applies to those who are in the positions to make decisions. The board should ensure that the persons in charge of making decisions do not compromise on the interest of the organization.

### **3.7. INDEPENDENT ENGAGEMENT WITH CHIEF FINANCIAL OFFICER (CFO)**

Generally, in organizations the Chief Executive Officer (CEO) becomes the point of contact between the board and the management. However, as a good practice it is necessary for the board to also have another channel of communication from the management through the CFO/Head of Finance. This engagement can be done through the finance committee or by inviting the CFO to attend board meetings as special invitee. This would provide greater assurance to the board and improve its oversight function.

### **4. CONCLUSION**

The board is the custodian of the organization and is the final point of reference. The board acts as a trustee on behalf of the multiple stakeholders of the organization. The financial governance is one such mechanism for the board to perform its oversight function effectively. Through strong financial governance, a board can have greater oversight and control which leads to improved accountability.

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## **Financial Management Service Foundation**

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

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