

INTERface

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Highlights:

- Severe Penalty for Delayed Filing of FC-6 Return
 - Service Tax on NPOs after Budget 2013
 - Change In More Than 50% of Board Members under FCRA
 - Notional Expenditures In Development Projects
 - Office Bearers – Roles & Responsibilities
- and many more.....



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Between Us

TURTLES

A turtle family went on a picnic. The turtles, being naturally slow about things, took seven years to prepare for their outings. Finally the turtle family left home looking for a suitable place.

During the second year of their journey they found it. For about six months, they cleaned up the area, unpacked the picnic basket and completed the arrangements. Then they discovered they had forgotten the salt. A picnic without salt would be a disaster, they all agreed. After a lengthy discussion, the youngest turtle was chosen to bring the salt from home. Although he was the fastest of the slow moving turtles, the little turtle resented, cried, and felt very sad in his shell. He agreed to go on one condition: that no one would eat until he returned.

The family consented and the little turtle left.

Three years passed and the little turtle had not returned. Five years...six years...then in the seventh year of his absence, the oldest turtle could no longer contain his hunger. He announced that he was going to eat and began to unwrap a sandwich.

At that point the little turtle suddenly popped out from behind a tree shouting, "SEE I knew you wouldn't wait. Now I am not going to go get the salt".

Some of us waste our time waiting for people to live up to our expectations. We are so concerned about what others are doing that we don't do anything ourselves. We are in a reactive mode rather than being pro-active. The challenge is to be pro-active even in circumstances which push us to a reactive mode.

Sanjay Parn

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The opinions
expressed by the
authors are not
necessarily that of
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TAX DEDUCTION AT SOURCE ON PAYMENT & INCOME

- Dr. Manoj Fogla, FCA

SUMMARISED OVERVIEW

1.1.01 Under the Income-tax Act, every person, including NGOs are required to deduct taxes at source (TDS) at the time of making payment or giving credit for various services. The important types of payment against which deduction of tax is mandatory are as under:

- Salaries if the amount of salary is above taxable limit, the TDS shall be at average rate to be computed specifically.
- Payment made to contractor & sub contractor if the amount exceeds Rs.30, 000/- in a single payment or Rs. 75,000/- in aggregate during the year. The TDS shall be at 1% for individuals/ HUF/ and 2% for others.
- Payment of rent if the amount exceeds Rs. 1, 80,000/- per year, the TDS shall be at 10%.
- Payment of fees for professional/ technical services, the TDS shall be at 10%.

1.1.02 All organisations required to deduct TDS should apply for Tax Deduction Account Number in Form 49B. Every such person shall have to apply to the Assessing Officer for allotment of a Tax Deduction Account Number (TAN) under section 203A.

1.1.03 All organisations should deduct tax at the rate specified. However, if the PAN number of the recipient is not available, then TDS should be deducted @ 20% of the amount paid.

1.1.04 The TDS deducted should be deposited to the credit of the Central Government, within one week from end of the month in which deduction has been made.

1.1.05 The organization should also file quarterly returns providing the TDS details.

1.1.06 Failure to deduct TDS may attract interest, penalty and punishment.

1.1.07 TDS is also required to be deducted on income of the organization against various investments. Normally, the banks deduct TDS against the interest income of the organization. An organization may apply to the Income Tax Officer in Form 13 for non

deduction of tax. It may be noted, earlier, it was permissible to file self declaration but w.e.f. 01.06.2002 any such self declaration is not acceptable. The organization has to obtain a certificate from the Income Tax Officer for non deduction of Tax.

PROCEDURE FOR OBTAINING TAX DEDUCTION ACCOUNT NUMBER (TAN)

1.2.01 All organisations which are required to deduct tax at source are required to obtain TAN from the Assessing Officer by making an application for the allotment of TAN in Form 49B of Income Tax Rules.

MANDATORY NATURE OF PROVISIONS

1.3.01 Under the income-tax law, it is mandatory to apply for and obtain TAN if an organisation is liable to deduct tax at source on certain payments which are

discussed in the following paras and the organisation deducting tax is required to quote the TAN in the following documents:

- (i) all challans while depositing the tax so deducted.
- (ii) all certificates issued against the tax deducted.
- (iii) all returns furnished in respect of tax deducted at source.
- (iv) all other documents pertaining to such transaction as may be prescribed.

TYPES OF PAYMENTS REQUIRING TAX DEDUCTION AT SOURCE

1.4.01 Section 200 of the Act specifies a list of payments which requires deduction of tax at source. From the viewpoint of voluntary organisations, the following are the important payments, in respect of which tax must be deducted at source:

Nature of payment	Amount above which TDS will operate in (Rs.)	Rate of Deduction
Salary	Salary incomes must be more than exemption limit after deductions.	Average Rate
Contract/Sub -contract**	30,000	Individual/HUF 1% other 2%
Interest	-	-
Rent (Land & Building)	1,80,000	10%
Rent (P&M, Equipment, Furniture & Fittings)	1,80,000	2%
Fees for Professional or Technical Service	30,000	10%
Any remuneration or commission paid to director of company (w.e.f.1 July 2012)	Any Amount	10%

**** Tax shall be deducted at source where the amount credited/paid to a contractor/sub-contractor exceeds Rs. 30,000 in a single payment or Rs. 75,000 in the aggregate during the financial year.**

Note: If deductee's PAN is not available or invalid then 20% TDS will be deductible. TCS (Tax collected at source) by seller on bullions or jewellery (if sale consideration is paid in cash exceeding INR 2 Lakh) is 1% w.e.f. 1 July 2012.

DEPOSIT OF TAX DEDUCTED AT SOURCE

1.5.01 The tax deducted at source is required to be deposited to the credit of the Central Government within the stipulated time limit. Such deposit can be made in various specified scheduled banks with the help of TAN challans. Whenever a TDS is deposited, one should not forget to quote the TAN on challan.

1.5.02 The time limit for depositing the amount of TDS is as under:

- For salaries as well as for other payments: within one week from the end of the month in which deduction has been made.

1.5.03 However, in case of 'other payments' when amount is credited by a person to the payee's account as on the date up to which the accounts of such person are made : Within 2 months from the end of the month in which such date falls.

1.5.04 With effect from 1-6-2004, the income-tax department has introduced OLTAS (online tax accounting system) wherein a single copy of Challan No. 281 is required to be filed.

ISSUE OF CERTIFICATE

1.6.01 Under section 203, the organization deducting TDS is required to issue a certificate to the person from whose income, tax has been deducted. This certificate will enable the person to claim credit for such tax deducted in his/her return of income. Organisations can prepare the certificate in their own stationery but in the prescribed form. The prescribed form is Form No.16/16AA for deduction of tax from salary. For all

other cases, it is Form No. 16A. Form 12BA is a statement showing particulars of perquisites, other fringe benefits or amenities and profits in lieu of salary with value thereof.

1.6.02 Where the tax has been deducted or deposited on or after 1-4-2008, there is no requirement to furnish this certificate. However, the TDS certificate shall be issued by the prescribed income-tax authority or the person authorized by such authority within the prescribed time after the end of each financial year beginning on or after 1-4-2008 to the person from whose income, tax has been deducted at source or in respect of whose income, tax has been paid.

RETURNS TO BE FURNISHED BY THE ORGANISATION

1.7.01 All organisations responsible for deduction of tax at source are required to submit to the prescribed income-tax authority; a return(s) within a stipulated period after the end of the quarter. The relevant return form and the month by which it should be filed are as under :

INTEREST, PENALTIES AND PUNISHMENT

1.8.01 Failure to deduct income-tax at source on various payments as discussed may attract interest, penalty and even severe punishment.

- If an organization does not deduct tax or deducts tax but does not deposit the same then interest at the rate of 1 per cent for every month or part of a month on the amount of

Types of Return	Form No	Last date for Submission
Quarterly return for salaries and perquisites	24Q	15th July, 15th Oct., 15th Jan. & 15th May
Quarterly return for others	26Q	15th July, 15th Oct., 15th Jan. & 15th May

such tax from the date on which such tax was deductible to the date on which such tax is deducted and at the rate of 1.5 per cent for every month or part of a month on the amount of such tax from the date on which such tax was deducted to the date on which such tax is actually paid, under section 201(1A).

- Now from 1 July 2012 if TDS return is a filed late then late fee of Rs. 200 per day will have to be deposited before filing TDS/TCS return. However it is specified that late fees should not exceed TDS/TCS for that quarter. In addition to this, if TDS and interest due thereon is not deposited within one year from the due date, then penalty ranging from 10 thousand to 1 lakh rupees may be imposed.
- The Income-tax Department may also levy penalties to the extent of the amount of tax not deducted in cases of failure to deduct tax, under section 271C (1).
- If deductee's PAN is not available or invalid, then 20% TDS will be deductible.
- On furnishing wrong information (like wrong PAN & amount) in TDS return, penalty ranging from 10 thousand to 1 lakh rupees may be imposed.

HOW TDS IS EXEMPTED ON INCOME OF NGOS

1.9.01 TDS is also required to be deducted on income of the organization against various investments. Normally the banks deduct TDS against the interest income of the organization. An organization may apply to the Income Tax Officer in Form 13 for non deduction of tax.

1.9.02 On payee's application in Form No. 13, if the Assessing Officer is satisfied that total income of payee justifies no deduction or deduction of tax at lower rate, he may issue an appropriate certificate to that effect to the payer.

1.9.03 It may be noted that, earlier, it was permissible to file self declaration but w.e.f. 01.06.2002 any such self declaration is not acceptable.

1.9.04 Under sub-section (1B) of section 197A, inserted by the Finance Act, 2002 w.e.f. 1-6-2002, the provisions of section 197A shall not apply where the amount of income on the following items, or the aggregate of such income, exceeds the maximum amount which is not chargeable to tax :

- (a) Interest on securities
- (b) Dividends
- (c) Interest other than interest on securities
- (d) Payments in respect of

deposits under National Savings Scheme

(e) Income in respect of units.

1.9.05 In other words, if the income of a trust under any of the above items, or the aggregate income of the trust under all the above items, exceeds the prescribed limit, such a trust cannot *ab initio* file any declaration in respect of the above items, and even if it files a declaration, the payer cannot act on the same and make the payment without deducting tax at source. The payer has to just ignore the declaration and deduct tax at source. The organization has to obtain a certificate from the Income Tax Officer for non deduction of Tax.

1.9.06 Persons covered - The following persons are covered in this regard i.e. they have to apply to be the Income Tax Officer:

- (a) Persons in receipt of income or deemed income derived from property held under trust wholly for charitable purposes and who claim exemption under section 11 or section 12
- (b) Persons mentioned below who are required to file a return of income under section 139(4C) & (4D) :
 - (i) Scientific research association referred to in section 10(21);
 - (ii) News agency referred to in section 10(22B);
 - (iii) Association or institution referred to in section 10(23A);
 - (iv) Institution referred to in section 10(23B);
 - (v) Fund or trust referred to in section 10(23C)(iii);
 - (vi) Fund or trust referred to

- in section 10(23C)(iv);
- (vii) Trust or institution referred to in section 10(23C)(v);
- (viii) University or other educational institution referred to in section 10(23C)(vi);
- (ix) Hospital or other medical institution referred to in section 10(23C)(vii);
- (x) Trade Union or association referred to in section 10(24)(a)(b).

1.9.07 Form of Application: The persons mentioned above may make an application in Form No. 13 to the Assessing Officer for grant of a certificate under section 197(1) authorizing them to receive income of any type without deduction of tax at source, if the conditions mentioned below are satisfied.

1.9.08 Conditions to be satisfied: The persons must satisfy the following conditions in order to make the application in Form No. 13:

- (i) The persons must have furnished the returns of income for all the assessment years for which such returns became due on or before the date on which the application in Form No. 13 is made;
- (ii) the entity is for the time being approved for the purpose of exemption from income-tax;
- (iii) the applicant must give a list of deductors from whom amounts are to be received without deduction of tax at

source every six months along with the names, address and the amounts received.

1.9.09 Issue of Certificate: The Assessing Officer may issue a certificate authorizing payment of income without deduction of tax at source, if he is satisfied that all the conditions are fulfilled and that the issue of any such certificate will not be prejudicial to the interests of revenue. The certificate is to be handed over to the applicant.

1.9.10 Validity of the Certificate: The

certificate shall be valid for the financial year specified therein unless it is cancelled by the Assessing Officer at any time before the expiry of the period of validity of the earlier certificate.

1.9.11 Issue of fresh Certificate: If the assessee desires, he can make an application for a fresh certificate, after the expiry of the period of validity of the earlier certificate.

1.9.12 Action by Applicant: The applicant may furnish copies of certificate to the persons responsible for paying the income for the purpose of no deduction of tax at source.

(Dr. Manoj Fogla - Senior Chartered Accountant and a Consultant with many Voluntary Organisations.)

SERVICE TAX ON NPOs

AFTER FINANCE ACT, 2013

- Dr. Manoj Fogla, FCA
- Suresh Kejriwal, FCA

INTRODUCTION

1.1.1 The Finance Act 2012 had brought radical changes in Service Tax Laws which were further amended by the Finance Act 2013. Now all services shall be treated as taxable except those services which are included in the negative list of services (Refer **Annexure-1**) or are specifically exempted and notified (Refer **Annexure-2**) and shall also include certain activities that have been specified as declared services (Refer **Annexure-3**). The earlier law provided a list of taxable services and all other services were exempted whereas, under the amended law all services have become taxable other than services included in negative list or covered under exemption.

1.1.2 As per the existing law, all NGOs are subject to Service Tax wherever applicable. However, the Finance Act 2012 has, exempted certain category of NGOs totally from the purview of service tax. In other words, such NGOs need not pay service tax even for providing taxable services without

any financial limit. Unfortunately, very few types of NGOs have been included under this totally exempted category. All such related matters are discussed in this issue.

NGOs WHICH ARE EXEMPTED

1.2.1 The exemption has been given to only those NGOs which are registered under section 12AA of the Income Tax Act, 1961 and carrying on one or more of the following charitable activities :

(1) NGO engaged in public health by way of -

(a) care or counseling of (i) terminally ill persons or persons with severe physical or mental disability, (ii) persons afflicted with HIV or AIDS, or (iii) persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or

(b) public awareness of preventive health, family planning or

- prevention of HIV infection;
- (2) NGO engaged in advancement of religion;
- (3) NGO engaged in advancement of educational programmes or skill development relating to,-
 - (a) abandoned, orphaned or homeless children;
 - (b) physically or mentally abused and traumatized persons;
 - (c) prisoners; or
 - (d) persons over the age of 65 years residing in a rural area;
- (4) NGO engaged in preservation of environment including watershed, forests and wildlife; or

In the light of the above definition, Service Tax shall be applicable –

- a) to NGOs which are not registered u/s. 12AA of the Income Tax Act, 1961, for example NGOs registered u/s. 10(23C) etc. **This seems to be a drafting error as the intent could not have been to deprive NGOs registered u/s. 10(23C) etc. from the benefits which are available to NGOs which are registered u/s. 12AA.**
- b) to NGOs which are engaged in relief to poor, preventive health, informal education programmes, etc.
- c) In case of NGOs engaged in “advancement of any other purpose of public utility” .

1.2.2 To sum up:

- The Service Tax Act has made all services taxable except those services which are specifically exempted. Under the new law, almost all services rendered by NGOs on commercial basis or on consultancy contract shall become taxable.

- However some NGOs (not all) registered under Section 12AA of Income Tax Act, 1961 are totally exempted from Service Tax.

- The NGOs engaged in “advancement of any other object of general public utility” were exempt upto a certain limit of taxable services in addition to the blanket exemption of Rs.10 Lacs. However vide Notification No.33/2012-ST dt. 20/06/2012 the special exemption given to this category of NGOs has also been withdrawn, meaning thereby there is no special exemption for the NGOs engaged in “advancement of any other object of general public utility” though they can avail the basic exemption of Rs.10 Lacs.

- The Service Tax laws have taken a narrow definition of the term ‘charitable purpose’ which is different from the definition of charitable purpose under the Income Tax Act. There is an urgent need to align and use the same definition of the term ‘charitable purpose’ both under the Income Tax Act and the Service Tax laws.

SERVICES COVERED IN THE NEGATIVE LIST

1.3.1 The services which are included in the negative list are exempt from applicability of Service Tax. Therefore NGOs (which are not covered under exempt category as discussed herein above) have to find out whether the services rendered by them falls under the negative list or the services rendered by NGOs are outside the negative list. If the services rendered is outside the

Negative list, then these services shall be subject to Service Tax Act.

1.3.2 Some of the services covered in Negative list includes:

- a) Services by way of –
 - i) Pre-school education and education up to higher secondary school or equivalent;
 - ii) Education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force;
 - iii) Education as a part of an approved vocational education course

Hence it appears that non-formal education is not covered under the exempt category of Service Tax and therefore any collection from non formal, program shall be subject to service tax.

- b) Services by way of renting of residential dwelling for use as residence;

Hence if the NGO is renting out properties for non-residential purpose then this rent income shall become service subject to Service Tax.

BASIC EXEMPTION AVAILABLE FOR TAXABLE SERVICES

1.4.1 If the service rendered by a non-exempt NGO does not fall under negative list then also there is no liability of service tax upto the value of Rs.10 lakhs. This means even if a non-exempt NGO provides taxable service for an amount upto Rs.10 lakhs in a year, there is no implication of service tax.

WHAT IS SERVICE?

1.5.1 In the new service tax system, all services, other than services specified in the negative list, provided or agreed to be provided in the taxable territory by a person to another would be taxed under section 66B. The term 'Service' has been defined in clause (44) of the new section 65B of the Service Tax Act and it means –

- any activity
- for consideration
- carried out by a person for another
- and includes a declared service.

1.5.2 As per the above definition, an activity for consideration carried out by a person for another person can be included as service and it may also include a declared service. In other words, any service provided for a fee or when something is received in return shall be considered as a service. All services except those provided in the negative list shall be considered as taxable services.

WHICH ACTIVITIES WILL NOT BE INCLUDED UNDER SERVICE?

1.6.1 The definition under Section 66B further provides that 'Service' does not include –

- any activity that constitutes only a transfer in title of (i) goods or (ii) immovable property by way of sale, gift or in any other manner
- a transaction only in (iii) money or (iv) actionable claim
- any service provided by an employee to an employer in the course of the employment.
- fees payable to a court or a tribunal set up under a law for the time being in force

WHAT IS CONSIDERATION?

1.7.1 The word 'consideration' has not defined in the Act. However the master Circular issued on 16.03.2012 clarifies that:

- Activity carried out without any consideration like donations, gifts or free charities are therefore outside the ambit of service. For example, grants given for a research where the researcher is **under no obligation** to carry out a particular research would not be a consideration for such research.
- Conditions in a grant stipulating merely proper usage of funds and furnishing of account also will not result in making it a provision of service.
- Donation to a charitable organization is not a consideration unless charity is obligated to provide something in return e.g. **display or advertise the name of the donor in a specified manner** or such that it gives a business advantage to the donor.

WILL PROJECT GRANT BE TREATED AS A SERVICE?

1.8.1 Project grants and restricted funds shall not be treated as service. However, if the grant agreement has any clause where any benefit or business value is going back to the donor, then it shall be treated as a taxable service. Some example of such benefit could be as under:

- (i) If the donor puts a clause that the implementing organization has to display its logo or name at the places of activity, then it could be considered as a taxable service.

(ii) If the implementing organization is conducting some research, survey or activity in which the donor is interested and the implementing organization is under obligation to provide certain specified output to the donor, then the services can be considered as taxable services. For example, if the donor keeps a condition that the implementing organization shall provide activity report or utilization statements, then it will not be treated as taxable service. However, if the donor keeps a condition that the implementing organization shall provide specific data or specific research report as an outcome of the activity, then it will be treated as a taxable service.

WILL CSR GRANT BE CONSIDERED AS TAXABLE SERVICE?

1.9.1 In the light of the definition of the term 'consideration' where it is provided that "*Donation to a charitable organization is not a consideration unless charity is obligated to provide something in return e.g. **display or advertise the name of the donor in a specified manner** or such that it gives a business advantage to the donor*", it seems that CSR grants could be treated as taxable services if the donor company is getting any business advantage out of such donation or keeps a condition regarding display of its logo or name during the implementation process. **Generally all grants including CSR grants should not be considered as service.**

WHAT DOES THE WORD 'ACTIVITY' SIGNIFY?

1.10.1 'Activity' has not been defined in the Act. In terms of the common understanding of the word, activity would include an act

done, a work done, a deed done, an operation carried out, execution of an act, provision of a facility etc. It is a term with very wide connotation. Activity could be **active or passive** and would also include forbearance to act. Agreeing to the obligation to refrain from an act or to tolerate an act or a situation has also been specified as a declared service under section 66E of the Act. In other words, even a promise of not doing something for a consideration can be considered as a service. For example, if an activist NGO enters into a contract for not agitating against any particular organization or any particular issue, then such services can be treated as taxable service.

WHAT IS NON-MONETARY CONSIDERATION?

1.11.1 Non-monetary consideration could be in the form of following:

- Supply of goods and services in return for provision of service
- Refraining or forbearing to do an act in return for provision of service
- Tolerating an act or a situation in return for provision of a service
- Doing or agreeing to do an act in return for provision of service

APPLICABILITY OF NEW REVERSE CHARGE MECHANISM TO NGOS

1.12.1 Under the Service Tax Act, the recipient of the services has to pay the service tax on certain category of services. These services includes :

- a) Rent – a- cab service
- b) Manpower power supply service
- c) Works Contract service

1.12.2 This reverse charge mechanism shall be applicable only if the service receiver is a business concern & registered as a body

corporate. **Hence all the NGOs registered as a trust and society are not covered under the new reverse charge mechanism but section 25 Companies may be covered under this new reverse charge mechanism if it also carries on business.**

FAQ's

1.13.1 Whether all NGOs registered u/s 12AA are exempt from service tax.?

Ans: No all NGOs registered u/s 12AA are not exempt from Service Tax. Only NGOs registered u/s. 12AA of Income Tax Act, 1961 and engaged in one or more of the specified charitable activities are exempt from Service Tax. Refer **Point No. 1.2.1.**

1.13.2 Whether the NGOs registered under 10(23) are liable for Service Tax?

Ans : NGOs registered u/s. 10(23) are not covered under the exempt category and therefore they are liable for Service Tax, if the service provided by them is not covered under negative list.

1.13.3 Whether grant received by NGOs after deduction of TDS either u/s. 194C or 194J shall be subject to Service Tax?

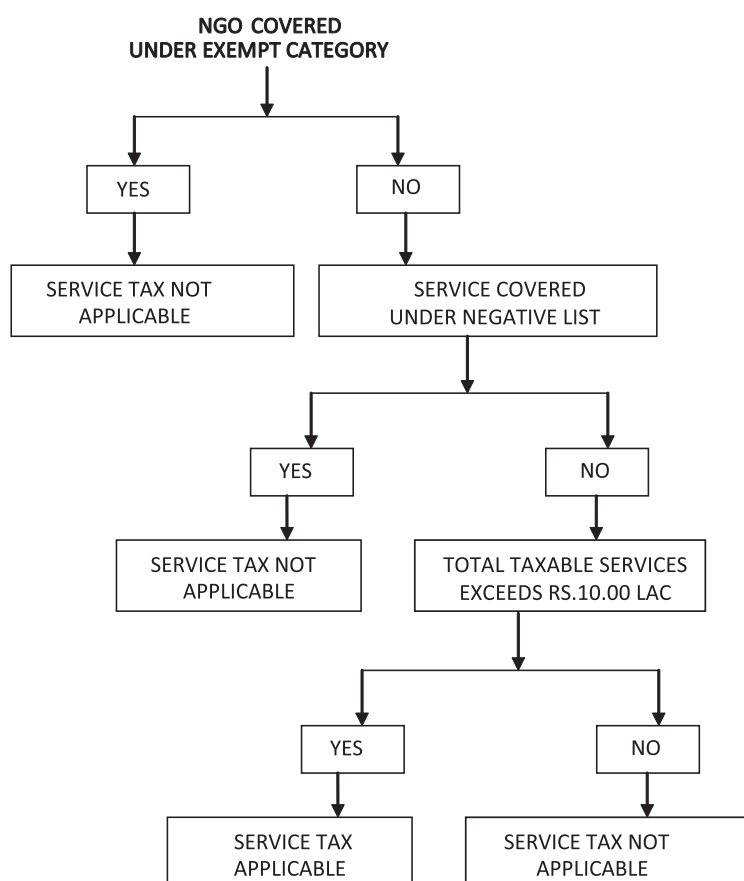
Ans : If the tax is deducted u/s. 194C or 194J while remitting the grant, then the grant may be considered in the nature of services and if the NGO does not fall under the exempt category and the nature of work done by NGO is also not included in negative list, then the grant amount on which Tax is deducted at source may be considered in the nature of services subject to Service Tax. However, there are case laws where it has been held that if by mistake a grant contract is drafted as a consultancy contract, it would not convert the transaction into a commercial transaction. In the case *Heart Care Management v. Director of Income-tax (E)* [2012] 22

taxmann.com 105 (Delhi - Trib.) it was held that only because donors deducted TDS, it will not convert a donation into a commercial receipt on the basis of presumptive inferences. As long as the assessee has credited the amount as donation and issued donation receipts, in our view, the same cannot be held to be commercial receipt.

1.13.4 In certain NGOs internal billings are raised as rent for use of office space or for conducting various trainings and these incomes are separately shown as income in the consolidated Audited reports. Whether these internal charges shall be subject to service tax?

Ans: Normally Rental income booked through internal bills are not legal income and therefore any income arising out of such internal billing should not be subject to Service Tax. However, if the consolidated financial audited reports consider these rental incomes as independent income without disclosure, then this rental income may be considered by the Service Tax Department as services rendered by the organization subject to Service Tax and therefore, NGO may have to defend its case by providing all the documents. Hence it is advisable not to include notional income while presentation of financial statements.

1.13.5 What is the scheme of applicability of Service Tax to NGO ?



(Dr. Manoj Fogla & Mr. Suresh Kejriwal
– Senior Chartered Accountants and consultants in many Voluntary Organisations)

THE NEGATIVE LIST OF SERVICES WHICH ARE EXEMPTED

The negative list as per Section 66D shall comprise of the following services, namely:—

- (a) services by Government or a local authority excluding the following services to the extent they are not covered elsewhere—
 - (i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;
 - (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
 - (iii) transport of goods or passengers; or
 - (iv) support services, other than services covered under clauses (i) to (iii) above, provided to business entities;
- (b) services by the Reserve Bank of India;
- (c) services by a foreign diplomatic mission located in India;
- (d) services relating to agriculture by way of—
 - (i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or seed testing;
 - (ii) supply of farm labour;
 - (iii) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;
 - (iv) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;
 - (v) loading, unloading, packing, storage or warehousing of agricultural produce;
 - (vi) agricultural extension services;
 - (vii) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce;
- (e) trading of goods;
- (f) any process amounting to manufacture or production of goods;
- (g) selling of space or time slots for advertisements other than advertisements broadcast by radio or television;
- (h) service by way of access to a road or a bridge on payment of toll charges;
- (i) betting, gambling or lottery;
- (j) admission to entertainment events or access to amusement facilities;
- (k) transmission or distribution of electricity by an electricity transmission or distribution utility;
- (l) services by way of—
 - (i) pre-school education and education up to higher secondary school or equivalent;
 - (ii) education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force;

- (iii) education as a part of an approved vocational education course;
- (m) services by way of renting of residential dwelling for use as residence;
- (n) services by way of—
 - (i) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount;
 - (ii) inter se sale or purchase of foreign currency amongst banks or authorized dealers of foreign exchange or amongst banks and such dealers;
- (o) service of transportation of passengers, with or without accompanied belongings, by—
 - (i) a stage carriage;
 - (ii) railways in a class other than—
 - (A) first class; or
 - (B) an air-conditioned coach;
 - (iii) metro, monorail or tramway;
 - (iv) inland waterways;
 - (v) public transport, other than predominantly for tourism purpose, in a vessel of less than fifteen tonne net; and
 - (vi) metered cabs, radio taxis or auto rickshaws;
- (p) services by way of transportation of goods—
 - (i) by road except the services of—
 - (A) a goods transportation agency; or
 - (B) a courier agency;
 - (ii) by an aircraft or a vessel from a place outside India to the first customs station of landing in India; or
 - (iii) by inland waterways;
- (q) funeral, burial, crematorium or mortuary services including transportation of the deceased.

EXEMPTIONS UNDER MEGA NOTIFICATION

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

Government of India Ministry of Finance Department of Revenue

NOTIFICATION NO.12/2012-SERVICE TAX

New Delhi, the 17th March 2012

Exemptions from Service tax — Mega Notifications — Notification No. 12/2012-S.T. superseded

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification number 12/2012-Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 210(E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely :-

1. Services provided to the United Nations or a specified international organization;
2. Health care services by a clinical establishment, an authorised medical practitioner or para-medics;
3. Services by a veterinary clinic in relation to health care of animals or birds;
4. Services by an entity registered under section 12AA of the Income tax Act, 1961 (43 of 1961) by way of charitable activities;
5. Services by a person by way of -
 - (a) renting of precincts of a religious place meant for general public; or
 - (b) conduct of any religious ceremony;
6. Services provided by-
 - (a) an arbitral tribunal to -
 - (i) any person other than a business entity; or
 - (ii) a business entity with a turnover up to rupees ten lakh in the preceding financial year;
 - (b) an individual as an advocate or a partnership firm of advocates by way of legal services to,-
 - (i) an advocate or partnership firm of advocates providing legal services ;
 - (ii) any person other than a business entity; or
 - (iii) a business entity with a turnover up to rupees ten lakh in the preceding financial year; or
 - (c) a person represented on an arbitral tribunal to an arbitral tribunal;

7. Services by way of technical testing or analysis of newly developed drugs, including vaccines and herbal remedies, on human participants by a clinical research organization approved to conduct clinical trials by the Drug Controller General of India;
8. Services by way of training or coaching in recreational activities relating to arts, culture or sports;
9. Services provided to an educational institution in respect of education exempted from service tax, by way of,-
 - (a) auxiliary educational services; or
 - (b) renting of immovable property;
10. Services provided to a recognized sports body by-
 - (a) an individual as a player, referee, umpire, coach or team manager for participation in a sporting event organized by a recognized sports body;
 - (b) another recognized sports body;
11. Services by way of sponsorship of sporting events organized,-
 - (a) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, state or zone;
 - (b) by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat;
 - (c) by Central Civil Services Cultural and Sports Board;
 - (d) as part of national games, by Indian Olympic Association; or
 - (e) under Panchayat Yuva Kreedha Aur Khel Abhiyaan (PYKKA) Scheme;
12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -
 - (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;
 - (b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);
 - (c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;
 - (d) canal, dam or other irrigation works;
 - (e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or
 - (f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65B of the said Act;
13. Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-
 - (a) a road, bridge, tunnel, or terminal for road transportation for use by general public;
 - (b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;

- (c) a building owned by an entity registered under section 12AA of the Income tax Act, 1961(43 of 1961) and meant predominantly for religious use by general public;
 - (d) a pollution control or effluent treatment plant, except located as a part of a factory; or a structure meant for funeral, burial or cremation of deceased;
14. Services by way of construction, erection, commissioning, or installation of original works pertaining to,-
- (a) an airport, port or railways, including monorail or metro;
 - (b) a single residential unit otherwise than as a part of a residential complex;
 - (c) low-cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;
 - (d) post-harvest storage infrastructure for agricultural produce including a cold storages for such purposes; or
 - (e) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages;
15. Services provided by way of temporary transfer or permitting the use or enjoyment of a copyright,-
- (a) covered under clause (a) of sub-section (1) of section 13 of the Copyright Act, 1957 (14 of 1957), relating to original literary, dramatic, musical or artistic works; or
 - (b) of cinematograph films for exhibition in a cinema hall or cinema theatre;";
16. Services by a performing artist in folk or classical art forms of (i) music, or (ii) dance, or (iii) theatre, excluding services provided by such artist as a brand ambassador;
17. Services by way of collecting or providing news by an independent journalist, Press Trust of India or United News of India;
18. Services by way of renting of a hotel, inn, guest house, club, campsite or other commercial places meant for residential or lodging purposes, having declared tariff of a unit of accommodation below rupees one thousand per day or equivalent;
19. Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having the facility of air-conditioning or central air heating in any part of the establishment, at any time during the year;
20. Services by way of transportation by rail or a vessel from one place in India to another of the following goods -
- ~~(a) petroleum and petroleum products falling under Chapter heading 2710 and 2711 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);~~
 - (b) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap;
 - (c) defence or military equipments;
 - ~~(d) postal mail or mail bags;~~
 - ~~(e) household effects;~~
 - (f) newspaper or magazines registered with the Registrar of Newspapers;
 - (g) railway equipments or materials;
 - (h) agricultural produce;

- (i) foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages; or
 - (j) chemical fertilizer and oilcakes;
21. Services provided by a goods transport agency, by way of transport in a goods carriage of,-
- (a) agricultural produce;
 - (b) goods, where gross amount charged for the transportation of goods on a consignment transported in a single carriage does not exceed one thousand five hundred rupees;
 - (c) goods, where gross amount charged for transportation of all such goods for a single consignee does not exceed rupees seven hundred fifty;
 - (d) foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages;
 - (e) chemical fertilizer and oilcakes;
 - (f) newspaper or magazines registered with the Registrar of Newspapers;
 - (g) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or
 - (h) defence or military equipments;”;
22. Services by way of giving on hire -
- (a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or
 - (b) to a goods transport agency, a means of transportation of goods;
23. Transport of passengers, with or without accompanied belongings, by -
- (a) air, embarking from or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal;
 - (b) a contract carriage for the transportation of passengers, excluding tourism, conducted tour, charter or hire; or
 - (c) ropeway, cable car or aerial tramway;
- ~~24. Services by way of vehicle parking to general public excluding leasing of space to an entity for providing such parking facility;~~
25. Services provided to Government, a local authority or a governmental authority by way of -
- (a) carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation; or
 - (b) repair or maintenance of a vessel or an airport;
26. Services of general insurance business provided under following schemes -
- (a) Hut Insurance Scheme;
 - (b) Cattle Insurance under Swarnajaynti Gram SwarozgarYojna (earlier known as Integrated Rural Development Programme);
 - (c) Scheme for Insurance of Tribals;

- (d) Janata Personal Accident Policy and Gramin Accident Policy;
 - (e) Group Personal Accident Policy for Self-Employed Women;
 - (f) Agricultural Pumpset and Failed Well Insurance;
 - (g) premia collected on export credit insurance;
 - (h) Weather Based Crop Insurance Scheme or the Modified National Agricultural Insurance Scheme, approved by the Government of India and implemented by the Ministry of Agriculture;
 - (i) Jan ArogyaBima Policy;
 - (j) National Agricultural Insurance Scheme (Rashtriya KrishiBimaYojana);
 - (k) Pilot Scheme on Seed Crop Insurance;
 - (l) Central Sector Scheme on Cattle Insurance;
 - (m) Universal Health Insurance Scheme;
 - (n) Rashtriya SwasthyaBimaYojana; or
 - (o) Coconut Palm Insurance Scheme;
- “26A. Services of life insurance business provided under following schemes -
- (a) JanashreeBimaYojana (JBY); or
 - (b) AamAadmiBimaYojana (AABY);”.
27. Services provided by an incubatee up to a total turnover of fifty lakh rupees in a financial year subject to the following conditions, namely :-
- (a) the total turnover had not exceeded fifty lakh rupees during the preceding financial year; and
 - (b) a period of three years has not been elapsed from the date of entering into an agreement as an incubatee;
28. Service by an unincorporated body or a non-profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution -
- (a) as a trade union;
 - (b) for the provision of carrying out any activity which is exempt from the levy of service tax; or
 - (c) up to an amount of five thousand rupees per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex;
29. Services by the following persons in respective capacities -
- (a) sub-broker or an authorised person to a stock broker;
 - (b) authorised person to a member of a commodity exchange;
 - (c) mutual fund agent to a mutual fund or asset management company;
 - (d) distributor to a mutual fund or asset management company;
 - (e) selling or marketing agent of lottery tickets to a distributor or a selling agent;
 - (f) selling agent or a distributor of SIM cards or recharge coupon vouchers;
 - (g) business facilitator or a business correspondent to a banking company or an insurance company, in a rural area; or
 - (h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;

30. Carrying out an intermediate production process as job work in relation to -
- (a) agriculture, printing or textile processing;
 - (b) cut and polished diamonds and gemstones; or plain and studded jewellery of gold and other precious metals, falling under Chapter 71 of the Central Excise Tariff Act, 1985 (5 of 1986);
 - (c) any goods on which appropriate duty is payable by the principal manufacturer; or
 - (d) processes of electroplating, zinc plating, anodizing, heat treatment, powder coating, painting including spray painting or auto black, during the course of manufacture of parts of cycles or sewing machines upto an aggregate value of taxable service of the specified processes of one hundred and fifty lakh rupees in a financial year subject to the condition that such aggregate value had not exceeded one hundred and fifty lakh rupees during the preceding financial year;
31. Services by an organiser to any person in respect of a business exhibition held outside India;
32. Services by way of making telephone calls from -
- (a) departmentally run public telephone;
 - (b) guaranteed public telephone operating only for local calls; or
 - (c) free telephone at airport and hospital where no bills are being issued;
33. Services by way of slaughtering of bovine animals;
34. Services received from a provider of service located in a non- taxable territory by -
- (a) Government, a local authority, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession;
 - (b) an entity registered under section 12AA of the Income tax Act, 1961 (43 of 1961) for the purposes of providing charitable activities; or
 - (c) a person located in a non-taxable territory;
35. Services of public libraries by way of lending of books, publications or any other knowledge - enhancing content or material;
36. Services by Employees' State Insurance Corporation to persons governed under the Employees' Insurance Act, 1948 (34 of 1948);
37. Services by way of transfer of a going concern, as a whole or an independent part thereof;
38. Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets;
39. Services by a governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution.

2. Definitions.- For the purpose of this notification, unless the context otherwise requires, -

- (a) "Advocate" has the meaning assigned to it in clause (a) of sub-section (1) of section 2 of the Advocates Act, 1961 (25 of 1961);
- (b) "appropriate duty" means duty payable on manufacture or production under a Central Act or a State Act, but shall not include 'Nil' rate of duty or duty wholly exempt;

- (c) “arbitral tribunal” has the meaning assigned to it in clause (d) of section 2 of the Arbitration and Conciliation Act, 1996 (26 of 1996);
- (d) “authorised medical practitioner” means a medical practitioner registered with any of the councils of the recognised system of medicines established or recognized by law in India and includes a medical professional having the requisite qualification to practice in any recognised system of medicines in India as per any law for the time being in force;
- (e) “authorised person” means any person who is appointed as such either by a stock broker (including trading member) or by a member of a commodity exchange and who provides access to trading platform of a stock exchange or a commodity exchange as an agent of such stock broker or member of a commodity exchange;
- (f) “auxiliary educational services” means any services relating to imparting any skill, knowledge, education or development of course content or any other knowledge – enhancement activity, whether for the students or the faculty, or any other services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person, including services relating to admission to such institution, conduct of examination, catering for the students under any mid-day meals scheme sponsored by Government, or transportation of students, faculty or staff of such institution;
- (g) “banking company” has the meaning assigned to it in clause (a) of section 45A of the Reserve Bank of India Act, 1934(2 of 1934);
- (h) “brand ambassador” means a person engaged for promotion or marketing of a brand of goods, service, property or actionable claim, event or endorsement of name, including a trade name, logo or house mark of any person;
- (i) “business facilitator or business correspondent” means an intermediary appointed under the business facilitator model or the business correspondent model by a banking company or an insurance company under the guidelines issued by Reserve Bank of India;
- (j) “clinical establishment” means a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases;
- (k) “charitable activities” means activities relating to -
- (i) public health by way of -
 - (a) care or counseling of (i) terminally ill persons or persons with severe physical or mental disability, (ii) persons afflicted with HIV or AIDS, or (iii) persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or
 - (b) public awareness of preventive health, family planning or prevention of HIV infection;
 - (ii) advancement of religion or spirituality;

(iii) advancement of educational programmes or skill development relating to,-

- (a) abandoned, orphaned or homeless children;
- (b) physically or mentally abused and traumatized persons;
- (c) prisoners; or
- (d) persons over the age of 65 years residing in a rural area;

(iv) preservation of environment including watershed, forests & wildlife; or

(v) advancement of any other object of general public utility up to a value of,-

(a) eighteen lakh and seventy five thousand rupees for the year 2012-13 subject to the condition that total value of such activities had not exceeded twenty five lakhs rupees during 2011-12;

(b) twenty five lakh rupees in any other financial year subject to the condition that total value of such activities had not exceeded twenty five lakhs rupees during the preceding financial year;

(l) "commodity exchange" means an association as defined in section 2(j) and recognized under section 6 of the Forward Contracts (Regulation) Act, 1952 (74 of 1952);

(m) "contract carriage" has the meaning assigned to it in clause (7) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);

(n) "declared tariff" includes charges for all amenities provided in the unit of accommodation (given on rent for stay) like furniture, air-conditioner, refrigerators or any other amenities, but without excluding any discount offered on the published charges for such unit;

(o) "distributor or selling agent" has the meaning assigned to them in clause (c) of the rule 2 of the Lottery (Regulation) Rules, 2010 notified by the Government of India in the Ministry of Home Affairs, published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (i), vide number G.S.R. 278(E), dated the 1st April, 2010 and shall include distributor or selling agent authorised by the lottery-organising State;

(p) "general insurance business" has the meaning assigned to it in clause (g) of section 3 of General Insurance Business (Nationalisation) Act, 1972 (57 of 1972);

(q) "general public" means the body of people at large sufficiently defined by some common quality of public or impersonal nature;

(r) "goods carriage" has the meaning assigned to it in clause (14) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);

(s) "governmental authority" means a board, or an authority or any other body established with 90% or more participation by way of equity or control by Government and set up by an Act of the Parliament or a State Legislature to carry out any function entrusted to a municipality under article 243W of the Constitution;

(t) "health care services" means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised

system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma;

(u) “incubatee” means an entrepreneur located within the premises of a Technology Business Incubator (TBI) or Science and Technology Entrepreneurship Park (STEP) recognised by the National Science and Technology Entrepreneurship Development Board (NSTEDB) of the Department of Science and Technology, Government of India and who has entered into an agreement with the TBI or the STEP to enable himself to

develop and produce hi-tech and innovative products;

(v) “insurance company” means a company carrying on life insurance business or general insurance business;

(w) “legal service” means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority;

(x) “life insurance business” has the meaning assigned to it in clause (11) of section 2 of the Insurance Act, 1938 (4 of 1938);

(y) “original works” means has the meaning assigned to it in Rule 2A of the Service Tax (Determination of Value) Rules, 2006;

(z) “principal manufacturer” means any person who gets goods manufactured or processed on his account from another person;

(za) “recognized sports body” means - (i) the Indian Olympic Association, (ii) Sports Authority of India, (iii) a national sports federation recognised by the Ministry of Sports and Youth Affairs of the Central Government, and its affiliate federations, (iv) national sports promotion organisations recognised by the Ministry of Sports and Youth Affairs of the Central Government, (v) the International Olympic Association or a federation recognised by the International Olympic Association or (vi) a federation or a body which regulates a sport at international level and its affiliated federations or bodies regulating a sport in India;

(zb) “religious place” means a place which is primarily meant for conduct of prayers or worship pertaining to a religion, meditation, or spirituality;

(zc) “residential complex” means any complex comprising of a building or buildings, having more than one single residential unit;

(zd) “rural area” means the area comprised in a village as defined in land revenue records, excluding the area under any municipal committee, municipal corporation, town area committee, cantonment board or notified area committee; or any area that may be notified as an urban area by the Central Government or a State Government;

(ze) “single residential unit” means a self-contained residential unit which is designed for use, wholly or principally, for residential purposes for one family;

- (zf) “specified international organization” means an international organization
(zg) “state transport undertaking” has the meaning assigned to it in clause (42) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);
(zh) “sub-broker” has the meaning assigned to it in sub-clause (gc) of clause 2 of the Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992;
(zi) “trade union” has the meaning assigned to it in clause (h) of section 2 of the Trade Unions Act, 1926 (16 of 1926).
3. This notification shall come into force on the 1st day of July, 2012.

[Notification No. 25/2012-S.T., dated 20-6-20

]Notification No. 25/2012-S.T., dated 20-6-2012]

DECLARED SERVICES

In the definition of 'service' contained in clause (44) of section 65B of the Act it has been stated that service includes a declared service. The phrase 'declared service' is also defined in the said section as an activity carried out by a person for another for consideration and specified in section 66E of the Act. The following nine activities have been specified in section 66E:

1. renting of immovable property;
2. construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of certificate of completion by a competent authority;
3. temporary transfer or permitting the use or enjoyment of any intellectual property right;
4. development, design, programming, customization, adaptation, up gradation, enhancement, implementation of information technology software;
5. agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;
6. transfer of goods by way of hiring, leasing, licensing or any such manner without transfer of right to use such goods;
7. activities in relation to delivery of goods on hire purchase or any system of payment by instalments;
8. service portion in execution of a works contract;
9. service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as part of the activity.

If the above activities are carried out by a person for another for consideration it would amount to provision of service. Most of these services are presently also being taxed except in so far as Sl. No.5 is concerned. It is clarified that they are amply covered by the definition of service but have been declared with a view to remove any ambiguity for the purpose of uniform application of law all over the country.

ITR-7 TO BE FILED ELECTRONICALLY

- Dr. Manoj Fogla, FCA
- Sanjay Patra, FCA

The Central Board of Direct Taxes (CBDT) has issued a Notification by virtue of which from the current assessment year, the Income Tax Annual Return, ITR-7 has to be filed electronically. It may be noted that currently the ITR-7 is being filed in hard copies however, from the current assess-

ment year 2013-14 i.e. the Income Tax Return for the year 2012-13 shall be filed electronically on or before 30th September, 2013.

The copy of the Notification No. 42/2013/F.No.142/5/2013-TPL dt. 11th June 2013 is enclosed herewith as Annexure-1.

*(Dr. Manoj Fogla - Senior Chartered Accountant and a Consultant with many Voluntary Organisations.)
(Sanjay Patra- Senior Chartered Accountant and Executive Director of FMSF)*

NOTIFICATIONS & CIRCULARS

Income Tax Rules 1962-Amendment in Rule 12 & Substitution of Forms ITR-2, ITR-3, ITR-4, ITR-5, ITR-6 and ITR-7

Notice Date: 11 June 2013

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
[CENTRAL BOARD OF DIRECT TAXES]
NOTIFICATION
New Delhi, the 11th day of June, 2013
Income-tax

S.O.1513(E).— In exercise of the powers conferred by section 295 of the Income tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:-

1. (1) These rules may be called the Income-tax (Seventh Amendment) Rules, 2013.
(2) They shall be deemed to have come into force with effect from the 1st day of April, 2013.
2. In the Income-tax Rules, 1962 (hereinafter referred to as the said rules), in rule 12,—
 - (a) in sub-rule (2),—
 - (A) after the words, letters and figure “Form No. ITR-6” the words, letters and figure “or Form No. ITR-7” shall be inserted;
 - (B) for the proviso, the following proviso shall be substituted, namely:—
“Provided that where an assessee is required to furnish a report of audit specified under sub-clauses (iv), (v), (vi) or (via) of clause (23C) of section 10, section 10A, clause (b) of sub-section (1) of section 12A, section 44AB, section 80-IA, section 80-IB, section 80-IC, section 80-ID, section 80JJAA, section 80LA, section 92E or section 115JB of the Act, he shall furnish the same electronically.”;
 - (b) in sub-rule (3),—
 - (A) in the proviso, for clause (aab), the following clause shall be substituted, namely:—
“(aab) a person claiming any relief of tax under section 90 or 90A or deduction of tax under section 91 of the Act, other than a person to whom clause (aaa) or clause (ab) is applicable, shall furnish the return for assessment year 2013-14 and subsequent assessment years in the manner specified in clause (ii) or clause (iii);”.(B) after the proviso, the following proviso shall be inserted, namely:—
“Provided further that a person who is required to furnish any report of audit referred to in proviso to sub-rule (2) electronically, other than a person to whom clause (aaa) or clause (ab) of the first proviso is applicable, shall furnish the return, in Form as applicable to him, in the manner specified in clause (ii) or clause (iii).”.

3. In the said rules, in Appendix-II, for “Forms ITR-2, ITR-3, ITR-4, ITR-5, ITR-6 and ITR-7”, the “Forms ITR-2, ITR-3, ITR-4, ITR-5, ITR-6 and ITR-7” shall be substituted.

[Notification No. 42/2013/ F.No.142/5/2013-TPL]

(Gaurav Kanaujia)

Director to the Government of India

Note.-The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) vide notification number S.O.969(E), dated the 26th March, 1962 and last amended by Income-tax (Sixth Amendment) Rules, 2013 vide notification S.O. No. 1491(E) dated 10th June, 2013.

Notification No: Notification No. 42/2013/ F.No.142/5/2013-TPL

Source:

Posted on 13 June 2013

SEVERE PENALTY FOR DELAYED FILING OF FC-6 RETURN

- Dr. Manoj Fogla, FCA
- Sanjay Patra, FCA

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.

It may be noted that currently the last date of filing Form FC-6 is 31st December, i.e. nine months from the end of the financial year.

The penalty proposed are as under:

- 2% of the amount received or Rs.10,000/- whichever is higher, if the

delay is within 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.

(Dr. Manoj Fogla - Senior Chartered Accountant and a Consultant with many Voluntary Organisations.)

(Sanjay Patra- Senior Chartered Accountant and Executive Director of FMSF)



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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नई दिल्ली, सोमवार, अप्रैल 29, 2013/वैशाख 9, 1935
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गृह मंत्रालय

अधिसूचना

नई दिल्ली, 26 अप्रैल, 2013

क्र.अ. 1070(अ).—केन्द्रीय सरकार, विदेशी अधिदाय (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 अधिव्ययन सौम्यात करने से पूर्व उक्त सारणी के स्तंभ (2) में विनिर्दिष्ट अपराधों का उक्त सारणी के स्तंभ (3) में विनिर्दिष्ट रकम का संतुष्ट करने पर शयन कर सकेगा, अर्थात् :-

सारणी

क्रम सं.	अपराध	शक्ति 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 रुपये, जो भी अधिक हो, की शक्ति ।	गृह मंत्रालय के विदेशी प्रभाग का विदेशी अधिदाय (विनियमन) अधिनियम खंड का प्रभारी निदेशक या उपसचिव ।
2.	प्रत्येक वर्ष 31 दिसम्बर के पश्चात् इक्क्यानवें दिन के पश्चात् एक सौ अस्सी दिन तक विवरणी प्रस्तुत न करना ।	वित्त वर्ष के दौरान प्राप्त रकम की तीन प्रतिशत या बीस हजार रुपये, जो भी अधिक हो, की शक्ति ।	गृह मंत्रालय के विदेशी प्रभाग का विदेशी अधिदाय (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 रुपये, जो भी अधिक हो, के साथ एक सौ अस्सी दिन के पश्चात् विलंब के प्रत्येक दिन के लिए पांच सौ रुपये की शक्ति ।	गृह मंत्रालय में विदेशी प्रभाग का विदेशी अधिदाय (विनियमन) अधिनियम खंड का प्रभारी निदेशक या उपसचिव ।

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

1706 GU/2013

(1)

पी. चमलनमंग, 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.

RECOGNITION AND DISCLOSURE OF VARIOUS GRANTS

(Analysis of Accounting Standards and Legal Issues pertaining to various types of grants)

- Dr. Manoj Fogla, FCA

INTRODUCTION

1.1.1 Charitable organisations receive various types of grants which may require different accounting and legal treatment. A grant may be conditional in nature or it may be for multiple years or it could be permanent in nature (corpus grant). Each types of grant may be required to be accounted and disclosed separately. Various types of grant can be categorized as under:

1. Grants in the nature of voluntary contribution or unrestricted grants.
2. Grant for recurring expenditure
3. Grant to organize specific event/ programs
4. Grant to purchase assets
5. Grant to give further grants to other organisations
6. Grant towards corpus etc.

1.1.2 From accounting perspective, the issue is subject to the various accounting standards and guidelines issue by the Institute of Chartered Accountants of India

(ICAI) and International Accounting Standards Board (IASB). In this issue, we will try to understand the concept and procedure of recognizing grants as income and the accounting disclosures thereof. *In this issue the income tax and legal issues will not be touched in detail for which the issue no. 2, Vol. V, May 2012 of Standards & Norms may be referred.*

UNDERSTANDING THE CONCEPT OF INCOME

1.2.1 The concept of income including its determination is same for all entities whether charitable or otherwise. The concept of income is not governed by the requirements of the Income-tax Act. Further, the concept of income is based on economic reality rather than the requirements of fiscal laws which, sometimes, have considerations other than economic reality.

1.2.2 We refer to the definition of income and the recognition criteria in this regard as contained in the Framework for the

Preparation and Presentation of Financial Statements issued by the Institute of Chartered Accountants of India. The Framework defines income as follows:

“69(a) 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.”

1.2.3 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.”

1.2.4 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.”

CONCEPT OF LIABILITY

1.3.1 As per the ICAI Framework, the liabilities are recognized as follows:

“90. A liability is recognized in the balance sheet when it is probable that an outflow of resources embodying economic benefits will result from the settlement of a present obligation and the amount at which the settlement will take place can be measured reliably. In practice, obligations under contracts that are equally proportionately unperformed (for example, liabilities for inventory ordered but not yet received) are generally not recognised as liabilities in the financial statements. However, such obligations may meet the definition of liabilities and, provided the recognition criteria are met in the particular circumstances, may qualify for recognition. In such circumstances, recognition of liabilities entails recognition of related assets or expenses.”

1.3.2 It can be seen that as per the ICAI definition, obligations under contracts are also considered as liability. Therefore, all restricted project grants which are bound by specific and measurable obligation should be considered as a liability rather than as income.

ANALYSIS OF REVENUE & INCOME BASED ON ICAI GUIDELINES

1.4.1 On the basis of the above, the principles and understanding emerging from existing accounting standards and guidelines of ICAI are as follows:

- (i) The term ‘revenue’ is generally used to convey the idea of ‘gross income’ or the ‘gross receipts’. However, what is available for appropriation is often

termed as 'Net Income'. This principle should be valid for both business and charity.

(ii) Every donation or grant is an income as defined above since it results in enhancement of assets. However, in practice, certain donations and grants are not recognized 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 recognized as capital grants and recognized in equity and not recognized in the Income and Expenditure Account. However, the corresponding International Accounting Standard, namely, IAS 20, recognizes all grants as income irrespective of whether they are of the nature of promoters' contribution. The position of ICAI is slightly different from the IASB. It is understood that ICAI is revising AS 12 to converge with IAS 20.

(iii) By definition, non-monetary grants, e.g., gold and buildings are also enhancements of assets and, therefore, considered as income irrespective of whether they are to be used as such by the donee. The Accounting Standard (AS) 12 requires such grants to be measured at rupee one although the corresponding International Accounting Standard (IAS) 20 also permits their measurement at fair value. It is understood that ICAI is revising AS 12 to converge with IAS 20.

(iv) By definition capital receipts are also income.

(v) With regard to the recognition of income in the Income and Expenditure account, it may be mentioned that a

grant although considered as an income by definition may still be recognized at different periods of time in the Income and Expenditure Account. For example, Accounting Standard 12 recognizes that grants related to specific fixed assets should be considered as deferred income and reflected in the balance sheet. In the Income and Expenditure Account, only that portion of the deferred income is recognized which corresponds to the depreciation on the fixed asset for the period acquired out of the grant. Similarly, AS 12 recognizes that the revenue grants should be recognized only to the extent of expenditure incurred. In other words, while the grants may by definition be considered to be of the nature of income, their recognition in the Income and Expenditure Account depends upon the extent to which the grants are used.

APPLICABILITY OF INCOME TAX NORMS VIS-A-VIS ACCOUNTING NORMS

1.5.1 For the purposes of Income Tax Act, we need to understand the concept of income, whether it is exempted or not. All entities registered under section 12A of the Income Tax Act are eligible for tax exemptions (subject to conditions) on the income which otherwise would have been taxed. In other words an exempted entity would not need tax exemptions for gross income which would be eligible for deduction under general provisions of the Act.

1.5.2 For example, the expenditure incurred to earn income should be deducted in order to arrive at the income available for exemption under section 11(1). Under this background, all NPOs should compute

income which comes under the purview of income tax under section 2(24). In other words, whatever falls within the definition of income should be treated as income on receipt basis for income tax purposes. For example, an organization may use a grant over 3 years but the entire amount should be treated as income in the year of receipt. However, under ICAI guidelines such grant may be recognized as income, over 3 years on pro-rata basis (to the extent utilized each year).

1.5.3 In this context the moot question would be whether restricted grants which are in the nature of legal obligation shall be treated as income or not. It is not relevant whether they are capital or revenue in nature. The AS 12 issued by ICAI gives an impression that all restricted grants should be treated as income, which is actually not correct. The AS 12 applies only in case where the grant can be categorized as income and it does not apply to legal obligation which come under the definition of 'liability' as per ICAI.

1.5.4 However, the fundamental issue to understand here is that AS 12 refers only to grant received in absolute capacity, where the recipient (organization) itself is the beneficiary. AS 12 does not refer to the legal obligations which are received for others or for specific purposes of public utility. A grant received as a trustee is different and distinct from the context in which government grants are referred in AS 12. The grant received as trustee with specific contractual obligations is a liability because of the existence of definite predetermined outflow of resources.

1.5.5 The definition of a liability by ICAI is reiterated as under:

*"90. A liability is recognized in the balance sheet when it is probable that **an outflow of resources embodying economic benefits will result from the settlement of a present obligation** and the amount at which the settlement will take place can be measured reliably."*

CAN LEGAL OBLIGATION BE TREATED AS INCOME

1.6.1 Any agreement or a contract creates legal obligation. In a restricted contract, income can be reliably measured only at the time of the settlement of the obligation. Therefore, if a fund or asset is subject to an ongoing obligation or restriction or performance, then it shall remain a legal obligation till such contractual issues are settled. This issue becomes confusing because ICAI under AS 12 recommends that the government grants received by an organization should also be treated as income. The ICAI further recommends that the grant can be recognized to the extent utilized.

1.6.2 A Government grant or subsidy will not be treated as a legal obligation unless there is a possibility of future out flow of funds. Here one may argue that a government grant or subsidy to an organization also may be subjected to certain conditions. However, a government grant received by an organization in absolute capacity may not entail outflow or reduction of the net worth. On the contrary when a restricted grant is received for a public cause and where the organization is only a trustee or facilitator, there is certainty of outflow in future. Therefore, even with conditions the

government grants (where organization is the beneficiary) go on to increase the net worth. In this context the Supreme Court of India has laid down very clear principles on whether legal obligations can be treated as a part of gross income or not. The Supreme Court has categorically stated that legal obligations cannot be treated as a part of the income. It may also be noted that the Apex Court held that grant received for specific charitable purposes were legal obligations even for commercial organisations. For instance, if a commercial organisation collects 0.01% of the invoice value for specific charitable purposes, then such amount should directly be treated as a liability in the balance sheet. In other words, the issue of being a charity or an exempt organization is not relevant. A legal analysis on the issue is provided in **Annexure 1**.

SHOWING RESTRICTED GRANTS AS LIABILITIES IN THE BALANCE SHEET

1.7.1 A restricted grant should generally be shown as liability in the balance sheet. An income can only be recognized if there is any surplus at the end of the contract period. However, in this context we need to understand that a restriction does not necessarily create a legal obligation which may result in outflow of resources. Normally a restricted grant agreement, for a specific project/purpose, does create a legal obligation and such grant agreement does not enhance the net worth till the settlement of such contracts. Therefore, the treatment of showing restricted grant as liability, in principle, is correct subject to the assumption that they are valid legal obligations. For example a corpus grant also

comes with a restriction but it is not treated as legal obligation because it goes on to increase the net worth.

RECOGNISING RECURRING GRANTS AS INCOME TO THE EXTENT UTILISED DURING THE YEAR

1.8.1 When the expenditure out of a long term grant is at the discretion of the organization, then such grant or such portion of the grant should not be treated as a legal obligation. We need to understand that there is no difference in the application of the principles of recognition (of income) to business entities and NPOs. For example, the timing of the recognition of a grant as an income in the financial statements of an organization does not depend upon the purpose for which the organization is run or the purpose for which the grant is applied. A grant is recognized as income in the financial statements, under accrual basis of accounting, when it becomes reasonably certain that the grant will be received and that the organization will fulfill the conditions attached to it, and under cash basis of accounting at the time when the grant is actually received. Thus, a business entity and an NPO would both follow the aforesaid criteria for recognition of grant as income depending upon the basis of accounting (i.e., cash or accrual basis) followed by the respective organization rather than the purpose for which the organization is run or the purpose for which the grant is applied. Similarly, principles for recognition of other incomes, expenses, assets and liabilities would be the same for business entities and NPOs. In other words, it is advisable to recognize a long term grant as income, to the extent utilised, each year.

1.8.2 In this context, the issue whether income can be recognized on principles of retrospective measurement, that is to the extent expended during the year. In so far as the measurement principles are concerned, the same principles are relevant to NPOs as those to business entities.

For example, depreciation of an asset represents primarily the extent to which the asset is used during an accounting period by an organization. Thus, whether an asset, such as a photocopying machine, is used by an NPO or by a business entity, the measure of charge by way of depreciation depends primarily upon the use of the asset rather than the purpose for which the organization is run. Accordingly, the measurement principles for other expenses, income, assets and liabilities are the same for business entities and NPOs.

1.8.3 The accounting standards or the framework of accounting issued by ICAI suggests recognition of income to the extent of application made. The probable logic of such a treatment is that to the extent of the application the restriction was lifted during the year. Therefore, even though it was in the nature of income at the time of receipt but it is recognized at different periods of time in the income and expenditure account.

CAPITAL GRANT FOR PURCHASE OF ASSETS

1.9.1 The same rationale should also apply to capital grants for purchase of assets. Such grants should be treated as deferred income and income should be recognized to the extent of depreciation on the asset, during that accounting period.

1.9.2 However, as discussed earlier the issue is not about restriction. The issue is about

whether the amount is a legal obligation or not. **Recognizing an income to the extent applied means that, inherently, the amount is an income but under principles of measurement a particular portion has been recognized as income or has accrued during the year.** Such analogy is not consistent with the treatment needed for legal obligations and also from income tax purposes.

1.9.3 As discussed above, an asset created out of legal obligation should be shown at its face value, being a part of the balance sheet of that particular legal obligation under the principles of fund accounting. Any diminution or depreciation in the value of the assets should be directly charged or reduced from such legal obligation. An organization being the legal owner of such assets may also claim depreciation though the issue of depreciation has many facets from income tax angle which are not addressed as a part of this opinion.

CAPITAL ASSETS RECEIVED AS A GRANT

1.10.1 An asset created out of capital grant and a capital asset received as grant in kind are two different issues. When an asset is purchased out of a capital grant, it should be treated like any other asset. The capital grant as discussed above can be treated as deferred income and can be recognized to the extent of the depreciation.

1.10.2 For income tax purposes, such asset can be shown as application of funds for charitable purposes. Then the value of the assets can be again reflected in the balance sheet by creation of asset fund to that extent. One may prepare two sets of financial statements, one for income tax purposes and the other could be statutory

audited statements. In the income and expenditure account prepared for income tax purposes capital expenditures may be shown as application/expenditure. But the statutory audited statement may not treat such capital expenditure as a part of expenditure and only depreciation may be treated as the expenditure for the year. However, in both the set of audited statements legal obligation would not for a part of the income and expenditure account.

1.10.3 Lastly, any capital assets received in kind may be shown at nominal value of rupee one. As of now the ICAI has not recommended showing such assets at fair value in terms with IAS 20.

SUMMARY

1.11.1 We may reiterate the issues as under:

(a) distinguish between legal obligations and long term grants (income) at the time of receipt or accrual. A long term grant which is not in the nature of legal obligation, may be, recognized to the extent of the application made during the year, if with reasonable certainty it could be established that such grant has been received for multiple years. The principles of measurement may apply.

(b) all legal obligations shall continue to remain legal obligations and only the surplus or deficit on settlement of legal obligation should go to the income and expenditure account.

(c) for income tax purposes, long term grants (income) should be treated as income in the year of receipt and the organization can carry forward the income for the next five years under the section 11(2) of the Income Tax Act.

(d) the accounting of legal obligations shall have no implications for income tax purposes as only the surplus or deficit on settlement of legal obligation can be treated as income or deficit.

(e) When a grant is received towards purchase of capital asset for the organization, then it should not be treated as a legal obligation. The entire amount should be treated as income. However, for the purposes of revenue recognition, the asset value should be treated as a deferred revenue expenditure and income to the extent of depreciation should be recognized each year. For income tax purposes the entire amount will become income in the year of receipt.

(f) Where a capital asset is received as grant, then such asset should be shown at a nominal value of rupee one in the balance sheet.

(Dr. Manoj Fogla - Senior Chartered Accountant and a Consultant with many Voluntary Organisations.)

ANALYSIS OF LEGAL OBLIGATIONS & RESTRICTED GRANTS

WHETHER PROJECT GRANTS ARE LEGAL OBLIGATIONS OR VOLUNTARY CONTRIBUTION

1.01 It has been held in various courts that project grants should not be treated as voluntary contribution and therefore, cannot be treated as income. In a recent case, the Delhi High Court reaffirmed that any grant with specific direction from the donor cannot be treated as income, *DIT v. Society for Development Alternatives* [2012] 18 Taxmann.com 364 (Delhi). In this case, the assessee had received grants for specific purposes/projects from the **government**, non-government, foreign institutions etc. These grants were to be spent as per the terms and conditions of the project grant. The amount, which remained unspent at the end of the year got spilled over to the next year and was treated as unspent grant. It was held that the unspent grant being a legal obligation/liability cannot be treated as voluntary contribution subject to the provision of utilisation and application as per the Income Tax Act.

1.02 There is lot of confusion about the treatment of specific contribution or project grant as to whether such contribution should be considered as income for the purposes of section 11. Section 12(1) provides that voluntary contributions should be treated as income for the purposes of section 11(1). However, a specific or restricted contribution is not a voluntary contribution if it comes attached with a condition. Project grants are considered as specific or restricted contribution because the amount has to be utilized as per the conditions of the project/grant agreement. Therefore, the grant is not freely available to the organization to be utilized for charitable purposes. It is bound by the contractual obligations of the project/grant agreement. Such grants are tied with specific purposes and are not available at the discretion of the recipient, therefore, should not be considered as income for the purposes of section 11(1) and should be transferred to a separate account of the donor from where it should be spent for its predetermined purposes. Any surplus remaining should revert back to the donor or should be treated as income after obtaining approval from the donor.

1.03 That various other cases holding project grants as legal obligation are as under :

- In the case *Society for Integrated Development in Urban and Rural Areas (SIDUR) v. DCIT* [2004] 90 ITD 493 (Hyd.), it was held that project grants did not form a part of the income of the assessee nor they form a part of the corpus. *Voluntary contributions covered under section 12 are those contributions freely available to the assessee without any stipulation, which the assessee can utilise towards its objectives according to its own discretion and judgment.* Tied-up grants for a specified purpose would only mean that the assessee which was a voluntary organisation, had agreed to act as a trustee of a special fund granted by donor with the result that it need not be pooled or integrated with the assessee's normal income or corpus.
- In the case of *Nirmal Agricultural Society v. ITO* [1999] 71 ITD 152 (Hyd.) the grants received from foreign donor were for specific purposes. The grants which were for specific purposes did not belong to the assessee society; the court further observed

that the assessee should have actually credited the grant in the personal account of the donor and any amount spent against that grant should have been debited to that separate account of the donor. That incoming and outgoing need not be reflected in the income and expenditure account of the assessee. At the end of the project, the balance, if any, available to the credit of the donor, could be treated as income of the assessee, if the donor did not insist on the repayment of the balance amount.

- In the case *Sukhdeo Charity Estate v. CIT* [1984] 149 ITR 470 (Raj.), the issue of whether specific grants were income or not was also discussed. It was observed that if the motive and intention of the donor play an important role in the utilization of the donation, then it cannot be considered as voluntary in nature. The word “voluntary” in its very inception connotes the absence of any obligation on the part of the donor.

- In the case of *CIT v. Shri Billeswara Charitable Trust* [1984] 145 ITR 29 (Mad.), their Lordships were pleased to take into consideration the significance of the expression “income derived from voluntary sources” and observed that the word ‘derived’ connotes obtaining or drawing or taking or receiving from a source. When something is stated to be derived from something else, the latter is a source, while the former is that which flows from that source. A voluntary contribution understood that way is not by itself income. It is that from which income flows. By implication, therefore, voluntary contributions may be regarded as non-income without anything more indicated in section 12(1) of the Act.

1.04 The meaning of the word ‘voluntary’ becomes very important in order to determine whether an obligation is attached to a grant or not. In a different context in the case of *Hakam Singh v. CIT* [1981] 5 Taxman 96 (All.) it was held that the term “voluntary” in section 273A has been used to indicate an action free of any constraint. This ruling of Allahabad High Court is also relevant in the sense that the term “Voluntary” requires an action or proposed action which has to be free from any constraint or conditions.

1.05 The specific project grants are bound by actionable contracts where both the parties have to act specifically as per the project contract. Therefore, it should not be termed as voluntary in the light of the statutory provisions and the cases cited above.

SUPREME COURT ON LEGAL OBLIGATIONS

1.06 A grant may come with or without legal obligation. If the provisions of the income tax act are applied (with or without the exemption U/s. 11), then all legal obligations are not covered under the purview of the income tax act. Now the issue is whether the specific or restricted grants can be considered as income or not. In the case *CIT v. Bijli Cotton Mills (P.) Ltd.* [1979] 116 ITR 60 Supreme Court debated the issue of certain charity/legal obligation being collected as a part of a commercial invoice. In this particular case the term ‘Dharmada’ has been used which means ‘towards charity’. The court held that any money received from the customers towards charity was under a legal obligation to be spent for a specific purpose, therefore it could not be treated as a trading receipt. The court further observed that “It was true that without payment of the ‘Dharmada’ amount, the customer might not

be able to purchase the goods from the respondent but that did not make the payment of 'Dharmada' involuntary inasmuch as it was out of his own volition that he purchased yarn or cotton from the respondent. The 'Dharmada' amount was, therefore, not a part of the price, but a payment for the specific purpose of being spent on charitable purposes."

1.07 Similar view were expressed by the Supreme Court in the case *CIT v. Tollygunge Club Ltd.* [1977] 107 ITR 776. Here the Supreme Court considered the question substantially similar to the one referred above. In this case the assessee was a social and sports club, one of whose activities consisted of conducting horse races with amateur riders. It charged for admission into the enclosure of the club at the time of the races from the race goers. The assessee passed resolution at general meeting for levying surcharge for local charities in addition to admission fees. The receipts from the surcharge were not credited to the profit and loss account but they were carried directly to a separate account styled "charity account". It was held that such income cannot be treated as income of the assessee.

1.08 In the case of *Commissioner of Income-tax v. Amritsar Transport Co. (P.) Ltd.* [1993] 68 TAXMAN 56 (SC) again the Hon'ble Supreme Court held that so far as inclusion of amounts collected as Dharmada which were kept in a separate account and were utilised for charitable purposes was concerned, there could be no dispute that they were not liable to be included in the income of the assessee.

CASE LAWS WHERE PROJECT GRANTS ARE HELD AS VOLUNTARY CONTRIBUTION

1.09 In *The Little Tradition v. Deputy Director of Income-tax (Exemption), Trust Circle-IV* [2009] 119 ITD 127 (DELHI), it was held that a project grant for specific activities shall be treated as voluntary contribution. The Tribunal was of the opinion that the donor was not expecting anything in return and the grant was also not towards the corpus. Therefore, even if it was for specific purposes, it should be treated as voluntary contribution. The tribunal relied on two High Court cases, *The National Institute Of Immunology vs Municipal Corporation of Delhi*, AIR 2002 Delhi 192, 96 (2002) DLT 41 and *Commissioner of Incometax, Bombay City-IV v. Gem & Jewellery Export Promotion Council*, (1983) 143 ITR 579. The Delhi Tribunal in *The Little Tradition supra* held that such project grants are subject to 85% application of funds and should be considered as voluntary contributions chargeable to tax as income of the assessee within the meaning of section 2(24)(iia) of the Act.

1.10 The above cases are provided for reference purposes. However, in the light of various Supreme Court and High Court decisions discussed (supra) and keeping in view the legal obligation aspect of project grants, in our opinion they should not be treated as voluntary contribution if they come with specific directions. It may be noted that under explanation (1) to Section 13(7), it is stated that for the purposes of section 11 and 12 Trust includes any other legal obligation.

TREATMENT OF PROJECT GRANTS

(Accounting and Legal issues in the light of recent Delhi High Court decision and proposed DTC provisions)

- Dr. Manoj Fogla, FCA

INTRODUCTION

1.01 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 proposed provisions of the Direct Tax Code (DTC) may have serious impact on NGOs 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 as under:

- A charitable organization can be treated as a commercial entity if its business activity exceeds Rs. 25 lakh 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 NGO shall have to pay taxes on its income if it is unable to spend at least 85% of its income in the year.

1.02 In both the above circumstances, an NGO will have to pay taxes on the gross amount of voluntary contribution received. Currently most of the NGOs 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.

WHETHER PROJECT GRANTS ARE LEGAL OBLIGATIONS OR VOLUNTARY CONTRIBUTION

1.03 It has been held in various courts that project grants should not be treated as voluntary contribution and therefore, cannot be treated as income. In a recent case, the Delhi High Court reaffirmed that any grant with specific direction from the donor cannot be treated as income, *DIT v. Society for Development Alternatives* [2012] 18 Taxmann.com 364 (Delhi). In this case, the assessee had received grants for

specific purposes/projects from the government, non-government, foreign institutions etc. These grants were to be spent as per the terms and conditions of the project grant. The amount, which remained unspent at the end of the year got spilled over to the next year and was treated as unspent grant. It was held that the unspent grant being a legal obligation/liability cannot be treated as voluntary contribution subject to the provision of utilization and application as per the Income Tax Act.

1.04 There is lot of confusion about the treatment of specific contribution or project grant. Whether such contribution should be considered as income for the purposes of section 11. Section 12(1) provides that voluntary contributions should be considered as income for the purpose of section 11. Section 12(1) provides that voluntary contributions should be treated as income for the purposes of section 11(1). However, a specific or restricted contribution is not a voluntary contribution if it comes attached with a condition. Project grants are considered as specific or restricted contribution because the amount has to be utilized as per the conditions of the project/grant agreement. Therefore, the grant is not freely available to the organization to be utilized for charitable purposes. It is bound by the contractual obligations of the project/grant agreement. Such grants are tied with specific purposes and are not available at the discretion of the recipient therefore, should not be considered as income for the purposes of section 11(1) and should be transferred to a separate account of the donor from where it should be spent for its pre-determined purposes. Any surplus remaining should revert back to the donor or should be treated as income after obtaining approval from the donor.

1.05 That various other cases holding project grants as legal obligation are as under:

- In the case *Society for Integrated Development in Urban and Rural Areas (SIDUR) v. DCIT* [2004] 90 ITD 493 (Hyd.), it was held that project grants did not form a part of the income of the assessee nor they form a part of the corpus. *Voluntary contributions covered by section 12 are those contributions freely available to the assessee without any stipulation, which the assessee can utilize towards its objectives according to its own discretion and judgment.* Tied-up grants for a specified purpose would only mean that the assessee which was a voluntary organization, had agreed to act as a trustee of a special fund granted by donor with the result that it need not be pooled or integrated with the assessee's normal income or corpus.

- In the case of *Nirmal Agricultural Society v. ITO* [1999] 71 ITD 152 (Hyd.) the grants received from foreign donor were for specific purposes. The grants which were for specific purposes did not belong to the assessee society; the court further observed that the assessee should have actually credited the grant in the personal account of the donor and any amount spent against that grant should have been debited to that separate account of the donor. That incoming and outgoing need not be reflected in the income and expenditure account of the assessee. At the end of the project, the balance, if any, available to the credit of the donor, could be treated as income of the assessee, if the donor did not insist or the repayment of the

balance amount.

- In the case *Sukhdeo Charity Estate v. CIT* [1984] 149 ITR 470 (Raj.), the issue of whether specific grants were income or not was also discussed. It was observed that if the motive and intention of the donor play an important role in the utilization of the donation, then it cannot be considered as voluntary in nature. The word “voluntary” in its very inception connotes the absence of any obligation on the part of the donor.

- In the case of *CIT v. Shri Billeswara Charitable Trust* [1984] 145 ITR 29 (Mad.), their Lordships were pleased to take into consideration the significance of the expression “income derived from voluntary sources” and observed that the word ‘derived’ connotes obtaining or drawing or taking or receiving from a source. When something is stated to be derived from something else, the latter is a source, while the former is that which flows from that source. A voluntary contribution understood that way is not by itself income. It is that from which income flows. By implication, therefore, voluntary contributions may be regarded as nonincome without anything more indicated in section 12(1) of the Act.

1.06 The meaning of the word ‘voluntary’ becomes very important in order to determine whether an obligation is attached to a grant or not. In a different context in the case of *Hakam Singh v. CIT* [1981] 5 Taxman 96 (All.) it was held that the term “voluntary” in section 273A has been used to indicate an action free of any constraint. This ruling of Allahabad High Court is also relevant in the sense that the

term “Voluntary” requires an action or proposed action which has to be free from any constraint or conditions.

1.07 The specific project grants are bound by actionable contracts where both the parties have to act specifically as per the project contract. Therefore, it should not be termed as voluntary in the light of the statutory provisions and the cases cited above.

SUPREME COURT ON LEGAL OBLIGATIONS

1.08 A grant may come with or without legal obligation. If the provisions of the income tax act are applied (with or without the exemption U/s. 11), then all legal obligations are not covered under the purview of the income tax act. Now the issue is whether the specific or restricted grants can be considered as income or not. In the case *CIT v. Bijli Cotton Mills (P.) Ltd.* [1979] 116 ITR 60 Supreme Court debated the issue of certain charity/legal obligation being collected as a part of a commercial invoice. In this particular case the term ‘Dharmada’ has been used which means ‘towards charity’. The court held that any money received from the customers towards charity was under a legal obligation to be spent for a specific purpose, therefore it could not be treated as a trading receipt. The court further observed that “*It was true that without payment of the ‘Dharmada’ amount, the customer might not be able to purchase the goods from the respondent but that did not make the payment of ‘Dharmada’ involuntary inasmuch as it was out of his own volition that he purchased yarn or cotton from the respondent. The ‘Dharmada’ amount was, therefore, not a part of the price, but a payment for the specific purpose of being spent on charitable purposes.*”

1.09 Similar view was expressed by the Supreme Court in the case *CIT v. Tollygunge Club Ltd.* [1977] 107 ITR 776. Here the Supreme Court considered the question substantially similar to the one referred above. In this case the assessee was a social and sports club, one of whose activities consisted of conducting horse races with amateur riders. It charged for admission into the enclosure of the club at the time of the races from the race goers. The assessee passed resolution at general meeting for levying surcharge for local charities in addition to admission fees. The receipts from the surcharge were not credited to the profit and loss account but they were carried directly to a separate account styled "charity account". It was held that such income cannot be treated as income of the assessee.

1.10 In the case of *Commissioner of Income-tax v. Amritsar Transport Co. (P.) Ltd.* [1993] 68 TAXMAN 56 (SC) again the Hon'ble Supreme Court held that so far as inclusion of amounts collected as Dharmada which were kept in a separate account and were utilised for charitable purposes was concerned, there could be no dispute that they were not liable to be included in the income of the assessee.

CASE LAWS WHERE PROJECT GRANTS ARE HELD AS VOLUNTARY CONTRIBUTION

1.11 In *The Little Tradition v. Deputy Director of Income-tax (Exemption), Trust Circle-IV* [2009] 119 ITD 127 (DELHI), it was held that a project grant for specific activities shall be treated as voluntary contribution. The Tribunal was of the opinion that the donor was not expecting anything in return and the grant was also not towards the corpus.

Therefore, even if it was for specific purposes, it should be treated as voluntary contribution. The tribunal relied on two High Court cases, *The National Institute Of Immunology vs Municipal Corporation of Delhi*, AIR 2002 Delhi 192, 96 (2002) DLT 41 and *Commissioner of Incometax, Bombay City-IV v. Gem & Jewellery Export Promotion Council*, (1983) 143 ITR 579. The Delhi Tribunal in *The Little Tradition supra* held that such project grants are subject to 85% application of funds and should be considered as voluntary contributions chargeable to tax as income of the assessee within the meaning of section 2(24)(iia) of the Act.

1.12 The above cases are provided for reference purposes. However, in the light of various Supreme Court and High Court decisions discussed (supra) and keeping in view the legal obligation aspect of project grants, in our opinion they should not be treated as voluntary contribution if they come with specific directions. It may be noted that under explanation (1) to Section 13(7), it is stated that for the purposes of section 11 and 12 Trust includes any other legal obligation.

SUGGESTED LEGAL TREATMENT

1.13 Many NGOs treat all donations including specific grants as income for the purposes of section 11. The difficulty arises when they are unable to spend such contribution in the year of receipt as per the stipulation of the project agreement. For example, a 3-year grant received in the first year. Now, if such grant is treated as income in the year of receipt then 85 per cent of it has to be utilised in that year itself.

But the project agreement may allow only 33 per cent to be utilised in the first year. The assessee has to accumulate the income under section 11(2) to be spent in next 5 years. There is no legal necessity for invoking section 11(2) when the grant by virtue of the project agreement was not available to the assessee for utilisation.

1.14 The above instance is of a specific grant where the instruction of the donor has to be complied with; therefore it cannot be applied as per the will and discretion of the recipient organisation. Such contributions from an accounting perspective should be kept in the donor's account by applying principles of fund accounting. The application of such funds should be made from the donor/project account, so created.

1.15 The project agreement or the '*letter of intent/instruction*' from the donor is of paramount importance. The assessee has to prove that the donation was not voluntary in nature. In other words, the donation was not available for utilisation as per the will and judgment of the assessee/NGO. The condition in the project agreement should be more than just proper utilisation of funds for specific purposes.

ACCOUNTING TREATMENT

1.16 As discussed above, 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.

1.17 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.

CONCEPT OF INCOME AS PER ICAI IN THIS REGARD

1.18 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."

1.19 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."

1.20 As per the Framework, the income is recognized 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 recognising 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."

1.21 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 organization which is a necessity to come under the definition of income.

INDIAN AND INTERNATIONAL ACCOUNTING STANDARDS

1.22 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.

1.23 However, the corresponding International Accounting Standard, namely, IAS 20, recognises all grants as income irrespective of whether they are of the nature of promoters' 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.

1.24 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 recognized only after such future obligation is resolved.

1.25 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.

1.26 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.

1.27 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.

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

RECAPITULATION

1.29 The above discussions relating to projects grants whether income or not could be summarized as under:

(i) Most project grants are specific or restricted contribution to be utilized as per the terms of the project/grant agreement; therefore, they should be treated as legal obligations and not voluntary contribution.

(ii) It may be noted that under explanation (1) to Section 13(7) it is stated that for the purposes of section 11 and 12 Trust includes any other legal obligation. A legal obligation is generally considered on par with Trust and is not included in the income.

(iii) The project agreement or the 'letter of intent/instruction' from the donor is of paramount importance. The assessee has to prove that the donation was not voluntary in nature.

(iv) There are court decisions where grants given without consideration and with general directions of utilisation were held as voluntary contribution. Therefore, in order to be treated as a restricted grant, the donor must impose specific contractual obligations on the organization. Otherwise it will be treated as voluntary contribution and therefore income under section 12(1).

(v) The project grants should not be treated as income in the income and expenditure and should be treated as a liability in the balance sheet. Such treatment is also necessary to avoid Income Tax controversies because:

- (a) A charitable organisation can be treated as a commercial entity if its business activity exceeds Rs. 25 lakh in a year. In such circumstances the

gross receipt of entire voluntary contribution can be subjected to tax. an NGO shall pay taxes on its income if it is unable to spend at least 85% of its income in the year.

(b) Under the proposed provisions of DTC,

(Dr. Manoj Fogla - Senior Chartered Accountant and a Consultant with many Voluntary Organisations.)

FORMAT OF CONSOLIDATED RESOURCES AND APPLICATION STATEMENT

RESOURCES	Previous year	Current year
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		
TOTAL		
APPLICATION		
<u>Programme Costs</u>		
<u>HIV /AIDS Programme</u>		
Salary and Benefits		
Documentation, Information, Study and Action Research		
Workshops		
Rural Development		
Networking		
Travel Costs		
Capacity Building		
<u>Slum Development Programme</u>		
Salary and Benefits		
Documentation, Information, Study & Action Research		
Workshops		
Rural Development		
Networking		
Travel Costs		
Capacity Building		
TOTAL		
Coordination and Administration Costs		
Office running expenses		
Capital Costs		
Office Rent		
Salary and benefits		
Vehicle Running and maintenance		
Audit fee		
TOTAL		
Excess/Deficit of Income over Expenditure transferred to general/unrestricted fund		

Significant Accounting Policies and Notes forming an integral part of Accounts

As per Report of even date

Chartered Accountant

Partner Signatures of Chairman Treasurer Member
 M.No Director
 Place
 Date :

FORMAT OF RECEIPTS AND PAYMENT ACCOUNT

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

Significant Accounting Policies and Notes forming an integral part of Accounts

As per Report of even date

Chartered Accountant

Partner Signatures of Chairman Treasurer Member
M.No Director

Place

Date :

FORMAT OF INCOME AND EXPENDITURE ACCOUNT

INCOME	Previous year	Current year
Grant Received		
Bank Interest		
Sale of Fixed Asset		
Other Income/Donations		
TOTAL		

EXPENDITURE	Previous year	Current year
Programme Costs		
HIV /AIDS Programme		
Salary and Benefits		
Documentation, Information, Study and Action Research		
Workshops		
Rural Development		
Networking		
Travel Costs		
Capacity Building		
Slum Development Programme		
Salary and Benefits		
Documentation, Information, Study and Action Research		
Workshops		
Rural Development		
Networking		
Travel Costs		
Capacity Building		
Total		
Coordination and Administration Costs		
Office running expenses		
Capital Costs		
Office Rent		
Salary and benefits		
Vehicle Running and maintenance		
Audit fee		
Total		
Excess of Income or Expenditure transferred to General/unrestricted fund		

Significant Accounting Policies and Notes forming an integral part of Accounts

As per Report of even date

Chartered Accountant

Partner Signatures of Chairman Treasurer Member
M.No Director

Place

Date :

FORMAT OF BALANCE SHEET

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

Significant Accounting Policies and Notes forming an integral part of Accounts

As per Report of even date

Chartered Accountant

Partner Signatures of Chairman Treasurer Member
 Director
 M.No

Place

Date :

COMPOUNDING OF OFFENCES UNDER FCRA 2010

- Dr. Manoj Fogla, FCA

SUMMARISED OVERVIEW

1.1.01 The Foreign Contribution Regulation Act, 2010 (FCRA) provides for compounding of offences. This new provision would provide relief to many organisations who commit violation, sometimes, unintentionally. Under the new provisions, organisations who have violated the provisions of FCRA can resolve their case by paying financial penalties only. Some highlight of the new provisions are as under:

- Under the old FCRA law organisations were being prosecuted, even, for small offences such as receiving FC funds in the non FC bank account. There are instances where organisations have fought cases for decades together against petty offences.
- The new FCRA provides that most of the offences (except those which are subject to imprisonment only) can be resolved by payment of financial penalty.
- any such offence may, before the institution of any prosecution, be compounded against payment of specified sums.
- Once an offence is compounded, the same person cannot avail the benefit of compounding if such offence is committed again within three years.
- However, if an offence is committed after three years of compounding, then such subsequent offence will be treated as first offence and can be compounded again.
- If a person accepts a cheque or draft from foreign source (without registration or prior permission) it will be treated as offence even if such cheque or draft is not deposited in the bank account, then the minimum penalty is Rs. 10,000/- or 2% of the amount whichever is higher.
- If a person accept a cheque or draft from foreign source (without registration or prior permission) and such cheque or draft is deposited in

the bank account, then the minimum penalty is Rs. 25,000/- or 3% of the amount whichever is higher.

- If a person accepts foreign contribution from foreign source (without registration or prior permission) and utilises it for specified purposes, then the minimum penalty is Rs. 1,00,000/- or 5% of the amount whichever is higher.
- If a person accepts foreign contribution in kind from foreign source (without registration or prior permission), then the minimum penalty is Rs. 10,000/- or 2% of the amount whichever is higher.
- Apart from the above specified penalties, the Director or Deputy Secretary in charge of FCRA Wing, Ministry of Home Affairs shall be the authority for exercising the powers of compounding of an offence.
- The option to compound and close an offence without prosecution is a very welcome change. This provision shall provide relief to both the Government Authorities and the litigants as offences could be resolved lawfully without fighting time consuming legal cases.

STATUTORY PROVISION ON COMPOUNDING OF OFFENCES

1.2.01 Section 41 of the FCRA 2010 provides that any offence punishable under this Act (whether committed by an individual or organization, not being an offence punishable with imprisonment **only**, may, before the institution of any prosecution, be compounded by such officers or authorities

and for such sums as the Central Government may, by notification in the Official Gazette, specify.

1.2.02 The text of Section 41 is reproduced as under:

“Section 41 : Compounding of certain offences:

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act (whether committed by an individual or association or any officer or employee thereof), not being an offence punishable with imprisonment only, may, before the institution of any prosecution, be compounded by such officers or authorities and for such sums as the Central Government may, by notification in the official gazette, specify in this behalf.

(2) Nothing in sub-section (1) shall apply to an offence committed by an individual or association or its officer or other employee within a period of three years from the date on which a similar offence committed by it or him was compounded under this section.

Explanation—For the purposes of this section, any second or subsequent offence committed after the expiry of a period of three years from the date on which the offence was previously compounded, shall be deemed to be a first offence.

(3) Every officer or authority referred to in sub-section (1) shall exercise the powers to compound an offence, subject to the direction, control and supervisions of the Central Government.

(4) Every application for the compounding of an offence shall be made to the officer or authority referred

to in sub-section (1) in such form and manner along with such fee as may be prescribed.

(5) Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, against the offender in relation to whom the offence is so compounded.

(6) Every officer or authority referred to in sub-section (1), while dealing with a proposal for the compounding of an offence for a default in compliance with any provision of this Act which requires by an individual or association or its officer or other employee to obtain permission to file or register with or deliver or sent to, the Central Government or any prescribed authority any return account or other document, may, direct by order, if he or it thinks fit to do so, any individual or association or its officer or other employee to file or register with, such return, account or other document within such time as may be specified in the order."

OFFENCES THAT CAN BE COMPOUNDED AND PENALTIES THEREOF

1.3.01 In terms of Gazette Notification S.O. 1976 (E) dated 26.08.2011, <http://mha.nic.in/fcra/forms/ComOffNoti-260811.pdf> the categories of offences that can be compounded under section 41 of FCRA, 2010 and the quantum of penalty for compounding, as indicated against each of the offences, is provided in **Annexure 1**.

1.3.02 Apart from the above specified penalties, the Director or Deputy Secretary in charge of FCRA Wing, Ministry of Home Affairs shall be the authority for exercising the powers of compounding of an offence. In other words, apart from the offences mentioned in **Annexure 1** the Director or Deputy Secretary of FCRA department has the authority to compound all other offences, except those offences which are subject to imprisonment only.

HOW TO APPLY FOR COMPOUNDING OF AN OFFENCE UNDER FCRA 2010

1.4.01 An application for the compounding of an offence under section 41 is to be made to the Secretary, Ministry of Home Affairs, New Delhi on a plain paper along with a fee of Rs.1000/- (One Thousand only) in the form of a demand draft or a banker's cheque in favour of the "Pay and Accounts Officer, Ministry of Home Affairs", payable at New Delhi.

WHAT HAPPENS AFTER AN OFFENCE IS COMPOUNDED

1.5.01 After payment of the penalty imposed and compounding of the offence, the person may be granted registration or prior permission, as the case may be, subject to its fulfilling all parameters.

WHAT IF THE PERSON IS UNWILLING OR UNABLE TO PAY THE PENALTY IMPOSED

1.6.01 In the event of failure to pay the penalty, for whatever reason, necessary action for prosecution of the person shall be initiated.

(Dr. Manoj Fogla - Senior Chartered Accountant and a Consultant with many Voluntary Organisations.)

NOTIFICATION REGARDING COMPOUNDING OF OFFENCES

**Published in the Gazette of India, Extraordinary—Part II,
Section 3, Sub-section (ii)**

**GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS**

New Delhi, dated the 26th August, 2011

Notification

S.O. 1976(E).- Whereas “foreign contribution” has been defined under clause (h) of sub-section (1) of Section 2 of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010) (hereinafter referred to as the “Act”).

Whereas “person” has been defined under clause (m) of sub-section (1) of Section 2 of the Act.

Whereas section 11 of the Act prescribes that no person, save as otherwise provided in the Act, shall accept foreign contribution unless such person obtains a certificate of registration or prior permission of the Central Government and therefore, acceptance of foreign contribution without obtaining registration or prior permission from the Central Government constitutes an offence under the Act.

Whereas sub-section (1) of section 41 of the Act prescribes that notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act (whether committed by an individual or association or any officer or employee thereof), not being an offence punishable with imprisonment only, may, before the institution of any prosecution, be compounded by such officers or authorities and for such sums as the Central Government may, by notification in the Official Gazette, specify in this behalf.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 41 of the Act, the Central Government hereby specifies that the following offences by any ‘person’ may, before the institution of any prosecution, be compounded for the payment of sums as penalty, as indicated against each of the offences under the Act:-

S. No	Nature of Offence	Quantum of Penalty
(i)	Acceptance of cheque or draft towards foreign contribution by a 'person' without registration or prior permission of the Central Government even in cases where the cheque or draft has not been deposited in a Bank by the 'person'.	Rs. 10,000/- or 2 per cent of the foreign contribution involved, whichever is higher.
(ii)	Acceptance of cheque or draft by a 'person' towards foreign contribution without registration or prior permission of the Central Government & depositing the same in a Bank notwithstanding non-utilization of the amount of the foreign contribution.	Rs. 25,000/- or 3 per cent of the foreign contribution involved, whichever is higher.
(iii)	Acceptance of foreign contribution by a 'person' without registration or prior permission of the Central Government and utilization of the same notwithstanding any inquiry which revealed that the contribution received was not diverted towards any purpose other than the objectives or purpose for which the same was received, utilization of the contribution was as per the objectives of receipt of the same and records of receipt and utilization have been kept properly.	Rs. 1, 00,000/- or 5 per cent of the foreign contribution involved, whichever is higher.
(iv)	Acceptance of foreign contribution in kind by a 'person' without registration or prior permission of the Central Govt. notwithstanding that	Rs. 10,000/- or 2 per cent of the foreign contribution involved, whichever is higher.

(2) In exercise of the powers conferred by sub-section (1) of section 41 of the Act, the Central Government hereby specifies that the Director or Deputy Secretary in charge of the FCRA Wing of the Foreigners Division in the Ministry of Home Affairs shall be the authority for exercising the powers for compounding of an offence under the Act.

Sd/-
(G.V.V. SARMA)
Joint Secretary to the Government of India

CHANGE IN MORE THAN 50% OF BOARD MEMBERS UNDER FCRA

- Dr. Manoj Fogla, FCA

INTRODUCTION

1.1.01 Under FCRA, any change in the Board Members in excess of 50% shall be made with prior permission. This condition is a part of the undertaking provided by the applicant at the time of making an application for 'registration' or 'prior permission'. Therefore, even though it is not mentioned in the Act or the Rules, it becomes binding on all the organizations by virtue of the undertaking given at the time of making an application for 'registration' or 'prior permission'.

UNDERTAKING GIVEN AT THE TIME OF REGISTRATION

1.2.01 A declaration and undertaking is given along with Form FC-3 at the time of making application for registration. The relevant extract of the undertaking under Form FC-3 is as under

“(ii) to obtain prior permission for change of Members of the Executive Committee/ Governing Council, if, at any point of

time, such change causes replacement of 50% or more of such Members as were mentioned in the application no. dated for registration under the Foreign Contribution (Regulation) Act, 2010 (42 of 2010) and undertake further not to accept any foreign contribution except with prior permission till the permission to replace the office-bearer(s) has been granted.”

1.2.02 It can be seen that the undertaking provides for seeking prior permission before there is a change in more than 50% of the Board Members as were mentioned in the application for registration. For example, if there were seven Board Members at the time of making the application for registration, then any change in the Board in excess of three members shall be made with prior permission. In other words, if the fourth member out of these seven members wants to resign or retire it should be done with prior permission. However, it may noted

that there is no bar in increasing or adding new members.

UNDERTAKING GIVEN AT THE TIME OF PRIOR PERMISSION

1.3.01 A declaration and undertaking is given along with Form FC-4 at the time of making an application for prior permission. The relevant extract of the undertaking under Form FC-4 is as under:

“(ii) to intimate within thirty days regarding the change of Members of the Executive Committee/Governing Council, if, at any point of time, such change causes replacement of 50% or more of such Members as were mentioned in the application No. dated..... for prior permission under the Foreign Contribution (Regulation) Act, 2010 (42 of 2010) and undertake further not to accept any foreign contribution except with prior permission till the permission to replace the office-bearer(s) has been granted.”

1.3.02 It can be seen that the undertaking provides for informing after there is a change in more than 50% of the Board Members which were mentioned in the application for prior permission. For example, if there were seven Board Members at the time of making the application for prior permission then any change in the board in excess of three members shall have to be intimated. In other words, if the fourth member out of these seven members resigns or retires it should be approved by the Central Government.

HOW TO COMPUTE 50% IF THE BOARD HAS BEEN EXPANDED

1.4.01 It may so happen that the Board of an organization is expanded after registration. In such circumstances, the law shall apply only to the number of Board Members as were mentioned at the time of making the application. For example, if there were seven Board Members at the time of making the application and later on the Board was expanded to 12 members, then, in order to comply with the FCRA laws, at least four of the Board Members mentioned at the time of making the application should continue. If more than 50% of the seven Board Members retire/resign then prior permission should be taken.

WHAT IF MORE THAN 50% CHANGE HAPPENS FOR REASONS BEYOND CONTROL

1.5.01 There may be a change of more than 50% in the board as discussed above for reasons such as death or election by voting etc. which are not in the control of the organizations. In such cases, the organization should inform the Central Government immediately after such change has occurred and get retrospective approval.

WHAT IF MORE THAN 50% CHANGE HAS ALREADY HAPPENED DUE TO IGNORANCE OF LAW

1.6.01 There may be a change of more than 50% in the board as discussed above, due to ignorance of law. In such cases the organisation should inform the Central Government immediately after becoming

aware of such requirement and request for condonation of the lapse. The Central Government may consider the matter if the reasons are justified. The intent of this law is not to harass or to interfere into the governance of genuine NGOs. The primary purpose of this law is to prevent unscrupulous practices where the FC registered associations are taken over by changing the governance structure.

DOES THIS LAW APPLY TO ORGANISATIONS REGISTERED UNDER THE REPEALED FCRA 1976

1.7.01 The undertaking regarding change of more than 50% of the Board Member was also there in the old Form FC-8 also. In fact, this undertaking became a part of the application form for registration with effect from 27.12.1996 when the erstwhile Form FC-8 was amended. In other words, all organisations who have applied for FCRA registration after 27th December 1996 have given the undertaking regarding prior approval for change in more than 50% of the Board Members. **Therefore, technically all organisations who have applied after 27th December 1996 are bound by this law. The organisations who have applied and obtained registration before 27.12.1996 are not subject to this provision.**

IS NOT TAKING PRIOR PERMISSION A SERIOUS OFFENCE?

1.8.01 As discussed earlier, this provision pertaining to change of Board Members is not a part of the FCR Act or FCR Rules. This provision finds a place in the application form for registration and prior permission. Therefore, strictly speaking it does not result

in violation of the FCR Act or FCR Rules and the onus would be on the FCRA department to prove that such provision is in consistency and consonance with the FCR Act or FCR Rules. The Supreme Court ruling in this regard is discussed below.

SUPREME COURT ON LIMITATION CREATED BY A FORM

1.9.01 It has been debated in several case laws whether direction by virtue of a Form can create legally mandatory obligation on the concerned organisation. Many High Courts held that a limitation provided under a Form was beyond the scope of the Act and therefore not tenable. The Supreme Court in *CIT v. Nagpur Hotel Owners' Association* [2001] 247 ITR 201, held that the additional condition in a Form can be held to be mandatory only if the purpose and the scheme of the pertaining Act is threatened to be defeated. In this case the Supreme Court held in favour of the Government, but made it very clear that any condition specified in a Form should be within the provisions of the Act and Rules.

1.9.02 In light of the above, Supreme Court ruling a Form can create conditions only if it fulfills the provisions of the Act. In our opinion, any change in the Board of Directors in the normal course of activity does not seem to be a violation of FCR Act or Rules. Therefore, treating such changes as violation may not be legally sustainable.

SUMMARY

1.10.01 This provision is a part of both the old and the new FCRA. Therefore, it is

necessary to seek prior approval in case of more than 50% change in the Board Members.

1.10.02 Further, those organisations who have not taken permission, even after such change has occurred, should apply for permission and condonation.

1.10.03 Legally, any such condition for prior approval, imposed through a *Form* does not seem to be sustainable. There might be circumstances where the organisation cannot take prior permission viz. death of Board Members, outcome of election etc.

1.10.04 The Supreme Court in *CIT v. Nagpur Hotel Owners' Association* [2001] 247 ITR

201, held that the additional condition in a Form can be held to be mandatory only if the purpose and the scheme of the pertaining Act is threatened to be defeated. In this case, the Supreme Court held in favour of the Government, but made it very clear that any condition specified in a Form should be within the provisions of the Act and Rules. In our opinion, any change in the Board of Directors in the normal course of activity, does not seem to be a violation of FCR Act or the Rules.

1.10.05 However, it is recommended that all organisations should inform the FCRA department and take prior approval wherever it is possible.

(Dr. Manoj Fogla - Senior Chartered Accountant and a Consultant with many Voluntary Organisations.)

NOTIONAL EXPENDITURES IN DEVELOPMENT PROJECTS

- Dr. Manoj Fogla, FCA

UNDERSTANDING NOTIONAL EXPENDITURE

1.01 In this chapter we shall be discussing the concept and prevailing practices of Notional expenditures in development projects.

1.02 Notional income or expenditure generally denotes something which remains unutilized or accrued at the project or fund level but there is no real expenditure or income at the level of the organization. For example, if an organization charges rent in a particular project for the use of its own premises, such rent will result in a notional expenditure in that particular project and at the same time will result in a notional income in the general fund/account of the organization. Similarly notional expenditure can be created by various methods including charge of expenditure on approximate basis or even inflating the expenses.

1.03 Notional expenditure generally is also valued at the estimated difference between the market value of the goods or services

provided and the actual cost incurred by the party.

1.04 It has been seen that some donors permit notional expenditure as a basis for recovering administrative expenses. For instance, a project budget may be allowed 10% of the project cost as administrative charge. In such circumstance, the organization will collect 10% of the project cost as administrative expenses but the actual administrative expenditures may be higher or lower than the amount charged.

1.05 In normal accounting parlance, certain legitimate non cash expenditures are also referred to as notional expenditures. Depreciation is an example of such non cash notional expenditure. In case of depreciation the term notional may not be entirely relevant because it actually denotes the wear and tear or the loss in the value of the asset. However, in development

projects, normally non cash expenditures are not considered as a part of the budget as the project assets are also financed under the project cost. Therefore, the possibility of charging further depreciation in the same project does not arise.

DIFFERENCE BETWEEN COMMERCIAL CONTRACT & NPO PROJECT CONTRACT

1.06 In a commercial contract generally a client is billed against invoices at a predetermined rate of goods and services. For example, a commercial organization may charge @ Rs. 5000/- per person per day but the actual expenditure may be much less than Rs.5000/- per day. In such cases, the commercial organization will book actual expenditures against such receipts and the profit and loss shall be automatically determined at the end of the year. However, in the case of an NPO, expenditures are charged at an estimated rate of, say, Rs. 5000/- which may be much less than the actual payment, then it will result in notional expenditure as well as notional income. This is because the utilization statement has been prepared on the basis of the estimated rate and not the actual expenses and being the nonprofit organization, profit cannot be booked.

1.07 It may also be noted that, all NPO projects are subject to actual utilization of funds. Therefore, in a project contract estimated or notional expenditure should not be booked as actual utilization of funds. If estimated or notional expenditures are booked as actual expenditures, then, funds are not actually applied to that extent and would tantamount to diversion of project funds.

WHY LEGALLY NOTIONAL EXPENDITURE IS NOT PERMISSIBLE

1.08 To incur a valid expenditure it is necessary that there is a valid transactions between two parties. All expenditures to be legally valid would require a valid legal transfer of funds against a valid invoices for goods or services. It is a established legal dictum that ***one cannot trade or transact with oneself***. Therefore, whenever there is a transfer of funds from one project to the general fund or another project, the fact remains that there is no legal transaction as far as the organisation as a whole is concern. The inter project transactions get nullified at the time of consolidation.

For Example: An NPO charges Rs.200/- per head towards the food provided to the participants in a Seminar conducted at its own building. The NPO transfers Rs. 10,000/- to its general funds from the project account as expenditure against fooding of participants. However, in its general account the actual expenditure against fooding is 4,000 only. Therefore, there is a profit of Rs.6, 000/- in a general account. In this case in the project account Rs. 6,000/- was charged over & above the actual expenditure. Therefore there is a profit of six thousand in the general account. In other words the NPO as a legal entity does not gain or loose anything, but, there is a loss of Rs.6, 000/- in one project and gain of Rs.6,000/- in the general account i.e. transferring funds from one pocket to another. Further for greater clarity the following are characteristic of such transaction :

- The service provider and the recipient are the same person.
- No legal transaction or transfer with oneself
- There is a notional

charge of expenditure in one project to the extent of Rs. 6,000/-.

- There is a matching notional profit in general account to the extent of Rs. 6,000/-.
- For donor utilisation purposes the utilisation statements shall be inflated to the extent of Rs. 6,000/-, however the consolidated accounts will show the correct expenditure as only actual expenditure is permissible under the income tax and FC laws. Therefore, the Rs.6,000/- will be just transferred from the project account to the general account without any legal implications.

COMMON PRACTICES OF NOTIONAL EXPENDITURE

1.09 Some of the common practices of notional expenditures in the NPO sector are as under:

- Charge against use of building
- Charge against use of infrastructure, convention centre etc.
- Charge against use of vehicle
- Charge against use of photocopier, telephone, computer etc.
- Providing services at a pre determined rate
- Charge of salary of the same staff to various projects.
- Inequitable apportionment of common expenditure etc.

1.10 In the following paras some case studies and methodology of various common practices of notional expenditure have been discussed.

GOODS AND SERVICES PROVIDED AT A FIXED RATE

1.11 There are instances where the organisation provides goods and services at pre determined prices. For instance, the organisation may charge for food against number of participants in meetings and training at a fixed pre-determined rate whereas the actual expenditure may be much lower.

Similar to the example discussed earlier, XX NPO conducts training and conference for the beneficiaries throughout the year. It's trainings are generally residential inclusive of food and accommodation. All participants stay in the building owned by XX. XX charges Rs. 200/- per day per participant towards food and Rs. 300/- towards accommodation. The money charged to the project is transferred to the general account. The actual expenditure on food and maintenance of property is incurred from the general account. It was found that the actual expenditure was Rs. 100/- per day per participant towards food and Rs.100/- towards accommodation. In this case, XX has charged notional expenditure of Rs.100/- per day per participant towards food and Rs.200/- towards accommodation.

1.12 The above example shows charging of notional expenditure which is not an acceptable practice in a project contract. The expenditure is not actual to the extent transferred to the General Fund. A

partner organisation is not allowed / supposed to make profit from development projects. From a legal perspective also such expenditure are not permissible, because the law would allow only the actual expenditures as one cannot trade with itself. In such cases one project of the partner is the service provider and another project is the service recipient which is legally not permissible.

RENT AND SERVICE CHARGE AGAINST ASSETS

1.13 There might be instances where the organisation charges the project against use of its assets. The assets could be land and building, training and conference facilities, vehicles, telephone, photocopier etc. In this context it is important to note that there might be some legitimate expenditure even without a legal transfer. For example, a LCD Projector is used for trainings and the effective life of the projector is 4 years. If the projector is used for, say, 500 trainings, then the actual cost should be distributed over the 500 trainings. The difficulty arises because donors do not, normally, allow depreciation against common assets as a part of the project cost. In such cases any such transfer against such facilities may not necessarily be a notional expenditure, but estimation of such expenditure should be made with prior approval of the donor. The following points needs to be kept in mind:

- If the charge is against use of the building, it should be seen whether the building is owned or rented. In case the building is owned by the organisation it should be clarified whether the building has been created out of corpus funds or

accumulated reserves or any other sources. The building or properties even though owned by the NPO may have been created out of project funds also. Therefore, one may be subjected to three types of circumstances where rent or charges are collected against building or properties:

- (i) Building or properties created out of corpus funds or accumulated reserves
 - (ii) Building or properties created out of the project funds or from past projects of the same donor.
 - (iii) Building or properties created out of funds provided by other donors.
- **Rent in case of self owned property created out of corpus funds or accumulated reserves:** Any recovery made against such assets should be transparently disclosed at the project proposal stages and should be formally reflected in the project agreement. Further, the rent/ charges recovered should be comparable with the reasonable market rent. In such cases it is necessary to assess the purposes for which the building is used i.e. for programme or administrative purposes. Further, normally, it is expected that the NPO should also contribute to the budget work, therefore the clarity and rationale for such transaction needs to be established between the donor and the NPO.
 - **Rent in case of self owned property created out of the project funds or from past projects of the same donor:** No recovery should be made against use of such assets for project purposes. The implementing partner should declare that no notional expenditure have

been charged against the assets funded by the same donor.

- **Rent in case of self owned property created out of funds provided by other donors:** Normally no recovery should be made against use of such assets for project purposes. However, if there is a circumstantial justification for use of such assets then the rent or cost charged against such assets should be transparently disclosed at the project proposal stages and should be formally reflected in the project agreement. Further, the rent/charges recovered should be comparable with the reasonable market rent.
- **Rent against other infrastructure and assets such as training facilities, equipments etc.:** When an organisation recovers the cost of the assets owned by it, then it becomes important that such cost recovery mechanism is transparently disclosed at the project proposal stages and is formally reflected in the project agreement. Any internal recovery/gain by the organisation is not permissible unless it is formally approved by the donor. The same rationale of the source of such assets is also applicable i.e. whether such assets are corpus assets or project assets needs to be seen and the treatment should be as discussed above with regard to self owned property.
- **Multiple Rent in case of a rented building:** It should be ensured that the sum total of the rent charged to various projects does not exceed the total actual rent paid. If the rents charged to various projects exceed the actual rent then it will result in notional

expenditure as well as income for the organisation.

- **Rent in case of self owned car/vehicle, photocopier and other assets:** The same principle should be applied as have been illustrated in context of self owned building or properties. Further the rent charged should be comparable with the reasonable market rent and the permission from the donor in this regard should also be obtained at the proposal stages.
- **Rent and other charges paid to sister concerns of the organisation:** Such conflict of interest transactions should be done with prior approval of the donor and should be declared and disclosed. Such transactions may also be in violation of the provisions of the local laws such as the Income Tax Act in India.

ADMINISTRATIVE EXPENDITURE AS A FIXED CHARGE

1.14 There might be instances where the organisation charges the administrative expenses as a fixed charge i.e the organisation may charge 20% of the project cost as administrative expenditure. In such circumstances the project agreement needs to be adhered to for the approval of the donor in this regard. Any other administrative expenditure which are charged to the project over and above the fixed administrative charge are not admissible.

1.15 Some donor might permit such charges for some small or specific projects. However, legally such charges do not constitute valid expenditure therefore, it is not permissible to treat such expenditure as valid utilisation of project funds.

INFLATING SALARIES TO CREATE BOTH NOTIONAL INCOME & EXPENDITURE

1.16 There might be instances where the organisation charges inflated salaries and subsequently the additional amount charged to the project is transferred to the general fund by creating notional income. The case study in the box will clarify the issue further.

YY NPO is having ten staff and pays Rs.100,000/- per staff per month. However, in the project, the salary is charged @ Rs.200,000/- per staff per month. On the same day of the salary payment, all the staff make donation of Rs. 100,000/- back to the organisation. In this way YY is able to transfer 1 million rupees per month to its general funds by charging notional expenditure in the project and by showing notional income in the general account.

1.17 Apart from the above example, there may be various illegal or unfair ways in which payment of salaries could be charged to various projects. Some instances are as under:

- Charging the salary of the same staff to more than one project, where the sum total of the amount charged is more than the amount actually paid.
- The same staff taking two or more salaries budgeted in the project proposal by formally executing multiple fulltime task.
- Payment of salaries to core staff and functionaries not related with the project or working under some other project.

- Transferring the budgeted salaries to the general fund and paying lesser salary to the staff from the general fund etc.

INFLATING PROGRAMME EXPENSES TO CREATE BOTH NOTIONAL INCOME AND EXPENDITURE

1.18 There might be instances where the organization charges inflated programme expenditures and subsequently the additional amount charged to the project is transferred to the general fund by creating notional income. The case study in the box below will clarify the issue further.

ZZ NPO is distributing funds among beneficiaries for purchase of seeds and manure. It pays Rs.10, 000/- per beneficiary for 100 persons. However, on the same day of the payment to the beneficiaries, all the beneficiaries make donation of Rs.5, 000 back to the organization. In this way ZZ is able to transfer 0.5 million rupees to its general funds by charging notional expenditure in the project and by showing notional income in the general account.

CHARGING COMMON EXPENDITURE TO VARIOUS PROJECTS

1.19 There might be instances where the organization charges common expenditure to various other projects. The common expenditure may be rent of premises, brochures and materials for similar programme etc. It may be noted if the common expenditure has been already

funded by one particular donor, the same expenditure should not be charged again to various other projects and donors.

1.20 In case the common expenditure is shared by various donors, it needs to be ensured that the sum total of the expenditures charged to various projects is not more than the actual expenditure incurred by the organization. In various instances it has been found that the same programme or activity has been shown as expenditure to more than one projects. In such circumstances it is important to ensure that if two projects of similar activities are implemented then there should be adequate disclosure and internal control with regard to double booking of expenditures.

CREATING PROVISION FOR EXPENDITURE & SUBSEQUENTLY TRANSFERRING IT TO GENERAL FUND

1.21 There might be instances where the organization creates provision for expenditure and charges it to the project. In other words, the reporting to the donor

reflects a notional expenditure which is just the provision and has not been actually incurred. In the subsequent year the same provision may be transferred as surplus to the general fund. Wherever non cash expenditure is incurred or expenditure is charged based on accrual basis of accounting (i.e. where the cash is still with the organization but utilization is shown to the donor), it needs to be ensured that the amount so provided is actually paid in the subsequent year.

CHARGING NOTIONAL CONVEYANCE AND ALLOWANCES AGAINST STAFF

1.22 There might be instances where the organization charges notional amount as conveyance, allowances and reimbursements to staff. In other words, there is no actual expenditure but a considerable amount is charged to the project against various staff as daily conveyance, refreshment allowance and other permissible unsubstantiated expenditures. It needs to be ensured that there are no notional expenditures and matching notional income in this regard.

(Dr. Manoj Fogla - Senior Chartered Accountant and a Consultant with many Voluntary Organisations.)

Governance Section

CHAIRPERSON- ROLES AND RESPONSIBILITIES

- Sanjay Patra, FMSF

1. WHO IS A CHAIRPERSON?

The board is a collective decision making body. In other words, even though individual preferences are expressed, eventually the collective wisdom of a body of individuals prevails. The principle behind forming and making decisions through board is to ensure that the experience and expertise of individual members can be collated and assimilated. At the same time, due to collective decision making process self interest and conflict of interest issues are also adequately addressed.

In order to structure the decision making process through the board, a method of facilitation is required. Normally, the facilitator is designated as the Chairperson of the board. The Chairperson is required to call the meeting to order, lead in various discussions, move the meeting as per the agenda items proposed and ensure that there is discipline in the meeting. When the board is not in session, the Chairperson also acts as a key representative of the organization to the outside world.

2. WHAT ARE THE KEY CHARACTERISTICS OF A CHAIRPERSON?

- Acceptable among the board members
- To be above reproach
- Demonstrate fairness and uphold organizational values
- Ability to direct and manage the Chief Functionary on behalf of the board
- Should not have Conflict of Interest
- Good leadership skills, communication and interpersonal skills.
- Impartiality, fairness and the ability to respect confidentiality.
- Understanding of the roles/responsibilities of board.

3. IS THE CHAIRPERSON THE LEADER OR LEADER AMONG THE EQUALS?

In order to manage his/her role smoothly, there are certain powers vested with the Chairperson. The Chairperson has the power to allow/disallow a member to speak in order to maintain discipline. At the same time, it is expected that the Chairperson acts in an

independent and neutral manner in order to provide opportunity to all Board Members to voice their opinions. Sometimes if there is a division in opinions, the Chairperson may ask for voting in order to determine the majority opinion. In the eventuality of a tie, the Chairperson has a second vote which is called the "Casting Vote". The power to execute "casting vote" is reserved only in case of a tie. Therefore, the Chairperson is seen as a leader among the equals with certain special powers embedded in the role.

4. HOW THE CHAIRPERSON IS SELECTED/ ELECTED?

Generally, the Chairperson is selected/ elected in two ways:

- The board is selected/elected in the General Body meeting (in case of society). Sometime the bylaws provide that the society also elects the Chairperson while electing the board members. In that case, the Chairperson is elected as a Board Member first and then elected as a Chairperson.
- The second method of selecting/ electing a Chairperson is that the board is elected in the General Body meeting. After this, in the first meeting of the board the Chairperson is elected again as stated above. These processes are prescribed in the bylaws of the organization.

5. ELECTION/ ROLE OF CHAIRPERSON VIS-A - VIS INCORPORATION LAWS?

As we know there are three ways of incorporating an organization i.e. Trust, Society and Company u/s 25 of Companies Act. The election and role of Chairperson also

varies according to the nature of incorporation and the process of election/ selection is defined in the governing documents of the organization. The following are the different modes of election/role of Chairperson:

5.1 Election / role of Chairperson in a Trust:

- Unlike a company or a society, the trust does not have a General Body, from which the Governing Body is elected. Therefore, all the Trustees form the General Body as well as the Governing Body of the Trust.
- The Chairperson is elected as laid down in the Trust Deed. Generally, the Trustees elect a Chairperson from among themselves by voting. The term of the Chairperson shall be applicable as defined in the Trust Deed.
- The Chairperson is entrusted to cause to maintain accurate accounts of trust property, invest money held on trust, act only for the benefit of the trust consistently with the trust rules and powers, etc.

5.2 Election / role of Chairperson in a Society:

- The board is selected/elected in the General Body meeting. Sometimes the bylaws provide that the society also elects the Chairperson while electing the board members. In that case the Chairperson is elected as a Board Member first and then as a Chairperson.
- The second method of selecting/ electing a Chairperson is that the board is elected in the General Body meeting. After this, in the first

meeting of the board the Chairperson is elected again as stated above. These processes are prescribed in the bylaws of the organization.

- The role of the chairperson is to keep order and maintain progress in line with the agenda, all relevant matters are discussed and that effective decisions are made and carried out.

5.3 Election / role of Chairperson in Section 25 Company:

- The Articles of a company generally allow for the directors to elect a Chairperson to chair the meetings of the Board. Unless specified in the Articles about the term, the Chairperson remains in that position for as long as he or she is a director, or until the Board elects otherwise.
- Even if there is no provision in the articles of association of the company, election and appointment of Chairperson for Board Meetings is a must, in order to conduct the proceedings of a meeting. In such case, the Board may elect a Chairperson and determine the period for which he/she is to hold office.
- The Chairperson will be elected by show of hands in the first instance by the members personally present at the meeting and if poll is demanded by them on the election of the Chairperson, it should be done by poll.
- The role of Chairperson is to ensure that the board meetings

are conducted in a manner which secures the effective participation of all directors, and encourages all to make an effective contribution, maintain a balance of power in the board, make certain that all directors receive adequate information, well in time and that the executive directors remain accountable to the board. The Chairperson's role should in principle be different from that of the chief executive, though the same individual may perform both roles.

6. WHAT ARE THE ROLES AND RESPONSIBILITIES OF A CHAIRPERSON?

The roles and responsibilities of chairperson are generally outlined in the organization's governing documents, below there are some specific duties entrusted upon the chairperson:

- To ensure the board functions properly:
 - To plan and run meetings in accordance with the organization's governing document.
 - To ensure matters are dealt with in an orderly, efficient manner.
 - To bring impartiality and objectivity to meetings and decision-making.
 - To facilitate change and address conflict within the board.
 - To review governance performance and skills.
 - To ensure effective balance of members with regard to the board members' age, work experience and skill sets.
 - To involve members already on

- the board to mentor members who are new to their position.
- To ensure the organization is managed effectively.
 - To liaise with the chief functionary of the organization and keep an overview of the organization's affairs.
 - To co-ordinate various sub-committees of the board e.g. Finance, Personnel etc,
 - To facilitate change and address conflict within the organization, liaising with the chief functionary to achieve this.
 - To be involved with the strategic planning of events and ensure that all activities are in accordance with the organization's vision & mission.
 - Provide support and supervision to staff.
 - To manage the senior staff members of the organization.
 - To sit on appointment and important decisions of the

organization, as and when required.

- Represent the organization.
 - To communicate effectively the vision and purpose of the organization.
 - To advocate for and represent the organization in external meetings and events.
 - To be aware of the changes in the external environment that can have affect on the organization.

7. CONCLUSION

The role that the Chairperson of the Board plays is different from all the other roles on the Board. It is the Chairperson's job to ensure that the Board operates as a team and everyone on the Board has a say. The chairperson should have knowledge of organizational policy, finance and programs so that the organization runs effectively. There are certain points which a Chairperson should ensure are addressed and some to be avoided.

(Sanjay Patra-Senior Chartered Accountant and Executive Director of FMSF)

VICE CHAIRPERSON- ROLES AND RESPONSIBILITIES

- Sanjay Patra, FMSF

1. WHO IS A VICE-CHAIRPERSON?

Generally, the Board of a voluntary organization is structured responsibility-wise. In other words, the Board would have ordinary members and certain office-bearers like Chairperson, Vice-chairperson, Secretary and the Treasurer.

In the previous issue, we have already discussed the roles and responsibilities of the Chairperson. In this issue, we would be focusing on the roles and responsibilities of the Vice-chairperson.

2. WHY A VICE-CHAIRPERSON IS NEEDED?

2.1. Taking collective responsibility:

A Vice-chairperson acts as a support or a deputy to the Chairperson. The role of Vice-chairperson becomes necessary and more important in both medium and large-sized organizations. As we know, Board members are voluntary positions and they are not remunerated for rendering their services as members of the Board.

Therefore, there is a constant challenge on the part of the members to allocate the time required to discharge their responsibilities. Further, the role of the Chairperson is very vital and therefore demands a lot of time. In such situations having a Vice-chairperson is very helpful to the Chair in delegating some responsibilities. However, having said that it needs to be remembered, delegating responsibilities to Vice-chairperson depends solely at the Chairperson's discretion.

2.2. Leadership development:

The Board is also the place for further learning and growth for Board Members. An effective Board always thinks of ways and means to capacitate the members to take on vital responsibilities. It is always recommended that before being elected as a Chairperson, the member must serve as a Vice-chairperson for at least one term. This would help the member get familiarized with the various responsibilities and demands of the position.

A Vice-chairperson is in a very good position to learn and develop in order to eventually take over as a Chairperson. During the term as Vice-chairperson, the individual gets to work closely with the Chairperson as well as functions as part of the core Governance team and gets valuable insights to the functioning of the organization.

3. HOW THE VICE-CHAIRPERSON IS ELECTED/SELECTED AND HIS/HER TENURE?

The term is determined in the Trust Deed for Trust and in the Byelaws in case of Society.

- The board is selected/elected in the General Body meeting. Sometimes the bylaws provide that the society also elects the Vice-chairperson while electing the board members and the Chairperson. In that case, the Vice-chairperson is elected as a Board Member first and only then as a Vice-chairperson.
- The second method of selecting/electing a Vice-chairperson is that the board is elected in the General Body meeting. After this, in the first meeting of the board, the Vice-chairperson is elected again as stated above. These processes are prescribed in the bylaws/ trust deed of the organization.

3.1 Election of Vice-chairperson in a Trust:

- Unlike a company or a society, the trust does not have a General Body, from which the Governing Body is elected. Therefore, all the Trustees

form the General Body as well as the Governing Body of the Trust.

- The Vice-chairperson is elected as laid down in the Trust Deed. Generally, the Trustees elect a Vice-chairperson from among themselves by voting. The term of the Vice-chairperson shall be applicable as defined in the Trust Deed.

3.2 Election of Vice-chairperson in a Society:

- The board is selected/elected in the General Body meeting. Sometimes the bylaws provide that, the society also elects the Vice-chairperson while electing the Chairperson and Board members. In that case, the Vice-chairperson is elected as a Board Member first and then as a Vice-chairperson.
- The second method of selecting/electing a Vice-chairperson is that the board is elected in the General Body meeting. After this, in the first meeting of the board the Vice-chairperson is elected along with the Chairperson, again as stated above. These processes are prescribed in the bylaws of the organization.

3.3 Election of Vice-chairperson in Section 25 Company:

- The Articles of Association generally allow for the Board of Directors to elect a Vice-chairperson to stand in the chair, when the reigning Chair is unable to do so. Unless, specified in the Articles about the term, the Vice-chairperson remain in that position until the Board decides otherwise.
- Even if, there is no provision in the Articles of Association of the company, election and appointment

of Vice-chairperson for Board Meetings is a must, in order to conduct the proceedings of a meeting. In such a case, the Board may elect a Vice-chairperson and determine the period for which he/she is to hold office.

- The Vice-chairperson will be elected by show of hands in the first instance, by the members, personally present at the meeting. However, if poll is demanded by them, then it should be done by ballot.

4. WHAT ARE THE ROLES AND RESPONSIBILITIES OF A VICE-CHAIRPERSON?

The roles and responsibilities of the Vice-chairperson are laid down in the Organization's governing documents.

- Generally, the Vice-chairperson serves on the Executive Committee or any special Committee of the Board along with the Chairperson
- To carry out certain special tasks as

delegated by the Chairperson

- To substitute the Chair in his/her absence which includes, chairing meetings and performing any other Legislative/Executive role performed by the Chairperson
- To support the Chair in conducting meetings in an orderly and organized manner is another big responsibility entrusted upon him/her and is expected to maintain a healthy relationship with the Chair and other Board members.

5. CONCLUSION

The Vice-chairperson is considered as the Chairperson-in-training. He/she should attend meetings of the Board regularly. He/she also has to obtain the consent of the Chairperson before making major decisions. The Vice-chairperson is accountable to the Board who is accountable to the members and other stakeholder.

By electing the Vice-chairperson, the Board creates a second line in the governance process itself. This ensures broad based leadership and smooth transition in due time.

(Sanjay Patra-Senior Chartered Accountant and Executive Director of FMSF)

BOARD MEMBERS- ROLES AND RESPONSIBILITIES

- Sanjay Patra, FMSF

1. WHO IS A BOARD MEMBER?

A board works on the principle of collective wisdom. The underlying principle for setting up of a board is that the collective decision making process minimizes risks and maximizes effectiveness. In that context, the individual members play a very important part in enhancing the overall effectiveness of the board. Therefore, the board must be a fine blend of individuals drawn from different walks of life & diverse sections of community.

The board members of a Non-Profit organization (NPO) usually work in voluntary capacity and are not remunerated for being members. This is to enhance their independence and impartial decision making.

Board members set the strategic direction of the organization. Along with providing oversight and supervision to ensure that management and operations are legally compliant, effective and appropriate, the Board is supposed to make effective decisions.

One of the ways of providing oversight is to make effective decisions and the other aspect is to have effective control over the organization. Therefore, we can say that decision making and exercising control are inseparable twins in any governance process.

2. CORE CHARACTERISTICS OF AN EFFECTIVE BOARD MEMBER

- **Alignment with Vision /Mission / Values:** Commitment comes from a clear understanding of the vision and mission and values. Board member, with adequate knowledge and understanding of the vision, mission and values that the organization stands for, becomes effective in their role.
- **Taking Responsibility:** The responsibility of overseeing the operations of the organization and taking necessary steps to control the organization for achieving desired results in line with its objective.

- **Clear Communicator:** A member who is a good communicator creates a positive environment in the organization by conveying the thoughts, ideas, need and wants clearly. It helps avoiding misunderstanding and losing the control on governance, therefore strong and clear communication skills are the key strengths required by a successful board member.
- **Specific Skills:** There can be specific need of an organization which would require individuals with prior experience in that particular field, certain professional skills and expertise so that their knowledge can contribute to the growth of the organization.
- **Independence:** Independence of board members plays a crucial role in effective governance. Conflict of interest is a situation where in the member has the responsibility for promoting an interest but has another competing interest at the same time. Board members need to ensure that any possibility of conflict of interest is avoided and the conflict is resolved with justice and fairness in order to promote a healthy environment in the organization.

3.THE: HOW, WHY AND WHAT

3.1 HOW THE BOARD MEMBER IS SELECTED/ ELECTED VIS-A-VIS THREE INCORPORATION LAWS? As we know there are three ways of incorporating an organization i.e. Trust, Society and Company u/s 25 of Companies Act. The election of board members also varies according to the nature of

incorporation and the process of election/selection is defined in the governing documents of the organization. The following are the different modes of election/role of board members:

➤ Election of Board Members in a Trust:

- Unlike a company or a society, the trust does not have a General Body, from which well as the Governing Body of the Trust.
- The term of the members shall be applicable as defined in the Trust Deed.

➤ Election of Board Members in a Society:

- The board is selected/elected in the General Body meeting from among the General Body members who have joined the organization voluntarily.
- The term of the members shall be applicable as defined in the bylaws
- The board members whose term has expired form part of the General Body and will again be on the board as per the guidelines in the bylaws. For instance, the bylaws provide that a member will serve the board after two terms of 3 years i.e. for next six years; the member will not be a board member.

➤ Election of Board Members in Section 25 Company:

- The board member will be elected by show of hands in the first instance by the members personally present at the meeting and if poll is demanded it should be done by poll.
- The Articles of a company generally

provides about the term of the board member.

3.2 WHY SOMEONE WOULD VOLUNTEER TO BE A BOARD MEMBER?

A membership in the board of an organization comes with various responsibilities and demands commitment. The board is ultimately responsible for the functioning and action of the organization. However, it also needs to be mentioned that after incorporation of an organization, the board assumes collective responsibility and there are generally no individual liabilities unless it is found that the board member has misused the authority bestowed on him/her to cause loss/damage to the organization or any individual. However, there is a difference in case of trusts where the trustees hold a much greater liability compared to other forms of registration. The other important issue to recognize here is that the board membership is an honorary/voluntary responsibility and cannot be remunerated for functioning as a board member. In view of the above, the question that arises is why anyone should become a board member of a NPO. Well, the reasons can be many. However, the primary reason is the commitment to the cause/mission that the organization pursues. Being on the board of the organization provides an opportunity to pursue the cause/

mission which the member is passionate about. It also provides a chance to engage with the community and an opportunity to serve. It also helps the person to develop deeper understanding of the issue and motivate oneself. It also keeps the social sensitivity alive in the individual.

Secondly, serving on the board also provides opportunity for a person to understand the nuances of organizational governance and management. This experience helps in being more effective as an individual and professional. Further, it also serves as a platform to share the expertise and skills the person possesses.

3.3 WHAT ARE THE ROLES AND RESPONSIBILITIES OF A BOARD MEMBER?

- To actively participate in meetings
- To be adequately prepared on the agenda to be discussed
- To get familiar with the organization and its activities
- To maintain order in meetings
- To respect protocol in meetings
- To present his/her point of view in the meeting
- To bring on specific expertise
- To maintain objectivity
- To find mutually acceptable solutions to various issues before the board
- To engage with the organization through other

committees and forums apart from the board meetings

- To understand and maintain the distinction between management issues and governance issues
- To promote team work

4. TYPES OF BOARD MEMBERS

The Board is formed through a process of nomination or election as may be prescribed in its governing documents. The primary responsibility of the Board is to make decision for the organization.

The persons who participate in Board meetings fall broadly into five categories. They are as follows:

4.1 Full-fledged Members: These groups of members are elected/ nominated or selected through well defined process according to the governing documents of the organization. They have all the rights of Board members including the right to vote.

4.2 Co-opted Members: Co-opted members are those members who are inducted into the Board by the existing Board members in their meeting. Generally, Co-option is provided in the governing document of the organization. Co-option is generally to induct certain specialized skills into the Board. In some cases where the Board is elected through a pre-defined

process, it is likely that certain skills and expertise required in the Board may not be available in the elected Board members. In such case co-option provides the opportunity to induct members with such skills for example; finance, law, program, etc. The co-opted members are invited to serve for a term as determined in the governing documents. In many cases, the powers of the co-opted members are limited for example; right to be elected as Office bearers or right to vote, etc may not be available to them. However, it all depends on the governing documents.

4.3 Invitee Members: The Board reserves the right to invite persons from time to time, to the meetings as and when required. There are two specific ways to be invitee members. There can be permanent invitees who are invited through a resolution to be present in every meeting of the Board. Then there are special invitees who are invited for a specific meeting. The invitee members can participate in deliberation but normally are not part of the decision-making process through voting or resolution.

4.4 Ex-officio Member: Ex-officio members are those members who represent the Board in their formal capacity. For example; the Executive Director of the

organization may be an Ex-officio member of the Board or even be the Secretary of the Board. Generally, the Ex-officio members are full members of the Board with the right to vote unless otherwise limited in its governing document.

4.5 In-attendance Members:

Sometimes, certain officials are asked to be present in the meeting to help the Board function effectively. For example; the Board may appoint a note-taker or an administrative assistant to help in presenting documents. Generally, they provide support to the Board for smooth functioning. They are not allowed to take part in the proceedings and cannot be part of the decision-making. Their attendance is marked as “in-attendance” just for the record.

5. CONCLUSION

A board member should be committed to the mission, goals and programs of the organization and perform the functions as a member to the best of one’s ability. An effective board member respects the decisions of the group, while utilizing the individual expertise. In the role as a board member, he/ she oversees’ the work carried out by the organization and providing support. The Board Members collectively as board are responsible for ensuring that organizational resources are used as effectively as possible in achieving the mission of the organization.

Finally, the two questions

- Why you volunteered to be a board member?
- What are your responsibilities toward the organization?

are the key questions that should fuel each member to contribute to the growth of the organization.

(Sanjay Patra - Senior Chartered Accountant and Executive Director of FMSF.)

SECRETARY- ROLES AND RESPONSIBILITIES

- Sanjay Patra, FMSF

1. INTRODUCTION

The overall administration and management of an organization vest with the duly elected Board as per the Bye-laws/Trust Deed/Memorandum of Association of the organization. To have smooth and effective Board processes, several positions are created within the board. Generally, the Board has a Chairperson, Vice-chairperson, Secretary and Treasurer and assigns them certain duties & responsibilities as per the governing documents of the organization.

In general, the Chairperson is responsible for the smooth and fair running of the organization. The main job is to chair the meetings of the organization and guide the board. The Vice-chairperson acts as a support or a deputy to the Chairperson. He/She also act as a substitute to the Chair in his/her absence and support the Chair in conducting meetings in an orderly and organized manner. The Treasurer has overall responsibility for the organization's finances and main job is keeping oversight on financial affairs of the organization.

2. WHO IS A SECRETARY?

The position of Secretary has wide-ranging responsibilities, requiring much more than simply being present at all board meetings. He/she is the one who has the role of disseminating information to all members and stakeholders, giving proper notice of any meetings and timely distribution of materials such as agendas and meeting minutes. Additionally, the Secretary is the custodian of the organization's records and related materials. The Secretary is expected to work in close co-operation with the Chair as he/she compliments the Chair's work and helps him/her discharge the duties effectively.

3. SECRETARY AND CHIEF FUNCTIONARY

There are various practices followed among Voluntary organizations with regard to whether the Secretary and the Chief Functionary should be the same person. Firstly, it needs to be understood that the Secretary is a legislative position whereas Chief Functionary is the head of the Executive. Sometimes, it is desirable to have both the

positions in one person so that the implementation of decisions by the Board is smooth. There are three possible scenarios with regard to Secretary and Chief Functionary.

- 3.1. Secretary also holds the position of Chief Functionary
- 3.2. Chief Functionary is appointed by the Board and he/she functions as the ex-officio Secretary of the Board
- 3.3. There are two different persons holding the above two positions

Ideally, it is always better to have one person performing both the functions in order to ensure smooth governance and management. In the vent of two different persons holding the two positions, the role, responsibilities, mandate, etc. should be clearly stated.

4. WHAT ARE THE KEY CHARATERISTICS OF SECRETARY?

- Ability to understand and articulate issues before the Board
- Understanding legal requirements
- To be well-versed with different documentation techniques
- In case, the organization is small, then it may not have a Vice-chairperson. In that case, the Secretary will play more supportive role to the Chair
- To have management oversight
- To liaise with the Chief Functionary in case the Chief Functionary and the Secretary are two different positions

5. WHAT ARE THE ROLES AND RESPONSIBILITIES OF SECRETARY?

Although, the job responsibilities of Secretary vary from organization to

organization, some basic roles and responsibilities which are common are explained below:

5.1. Minutes:

The Secretary is responsible for ensuring that accurate minutes of meetings are taken and approved. Requirements of minutes may vary as per the needs of the organization but should include at a minimum:

- Date, time, location of meeting;
- List of those present and absent;
- List of items discussed;
- List of reports presented;
- List of motions presented and description of their disposition.

Minutes should have enough information to help absent members to understand what issues were discussed and what decisions were made. The Secretary signs a copy of the final, approved minutes and ensures that this copy is maintained in the organization's records.

5.2. Implementation of decisions

- Even though it is for the management/staff team primarily to implement the decisions of the Board, it is the role of the Secretary to communicate such decisions, ensure implementation and report back to the Board in the next meeting on actions taken on them and updates. This is the role of the Secretary in between Board meetings.

5.3. Custodian of records

As the custodian of the organization's records, the Secretary is responsible for

maintaining accurate documentation and ensuring that the records are made available when required by authorized persons. These records may include governing documents, details of board members, board meeting minutes, financial reports, and other official records.

5.4. Communication

The Secretary ensures that proper information about the schedule of next meeting and upcoming events is shared with the Board and on time. In most of the case, the Secretary is responsible for sending out necessary notices for meetings.

5.5. Meetings

The Secretary participates in Board meetings as a voting member or as specified in the governing laws. The Secretary provides items for the agenda as appropriate and informs all the members well in advance about the meeting. Further, the minutes of the previous meeting are read, and if they are approved, the signature of the Chairperson is obtained on them.

In the absence of the Chairperson (and Vice-Chairperson, if the position exists), the Secretary calls the meeting to order, presiding until a temporary chairperson is elected. The Secretary records meeting minutes as described above depending upon the practices of the organization.

5.6. Signing Officer

The Secretary may be designated by the Board and/or bylaws as one of the signing officers for certain documents. In this capacity, the Secretary may be

authorized or required to sign or countersign cheques, correspondence, applications, reports, contracts or other documents on behalf of organization.

5.7. Accountability

The Secretary is accountable to the Board and the general members of the organization.

6. HOW IS A SECRETARY ELECTED/SELECTED AND HIS/HER TENURE?

The term is determined in the Trust Deed for Trust and in the Byelaws in case of Society.

- The Board is selected/elected in the General Body meeting (in case of society). Sometimes, the bylaws provide that the society also elects the Secretary while electing the Board Members, the Chairperson and the Vice-chairperson. In that case, the Secretary is elected as a Board Member first and only then as a Secretary.
- The second method of selecting/ electing a Secretary is that the Board is elected in the General Body meeting. After this, in the first meeting of the Board, the Secretary is elected again as stated above. These processes are prescribed in the Bye-laws/ Trust Deed of the organization.

6.1 Election of Secretary in a Trust:

- Unlike a Company or a Society, the Trust does not have a General Body, from which the Governing Body is elected. Therefore, all the Trustees form the General Body as well as the Governing Body of the Trust.

- The Secretary is elected as laid down in the Trust Deed. Generally, the Trustees elect a Secretary from among themselves by voting. The term of the Secretary shall be applicable as defined in the Trust Deed.
- It may be noted that, it is not mandatory for a Trust to elect a Secretary. Many times Trustee performs the role of the Secretary in the Trust.

6.2 Election of Secretary in a Society:

- The Board is selected/elected in the General Body meeting. Sometimes the Bye-laws provide that the Society also elect the Secretary while electing the Chairperson, Vice-Chairperson and Board Members. In that case, the Secretary is elected as a Board Member first and then as a Secretary.
- The second method of selecting/ electing a Secretary is that the Board is elected in the General Body meeting. After this, in the first meeting of the Board the Secretary is elected along with the Chairperson, Vice-chairperson again as stated above. These processes are prescribed in the bye-laws of the organization.

6.3 Election of Secretary in Section 25 Company:

As per the provisions of the Companies Act, 1956 the Companies are required to appoint a *Company Secretary*, who is a member of the Institute of Company Secretaries of India. However, for Section 25 Company it is not mandatory to appoint a Company Secretary. The Company can appoint a Company Secretary for the responsibilities of a Secretary or they can delegate the responsibility of Secretary to any competent person within the Board.

7. CONCLUSION

A Secretary's role is to ensure smooth running of board meetings. Therefore, this involves activities before, during and after meetings. The secretary is responsible for preparing minutes of the meetings, maintaining records, administration, flow of information/communication. The Secretary also ensures that the decisions taken by the Board are clearly communicated to various stakeholders and they are implemented. The Secretary often acts as an information and reference point for the Chairperson and other members and clarifying past practice and decisions. Therefore, a Secretary is often the most important loop in the board.

(Sanjay Patra - Senior Chartered Accountant and Executive Director of FMSF.)

TREASURER- ROLES AND RESPONSIBILITIES

- Sanjay Patra, FMSF

1. INTRODUCTION

Accountable and transparent financial management practices play a major role in enhancing the effectiveness of an organization. If the stakeholders lose faith in an organization's ability to control and account for finances, the entire organization is seen in bad light. The Treasurer is the person who has to ensure that bank accounts are managed well, cash and cheque are deposited, bills are paid, records are kept, budgets are prepared and adhered to and incoming as well as outgoings are backed properly.

In large organizations, the Treasurer is usually supported by a Finance Committee and provides a link between the management and the Board on financial matters. The Treasurer maintains an overview on monthly finances to ensure that appropriate procedures are in place so that programs can be implemented without any delay or disruption.

Most importantly, the Treasurer works with the Chair, other Board members, and the staff to ensure that the annual budget is drawn and approved by the Board for implementation. The Treasurer needs to ensure that quarterly/half-yearly/annually reports are duly prepared by the management and reviewed by the Board, as and when required. He needs to advise the Board in decision-making on emerging/contingent financial liabilities and risks so that necessary decisions can be taken in time to avoid loss of revenue and other risks.

2. WHO IS A TREASURER?

The role of the Treasurer is very crucial for any organization. Generally, the organization aims to appoint individuals to the positions of Treasurer who have adequate knowledge in the areas of financial management and at the same time understand financial governance. Here it is important to make a clear distinction

between financial management and financial governance. While, the financial management falls in the domain of management, financial governance is more of a larger issue and is addressed at the governance level. The Treasurer should understand the above difference clearly and take up his/her role in the context of financial governance. In other words, financial governance would imply financial oversight. Financial oversight is basically to ensure that:

- The financial management practices within the organization is adequate;
- The various controls and policies are in place;
- The reporting structures exist and are clear;
- The compliances are regular and adequate.

As a part of the oversight functions, the Board needs to be assured that above four areas within the organization are in place. The Treasurer on behalf of the Board ensures it. The Treasurer is also a person who acts as a bridge between the Board and the management. Further, among the office bearers, the Treasurer's role demands enough time and physical presence. Therefore, it is prudent on the part of the organization to select/elect a Treasurer who has physical proximity to the office of the organization and has the required availability.

For generating accountability within and outside the organization and preventing the diversion of funds for personal gains Treasurer play critical role. Hence, it is necessary to attach adequate importance to the position of the Treasurer, despite the

responsibilities being invisible to the outside world.

3. WHAT ARE THE KEY CHARACTERISTICS OF A TREASURER?

"Treasurer" as the name suggests is confided with the responsibility of the "treasure". And, "treasure" in accordance with the Oxford English language, mean a valuable or valued item. Therefore, it is of utmost importance to find a suitable person conforming to the virtues and skill set necessary for the job. Since the job requires an oversight of funds and financial processes, the Board benchmarks and determines the accountability standards for the organization. The Treasurer also holds the stewardship functions of the organization; hence it is very important to have high integrity and accountability at a personal level. The Treasurer is required to set the tone at the top in the areas of accountability and transparency. It also needs to be understood that NPOs have different sizes. In case of small organizations, it is difficult to segregate oversight functions from management functions, since such organizations do not have adequate staff to run the management. Therefore, in such situations Board Members also take up management responsibilities and the distinction between the management and the governance becomes blurred. Realistically, such situations emerge in various small organizations and this is the fact which cannot be ignored. In such scenarios, the Treasurer crosses the line of governance and gets involved in the

management of the organization. However, while discharging governance role the Treasurer needs to keep in mind that the controls and the oversight functions are not diluted, since those are the primary functions of the Treasurer.

4. ELECTION OF TREASURER VIS-A VIS INCORPORATION LAWS

The term of a Treasurer is determined in the Trust Deed for the Trust and in the Bye-laws for the Society. The procedures and guidelines for electing/selecting a Treasurer are prescribed in the Constitutional documents.

- The Board is selected/elected in the General Body meeting (in case of Society). Sometimes, the Bye-law provides that the Society also elect the Treasurer while electing the Board Members, the Chairperson, the Vice-chairperson and the Secretary. In that case, the Treasurer is elected as a Board Member first and only then as a Treasurer.
- The second method of selecting/ electing a Treasurer is that the Board is elected in the General Body meeting. After this, in the first meeting of the Board, the Treasurer is elected again, as stated above. These processes are prescribed in the Bye-laws/ Trust Deed of the organization.

4.1 Election of Treasurer in a Trust:

- Unlike a Company or a Society, the Trust does not have a General Body, from

which the Governing Body is elected. Therefore, all the Trustees form the General Body as well as the Governing Body of the Trust.

- The Treasurer is elected in accordance with the provisions laid down in the Trust Deed. Generally, Trustees elect a Treasurer from among themselves by voting. The term of the Treasurer shall be applicable as defined in the Trust Deed.
- It may be noted that, it is not mandatory for a Trust to elect a Treasurer. Many times Trustees perform the role of the Treasurer in the Trust.

4.2 Election of Treasurer in a Society:

- The Board is selected/elected in the General Body meeting. Sometimes the Bye-laws provide that the Society also elect the Treasurer while electing Board Members, Chairperson, Vice-Chairperson and Secretary. In that case, the Treasurer is elected as a Board Member first and then as a Treasurer.
- The second method of selecting/ electing a Treasurer is that the Board is elected in the General Body meeting. After this, in the first meeting of the Board, the Treasurer is elected along with the Chairperson, Vice-chairperson and the Secretary, as stated above. These processes are prescribed in the Bye-laws of the organization.

4.3 Election of Treasurer in Section 25 Company:

As per the provisions of the Companies Act, 1956 the Companies are required to appoint a *Company Treasurer*, who is a member of the Institute of Company Secretaries of India. However, for Section 25 Company it is not mandatory to appoint a Company Treasurer. The Company can appoint a Company Treasurer for the responsibilities of a Treasurer or they can delegate the responsibility of Treasurer to any competent person within the Board.

5. WHAT ARE THE ROLES AND RESPONSIBILITIES OF A TREASURER?

The roles and responsibilities of a Treasurer in a non-profit organization vary with the size and form of the organization. Primarily, the roles and responsibilities are enshrined in the registration document (Trust Deed/Article of Association/ Rules and Regulation) of the organization. However, these are very basic and may not be exhaustive. When the organization is small, with limited resources and staff, the role of the Treasurer is confined to ensuring financial, legal, contractual compliances. As the organization grows, the role of the Treasurer evolves and primarily gets focused in the area of financial and governance oversight functions.

The financial management oversight of the Board is basically undertaken by the Treasurer. The Treasurer ensures that robust financial management systems exist in the organization. This would ensure that adequate documentation and reposting exists so that accounting trails can be

tracked. The following are some key functions of the Treasurer in the area of financial management:

5.1 Budgeting

- Ensures that project-wise budgets are prepared with clear budget heads corresponding to the activity plan
- The budget prepared should be presented to the Board and approved for implementation
- The budget is adequately implemented and monitored
- Regular reports are generated and shared with the Board on budget variance

5.2 Accounting

- Ensure that adequate books of accounts are maintained by the organization
- The books of accounts should be regularly updated
- Adequate accounting and vouchering documentations are prepared
- The budget heads should match with the accounts head
- Authorization for payment should be in place
- Regular accounting reports (Bank Reconciliation Statement, Trial Balance, etc.) are generated and reviewed by the management

5.3 Asset Management

- Ensure that adequate control exists in physical assets of the organization
- Insurance cover is taken for the assets

- Policies for use of assets are in place
- There is adequate control over custody and disbursement of cash
- Bank account operational procedures are adequate

5.4 Investment

- Ensure safe custody of the investment instruments
- Ensure that investment policy is in place
- Details of investments are available

5.5 Audit

In large organization, the Treasurer chairs the Audit Committee.

- Has direct interface with the auditors
- The management letter issued by the auditors are adequately addressed
- Ensure full co-operation from the organization for audit process
- If needed design a proper internal audit process for the organization

5.6 Compliances

- Ensure that legal compliances are adhered to by all organization well within time
- The donor's compliances are met as per donor contract

The most important issue for a Treasurer is

to ensure that the policies and procedures manual is developed for the organization so that expectations and the framework is clear to all stakeholders.

For a non-profit organization that operates on donated funds, good financial management system provides a safeguard from potential risks. Also, many a time organizations cannot afford to hire a full-time or experienced accountant. In these cases, having an experienced Treasurer is very helpful.

6. CONCLUSION

The Treasurer's duty varies from organization to organization based on the organization's size and resource-base. The Treasurer, the Chair, Members of the Governing Body and other staff must work closely to develop a robust financial management system and monitor the process, for the organization.

The Treasurer is the most important office-bearer in finance related issues. Thus, he/she greatly propels the public's perception, trust, and assurance in the organization's management. Therefore, the importance of desired skill sets and qualifications for being selected as a Treasurer is indispensable. The Treasurer is the key office-bearer within an organization for ensuring the financial health of the organization. However, for the external world, the Board is ultimately accountable. Therefore, the rest of the Board members must also take an active part in ensuring financial accountability and compliances of the organization.

(Sanjay Patra - Senior Chartered Accountant and Executive Director of FMSF.)

Others

Workshop on Governance of NGOs for Nepal Partners

FMSF organized a workshop on Governance of NGOs for its partner organizations in Kathmandu. The workshop was organized on 27th and 28th November, 2012 at Hotel Alpha.

The Board Members and Chief Functionaries from Partner Organization were invited and 23 participants participated in the workshop.

The objective of the workshop was to share the Good Governance practices as it plays a key role in promoting transparency and accountability of an organization thereby enhancing effectiveness. The challenge for organization is basically to develop a good governance framework and implement it in their own context.

Participants were taken through understanding the meaning of Governance and NGO Governance was Vis a Vis in context with Corporate Governance. As Board Members play a key role in good governance, the board recruitment, orientation, board processes and conflict of interest was discussed in detail. The linkage between board and CEO and board's responsibility to the CEO was discussed. To have practical learning, a board meeting activity was conducted. The importance of Governance Manual which acts as a set of well written basic documents, which give instructions in matter such as selection of members, meeting schedules etc was also discussed.

A blend of exercises, examples and practical case studies made the workshop very interactive and participative.



Workshop on Internal Control Systems

FMSF had organized a two day workshop on Internal Control Systems on 22nd and 23rd November, 2012 at Ramee Guestline Hotel, Bengaluru. The workshop was organized for South region Partner organizations and 21 participants participated in the workshop. The resource team from FMSF consisted of Mr. Sanjay Patra - Executive Director, Mr. Hari Krishna Pasupuleti – Programme Manager.



The objective of the workshop was to have good internal Control System in an organization to ensure reliable financial reporting, effective and efficient operations, and compliance with applicable laws and regulations. The learning objectives of the “*Workshop on Internal Control Systems*” were as follows:

- To understand the concept and need of Internal Controls in an organization.
- To understand various types of internal controls with emphasis on Financial Controls.
- To understand the various types of Financial Controls
- To understand risk management
- To understand Policy making and implementation

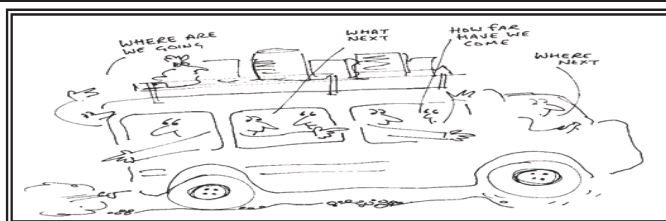
Some of the topics that were dealt with are as follows:

- Understanding Internal Control Systems.
- Understanding Risk
- Identifying Risks And Mapping Roles and Responsibilities of Various Actors in an Organization
- Key Areas of Internal Controls
- Policy Setting

The feedback received from the participants was over whelming with an overall score of 88% on the impact of the workshop.

NPO GOVERNANCE PROGRAMME

(4 MONTHS CERTIFICATE PROGRAMME)



Non-Profit Organization (NPO) Governance Program is a four months online certificate Program which takes the participants systematically through a sustained learning process. The objective of the program is to build capacity and create a facilitative atmosphere of personnel working in the voluntary sector in the area of NPO Governance (includes Voluntary Associations/ Civil Society Organization). Since the program is built on virtual platform, it is open to participants globally.

ELIGIBILITY CRITERIA

- CEOs, Chief Functionaries / Executive Directors of Non Profit Organizations (NPOs).
- Persons working in senior / mid-management level positions in NPOs, Donor / CSR Organizations.
- Individuals serving in the board of Non Profit Organizations.
- Consultants involved in the reviews & evaluation of NPOs.

COURSE FEES

For Applicants from India – **INR 5500**

For Applicants from SAARC countries – **US \$ 135**

For Applicants from other than SAARC Countries – **US \$ 170**

*** Inclusive of 12.36% Service Tax**

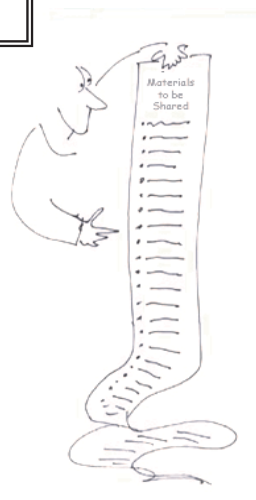
**Classes for Batch 3 has commenced from
July, 2013.**

Registration for Batch 4 is now open.

**Limited Seats
Register Now!!!**

For Details please visit: www.fmsflearningsystems.org or www.fmsfindia.org

Contact us at: ngmp@fmsflearningsystems.org,
purnatoya.nayak@fmsfindia.org



Modules

Module I—NPO
Constitution,
Accountability & Legal
Framework

Module II— NPO
Governance and Board
Issues

Module III— Board
processes and Tools

Module IV— Meeting,
Records, Board Reports
and other Issues

DIPLOMA IN FINANCIAL MANAGEMENT & ACCOUNTABILITY



A Joint initiative of FMSF & TISS



The Diploma in Financial Management & Accountability (DFMA) is a one year diploma program in financial management of the non-profit organizations. The course is open to applicants from all over the world. The course is offered online via the internet.

Ideal for individuals already working in the Voluntary Sector seeking to equip themselves with Financial Management skills as well as for individuals who are seeking to join the Voluntary Sector.

- The entire program is divided into 4 modules. These module are further sub-divided into 8 papers
- Now offered in a flexi-mode with exit option after 6 months
- On completion of first 4 papers, Certificate will be provided and on completion of all 8 papers Diploma will be awarded

*Course Fee		For Indian Applicants	
		Certificate	Diploma
1.	For institutional sponsored candidates	INR 16,292-	INR 25,281
2.	For individual candidates	INR 8,146	INR 16,292
3.	For students	INR 4,073	INR 8,146
For International applicants			
		Certificate	Diploma
4.	For applicants from developed countries	US\$ 843	US\$ 1,685
5.	For applicants from SAARC & other developing countries	US\$ 309	US\$ 618

* Inclusive of Service Tax of 12.36%

Registration for Batch 8 is now open
Limited Seats
Register Now!!!

Please visit: www.fmsflearningsystems.org or www.fmsfindia.org
 Contact us at: coordinator@fmsflearningsystems.org



Financial Management Service Foundation
“ACCOUNTABILITY HOUSE”, A-5, Sector-26, NOIDA 201301
Tel: 00-91-120-4773200, Fax: 00-91-120-4773227
E-mail: fmsf@fmsfindia.org; Web-site: www.fmsfindia.org





FINANCIAL MANAGEMENT SERVICE FOUNDATION

Financial Calendar 2013-14

Month	Income Tax	PF & ESI	TDS	FCRA	Service Tax
APRIL 2013		15 th April- Payment of PF Cont. cum filing of Return of previous month 21 st April-Payment of ESI Cont. of previous month	30 th April-Payment of TDS deducted in previous month		
MAY 2013		12 th May-Filing of ESI Cont. Return for the half year ending on 31.03.2013 15 th May-Payment of PF Cont. cum filing of Return of previous month 21 st May-Payment of ESI Cont. of previous month	7 th May- Payment of TDS deducted in previous month 15 th May-Filing of TDS Return for the Quarter January to March 2013 30 th May-Issue of Certificate for TDS on non salary payments for the Quarter January to March 2013 31 st May-Issue of Certificate for TDS on Salary for the year 2012-13		5 th May- Payment of Service Tax of previous month by Other than Individual/Partnership Firm/LLP 6 th May- Electronic payment of Service Tax through Internet by above
JUNE 2013	15 th June-Payment of Advance Income Tax by Companies (upto 15%of advance income tax payable)	15 th June-Payment of PF Cont. cum filing of Return of previous month 21 st June- Payment of ESI Cont. of previous month	7 th June-Payment of TDS deducted in previous month		5 th June- Payment of Service Tax of previous month by other than Individual/Partnership Firm/LLP 6 th June- Electronic payment of Service Tax through Internet by above
JULY 2013	31 st July-Filing of Income Tax Return by Other than company whose accounts are not required to be audited under any law	15 th July-Payment of PF Cont. cum filing of Return of previous month 21 st July-Payment of ESI Cont. of previous month	7 th July-Payment of TDS deducted in previous month 15 th July- Filing of TDS Return for the Quarter April to June 2013 30 th July-Issue of TDS Certificate for TDS on non salary payments for Quarter April to June 2013		5 th July- Payment of Service Tax of previous month by other than Individual/Partnership Firm/LLP 6 th July-Electronic payment of Service Tax through Internet by above 5 th July-Payment of Service Tax of Quarter ending 30.06.2013 by Individual/Partnership Firm/LLP 6 th July-Electronic payment of Service Tax through Internet by above
AUG 2013		15 th August- Payment of PF Cont. cum filing of Return of previous month 21 st August- Payment of ESI Cont. of previous month	7 th August- Payment of TDS deducted in previous month		5 th Aug- Payment Service Tax of previous month by other than Individual/Partnership Firm/LLP 6 th Aug- Electronic payment of service Tax through Internet by above 31 st Aug- Filing of Service Tax Return for the half year ending on 31.03.2013 (01.10.2012 to 31.03.2013)
SEPT 2013	15 th Sept- Payment of Advance Income Tax by Company (upto 45%of advance income tax payable) 15 th Sept-Payment of Advance Income Tax by Other than Company (upto 30%of advance income tax payable) 30 th September- Filing of Income Tax Return by Company and Other than company whose accounts are required to be audited under any law	15 th September- Payment of PF Cont. cum filing of Return of previous month 21 st September- Payment of ESI Cont. of previous month	7 th September- Payment of TDS deducted in previous month		5 th Sep- Payment of Service Tax of previous month by other than Individual/Partnership Firm/LLP 6 th Sep- Electronic payment of Service Tax through Internet by above
OCT 2013		15 th October- Payment of PF Cont. cum filing of Return of previous month 21 st October- Payment of ESI Cont. of previous month	7 th October- Payment of TDS deducted in previous month 15 th October- Filing of TDS Return for the Quarter July to September 2013 30 th October- Issue of TDS Certificate for TDS on non salary payments for Quarter July to Sept. 2013		5 th Oct- Payment of Service Tax of previous month by other than Individual/Partnership Firm/LLP 6 th Oct-Electronic payment of Service Tax through Internet by above 5 th Oct- Payment of Service Tax of Quarter ending 30.09.2013 by Individual/Partnership Firm/LLP 6 th Oct-Electronic payment of Service Tax through Internet by above 25 th Oct- Filing of Service Tax Return for the half year ending 30.09.2013
NOV 2013		11 th November- Filing of ESI Cont. Return for the half year ending on 30.09.2013 15 th November- Payment of PF Cont. cum filing of Return of previous month 21 st November- Payment of ESI Cont. of previous month	7 th November- Payment of TDS deducted in previous month		5 th Nov- Payment of Service Tax of previous month by other than Individual/Partnership Firm/LLP 6 th Nov-Electronic payment of Service Tax through Internet by above
DEC 2013	15 th Dec- Payment of Advance Income Tax by Company (upto 75%of advance income tax payable) 15 th Dec- Payment of Advance Income Tax by Other than Company (upto 60%of advance income tax payable)	15 th December- Payment of PF Cont. cum filing of Return of previous month 21 st December- Payment of ESI Cont. of previous month	7 th December- Payment of TDS deducted in previous month	31 st December- Filing of Annual Return under FCRA in FC-6 for the year 2012-13	5 th Dec- Payment of Service Tax of previous month by other than Individual/Partnership Firm/LLP 6 th Dec- Electronic payment of Service Tax through Internet by above
Jan 2014		15 th Jan- Payment of PF Cont. cum filing of Return of previous month 21 st Jan- Payment of ESI Cont. of previous month	7 th Jan- Payment of TDS deducted in previous month 15 th Jan-Filing of TDS Return for the Quarter October to December 2013 30 th Jan- Issue of TDS Certificate for TDS on non salary payments for Quarter Oct. to Dec. 2013		5 th Jan- Payment of Service Tax of previous month by other than Individual/Partnership Firm/LLP 6 th Jan- Electronic payment of Service Tax through Internet by above 5 th Jan- Payment of Service Tax of Quarter ending 31.12.2013 by Individual/Partnership Firm" /LLP 6 th Jan- Electronic payment of Service Tax through Internet by above
Feb 2014		15 th Jan- Payment of PF Cont. cum filing of Return of previous month 21 st Feb- Payment of ESI Cont. of previous month	7 th Feb- Payment of TDS deducted in previous month		5 th Feb- Payment of Service Tax of previous month by other than Individual/Partnership Firm/LLP 6 th Feb- Electronic payment of Service Tax through Internet by above
Mar 2014	15 th Mar- Payment of Advance Income Tax by Company (upto 100%of advance income tax payable) 15 th Mar- Payment of Advance Income Tax by Other than Company (upto 100%of advance income tax payable)	15 th Mar- Payment of PF Cont. cum filing of Return of previous month 21 st Mar- Payment of ESI Cont. of previous month	7 th Mar- Payment of TDS deducted in previous month		5 th Mar- Payment of Service Tax of previous month by other than Individual/Partnership Firm/LLP 6 th Mar- Electronic payment of Service Tax through Internet by above 31 st Mar- Payment of Service Tax for the month of March 2014 by Other than Individual/Partnership Firm/LLP 31 st Mar- Electronic payment of Service Tax through Internet by above 31 st Mar- Payment of Service Tax of Quarter ending 31.03.2014 by Individual/Partnership Firm/LLP 31 st Mar- Electronic payment of Service Tax through Internet by above