## ACCOUNTAID CAPSULES

UPTO 14-NOV-2019

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548: CANCELLATION OF 12A REGISTRATION AFTER LOSING FCRA?

This year the FCRA Department has cancelled the registration of 1,807 organisations, mostly for not filing their annual returns. Many of these organisations won’t be affected much as they are probably not receiving any foreign contribution — probably some are even totally inactive.

However, in some cases, this can lead to more hardship. In a little known change, the Income Tax Act now allows the Department to withdraw 12A registration for non-compliance with other laws. FCRA could be viewed as one of the laws. And if 12A registration is cancelled, the Department will have a right to impose tax on accreted value of the charity’s assets (net market value). This could ruin some of the older charities with land or property.

There are two options to deal with this:

1. File an appeal against the 12A cancellation. Loss of FCRA registration is not the end of the road for a charity. It can continue working with non-FCRA funds.
2. Avoid build-up of assets in the organisation — especially land and buildings. Talk to your advisers or auditors about options for this.

There is a third option also. Make sure you don’t lose your FCRA or break any other law. Difficult, but not impossible, if you invest more in accounting, audit and compliance.

Ref.:
1. AccountAid Capsule 537, dated 5-Jul-19
(14-Nov-2019)

547: ANOTHER BOARD EXODUS OVER FCRA AFFIDAVIT?

Applying for FCRA prior-permission, registration or renewal? The FCRA Department will ask you to provide a signed and sworn affidavit from each Board member. You must also provide this if you have a pending application for registration or prior-permission.

The affidavit requires that each Board member confirm there is no violation of FCRA. It also asks the Board members to inform MHA if they come to know of a default by the NGO or a Board member in future.

This is causing quite a flutter among Board members, particularly those who take their responsibilities very seriously. Some are even refusing to sign the required affidavit. Without the affidavit, your application will be rejected.

Therefore, you should speak to your Board members now. Any of them who are unwilling to provide the affidavit should be asked to step down. Others may be appointed in their place, if required.

Ref.:
1. AccountAid Capsule 542, dated 18-Sep-19
2. Amendment to FCRA Rules dated 16-Sep-2019, and affidavit proforma AA.
(13-Nov-2019)

546: CRACKDOWN ON SLUGGISH CSR SPENDING?

In July ’19, the Government modified section 135 to put more pressure on Companies. If and when the modifications become effective, following could happen:
1. Unspent CSR funds at the end the year will be divided into two categories: committed CSR funds and uncommitted CSR funds.
   
a. CSR Funds committed for an ongoing project, but not yet disbursed, should be transferred to a special year-wise bank account by 30th April. This money can then be spent over next three years. If it remains unspent at end of three years, it should be transferred to a Special Schedule VII Fund to be set up by the Government. This transfer should be done by 30th April after completion of three years.
   
b. CSR funds which have not been committed to any project must be transferred to a Special Schedule VII Fund to be set up by the Government. The transfer should be done by 30th September.

2. Companies which don’t comply with above will have to pay a fine ranging from Rs.50,000 to Rs. 25 lakh.

3. Directors and other officers in default may be put in jail for up to three years, or pay a fine ranging from Rs. 50,000 to Rs. 5 lakh.

The last provision regarding jail has led to anguish cries from industry captains. The Government has, therefore, put this on hold, while it works out a more palatable option, without jail terms.

Jail or not, a hardening of CSR provisions is clearly in the air. CSR heads should figure out how to ramp up spending to keep their Board out of trouble.

Ref.:  


(25-Sep-2019)

545: INDIAN COMPANY - FOREIGN SOURCE?

An Indian company can become a foreign source under FCRA in three ways:

1. Foreigners hold more than 50% shares in the company, AND this holding violates FDI norms; or,

2. The Company is a subsidiary of a foreign company; or,

3. The Company is a part of a foreign multinational corporation.

However, there is a school of thought which believe that an Indian company will always be a non-foreign source. This school argues that the 2016 amendment to FCRA exempts even the second category of companies. The school thinks that what was given by the 2016 amendment should be extended to subsidiaries also.

If this interpretation is accepted:

1. All foreign-controlled entities such as Microsoft India, Apple India, Suzuki Motors, and many more will come out of FCRA. They will be free to give money to Indian politicians, bureaucrats, journalists, judiciary, etc. They will also be free to fund NGOs who do not have FCRA.
2. A foreign trust or NGO can set up a 100% owned private limited company in India and contribute, say, Rs. 50 crores as share capital. This company will be free of any restrictions under FCRA. It can support politicians, fund Indian NGOs, and do pretty much whatever it wants without stumbling over FCRA.

3. Even worse — the Chinese could set up an Indian company in this manner, and start manipulating our democracy and political institutions!

Anyone can see that such cannot be the intention of the legislature — certainly not on the watch of the NDA Government. That is why the 2016 amendment was tucked as a proviso into a sub-clause of the definition of foreign source. It was not made in the main definition.

It is also useful to go back to why this change was brought in. A large number of Indian companies, including Infosys, ICICI, HDFC had been asking the government to relax FCRA norms or allow them more time to spend their CSR contribution. These companies were based in India and were controlled by Indians — not by another company sitting in USA, Europe or Japan.

In Sep-15, the Late Mr. Arun Jaitley wrote a letter to MHA endorsing representations from 22 such companies on this issue. MHA circulated a proposed amendment in Dec’15 - this was passed as a Finance Bill in 2016.

Therefore, before you make out that CSR cheque to an Indian NGO, think again. Are you a foreign source? Are you putting your directors at risk? Should you ask your lawyers (or the FCRA Department) for a written opinion first?

And if you are still not sure, why not give your money to an FCRA NGO only? Better safe than sorry!

Ref: 

2. Sec. 2(1)(j)(iii) and (vi) read with sec. 2(1)(g)(ii) of FCRA 2010, as amended by Cl. 233 of Finance Act 2016, read with cl. 217 of Finance Act 2018
5. FCRA tweaked to boost CSR Spend; 3-Apr-16; The Hindu. https://www.thehindu.com/news/national/fcra-tweaked-to-boost-csr-spend/article8427564.ece
7. AccountAid Capsule 466: All Companies in India won't become Indian!, dated 4-Apr-16
8. AccountAid Capsule 453: Political Donations & Foreign Source Definition, dated 30-Dec-15
9. AccountAid Capsule 452: MNCs & Foreign Source Definition, dated 30-Dec-15
544: QUICKER FCRA REPORTING POST HOSPITALISATION

If a government officer suddenly falls ill while abroad, then they can accept emergency aid from a foreign source for hospitalisation, treatment, etc. However, if the total bill for this crosses Rs. One Lakh, they must report this to the FCRA Department within sixty days. The limit of sixty has been reduced to one month, in line with the Act itself.

This restriction also applies to all MPs, MLAs, councillors, Panchayat members, office-bearers of political parties (including those who have never fought an election!), judges, as well as employees of government bodies.

Ref.:
1. Amendment to FCRA Rule 7 w.e.f. 16-Sep-2019
2. Sec. 6 of FCRA 2010.

(18-Sep-2019)

543: FCRA LIMIT ON PERSONAL GIFTS RAISED

Under FCRA rules, if a foreign source gives a personal gift to a political or bureaucrat, etc., then it’s okay so long as the value is below Rs. 25,000. This limit used to be Rs. 1,000 till 2011, when it was raised to Rs. 25,000. This has now been revised to Rs. 1 lakh, with effect from 16-Sep-19.

Just in time to give your friends that nice Mont Blanc Special Edition pen this Diwali. Go ahead — they won’t need FCRA permission this time around!

Ref.:
1. Amendment to FCRA Rule 6A w.e.f. 16-Sep-2019

(18-Sep-2019)

542: TESTING TIMES FOR BOARD MEMBERS OF FCRA NGOS

FCRA Department has made a critical change in FCRA formalities. With this change, every Board Member must submit a sworn and notarised affidavit that the NGO is complying with the provisions of sec. 12(4). And not just that, the Board Members must also inform the MHA if the NGO or any of the Board Members violate sec. 12(4). Of course, they should do so only if they come to know about the violation. However, proving that you did not know can be quite difficult!

What does this mean? Sec. 12(4) covers a number of things:

1. NGO is not fictitious or benami;
2. NGO/Board member has not been prosecuted or convicted for inducing or forcing religious conversions;
3. NGO/Board member has not been prosecuted or convicted for creating communal tension or disharmony;
4. Board member has not been found guilty of diversion or misuse of NGO’s funds;
5. NGO/Board member is not engaged or likely to engage in promoting sedition or violence;
6. NGO/Board member is not likely to use the foreign contribution for personal gains or divert it for undesirable purposes;

7. NGO/Board member has not contravened any of the provisions of this Act;

8. NGO/Board member has not been prohibited from accepting foreign contribution;

9. NGO has undertaken reasonable activity in its chosen field or has prepared a reasonable project for the benefit of the society;

10. Board member has neither been convicted nor prosecuted under any law;

11. NGO/Board members will not use the foreign contribution against the sovereignty and integrity of India;

12. NGO/Board members will not use the foreign contribution against the security, strategic, scientific or economic interest of the State;

13. NGO/Board members will not use the foreign contribution against the public interest;

14. NGO/Board members will not use the foreign contribution against freedom or fairness of election to any Legislature;

15. NGO/Board members will not use the foreign contribution against friendly relation with any foreign State;

16. NGO/Board members will not use the foreign contribution against harmony between religious, racial, social, linguistic, regional groups, castes or communities;

17. NGO/Board members will not use the foreign contribution for inciting offences; and,

18. NGO/Board members will not use the foreign contribution for endangering the life or physical safety of any person.

If all your Board Members agree to sign the affidavit, then you must get down on your knees and thank the heavens.

For as Pope Francis once said: Blessed are those who look into the eyes of the abandoned and marginalized and show them their closeness.

Ref.:

1. Amendment to FCRA Rules dated 16-Sep-2019, and affidavit proforma AA.

541: JAVA UTILITY AVAILABLE FOR ITR-7

If you are ready to file your ITR-7 for FY 2018-19, here is some good news. The Department has uploaded the new utility for ITR-7. You can now go ahead and file it.

Filing early also means you can avoid the uncertainty about new form 10B. However, DO NOT file ITR-7 before filing 10B.

Ref.:

1. AccountAid Capsule 540: File your 10B Audit Report BEFORE Filing ITR-7 dated 9-Aug-19

2. ITR-7 download link https://www.incometaxindiaefiling.gov.in/downloads/incomeTaxReturnUtilities

(18-Sep-2019)
540: FILE YOUR 10B AUDIT REPORT BEFORE FILING ITR-7

Can you file your 10B audit report AFTER filing your ITR-7, so long as both are filed before 30-Sep?

Common sense will tell you that you can. After all, you are filing the report in time, aren’t you?

Well, sadly, common sense doesn’t work all the time. If you file your 10B audit report AFTER filing your ITR-7, the Department will not allow you any tax exemption. It will ask you to pay tax on the entire income.

What if you file both on the same day, but the 10B Audit Report is filed AFTER ITR-7? Not good — unless you want to get into complicated legal arguments.

Therefore, please follow the steps below:

1. Add the auditors online to your income tax account.
2. Auditors upload form 10B for your acceptance.
3. Log into your account, and accept form 10B.
4. Give date of accepting 10B as date of filing 10B in ITR-7. The date of signing form 10B may be different.
5. File your ITR-7 online.
6. E-verify ITR-7 or send signed copy of ITR-V by post to CPC, Bangalore.
7. Go home and relax.

Ref.:
1. Sec. 12A(1)(b) of Income Tax Act, 1961
(9-Aug-2019)

539: LAST CHANCE FOR 16,039 NGOS WHO LOST THEIR FCRA

Over the last few years many NGOs have lost their FCRA due to a simple default. Some had not filed their annual returns. In other cases, their returns had either not reached FCRA office or they were not taken on record. Many came to know of their cancellation only when the banks refused them credit of funds. Some are probably blissfully unaware even on date.

What’s worse, due to FCRA rules, these NGOs cannot also apply again for FCRA Registration for three years from the date of cancellation. They cannot even apply for prior-permission. This is like rubbing salt in their wound.

Heeding their piteous cries, the FCRA Department has decided to give them some relief. Such NGOs can now apply for FCRA registration straightaway. They don’t have to wait for the mandatory three years. And what is really sweet, these NGOs won’t be asked to pay any penalty for uploading the missing annual returns.

However, this is only a one-time exemption. And the exemption window will close on 31 October 2019.

Great! So what are you waiting for? Go and upload your annual FCRA returns straightaway. And then file form FC-3 for registration again.

Ref.:
1. AccountAid Capsule 499: 5,922 FCRA NGOs at Risk, dated 10-Jul-17
2. AccountAid Capsule 403: FCRA Registration of 10,117 NGOs Cancelled, dated 28-Apr-15


4. FCRA Public Notice No. 963913/JS(F)/2017 dated 1-August-2019

(2-August-2019)

538: THE DEVIL IN DETAILS OF SEC. 12AA (FOR RELIGIOUS TRUSTS)

When the present Finance bill is passed, Sec. 12AA will change in a small way on 1 September 2019.
What would this small change mean for churches, ashrams, temples, gurudwara and charities exempt under sec. 12AA?

The Income Tax Department must now check that the religious (or charitable) organisation is compliant with all ‘laws that are material for the purpose of achieving its objects’. How does one do that?

You have to first figure out which laws are ‘material’ for the religious or charitable trust. The Income Tax Act doesn’t provide a list. We are not sure that such a list can be compiled on all-India basis. Activities of charities and religious bodies cover a wide span, across State List, Concurrent List, and possibly even Union List. Religious and charitable societies are on the State list. Trusts themselves are on concurrent list. The objects on which these organisations work are scattered across the lists. All this means there would be hundreds of laws which could be material for a charity or religious trust.

Once the Department has done that, it has to ask the trust to produce all kinds or records, returns filed, permissions taken, and then check whether all this is okay. This could be quite difficult to implement. The 12AA approval could become almost impossible to obtain.

If the approval is granted, the Department has to check compliance every year. It will probably take a simple shortcut — adding another item to audit report in form 10B or 10BB. How will auditors check that there is no adverse order or decree against the charity or religious trust?

What can be done? The requirements are too general. These should be made more specific, to avoid litigation. Firstly, the laws under which compliance is to be checked should be provided as a list. This will help professionals and tax officers focus on what is important.

Secondly, the de-registration should be linked to specific defaults under these laws. Leaving this open would mean that you could lose your 12AA for failure to deduct tax at source; or for not charging GST.

Or because the NGT passed a decree against you for holding a Sammelan on the Yamuna flood plains!

Ref.:  
1. AccountAid Capsule 537, dated 5-Jul-19
2. Clause 7 of Finance Bill Jul 2019:

7. In section 12AA of the Income-tax Act, with effect from the 1st day of September, 2019,—

(i) in sub-section (1),—

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

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

(i) the genuineness of activities of the trust or institution; and
(ii) the compliance of such requirements of any other law for the time being in force by the trust or institution as are material for the purpose of achieving its objects, and may also make such inquiries as he may deem necessary in this behalf; and”;

(ii) in clause (b), after the words “genuineness of its activities”, the words, brackets, figures and letter “as required under sub-clause (i) of clause (a) and compliance of the requirements under sub-clause (ii) of the said clause” shall be inserted;

(ii) in sub-section (4), for the portion beginning with the words “the activities of the trust or the institution” and ending with the words “cancel the registration of such trust or institution”, the following shall be substituted, namely:—

“(a) the activities of the trust or the institution are being carried out in a manner that the provisions of sections 11 and 12 do not apply to exclude either whole or any part of the income of such trust or institution due to operation of sub-section (1) of section 13; or

(b) the trust or institution has not complied with the requirement of any other law, as referred to in sub-clause (ii) of clause (a) of sub-section (1), and the order, direction or decree, by whatever name called, holding that such non-compliance has occurred, has either not been disputed or has attained finality, then, the Principal Commissioner or the Commissioner may, by an order in writing, cancel the registration of such trust or institution”.

(26-July-2019)

537: BREAK A LAW? LOSE YOUR TAX EXEMPTION!

Historically, every Government Department enforces only one or two laws. This helps make sure that no department becomes a Super Enforcer — and also keeps departmental rivalries at bay. This is now changing when it comes to taxation for charities. Some years ago, the Income Tax Department started asking NGOs to provide their FCRA registration number, and report FC receipts separately. This was intended to identify cases where charities were under-reporting their income. This approach has now been taken to an entirely new level.

The Finance Bill presented in Parliament on 5-Jul-2019 proposes changes to sec. 12AA of Income Tax Act with effect from 1-Sep-2019. If these changes are passed by Parliament, then two things will happen:

1. When a charity applies for tax exemption, the Department will check that the charity is complying with ‘any other law’ relevant for ‘achieving its objects’.

2. Once the registration is granted, the Department will have the right to cancel the exemption if the trust ever defaults on compliance under ‘any other law’ relevant for ‘achieving its objects’.

The story doesn’t end here. If a charity’s tax exemption is cancelled, it will also have to pay a lot of tax. 30% of the current market value of its net assets (sec. 115TD). For older charities holding property, this may well be a near-death experience.

And to prepare the ground for this, the new ITR-7 already asks you to provide details of all other registrations and approvals.

So whatever you do, don’t break a law. Any law. And if that’s not practical, keep your Tax Officer in good humour. That might help.

Ref:

1. Clause 7 of Finance Bill Jul 2019:

7. In section 12AA of the Income-tax Act, with effect from the 1st day of September, 2019,—
(I) in sub-section (1),—

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

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

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

(ii) the compliance of such requirements of any other law for the time being in force by the trust or institution as are material for the purpose of achieving its objects, and may also make such inquiries as he may deem necessary in this behalf; and”;

(ii) in clause (b), after the words “genuineness of its activities”, the words, brackets, figures and letter “as required under sub-clause (i) of clause (a) and compliance of the requirements under sub-clause (ii) of the said clause” shall be inserted;

(II) in sub-section (4), for the portion beginning with the words “the activities of the trust or the institution” and ending with the words “cancel the registration of such trust or institution”, the following shall be substituted, namely:—

“(a) the activities of the trust or the institution are being carried out in a manner that the provisions of sections 11 and 12 do not apply to exclude either whole or any part of the income of such trust or institution due to operation of sub-section (1) of section 13; or

(b) the trust or institution has not complied with the requirement of any other law, as referred to in sub-clause (ii) of clause (a) of sub-section (1), and the order, direction or decree, by whatever name called, holding that such non-compliance has occurred, has either not been disputed or has attained finality, then, the Principal Commissioner or the Commissioner may, by an order in writing, cancel the registration of such trust or institution”.

2. ITR 7 for AY 2019-20 (Extract)

Note: All past issues of AccountAid Capsules are available on www.AccountAid.net

(5-July-2019)

536: BREAKTHROUGH ON FILING FORM FC-6E

As mentioned earlier, FCRA Department wants all NGOs to update their Board changes online by 7th July 2019. However, the online form apparently still asks you to file the form only if changes have
reached 50% or more. Some people have also found that the list of their office bearers in FCRA database is incomplete. What to do?

One intrepid NGO wrote to the Department, asking for a solution. They were told to ignore the 50% requirement, and file the changes anyway. This the NGO has done successfully, as follows:

1. They logged into the FCRA website, and chose form FC-6E.
2. The list of existing board members is auto-populated by the FCRA database. This was empty in their case.
3. They navigated to the utility for adding members (the table showing ‘details of changed key functionaries on account of addition/deletion...’). Here the NGO added all their present members as no one’s name showed up on the FCRA records.
4. Nature of change was marked as ‘addition’. Effective date was given as the date when the member was appointed — in some cases this was several decades ago.
5. They were then asked to give reasons for changes. They wrote: ‘As list of members is not showing in form FC-6E, we are submitting list of all the members once again, including the new addition, despite the fact that we are not falling in the 50 percent change criteria.’
6. You can modify your reasons suitably, but don’t forget the add the magic words ‘...despite the fact that we are not falling in the 50 percent change criteria,’ if your changes have not reached 50%.
7. In the remarks column, for the new additions, they chose ‘New Member added’. For others, they wrote ‘Continuing Member’.
8. When they previewed the form, the list of existing members had also filled up magically, showing ‘New Addition’ against each case.
9. They saw everything they had filled, and indeed, it was very good.
10. Being pleased with their work, they hit the ‘final submit’ button. And had a peaceful weekend thereafter.

Want to try this before 7th July? Go ahead. And write to fcra-support@nic.in if you come up with a roadblock.

Ref.:
1. FCRA public notice dated 7-Jun-2019 (F. No. 11/21022/36(0207)/2015-FCRA-II) (copy enclosed)
2. Rule 17A of Foreign Contribution (Regulation) Rules, as amended on 7-Mar-2019:

“17A. Change of designated bank account, name, address, aims, objectives or key members of the association:-

A person who has been granted a certificate of registration or prior permission under section 11 of the Act shall intimate electronically online, within fifteen days, of any change in the following, namely :-...

(iv) Key members of the association if at any point of time such change causes replacement of fifty percent or more of the original key members as reported in the organisation for grant of registration/ prior permission/ renewal of registration under the Act in Form FC-6E.”

3. Form FC-6E (pdf enclosed); Online link for filing
We thank Mr. Suresh Kejriwal, FCA, Kolkata for sharing this update with us. - Ed.

(2-July-2019)

535: UPDATING CHANGES IN OFFICE BEARERS

FCRA Rules call for filing form FC-6E whenever the cumulative change in office bearers (as compared to those on FCRA record) reaches 50%. In some cases, when NGOs have tried to file FC-6E without reaching the 50% threshold, the online utility has rejected the form.

On 7th June 2019, the FCRA Department has come out with a notice, asking all NGOs to update the changes immediately by filing form FC-6E. The notice is quite confusing:

1. It implies that NGOs have been at fault for not filing form FC-6E whenever there was a change in their Board. It doesn’t refer to the 50% threshold or any rule.

2. All NGOs who have not filed form FC-6E for a change in Board, must do so within one month, i.e. 7th July 2019. If they don’t do so, they will be prosecuted under unspecified sections (for a fault they have not committed).

3. There is no mention that NGOs who change their Board members in future must also file form FC-6E, or the time limit for filing.

4. The headline implies that NGOs should seek prior-approval for change in Board members.

In response, many NGOs rushed to file form FC-6E at fcranonline.nic.in. First they found that the form was not active. Later, they found that the form still cannot be filed unless the changes have reached 50% threshold.

NGOs, who are quite confused about FCRA most of the time, are now completely foxed. What should they do?

Here is some advice:

1. Take a deep breath. Don’t panic. Try some Yoga, if necessary.

2. This applies only if you are registered under FCRA or have a current prior-permission.

3. MHA will probably conduct a field enquiry for any additions to the board. Make sure all Board members have impeccable record, and that none are foreigners (PIOs excepted).

4. If in doubt about someone, request him/her to step down, before you file form FC-6E.

5. Wait for the FC-6E utility to be updated so that you can file single person changes also.

6. If there are any changes in your board in future, file FC-6E within 15 days. Don’t get into an argument over whether it is required under rules, Act, etc. What’s the point?

Don’t fret about whether you need prior-approval for Board changes (though the notice implies this). It merely means that you will have to de-board a member if FCRA objects to them.

Ref.:

1. FCRA public notice dated 7-Jun-2019 (F. No. 11/21022/36(0207)/2015-FCRA-II) [copy enclosed]

2. Rule 17A of Foreign Contribution (Regulation) Rules, as amended on 7-Mar-2019:

   “17A. Change of designated bank account, name, address, aims, objectives or key members of the association:-
A person who has been granted a certificate of registration or prior permission under section 11 of the Act shall intimate electronically online, within fifteen days, of any change in the following, namely :

(iv) Key members of the association if at any point of time such change causes replacement of fifty percent or more of the original key members as reported in the organisation for grant of registration/ prior permission/ renewal of registration under the Act in Form FC-6E.”

3. Form FC-6E (pdf enclosed): Online link for filing

(19-Jun-2019)

534: STILL ON RBI WATCHLIST?

Following the Kundankulam agitation, the FCRA Department introduced a new mechanism to restrict flow of funds for programs it considers undesirable. Any donors found supporting such program or supporting organisations which don’t have FCRA are placed on a watchlist. Currently, following donors appear to be on the list:

1. 350.Org
2. Amnesty International, UK
3. Avaaz.org, USA
4. Bertha Foundation, Geneva
5. Bank Information Centre (BIC), USA
6. Catholic Organisation for Relief and Development Aids (CORDAID), Netherland
7. Climate Work Foundation (CWF), USA
8. Compassion International, USA
9. Dan Church Aid (DCA)
10. Danish Institute of Human Rights (DIHR)
11. Danish International Development Agency (DANIDA)
12. Family Federation for World Peace and Unification, South Korea
13. Greenpeace International
14. HIVOS, Netherlands
15. ICCO Stretegische Samenwerking (ICCO), Netherlands
16. Inter Church Peace Council-Pax Christi (IKV-PC), Netherlands
17. Mercy Corps, USA
18. National Endowment for Democracy (NED), USA
19. Open Society Foundation (OSF)
20. Sierra Club Foundation, USA
21. Stichting Greenpeace Council, Netherlands
22. World Movement for Democracy (WMD), USA

Of these 22, eight were placed on the list by UPA. The balance 14 have been added by NDA government. Two (Ford Foundation and Caritas Internationals) were placed on the list for some time, but have since been taken off.

Banks are under RBI instructions to clear any remittances (grants, donations, fees, any payments) from these donors with FCRA Department, before crediting them to the customer’s account. These
instructions cover NGOs, companies, businesses, as well as individuals. This clearance is required even if the NGO already has FCRA registration. Clearance of a remittance can take forever, especially since the FCRA Department is so heavily overworked and understaffed.

Ref:
The above list has been compiled from newspaper reports and informal information. We hold out no warranties as to its accuracy. - Ed.

1. AccountAid Capsule 412: Caveat Donator!, 6-May-15
3. AccountAid Capsule 470 (rev.): Donors on FCRA Watchlist, 19-Jul-16
5. LiveMint: RBI seeks stay on CIC order on foreign donors in FCRA list, 30-Nov-2018; https://www.livemint.com/Industry/9SGYg4mPbtKD8EMamDJjMK/RBI-seeks-stay-on-CIC-order-on-foreign-donors-in-FCRA-list.html

533: FORM FC-4 REVAMPED

The biggest changes are in form FC-4, the annual return for foreign contribution:

11. FC-4 should now provide breakup of spending project-wise. Earlier, this was a consolidated figure.

12. Particulars of all donors, including individuals, even those donating below Rs.20,000 must be given in FC-4. The name of the project for which contribution is received should be mentioned against each donor.

13. Contribution in kind was no longer being reported in FC-4. This has been brought back. Opening, receipts, utilisation and closing balance of contribution in kind should be given for each project.

14. Detailed listing of contribution transferred to other associations should be given along with purpose.

15. Details of foreigners working or associated with NGO as key functionaries, employees or volunteers must now be given in FC-4. Earlier only the total number was required.

16. Other items of information:

- Reasons for land/property lying unused for more than 2 years should be given.
- Summary of investment transactions
- Breakup of unutilised balance (Bank, Cash, Deposits)
• Income from FC projects to be tabulated separately

Overall, this is a major overhaul of the annual return. This will allow the FCRA Department to monitor FCRA-NGOs more effectively. It will also result in more public disclosure.

However, filling up form FC-4 will probably become more complicated. There are no internal cross-checks to reconcile the figures given in FC-4. More errors in reporting are likely.

AccountAid Team

www.AccountAid.net

Ref.:


(25-Mar-19)

532: FORM FC-6 SPLIT INTO FIVE FOR EASIER PROCESSING

Form FC-6 has now been broken up into 5 forms:

1. FC-6A for change of address,

2. FC-6B for change in nature, aims and objects,

3. FC-6C for change in designated FC receipt-cum-utilisation bank account,

4. FC-6D for opening of additional FC utilisation bank account, and

5. FC-6E for cumulative changes in board members of 50% or more.

AccountAid Team

www.AccountAid.net

Ref.:


(25-Mar-19)
Form FC-3 broken up into three forms — FC-3A for registration, FC-3B for prior permission and FC-3C for renewal. Fees for all these forms has been increased:

1. Fees for prior-permission (FC-3B) has been raised from Rs. 1,000 to Rs. 3,000.

2. Fees for registration (FC-3A) has been raised from Rs. 2,000 to Rs. 5,000.

3. Fees for renewal (FC-3C) has been raised from Rs. 500 to Rs. 1,500. Delayed renewal application can now be filed up to one year late, with late fees of Rs. 5,000.

If prior-permission is over Rs. 50 lakh, then audited accounts and annual activity reports for last three years should be filed. This effectively means that NGOs cannot apply for large prior-permissions in the first three years of their existence.

AccountAid Team
www.AccountAid.net

Ref.:


(25-Mar-19)

530: DARPAID, AADHAAR AND PAN UNDER FCRA

The new FCRA rules include modifications related to Aadhaar, Darpan and PAN:

1. Darpan ID of the NGO is now optional for all the forms. However, providing PAN of the NGO is compulsory.

2. Aadhaar number of the key functionaries (all board member) is now optional for all the forms. However, providing their PAN is compulsory.

This solves the legal problem around compulsory furnishing of Darpan/Aadhaar. Yet, this will still help the Department flag cases where two FCRA registration numbers have been allotted against one PAN. As PAN is unique for each person, this will also help identify cases where a person is key functionary in several NGOs.

AccountAid Team
www.AccountAid.net

Ref.: 


(25-Mar-19)

529: NO FREEDOM FROM GST ON MARATHONS

Ever since the huge success of Mumbai Marathon, these events have become a way to promote awareness on issues and raise funds. The charities organising the event charge a registration ‘fee’ from participants or their sponsors. Corporate groups also support the event, in return for having their logos displayed or for becoming sponsors.

Are these events chargeable to GST? Yes - says the Tamil Nadu Authority for Advance Ruling, if the aggregate turnover of the NGO crosses the limit. It does not matter that the proceeds are donated to charity. The application for the ruling was moved by Dream Runners Foundation, which has been organising India’s second largest marathon.

This important ruling will change the way such events are structured and sponsored. If you are planning such an event, do not accept the participation or sponsorship fees yourselves. This should be accepted by the event organiser (for-profit), which can then donate the proceeds to other charities.

AccountAid Team

www.AccountAid.net

Ref:

TNAAR Order No. 6/AAR/201, dated 22.01.2019

AccountAble 153A-153D at www.AccountAid.net

We thank Mr. Aditya Agarwal, CA, for drawing our attention to this ruling. -Ed.

(16-Mar-19)

528(R): CORRECTION - GST REVERSE CHARGE NOT BEING RESTORED

The charging section 9(4) for Reverse Charge Mechanism has also been simultaneously amended. Therefore the withdrawal of exemption has no effect. There are no implications for NGOs or any other entities.

Please ignore capsule 528 released on 30-Jan-2019. Apologies for the confusion!

Ref:

1. Capsule 528: GST Reverse Charge Kicks in Again! released on 30-Jan-19.

2. Capsule 500: No GST on NGOs for Charitable Activities, released on 23-Sept-17
3. Notification No. 8/2017 - Central Tax (Rate) dated 28-Jun-17

4. Notification No. 01/2019 - Central Tax (Rate) dated 29-Jan-19

(30-Jan-19)

528: GST REVERSE CHARGE KICKS IN AGAIN!

Reverse Charge is payable by all (including NGOs) who are already registered for GST. The charge is paid on supplies (goods or services) purchased from vendors who are not registered under GST. You can then claim Input Tax Credit for the amount paid by you under Reverse Charge. It doesn’t have any financial impact on you or on total GST collection. However, it means a lot of paperwork for you. The government also hopes this will push more and more vendors to register for GST.

This mechanism was introduced in Jul’17. However, it was suspended after people complained. The suspension was extended several times, and was set to expire on 30-Sep-19.

Now in a surprise move (just before elections too!), the government has withdrawn the suspension. This means that Reverse Charge kicks in from 1st Feb 2019. And this time there is no exemption even if total supplies from unregistered vendors are below Rs. 5,000 in a day.

This move doesn’t have any financial impact for commercial entities. However, for NGOs which are registered for GST, it is a different story altogether. These NGOs will have to pay reverse charge on ALL purchases from village shops, street vendors, contract labour, etc. They will also have to pay reverse charge on fees and expenses paid to ‘consultant’ employees. Often, the amount paid as reverse charge will be a lot more than the GST payable on output supplies.

The result may be quite perverse: increased cost of charitable activities, even those funded out of grants!

Ref:
1. Capsule 500: No GST on NGOs for Charitable Activities, released on 23-Sept-17

2. Notification No. 8/2017 - Central Tax (Rate) dated 28-Jun-17

3. Notification No. 01/2019 - Central Tax (Rate) dated 29-Jan-19

(30-Jan-19)

527: DARPAID ID IS OPTIONAL AGAIN

The FCRA Department has now completed its rethink on Darpan ID. NGOs no longer need to obtain or quote their Darpan ID for any FCRA services.

They can now file their FC-4 without Darpan. They can even apply for FCRA permission, registration or renewal without getting the Darpan ID.

However, if an NGO already has Darpan ID and wants to flaunt it, it can continue doing so for getting government funds, or even for FCRA services.

Ref:
1. **Capsule 526: Open Sesame - File your FC-4 without Darpan ID**, released on 3-Jan-19

2. **Capsule 525: Last Date for Filing FC-4 Extended to 31-March-2019**, released on 29-Dec-18

3. **Capsule 524: Unable to file FC-4 due to Darpan ID?** released on 28-Dec-18

4. **Capsule 522: Filing FC-4 without Darpan ID?** released on 25-Dec-18

5. **Capsule 521(R): FC-4, Darpan ID and 1 lakh penalty!** released on 14-Dec-18

6. **Capsule 505: Unique Darpan ID Must for FCRA NGOs**, released on 8-Oct-17

7. 'After a year, Home Ministry relaxes mandatory norm for NGOs getting foreign fund': Economic Times, 17-Jan-2019

8. **FCRA Public Notice No. II/21022/58(370)/2018-FCRA(MU) dated 15-Jan-19**

(18-Jan-19)

**526: OPEN SESAME - FILE YOUR FC-4 WITHOUT DARPAN ID**

Responding to difficulties faced by NGOs, and the lobbying efforts of organisations such as VANI and NITI Ayog, FCRA Department has now opened the FC-4 filing window without Darpan ID.

So if you are waiting for your Darpan ID to file FC-4, don't wait any longer. Simply go ahead and file your FC-4. Immediately. Before they change their mind again!

And have a Happy New Year as well!!

Ref:
1. **Capsule 525: Last Date for Filing FC-4 Extended to 31st March 2019** released on 29-Dec-18

2. **Capsule 524: Unable to file FC-4 due to Darpan ID?** released on 28-Dec-18

3. **Capsule 522: Filing FC-4 without Darpan ID?** released on 25-Dec-18

4. **Capsule 521(R): FC-4, Darpan ID and 1 lakh penalty!** released on 14-Dec-18

We gratefully acknowledge CA Martin Pinto's help in alerting us to this development promptly. - Ed.  

(3-Jan-19)
Rejoice! For the FCRA Department has just sent out the following SMS to NGOs:

“Considering the requests from different associations, last date for filing online Annual Returns for FY 2017-18 under FCRA, 2010 has been extended to 31.03.2019.”

However, if you have already prepared your FC-4, please file it. This year will surely go down in history as a record year for shifting deadlines, whether tax, FCRA or ROC!

Ref:
1. **Capsule 524: Unable to file FC-4 due to Darpan ID?** released on 28-Dec-18
2. **Capsule 522: Filing FC-4 without Darpan ID?** released on 25-Dec-18
3. **Capsule 521(R): FC-4, Darpan ID and 1 lakh penalty!** released on 14-Dec-18

(29-Dec-18)

### 524: UNABLE TO FILE FC-4 DUE TO DARPAN ID?

Some NGOs are finding it difficult to file FC-4 online, due to problems of linking their FCRA account with Darpan ID. If you are one of the unfortunate few (or many), please consider following steps:

1. Send an email to support-fcra@gov.in explaining that you are not able to link your Darpan ID to your FCRA account:
   1. Due to an apparent database error, or,
   2. Because it has not yet been allotted, or,
   3. Because you have not been able to complete the Darpan ID process.

2. If you have already applied or obtained Darpan ID, send an email to NGO Darpan people at ngo@india.gov.in explaining the problem. You can also send them a message through their web-site (https://ngodarpan.gov.in/index.php/home/contact). If this doesn’t work, you can try calling up on 011-23042707 or 011-23042326.

3. Prepare a paper copy of FC-4, with all attachments, and keep it ready. If the problem is not resolved today or tomorrow, make sure you send the paper copy by registered post (speed post) to FCRA Department on 31-Dec-2018, with a covering letter explaining that you have not been able to file the return online due to problems in linking the FCRA account with Darpan ID. Make sure you download and keep a copy of the delivery record.

4. Please use the following address - write ‘For FCRA Wing’ on the top of the envelope in bold letters:

   Secretary to Government of India  
   Ministry of Home Affairs  
   FCRA Wing, 1st Floor, Major Dhyan Chand National Stadium,  
   Near Pragati Maidan, New Delhi-110001
There is some talk that the last date of FC-4 filing may be extended. However, as there is no confirmation of this yet, please follow the above steps. This would help you build a case to avoid the penalty of Rs. 1 lakh or more for late filing of FC-4.

Ref:

2. Capsule 518: No FC-4 Without Darpan? released on 26-Oct-18
3. Capsule 508: Clarification of Darpan & FC-4 released on 15-Dec-17
4. Capsule 507: No Darpan, No FC-4!! released on 15-Dec-17
5. Capsule 505: Unique Darpan ID Must for FCRA NGOs released on 8-Oct-17
6. MHA public notice dated 4-Oct-2017 (read here)

(28-Dec-18)

523: DIDN’T FILE TAX FORMS 9A OR 10 IN TIME?

All NGOs claiming carry-forward of unspent income in ITR-7 must file form 9A or form 10. Beginning FY 15-16, this form must be filed online by the due date for filing ITR-7. If the form is not filed online in time, you cannot claim a carry-forward and may have to pay tax and interest on the shortfall. In the past few months, many NGOs have realised that they forgot to file the form, and may be asked to pay huge amounts of tax.

This (and some other defaults) can be condoned by the Commissioner of Income Tax under sec. 119(2) (b). An old CBDT circular (273 dated 3-Jun-1980, enclosed) allows Commissioners to do so in deserving cases. However, as the provisions have changed since then, officers in some circles have been declining such applications.

In a major relief, the CBDT has now come out with a new circular (7 dated 20-Dec-2018, enclosed). This allows all commissioners to admit belated applications of form 9A and form 10. However, three conditions must be met:

1. The case should be related to FY 2015-16.
2. The NGO should have been prevented by reasonable cause from filing form 9A or form 10.
3. In case of form 10, the NGO should have invested the funds in modes list in sec. 11(5) of Income Tax Act.

So if you are facing such a situation, go ahead and file form 9A or 10 online immediately. And though the circular doesn’t say so, file an application under sec. 119(2)(b) with the Commissioner for condonation of delay in filing the form.

Ref.

1. Capsule 457: Revised Form 10 for Long Term Project released on 1-Jan-16
2. Capsule 456: Form 9A for Carry Forward of Unused Income on 1-Jan-16
3. CBDT Circular 273 dated 3-Jun-1980
4. CBDT Circular 7 dated 20-Dec-2018
522: FILING FC-4 WITHOUT DARPAN ID?

In 2017, FCRA Department asked all FCRA-registered NGOs to get Darpan ID. Initially, this was required for applying for FCRA registration, prior-permission or renewal. This year, it has been made compulsory for filing FC-4 as well. Most NGOs have complied with this administrative directive, even though FCRA law and rules do not mention anything of the sort.

To get Darpan ID, you also have to fill up details of at least three office bearers. Mandatory details include providing the Aadhaar number of the office bearers. With all the controversy surrounding Aadhaar, many people are leery of giving this information. There are also doubts whether this is legally valid, as the Supreme Court has allowed use of Aadhaar ID in limited situations only.

Now in a recent case before High Court of Delhi, the Honourable Judge has allowed Rajiv Gandhi Charitable Trust to file their FC-4 offline in paper form - without obtaining Darpan ID. The Court has also issued a notice to the FCRA Department asking for their views on compulsory seeking of Aadhaar number. Next hearing is scheduled for 8-Feb-2019.

Till then, enjoy your holidays - if you’ve already filed your FC-4 online, after linking it with your Darpan ID. And if your trustees don’t want to link their Aadhaar with your Darpan ID, you know whose door to knock!

Ref:

2. Capsule 508: Clarification of Darpan & FC-4 released on 15-Dec-17
3. Capsule 507: No Darpan, No FC-4!! released on 15-Dec-17
4. Capsule 505: Unique Darpan ID Must for FCRA NGOs released on 8-Oct-17
5. MHA public notice dated 4-Oct-2017 (read here)
6. News article: Delhi HC Allows Rajiv Gandhi Charitable Trust To File FCRA Annual Returns Offline, Without Aadhaar Linking... dated 17-Dec-18

521 (REV.): FC-4, DARPAN ID AND 1 LAKH PENALTY!

Have you tried filling up FC-4 recently? You won’t be able to get past the opening screen unless you have linked your FCRA account with the Darpan ID.

And if you don’t file your FC-4 by 31-December-2018, you will have to pay a penalty of at least Rs. 1 lakh. It could be more if your FC receipts (donations and interest) are more than Rs. 20 lakh.

If you’ve not already applied for Darpan ID, do so immediately. According to Darpan ID Team, it takes them a minimum of 48 hours and a maximum of one week to process. However, some NGOs have reported waiting time of three months to get the Darpan ID. So hurry, please.
If you've already applied some time ago, but have not received it as yet, you may be in trouble. Try sending an e-mail to Darpan ID people at ngo@india.gov.in. You can also send them a message through their web-site (https://ngodarpan.gov.in/index.php/home/contact). If this doesn't work, you can try calling up on 011-23042707 or 011-23042326.

Remember that both Darpan and FCRA sites will witness heavy traffic in the last week of December. So don't wait for Christmas holidays - file your return now!

Ref:

We thank Mr. Wilson D'Souza - Mark D'Souza & Co., Bangalore for drawing our attention to contact details of DARPAN Portal.

(14-Dec-18)

520: FCRA OF 156 NGOS SUSPENDED

In December 2017, the FCRA Department issued a public notice asking NGOs to open or shift their bank accounts with banks integrated with the Public Financial Management System (PFMS) within one month of issue of notice. By June 2018, most NGOs had complied. Remaining NGOs were served a show-cause notice.

The FCRA Department has now come out with an order suspending FCRA of 156 NGOs for not complying with the orders. Their FCRA has been suspended for a period of 180 days. The list is enclosed in PDF format.

During the suspension period, the NGOs can not withdraw or deposit any foreign contribution in their bank accounts. Donor agencies funding these NGOs should not disburse any more funds till the FCRA registration is restored.

It also seems that some of these have already changed the bank, though the details have not been updated in FCRA database.

In case you have already migrated to a PFMS compliant bank and your name still appears on the list, please send an e-mail to support-fcra@gov.in enclosing proof of bank letter.

If you have not yet migrated, you can still do so, and then request FCRA Department to restore your FCRA.

Ref:

1. FCRA order dated 06-Dec-2018 (read here)
2. List of 156 NGOs (read here)
3. FCRA public notice dated 21-Dec-2017
4. ‘ Capsule 513: FCRA-approved Banks Grow to 53…’ released on 22-Feb-2018
5. 'Capsule 512: Fab Forty-Six FCRA banks!' released on 06-Feb-2018
6. 'Capsule 511: Super 36: FCRA-approved Banks' released on 11-Jan-2018
8. Updated List of FCRA Compliant Banks

(13-Dec-18)

519: 1,775 NGOS COULD LOSE THEIR FCRA...

In May 2017, the FCRA Department issued a public notice asking 18,523 NGOs to submit missing annual returns online from 2010-11 to 2014-15 without payment of any penalty.

In April 2018, the FCRA Department issued another notice asking 3,292 NGOs to submit missing annual returns. However, many NGOs still haven’t complied with the directive issued by the FCRA Department.

In November 2018, the FCRA Department has now come out with a show cause notice directing 1,775 NGOs to explain why should their FCRA not be cancelled. Last date for this is 1-Dec-18.

In case your name (or that of a loved one) appears on the list, send a letter to MHA explaining why the return was missing.

In case you have already submitted the annual returns and your name still appears on the list, please send an e-mail to support-fcra@gov.in enclosing proof of submission along with annual return.

Ref:
1. FCRA show cause notice dated 16-Nov-2018 (read here)
2. FCRA notice dated 26-Apr-2018 (read here)
3. FCRA public notice dated 12-May-2017 (read here)
4. 'Capsule 497: Get your FCRA cancelled - without any effort!' released on 1-Jun-2017
5. 'Capsule 495: Upload Missing FC Returns or Face Cancellation' released on 25-May-2017
6. 'Capsule 494: Upload Your Missing FC Returns on FCRA Web-site or...' released on 13-May-2017

(20-Nov-18)

518: NO FC-4 WITHOUT DARPAN?

In Oct 2017, the FCRA Department issued a circular asking all NGOs to get Darpan ID for using the FCRA portal, including for filing FC-4 and FC-6.

However, the change was not implemented fully. Darpan ID was needed only for form FC-3 (registration, prior-permission or renewal).

This seems to have changed now. Some NGOs have reported difficulties in filing FC-4 without providing a Darpan ID. The last date for FC-4 is 31st December.
Getting a Darpan ID can take just four days or as much as four months, depending on how many applications are filed.

Therefore, if you don’t already have a Darpan ID, get one now at ngodarpan.gov.in, before the rush of applications for Darpan chokes up the system again.

Ref. Notice dated 4-Oct-2017 (read here)

(26-Oct-18)

517: FCRA MUST FOR ALL LIAISON OFFICES?

MHA to Regulate Foreign Charities in India

MHA has been asking for more control over liaison offices of INGOs and Donor Agencies since at least 2016. It seems that they now have their wish.

Effective 31-August-2018, FEMA rules for granting permission for liaison offices have been revised. Accordingly, if an INGO or Donor agency is engaged in any activity covered by FCRA, they must go to FCRA Department for registration — not to RBI. Form FNC for liaison / branch office permission has also been revised — all entities (whether for-profit or not-for-profit) must give an undertaking that they will not take up any activities (in India) covered by FCRA. (See amended notification here - FEMA_LOBO_Regulations_2018-Amended.pdf)

What does this mean? The modification may be interpreted literally by MHA and RBI, which would mean that any INGO or Donor agency engaged in CREES in its homeland must get FCRA permission to set up an office in India, even if India office is not into these activities directly. Or it may be read substantively, which would mean that only liaison offices doing direct program activities in India would need FCRA registration.

And how would this work? Will FCRA Department change its long-standing policy and give INGOs FCRA registration in India? Or will it use the provision to simply say ‘NO’ to most INGOs who apply?

Finally, will this apply to existing offices also or only to prospective applicants? Again, a literal reading would give the impression that only prospective applicants are covered. However, that may not serve the policy objectives of the government, so far as foreign influence on ‘social discourse’ is concerned.

In which case, all liaison offices should keep an eye, like Damocles, on the sword hanging over their head by a hair!

Ref.:
1. Foreign Exchange Management Regulations 2016 (RBI Notification No. FEMA 22(R)/2016-RB dtd. 31-Mar-16; as amended by RBI Notification No. FEMA 22(R)(1)/2018-RB dtd. 31-Aug-18)
2. NGOs violating FCRA seek refuge by invoking FEMA registration, Home Ministry wants the option closed (Economic Times, 29-Aug-2016;
3. Abbreviations:-

(24-Oct-18)
516: GST ON TRAINING
NGOs registered under GST have to deposit GST on residential training courses, held on own campus. These are mostly sponsored by another organisation (client). Should the NGO charge CGST+SGST or IGST on these? There can be three situations:

1. The ‘client’ is registered under GST and their address is in a different state than yours. In such cases, place of supply is client’s home state. You should charge IGST.
2. The ‘client’ is registered under GST and their address is in the state as yours. In such cases, place of supply is client’s home state. You should charge CGST+SGST.
3. The ‘client’ is not registered under GST. In such cases, place of supply is state where training takes place, i. e. your home state. You should charge CGST+SGST.

If you make a mistake, you will have to deposit the GST again while your refund claim remains stuck in the GST system. Make sure you charge GST correctly. Check with your auditors if in doubt. Also check with them if not in doubt!

(22-Aug-18)
515: HEFTY COMPOUNDING FEES UNDER FCRA
The FCRA Department has notified new rates of compounding fees for a number of old and new offences. With this notification, the rather lenient regime of late filing fees for FC-4 (and penalties for accepting FC without permission) has been scrapped.

If you pay the compounding fees, the Department will agree not to file a case against you. However, don’t make a habit of this - you can go for compounding a particular type of offence only once in three years.

In brief:
1. Rs. 10,000 for bureaucrats, judges, etc. who enjoy foreign hospitality without permission
2. Rs. 1 lakh or 10% for NGOs passing on foreign contribution to other NGOs without registration or permission
3. Rs. 1 lakh of 5% for NGOs spending more than 50% on administration
4. Rs. 1 lakh or 10% for NGOs accepting foreign contribution without registration or permission
5. Rs. 1 lakh or 5% for NGOs depositing foreign contribution in the wrong bank account
6. Rs. 1 lakh or 2% for NGOs depositing local contribution in the FCRA bank account
7. Rs. 1 lakh or 3% for banks who don’t report foreign contribution received in customer accounts
8. Rs. 1 lakh or 5% for NGOs who don’t file FC-4 or FC-1 by due date
9. Rs. 1 lakh or 5% for NGOs who don’t keep their FCRA records properly

In all cases, the higher of the two amounts apply. For example, if you deposit Rs. 1 lakh of local funds in the FCRA account, the penalty will be Rs. 1 lakh or 2% of the amount, whichever is higher.

In some cases, an NGO may commit multiple violations for a grant. In such cases, penalties will be charged separately for each of the offences. The Department has said that the penalties will not add up to more than 100% of the donation.

Where the NGO has already spent the foreign funds, it may have to borrow money from a bank to pay the fine. And if you’re worried about going bankrupt with these hefty fines, you can approach the Insolvency and Bankruptcy Board to frame a scheme for relief!

Ref:
1. MHA Notification No. S.O. 2291(E) dated 5-June-2018
2. Sections 6, 7, 8, 11, 17, 18, 19, 35, 37, 41 of FCRA 2010.

(8-June-18)

514: SPREADING CHARITY ABROAD: TATA HALL AT HARVARD BUSINESS SCHOOL

According to news reports, some well-known Indian charitable trusts have made grants of about Rs. 325 crores to Harvard Business School for constructing a building named in the honour of an alumnus. The grants were made around 2011-13, and have been subjected to the scrutiny of a Parliamentary panel. One of the issues that the panel wants clarity on is whether charity funds can be donated to organisations abroad.

The law on this is clear AND confusing. It is clear that charitable funds should generally be 'applied' within India. If you 'apply' charity funds abroad, this must be approved in advance by CBDT. For trusts created after 1952, there is an additional requirement: the application should promote international welfare in which India is interested.

What is confusing is the word 'applied'. For application in India, should the payment be made in India or the benefit must be received within India? Again, is it okay to give scholarship to an Indian studying abroad? Similarly, is it okay to give scholarship to a foreigner studying in India? Court judgments on this have not laid down any principles - the decisions have been based more on facts.

If this matter goes to courts, it could bring more clarity for all of us. It could even lead to an amendment allowing Indians to be charitable abroad also. If that happens, charity will no longer remain at home — and Vasudev Kutumbkam could eventually become more than a phrase!

Ref:
Since the FCRA Department launched its PFMS drive, 53 banks have become PFMS-compliant. PFMS stands for Public Financial Management System:

1. Abu Dhabi Commercial Bank
2. Allahabad Bank
3. Allahabad UP Gramin Bank
4. Andhra Bank
5. Andhra Pragathi Grameena Bank
6. Axis Bank
7. Bank of Baroda
8. Bank of India
9. Bank of Maharashtra
12. Canara Bank
13. Catholic Syrian Bank Ltd.
14. Central Bank of India
15. Citibank
16. City Union Bank Ltd
17. Corporation Bank
18. DCB Bank Limited
19. Dena Bank
20. Deutsche Bank
21. Dhanlaxmi Bank Ltd
22. HDFC Bank Ltd
23. HSBC
24. ICICI Bank Ltd
25. IDBI Bank Ltd
26. Indian Bank
27. Indian Overseas Bank
28. Indusind Bank Limited
29. Karnataka Bank
30. Karur Vysya Bank
31. Kotak Mahindra Bank
32. Madhya Bihar Gramin Bank
34. New India Co-Operative Bank Ltd
35. Oriental Bank of Commerce
36. Punjab And Sind Bank
37. Punjab National Bank
38. South Indian Bank
39. Standard Chartered Bank
40. State Bank of India
41. Syndicate Bank
42. Tamilnad Mercantile Bank Ltd
43. The Cosmos Co-Operative Bank Ltd.
44. The Federal Bank Ltd
45. The Jammu And Kashmir Bank Ltd
46. The Ratnakar Bank Ltd
47. The Saraswat Co-Operative Bank Ltd
48. The Shamrao Vithal Co-Operative Bank Limited
49. UCO Bank
50. Union Bank of India
51. United Bank of India
52. Vijaya Bank
53. Yes Bank Ltd

FCRA-holders / prior-permission holders can maintain their FCRA bank accounts with any one of these. This applies to designated as well as utilisation bank accounts. If you change your bank account, then you must file form FC-6 online within 15 days, with details of the new bank account.

Once you migrate to a PFMS-compliant bank, FCRA Officers will be able to monitor what goes on in your FCRA bank account. Even if it is with PNB!

Ref:
1. List of Banks integrated with PFMS [https://fcraonline.nic.in/fc_bank_list.aspx](https://fcraonline.nic.in/fc_bank_list.aspx)
2. AccountAid Capsule 512: Fab Forty-Six FCRA Banks! sent on 6-Feb-18
3. AccountAid Capsule 511: Super 36: FCRA-approved Banks sent on 11-Jan-18
4. AccountAid Capsule 509: Migrate to PFMS-Compliant FCRA Bank. Now! sent on 22-Dec-17

(22-Feb-18)

512: FAB FORTY-SIX FCRA BANKS!

Since the FCRA Department launched its PFMS drive, more banks have become PFMS-compliant. PFMS stands for Public Financial Management System. The latest list includes 46 banks:

1. Abu Dhabi Commercial Bank
2. Allahabad Bank
3. Allahabad Up Gramin Bank
4. Andhra Bank
5. Axis Bank
6. Bank Of Baroda
7. Bank Of India
8. Bank Of Maharashtra
11. Canara Bank
12. Catholic Syrian Bank Ltd.
13. Central Bank Of India
14. Citibank
15. City Union Bank Ltd
16. Corporation Bank
17. DCB Bank Limited
18. Dena Bank
19. Deutsche Bank
20. Dhanlaxmi Bank Ltd
21. HDFC Bank Ltd
22. ICICI Bank Ltd
23. IDBI Bank Ltd
24. Indian Bank
25. Indian Overseas Bank
26. IndusInd Bank Limited
27. Karur Vysya Bank
28. Kotak Mahindra Bank
30. Oriental Bank Of Commerce
31. Punjab National Bank
32. South Indian Bank
33. Standard Chartered Bank
34. State Bank Of India
35. Syndicate Bank
36. Tamilnad Mercantile Bank Ltd
37. The Cosmos Co-Operative Bank Ltd.
38. The Federal Bank Ltd
39. The Jammu And Kashmir Bank Ltd
40. The Ratnakar Bank Ltd
41. The Saraswat Co-Operative Bank Ltd
42. UCO Bank
43. Union Bank Of India
44. United Bank Of India
45. Vijaya Bank
46. YES Bank Ltd
FCRA-holders / prior-permission holders can maintain their FCRA bank accounts with any one of these. This applies to designated as well as utilisation bank accounts. If you change your bank account, then you must file form FC-6 online within 15 days, with details of the new bank account.

And watch your step in future - FCRA Officers will be keeping a vigilant eye on what goes on in your PFMS-compliant FCRA bank account!

Ref:
1. List of banks integrated with PFMS
Website: [https://fcraonline.nic.in/fc_bank_list.aspx](https://fcraonline.nic.in/fc_bank_list.aspx)
2. AccountAid Capsule 511: Super 36: FCRA-approved Banks sent on 11-Jan-18
3. AccountAid Capsule 509: Migrate to PFMS-Compliant FCRA Bank. Now! sent on 22-Dec-17

(6-Feb-18)

**511: SUPER 36: FCRA-APPROVED BANKS**

FCRA Department has been trying to get all banks with FCRA accounts to become PFMS-compliant. PFMS stands for Public Financial Management System. This allows the FCRA Department to directly monitor transactions in FCRA bank accounts (see tweet by @fcra2010 on 15-Dec-15).

However, many banks did not migrate to PFMS as planned. Therefore, FCRA Department decided to play hardball. On 21st December, it published a list of 32 banks which are PFMS-compliant. Later on at least four other banks have been approved.

Following is the updated list of banks approved by FCRA Department as PFMS-compliant:

1. Abu Dhabi Commercial Bank
2. Allahabad Bank
3. Allahabad UP Gramin Bank
4. Andhra Bank
5. Axis Bank
6. Bank of Baroda
7. Bank of India
8. Bank of Maharashtra
10. Canara Bank
11. Catholic Syrian Bank Ltd.
12. Central Bank of India
13. City Union Bank
14. Corporation Bank
15. Cosmos Co-Operative Bank
16. DCB Bank Ltd.
17. Dena Bank
18. HDFC Bank
19. ICICI Bank
20. IDBI Bank  
21. Indian Overseas Bank  
22. IndusInd bank Limited  
24. Karur Vysya bank  
25. Kotak Mahindra Bank  
26. Manipur State Co-op Bank  
27. Oriental Bank of commerce  
28. Punjab National Bank  
29. South Indian Bank  
30. Standard Chartered Bank  
31. State Bank of India  
32. Syndicate Bank  
33. Tamilnad Mercantile Bank Ltd.  
34. UCO Bank  
35. Vijaya Bank  
36. Yes Bank  

All FCRA-holders / prior-permission holders should keep their FCRA bank accounts with one of these. They have been given time till 21-Jan-18 to migrate to these. The requirement applies to designated as well as utilisation bank accounts.

To change your designated bank, follow these steps:
1. Open a new bank account with a PFMS-compliant bank.
2. File form FC-6 online for the new bank account, reporting it as the new designated FCRA bank.
3. After filing FC-6 online, make a cheque from your existing designated FCRA bank in favour of the organisation. The amount of the cheque should be all the FCRA funds in the old bank account.
4. Deposit the cheque in your new FCRA bank.

If you are changing a utilisation bank, then you will need to transfer the funds to your designated account, whether new or old. To change your utilisation bank, follow the steps below:
1. Open a new bank account with a PFMS-compliant bank.
2. File form FC-6 online for the new bank account, reporting it as a new utilisation FCRA bank.
3. After filing FC-6 online, make a cheque from your existing utilisation FCRA bank in favour of the organisation. The amount of the cheque should be all the FCRA funds in the old utilisation bank account.
4. Deposit the cheque in your designated FCRA bank.

If you face any difficulties in filing multiple FC-6 online, please send an email from your official email ID to support-fcra.gov.in, mentioning your FCRA registration number and the problem you are facing.

Ref.:  
2. AccountAid Capsule 509, dated 22-Dec-2017

We thank Mr. Suresh Kejriwal, FCA and Br. Geoff, MC, Kolkata for sharing bank approval letters with us. - Ed.

(11-Jan-18)

510: SECRETS OF FILING FC-1 ONLINE

NGOs receiving contribution in kind (articles, gifts, etc.) from foreign source must file form FC-1 online by 31-December each year. However, many people find the form FC-1 interface confusing. Here's a short guide to filling it online:

1. Get a jpg file of the Chief Functionary's signature (140x60 pixels, less than 50KB).

2. Go online to fcraonline.nic.in. Select and click on form FC-1 from the left hand column.

3. Select 2nd option: 'Online Filing for giving Intimation about Foreign Contribution by way of (Articles) from relative by an individual' from the four options.

4. Give the NGO's name as applicant, and its contact details in information about recipient. Fill your FCRA registration / prior-permission details. Fill up information about articles received - a separate form is required for each type of article. Donor's name and address should also be given in this section. Remember to upload the jpg signature file before submitting.

5. Remember to save a pdf copy of the FC-1 submission for your record.

(28-Dec-17)

509: MIGRATE TO PFMS-COMPLIANT FCRA BANK. NOW!

FCRA Department has been trying to get all banks with FCRA accounts to become PFMS-compliant. PFMS stands for Public Financial Management System. This allows the FCRA Department to directly monitor transactions in FCRA bank accounts (see tweet by @fcra2010 on 15-Dec-15).

However, many banks have not migrated to PFMS as planned. Therefore, FCRA Department has decided to play hardball.

It has now published a list of 32 banks which are PFMS-compliant:

1. Abu Dhabi Commercial Bank
2. Allahabad Bank,
3. Allahabad UP Gramin Bank
4. Andhra Bank
5. Axis Bank
6. Bank of Baroda
7. Bank of Maharashtra
8. Bombay Mercantile Co-operative Bank Ltd.
9. Canara Bank
10. Catholic Syrian Bank Ltd.
11. Central Bank of India
12. City Union Bank
13. Corporation Bank
14. Cosmos Co-Operative Bank
15. DCB Bank Ltd.
16. Dena Bank
17. HDFC Bank
18. ICICI Bank
19. IDBI Bank
20. IndusInd bank limited
22. Karur Vysya bank
23. Manipur state Co-op Bank
24. Oriental Bank of commerce
25. Punjab National Bank
26. South Indian Bank
27. State Bank of India
28. Syndicate Bank
29. Tamilnad Mercantile Bank Ltd.
30. UCO Bank
31. Vijaya Bank
32. Yes Bank

All FCRA-holders / prior-permission holders must now keep their FCRA bank accounts with one of these. They have been given time till 21-Jan-18 to migrate to these. They should then file form FC-6 with details of the new bank account.

The requirement applies to designated as well as utilisation bank accounts.

Ref.:

We thank Mr Suresh Kejriwal, FCA for drawing our attention to this circular. - Ed.

(22-Dec-17)

508: CLARIFICATION ON DARPAN AND FC-4

According to FCRA notification of 4th October 2017, Darpan ID is must for using FCRA online services, including filing of annual returns. However, this rule has not been fully enforced yet.
When you login to file FC-4, a window pops up asking for your Darpan ID. If you don’t have a Darpan ID, you can simply click on ‘Close’ at the bottom of the screen. You can then file your FC-4 for 16-17, without giving the Darpan ID.

Still, this small relief should not stop you from going to Darpan web-site and getting your ID on war-footing!

Reference:

1. Capsule 505: Unique Darpan ID must for FCRA NGOs
2. Capsule 507: No Darpan, No FC-4!!

(18-Dec-17)

507: NO DARPAN, NO FC-4!!

All NGOs/organisations registered with FCRA department are required to obtain a unique Darpan ID, failing which they will not be able to file FC-4 return. NGOs/organisations can obtain Darpan ID by logging onto http://ngodarpan.gov.in. As it takes up to one month to get the ID allotted, you should register on Darpan site as quickly as possible.

Or miss the 31-Dec deadline for filing your FC-4 this year!

Ref:

1. Capsule 505: Unique Darpan ID must for FCRA NGOs

(15-Dec-17)

506: CHANGES PROPOSED IN FORM 10A OF INCOME TAX

Most NGOs must register under sec. 12A for getting exemption from Income Tax. Earlier this year, the government inserted a new clause in this section. Now if an NGO changes / adds to its objects clause, then it must apply for re-validation of its 12A registration within 30 days. If this is not done, the NGO can not claim exemption from tax. This change is effective from assessment 2018-19, which means it is effective for financial year 2017-18 as well. However, the required changes in rules were not made.

The CBDT is now making these changes. And curiously it has invited suggestions from public before the changes are notified. You can also send your comments to CBDT at dirtpt1@nic.in by email. This must be done by 27th Oct-17. The main changes are:

1. Form 10A must be filed online.
2. It must be signed digitally or verified using an OTP.
3. NGO must say whether they are charitable, religious or both.
4. NGO must also specify the sector of charitable work (education, medical relief, yoga, general public utility etc.). this will help the department check compliance with the limits on business activities under section 2(15) of the Act.
5. Aadhaar numbers of the trustees / office bearers should be given, in addition to their PAN.
6. Chief Functionary’s mobile number and email id should also be provided.
7. If the NGO is registered under FCRA, then the registration number should be given.

All in all, the new form is more streamlined and designed for better administration of tax exemption for charities. Now isn’t that a wonderful thing?

(24-Oct-17)

505: UNIQUE DARPAN ID MUST FOR FCRA NGOS

All NGOs / organisations registered with FCRA Department are given an FCRA number. In addition to this, the Government has now asked all FCRA NGOs to register with Darpan portal of the NITI Ayog and obtain a unique Darpan ID. This ID must be quoted for all filings/ service requests made on FCRA portal.

The requirement applies to those NGOs as well who have prior-permission or are applying for registration or prior-permission.

Once an NGO registers on the Darpan portal, some basic information about NGO and its Board Members (name and designation) will be available to the public. Hopefully Darpan will boost public confidence in FCRA NGOs.

Ref:

2. Niti Ayog site for registration: http://ngodarpan.gov.in/

(8-Oct-17)

504: FCRA OFFICE HAS SHIFTED TO INDIA GATE

FCRA Office has shifted yet again. This time the office has moved to:

Ministry of Home Affairs
FCRA Wing,
1st Floor, Major Dhyan Chand National Stadium,
Outer Circle, India Gate,
New Delhi - 110 001.

(8-Oct-17)
503: EXTENSION OF DATE FOR FILING ITR-7

The last date for filing ITR-7 for FY 16-17 was 30th September 2017 for all cases where audit report in form 10B is required. This date has been extended to 31st October 2017.


(29-Sep-17)

502: GRANTS AS OTHER INCOME IN ITR 7

Filling up your ITR 7? Do not report grants received under 'Other Income' (in Part B-TI and schedule OS). If you do, the ITR Processing Software will not offset any utilization against this. You will get a demand notice when your assessment happens under sec. 143(1).

Grants received should be listed in schedule VC and reported under 'Voluntary Contributions' (in part B-TI - Total Income). This will ensure your application of income is accepted and you don't get sleepless nights!

(23-Sep-17)

501: GST ON GRANTS AND DONATIONS?

GST (Goods and Services Tax) is not applicable on 'charitable activities' by NGOs registered under sec. 12A. However, 'charitable activities' have a very narrow definition under GST. Most NGO activities will not qualify as 'charitable' if the GST definition is used.

Should NGOs then pay GST on the grants or donations they receive? No. The activities of the NGOs are benefiting the public - not the donor or people connected with the donor. Therefore, these are not taxable supplies.

However, if an NGO receives a 'grant' for training the donor's staff, or their grantees, then GST may be attracted. You should ensure that total of such taxable supplies remains below Rs. 10/20 lakh annually.

(23-Sep-17)

500: NO GST ON NGOS FOR CHARITABLE ACTIVITIES

Are you worried about GST? Here are eleven clarifications to help you sleep better:

1. Goods and Services Tax (GST) applies only to business activities. It is not applicable where an NGO provides goods or services to others as part of its charitable activities or at nominal prices. It is also not applicable on grants received by NGOs.

2. Some NGOs also sell products or charge market-based fees for various services. If the NGO's total intrastate turnover from these taxable supplies is below Rs. 20 lakh p.a. (Rs. 10 lakh in hill states), then GST will not be applicable. Intrastate turnover means that these supplies are made to customers within the state.
3. If an NGO sells goods or provides services to anyone outside its state, the NGO must register for GST. In such cases, it does not matter that the total turnover is below the threshold of Rs. 10/ 20 lakh.

4. If you were already registered for VAT or service tax, then you must register for GST also.

5. If an NGO is registered under GST, it must pay GST on all taxable supplies made by it. Remember, this does not include grants for charitable activities.

6. If the NGO provides any goods or services (e.g. training or group formation) to a donor, then GST would be attracted.

7. If an NGO displays business logo etc. of a corporate donor in a prominent manner, then GST will be attracted.

8. If an NGO is registered for GST, then it must also pay reverse charge on services or goods received from unregistered vendors. This includes consultants, caterers, shopkeepers, etc. if they are not registered under GST. Casual supplies (<Rs. 5,000 in a day) from micro-vendors are excluded from reverse charge.

9. Reverse charge is deductible from GST payable as Input Tax Credit.

10. Education and medical services are not chargeable to GST. Export of services is charged at zero-rate, but is counted towards total turnover.

11. There is no general exemption from GST for supplies purchased by NGOs.

Please share this with your friends as an act of charity. No GST will be charged on such sharing.

Ref:
We thank Mr. K. Shivakumar of Gandhigram for initiating this dialogue. - Ed.

(12-July-17)

499: 5922 FCRA NGOS AT RISK

FCRA Department has issued a notice asking 5,922 NGOs to show cause as to why their FCRA Registration should not be cancelled.
https://fcraonline.nic.in/home/PDF_Doc/Show_Cause_List_08072017.pdf

Please check this list. In case your name (or that of a loved one) appears on the list, file the missing annual returns immediately. Also send a letter to MHA explaining why the return was missing. Your reply should be sent to the following email-address:
fcrarenewal-mha@gov.in

In case no replies are received by 22nd July, the Department will cancel your FCRA registration.
Ref:

1. FCRA notification dated 8-Jul-17:  
   https://fcraonline.nic.in/home/PDF_Doc>Show_Cause_08072017.pdf
2. Show Cause List of NGOs dated 8-Jul-17:  
   https://fcraonline.nic.in/home/PDF_Doc>Show_Cause_List_08072017.pdf

We thank CA Suresh Kejriwal (Kolkata) for bringing this to our attention. - Ed.

(10-July-17)

498: UPDATE YOUR FCRA BANK DETAILS IMMEDIATELY!

FCRA Department has now asked 2025 NGOs to update their FCRA bank details by 22-June-2017. The names of these NGOs are given in a list here:  
https://fcraonline.nic.in/home/PDF_Doc>fc_list_07062017.pdf

The list is sorted alphabetically. You can download and search it for your NGO's name. If you are a donor agency, please check the list for names of your grantees or partners, and alert them.

The details should be updated by filing form FC-6 online at https://fcraonline.nic.in/fc_public_login.aspx?Resp_Id=3

If you don't update the details by 22nd June, you may face further action by FCRA Department.

And if you don't share this mail immediately with 10 others, then you alone will be responsible for any misfortune that may befall them! ;)

Ref:

4. FCRA notification dated 7-Jun-17 https://fcraonline.nic.in/home/PDF_Doc>fc_circular_07062017.pdf

(8-Jun-17)

497 (REV.): GET YOUR FCRA CANCELLED - WITHOUT ANY EFFORT!

FCRA Department has asked 18,523 NGOs to file missing FC returns immediately. These NGOs are named in a notification, along with years for which the returns are required. However, there has been poor response from the NGOs, many of whom may not be aware of this.

FCRA Department has now warned (again) that if these NGOs do not file the missing returns (from 10-11), they will face cancellation of their FCRA. If your FCRA has been renewed, it will be revoked.

You should therefore visit the FCRA site immediately and check whether your name is on the list. If yes, please file the missing returns online without delay, before 14-June-17. Or have your FCRA cancelled - automatically.
The choice is yours.

Ref:
1. FCRA notification dated 12-May-17 [https://fcraonline.nic.in/home/PDF_Doc/fc_Notice_12052017_01.pdf](https://fcraonline.nic.in/home/PDF_Doc/fc_Notice_12052017_01.pdf)
2. FCRA notification dated 22-May-17 [https://fcraonline.nic.in/home/PDF_Doc/fc_Circular_22052017.pdf](https://fcraonline.nic.in/home/PDF_Doc/fc_Circular_22052017.pdf)
4. AccountAid Capsule 494, 495

We thank Mr Martin Pinto, FCA for alerting us to this new circular. - Ed.

(1-June-17)

**496: SHOULD NGOS REPORT SFT IN FORM 61A BY 31-MAY?**

Some NGOs have received email reminders by name from Income Tax Department. The reminder asks them to file form 61A online by 31-May-17. This form should include details of high-value cash transactions (e.g. cash receipt of Rs 2 lakh from a person) etc. Should they file a nil declaration even if they don't have any transactions to report?

Tax exempt charities are not covered under any of the categories of reporting persons. Therefore there is no requirement for them to file form 61A at all, whether nil or otherwise.

The only exception would be where a charity is:
1. Running a bank or
2. Is covered under 44AB audit and
3. Has some specified transactions to report.

If you are not covered by any of the above, then relax and enjoy your weekend!

Ref:
1. Sec. 285BA and Rule 114E of Income Tax Act
2. Form 61A
3. We thank Mr. K. Shivakumar of Gandhigram for bringing this to our attention. - Ed

(25-May-17)

**495: UPLOAD MISSING FC RETURNS OR FACE CANCELLATION**

FCRA Department has asked 18,523 NGOs to file missing FC returns immediately. These NGOs are named in the notification, along with years for which the returns are required. However, there has been poor response from the NGOs, many of whom may not be aware of this.
FCRA Department has now added some teeth to its request. It has said that if these NGOs do not file the missing returns (from 10-11), they may face cancellation of their FCRA. If your FCRA has been renewed, it may be revoked.

You should therefore visit the FCRA site immediately and check whether your name is on the list. If yes, please file the missing returns online without delay, before 14-June-17.

Ref:
1. FCRA notification dated 12-May-17 https://fcraonline.nic.in/home/PDF_Doc/\n   fc_Notice_12052017_01.pdf
2. FCRA notification dated 22-May-17 https://fcraonline.nic.in/home/PDF_Doc/\n   fc_Circular_22052017.pdf
3. AccountAid Capsule 494

(25-May-17)
494: UPLOAD YOUR MISSING FC RETURNS ON FCRA WEB-SITE OR...

FCRA Department has published a list of 18,523 NGOs. The Department is not able to find the FC annual returns for these NGOs in its records. It has therefore asked these NGOs to upload their missing returns online within one month (from 15-May-17 to 14-Jun-17). No compounding fees will be charged during this period. The list can be seen here: https://fcraonline.nic.in/home/PDF_Doc/fc_list_12052017.pdf

You should therefore go the FCRA web-site and download the list. Search (Ctrl+F) for your FCRA number or name to see whether you are in the list. If yes, check the years for which the returns are missing. Then login to your FCRA account and file the missing returns.

If you face any difficulties, please send a mail to fcrcentral-mha@gov.in.

Remember, there is no fees for this. It is also advisable to file the missing returns, even if you think you have already filed a paper or electronic return earlier.

If you do not follow the advice, you may find your FCRA renewal is held up. And that won't be so nice!

Ref:
1. FCRA notification dated 12-May-17 https://fcraonline.nic.in/home/PDF_Doc/\n   fc_Notice_12052017_01.pdf
2. We thankfully acknowledge CA Martin Pinto's kind help in alerting us to this notification. - Ed.

(13-May-17)
493: DISPLAY FCRA ACCOUNTS ON YOUR WEB-SITE?

In Dec-15, the Government changed several FCRA rules. One of these asks FCRA NGOs to upload their annual audited FCRA accounts on their own web-site. This should be done within nine months of end of financial year. For most NGOs, this would mean 31st December. The provision applies to your audited
accounts from FY 2014-15 onward.

Earlier this rule applied only to NGOs getting Rs. 1 crore or more in a year. Now it applies to every NGO which has FCRA registration or prior-permission.

Is it okay if you upload the main accounts, including FC and non-FC? That is your choice. However, you must also separately upload your FCRA Balance Sheet, FCRA Receipts & Payments Account, and the FCRA Income & Expenditure Account. Not doing so can lead to problems.

Ref: Rule 13(1) of FCRR 2011, as amended

(17-Apr-17)

**492: NO DEDUCTION FOR CORPUS DONATIONS TO OTHER CHARITIES**

If one charity (e.g. a Foundation) makes a grant to another charity, the payment can be claimed as application of income. It is counted towards minimum utilisation of 85%. It does not matter whether the donation is for a project or towards corpus. In practice, corpus donations by one charity to another are quite rare.

This is now set to change. The Government is amending sec. 11. Once this happens the first charity will not be able to claim such corpus donations as application of income. This is designed to plug a tax loophole where charities were able to park surplus funds with other charities as corpus. Effective date is likely to be 1-Apr-17.

(3-Feb-17)

**491: EULOGY FOR SEC. 35AC**

In 1992, the Government introduced 100% tax deduction for donations made to priority projects. Hundreds of projects were approved for sec. 35AC by National Committee. Charities and Companies raised /spent thousands of crores on these projects over the last 25 years.

In 2016, the Government decided that deductions under sec. 35AC will no longer be allowed after 31-Mar-17. Some people were hoping for a reprieve in this budget. However, this has not happened. Sec. 35AC comes to an end on 31-Mar-2017.

So if you still have an unfinished project, please gear up and raise as much money as you can in Feb-Mar’17. Any donations made to charities till 31-Mar-17 will be eligible for deduction.

The money raised by charities can be spent after 31-Mar-17 also.

However, companies with 35AC projects of their own should complete the project by 31-Mar-17.

(3-Feb-17)

**490: ONLINE PENALTY PAYMENT FOR DELAYED FILING OF FCRA RETURN**

If you couldn't file your annual FC return in time, you can do so now. In some cases, late-filing fees apply. This late-filing fees can now be paid online.
Ref:

1. FCRA notice No.II/21 022/58(086)2016-FCRA-MU/Gen Restoration/S-4 dated 27-Jan-17 at fcraonline.nic.in
2. AccountAble 20: Filing FCRA Annual Return (FC-4) at www.AccountAid.net
3. AccountAid Capsule 488 dated 30-Dec-2016

(3-Feb-17)

**489: FILE YOUR FC-4 FOR 14-15**

How did you file your annual FCRA return for 14-15? If you filed it manually in form FC-6, then you have to file it again. This time you must do it online in form FC-4.

Those who don’t file their FC return online for FY 14-15 will be treated as defaulters.

People who filed their return in FC-6 for 14-15 online don't have to do anything.

(3-Feb-17)

**488: FCRA RETURN NOT READY?**

If your FC-4 is not readymade yet for any reason, you can file it after the due date also. Delayed filing up to 31st March 2017 attracts a penalty of 2% of amount received or Rs.10,000 whichever is lower.

And if you are not ready by 31st March 2017, don’t worry. You can file up to 30th June 2017 by paying a penalty of 3% of amount received or Rs.50,000 whichever is lower.

However, please don’t make a habit of delayed filing every year. If you do that, the Department may increase the penalties again

(30-Dec-16)

**487: WAITING FOR FCRA RENEWAL?**

Have you applied for renewal of your FCRA registration? Are you still waiting for an email from them? Well, don’t keep checking your inbox. Instead login to the FCRA online site using your FCRA login and see whether they’ve left you a secret message. If they have, lose no time in responding.

How often should you check your FCRA login? Logging in three times a day would be overdoing it. But once a day is indeed advisable. And if you do it just after your morning prayers, so much better!

(30-Dec-16)

**486: FC-4 - LOCAL SOURCE OR FOREIGN?**

Form FC-4 asks you to show FC received directly from a foreign source and transferred from a local source separately. What does local source mean here?
If you receive FC from another organisation which has an FCRA registration, it should be shown as 'local' source in form FC-4. The amount will still remain foreign contribution. Also this amount will not be reported in point 2(ii)(b) where you have to give purpose of FC received.

If you have received FC from an MNC or a foreign company / their subsidiary based in India, this should be reported as FC received directly from a foreign source.

(29-Dec-16)

485: FILING FC-4 ONLINE

Last date for filing FC-4 online for FY 15-16 is 31-Dec-16. All organisations with FCRA registration must log in to the site (fcraonline.nic.in) and file their FC-4 online. There is no need to send a printed copy by post.

Just make sure that after filing you print a copy and keep it for your record.

(29-Dec-16)

484: LOKPAL:FILING DATE POSTPONED - AGAIN!

Public Servants (and NGO officers) Get Another Breather

In Jul’16, the Government had saved everyone a lot of trouble by amending the Lokpal and Lokayukta Act at the last moment. As a result, the date had been deferred to 31-Dec-2016.

The Government was to use this time to frame new rules and forms. However, the new rules are not yet ready. Old rules are not quite suitable - with impolite references to spouses and dependent children.

It seems therefore that the hour of reckoning has been deferred again. You need not therefore file your Lokpal Declarations just yet.

And maybe never, if the Government sees the sense behind not declaring NGO officers as public servants!

Ref:

1. DOPT Office Memorandum No. 407/16/2016-AVD-IV(LP) dated 1-Dec-2016

We thank Ms. Anamika, Coordinator at CSO Support Cell, ISI, Delhi for sharing this notice. -Ed.

(8-Dec-16)

483: FOUR MONTHS’ GRACE PERIOD FOR FCRA RENEWAL

About 11,000 NGOs had not applied for renewal of FCRA registration by 30-Jun-16 in online form FC-3. Their FCRA registration has lapsed on 31-Oct-16. They can not accept any foreign contribution after this date.
FCRA Department has now extended the deadline for filing renewal application. These 11,319 NGOs can visit fcraonline.gov.in and apply online for renewal.

Reasons for not applying in time should be provided in writing. The letter giving these reasons should be scanned and uploaded with the application. If your old returns have been filed, and the reasons for lapse are genuine, the Department will likely renew your registration.

Last date for submitting form FC-3 for renewal is 28-February-17.

However these 11,319 NGOs can still not accept any foreign contribution till their registration is actually renewed.

Only NGOs named in the list can use this facility. Presumably other pending cases (out of 1736 closed cases) can not.

Ref:

We thank Mr. Anil Goel, CA, Delhi for bringing this notice to our attention. -Ed..

(24-Nov-16)

482: WAITING TO EXHALE? FCRA RENEWAL ON THE WAY.....

On 2nd November, FCRA Department notified names of 1,736 NGOs whose FCRA renewal was stuck due to documentation issues. They were given time till 8th November to file their replies or documents.

The FCRA Department has now reviewed these cases. Renewal has been granted in many cases. In other cases, the application for renewal has been refused. If you have not received the email yet, you can check your status at fcraonline.nic.in. Click on the link for 'Validity Verification of FCRA Certificate'.

If your certificate has been renewed, you can start receiving FC funds again. If it has been refused, please consult your auditors / advisers about whether you should file an appeal.

Ref:
1. AccountAid Capsule 479 of 3-Nov-16

(21-Nov-16)

481: TAX NOTICE TO TRUSTS & NGOS ON OHD

On 8th November, the Government recalled 500 and 1000 rupee notes (OHD). Some persons have apparently started using tax exempt trusts to launder their OHD. Or so it would seem.
To prevent this, Income Tax Department is sending notices to all tax exempt trusts. The notices are being issued under sec. 133(6). The Trusts are being asked to submit information on cash balance in hand as on 31-Mar-16 and 8-Nov-16. This will help the Department put a cap on the amount of OHD these trusts can deposit in their bank.

If you don’t respond to the notice in time, and yet deposit a lot of OHD in bank, you may face:
1. penalty of Rs. 100 per day under sec. 272A, or
2. scrutiny of your accounts during assessment.

If you’ve not received the notice yet, don’t worry. You soon will!

And even if you don’t, stay safe and don’t yield to temptation. Any attempt to launder large amounts for others will be easily detected. And you may face scrutiny for earlier years as well.

Ref:

1. AccountAid Capsule 480 of 12-Nov-16
2. Sec. 133(6) & 272A of Income Tax Act, 1961

We thank CAs. Martin Pinto and Uttam Gupta for sharing this. - Ed.

(18-Nov-16)

480: CURRENCY RECALL - RISK FOR NGOS

On 8th November, the Government recalled all currency notes of Rs. 500 and Rs. 1,000 (OHD). These can be accepted at some merchants (Govt. Hospitals, petrol pumps, etc.) till 14-Nov. Limited amounts (Rs. 4,000) can be exchanged by individuals across bank counters on producing ID proof (Aadhar card). Larger amounts should be deposited back into your bank account.

This move has also started a panic among people hoarding OHD. Reportedly, they are offering large sums (in 500, 1000 rupee OHD notes) to charitable and religious organisations as donations. The thinking is that the currency can be deposited in NGO bank account, and then withdrawn later.

What to do if you receive such an offer? Deposits of OHD into NGO accounts must be backed by genuine book entries and donor details. Tax officers will also correlate this with deposit pattern in the past. If these do not match, they may levy high penalties of 200%+ for laundering of OHD.

You should therefore say NO to any such offers.

(12-Nov-16)

479: URGENT: FCRA RENEWAL - CLEAR DEFICIENCIES BY 8TH NOV

FCRA Department has offered one last chance for correcting deficiencies in renewal applications. This offer expires on 8th November.
(3-Nov-16)

478: FCRA NOT RENEWED YET?

Some organisations have not yet received their FCRA renewal letter, though the last date (31-Oct-2016) is just two weeks away. Naturally they are very worried.

This delay has probably been caused due to recent changes in administrative setup of FCRA Department. However, in some cases, the delay may be due to lack of FCRA funding in last two years or some documentation issues. Common problems are discrepancy in FCRA bank account details, non-availability of original FCRA registration letter, last FCRA return not showing up in Department record, etc. What should you do?

As a matter of caution, you send an email (from your email ID registered with FCRA) to support-fcra@gov.in. While drafting the email:
- give reference of your application number
- mention your FCRA registration number,
- enclose copy of your FCRA registration letter
- enclose copy of last FCRA return (if it's not showing up online)

Request them to let you know in case they need any information or documents to process your application in time. This will serve both as a reminder and as a record.

(14-Oct-16)

477: LOKPAL FILING DATE EXTENDED

After a group of MPs met the PM on 25th July, the Government introduced an amendment bill in Parliament. This bill has been passed quickly in both houses. Lokpal_and_Lokayuktas_Bill,_2016.pdf

If this amendment becomes law, it will allow the Government to soft-code the provisions related to last date of filing, public disclosure and inclusion of dependents and spouses. At present these provisions are hard-coded into the Act itself.

Further, the Government has now extended the last date of filing Lokpal declarations to 31-Dec-2016. People who have already filed or sent in their disclosure forms will have to file these again later. GSR-747E-29072016.pdf

AccountAid Team
www.AccountAid.net
Follow us on Twitter @AccountAid and @FCRA2010

Ref:
1. AccountAid Capsule 469, 472, 476 of Jul-16

We thank Mr. Debadeb Dutta for sharing the extension notification with us. - Ed.

(29-July-16)

476: FCRA DEPT. GOES ONLINE WITH LOKPAL

In a surprisingly swift move, FCRA Department has set up an online facility for submission of Lokpal declarations. The link to the portal is here: https://fcraonline.nic.in/fc_lokpal_initial.aspx

Steps for filing the declaration online are:
1. Prepare, print and sign the declaration.
2. Scan the signed declaration as PDF, making sure file size doesn't exceed 10MB (tip: use smallpdf.com to make the file smaller for quicker upload).
3. Punch in the NGO's FCRA number at the link given above. This opens up a small utility where you can punch in the Member's/ Trustee's name and designation.
4. Upload the PDF file you have prepared.
5. FCRA Department is asking for FY 15-16 return only

This appears to be an initial effort, with some flaws:
1. There is no requirement that the return must be filed online.
2. There is no order specifying FCRA Department as the 'Competent Authority' for this.
3. There is no security or password for individuals logging in as NGO officers.
4. The filing is being linked to particular NGOs. What happens to an individual who is a trustee in multiple NGOs? Should they log in separately for each NGO?

Ref:
1. AccountAid Capsule 469, 472 of Jul-16
3. Fillable Lokpal form in Excel format at http://www.accountaid.net/Reference/Notifications/Lokpal%20Forms/Return%20of%20Assets%20&%20Liabilities%20-
   %20Lokpal%20Act%202013%20AAI.xlsx

(22-July-16)

475: AND LEAD US NOT INTO TEMPTATION...

But Deliver Us from Evil....

For most accountants, Errors are Evil. Therefore, they try their best to keep them out of their books. But what about erroneous interpretation of law, such as FCRA? That will surely get us into clutches of....
One such error doing the rounds of NGO circles and CSR companies is related to the changed definition of 'foreign source'. A popular misinterpretation is that ALL companies registered in India are no longer a foreign source. That is quite wrong.

It is only certain companies such as HDFC, ICICI, etc. that benefit from the changed definition. These had become classified as foreign source as foreigners were holding more than 50% shares in these.

What about Indian companies which are subsidiaries of a foreign company? Do these also become Indian sources? No. These are covered under a different clause, which is not affected by the new proviso. Thus companies such as Maruti Suzuki and Microsoft India continue to be foreign source.

Same is the case with foreign MNC. If an Indian company is part of a foreign MNC, then it will remain a foreign source.

Therefore, keep away from Error. And be Good.

Ref.:

1. Sec. 2(1)(j) of FCRA 2010, as amended by Finance Act 2016
3. Mathew 6:13
   “And lead us not into temptation, but deliver us from evil: For thine is the kingdom, and the power, and the glory, for ever. Amen.”

(21-July-16)

474 (REV.): GANDHIAN NGO WRITES TO GOVERNMENT FOR LOKPAL RELIEF

Mr. K. Shivakumar of V. K. Foundation, Gandhigram has written a letter to Hon. Minister of Home Affairs seeking relaxation of filing norms under Lokpal, as well as clarity on some crucial aspects. Please find the text of the letter below for your information:

V.K.FOUNDATION

V.K.ILLAM,

GANDHIGRAM – 624302

19.07.2016

To

Hon’ble Shri. Rajnath Singhji,

Minister of Home Affairs,
Dear Friend,


Civil society organisations who has been instrumental for introduction of Lokpal and Lokayukta act, 2013 welcomes the decision of the government for amending the act to include their functionaries and office bearers. Though at the time when we advocated LLA we never dreamt that we will also be included. This strengthens the idea of the Gandhiji who always wanted people to practice the subjects they preach.

This decision of the government recognises the status of CSO organisations as public institutions doing yeomen service to the public. This will built the creditability of the sector and uphold the transparency of the individuals who are likely to be covered.

Though there is general welcome we are bringing the following points for your consideration before implementing.

- The government has been involving respective organisations at the time of introduction of new procedures / law and unfortunately in this case the stake holders has not been consulted and their view were not obtained and issuing a notification without participation from the stake holders leads to confusion in interpretation and implementation.
- The CSO organisations needs time to study and collect the information from those who are likely to be covered under this provision. We have to congratulate the government for their positive approach by granting extension of time for application for renewal of FCRA and other provisions. Since, this notification is also new, the government may consider granting atleast six months time for filing the returns instead of pressurising to file the returns on 30th July’2016. This will give enough time for the CSO organisations to study the format and collect information from their constituencies.
- Since, the CSO organisations are going to file return first time, they may be given exemption for the previous years and may be allowed to file only for the year ending 31st March’2016.
- There is no clarity about the definition of Director, Manager or other officers, or association of persons. The governance pattern of the CSO organisation differs and designations and usage is also different. It is essential that the definition and the person to be included should be clearly defined to facilitate the compliance.
- The CSO organisations do have the practice of including many honorary members’ high profile professionals, business people, experts in respective areas, who will contribute only as advisors during the board meeting and give guidance for the board members in their respective areas. There is no clarity about the inclusion of such members like current notification. If it is insisted it will jeopardise the interest of such experts and they may not like to continue and their expertise will be lost. Hence, the government may be consider to exclude them specifically from the compliance.
The above are only illustrative examples, where the CSO organisations require clarifications and not exhaustive list. We are of the opinion the government may invite suggestions and give clarifications within two months time and after giving clarification four more months time may be given for CSOs to comply with rules. We appeal to the government to consider this request seriously instead of forcing to comply with the rules without clarity.

Thanking you,

With warm regards,

Yours sincerely

K.Shivakumar

(20-July-16)

473: UPDATE YOUR FCRA BANK ACCOUNT DETAILS

The FCRA Department will shortly be connected to the PFMS. This will allow the Department to monitor bank account transactions of all FCRA NGOs online, in real-time.

In preparation for this momentous transition, FCRA Department has requested all NGOs to check whether the details of their designated and utilisation bank accounts is correct. If not, they should file an update by using form FC-6. This should be done latest by 31-Aug-2016.

If your bank account details are already updated, please do not file form FC-6 now.

Ref:
2. Form FC-6, to be filed online at https://fcraonline.nic.in

(20-July-16)

472: LOKPAL DISCLOSURE FORM FOR FCRA NGO OFFICERS

Some people have started filing Lokpal disclosure forms. Should you also do it now? That is your choice. Unless a court grants a stay or the Government extends the deadline, you would be legally bound to post the forms before 31-Jul-16.

If you decide to file the forms, here are some more tips on filing the Lokpal disclosure forms:

1. There are some departmental forms floating around - these ask for additional information, such as value of your electronic guitar also! The notified form is available at www.AccountAid.net. We have now uploaded an editable Excel form as well.

2. The valuation of assets does not have to be accurate, but it should be fair. For example, you don’t need to go a valuer for getting your land or jewellery valued. Estimated current values will do.
3. The forms should be filed by individual office-bearers or executives. The concerned NGO is not responsible for filing the forms. The officer filing the forms has no responsibility to share a copy with the NGO concerned.

4. The disclosure forms should be filled up, signed and sent by registered post to:

Minister of Home Affairs,
North Block,
Central Secretariat,
New Delhi - 110001

5. Please keep a copy of the forms you file and the proof of posting with you.

Ref:

1. AccountAid Capsule 469 of 18-Jul-16

We thank Mr. Debadideb Dutta for sharing an Excel template of the disclosure forms. - Ed.

(20-July-16)

471: MHA MEETINGS RE-SCHEDULED

The MHA Director conducts meetings with NGOs every month. These have now been rescheduled to last Monday of each month, 3-5 p.m. However, you must seek an appointment for the meeting in advance.

Ref:

2. AccountAid Capsule 427, 20-Jun-15

(19-July-16)

470 (REV.): DONORS ON FCRA WATCHLIST

Following donors are currently on FCRA Watchlist. This list has been compiled from newspaper reports:

1. 350.Org
2. Avaaz, USA
3. Bertha Foundation
4. BIC, USA
5. Caritas Internationalis
6. Catholic Organisation for Relief and Development Aids (CORDAID)
7. Climate Work Foundation (CWF), USA
8. Compassion International, USA
9. Dan Church Aid (DCA)
10. Danish Institute of Human Rights (DIHR)  
11. Danish International Development Agency (DANIDA)  
12. Family Federation for World Peace and Unification, South Korea  
13. Greenpeace International  
14. HIVOS Netherlands  
15. ICCO Strategische Samenwerking (ICCO), Netherlands  
16. Inter Church Peace Council-Pax Christi (IKV-PC), Netherlands  
17. Mercy Corps, USA  
18. National Endowment for Democracy (NED)  
19. Open Society Foundations (OSF)  
20. Sierra Club USA  
21. World Movement for Democracy (WMD)

Of these 21, eight had been placed on the list by UPA. The balance 13 have been added by NDA government.

Banks are under RBI instructions to clear any donations or other such remittances from these donors with FCRA Department, before crediting them to NGO’s account. Some banks follow these instructions rigorously - others don't. Therefore, some remittances slip through, while others are delayed till FCRA Department clears these.

Ref:
1. AccountAid Capsule 412, 6-May-15  
2. AccountAid Capsule 426, 20-Jun-15  

(19-July-16)

469: GUIDANCE ON LOKPAL DISCLOSURE BY FCRA NGO OFFICERS

The proposed amendment in FCRA 2010 will not benefit companies like Maruti Suzuki, Sesa Goa, Sterlite, Hindustan Lever, etc. These will still remain foreign source. How so?

This is because the proposed amendment applies only to one sub-clause out of ten. Companies listed above may not longer be a foreign source under sec. 2(1)(j(vi) of FCRA 2010.

(18-July-16)

468: THE SEVEN DEADLY SINS UNDER FCRA

FCRA Department has recently suspended the FCRA registration of an NGO. The suspension letter (available at MHA web-site) lists some notable worry-points:  
1. Transfer of foreign contribution for activities outside India  
2. Paying fees / expenses for foreigners who were visiting India on a tourist visa
3. Depositing FC directly into a utilization bank account
4. Transfer of funds between two utilization bank accounts
5. Transfer of funds between local and FCRA bank accounts
6. Organizing dharna / rally with 'political hue'
7. Advocacy / lobbying with MPs

The legal basis for some of these (1, 2, 6, 7) is not very clear, and the charges may not hold up in a court. However, it would be wise to keep in line till there is a clear court order on disputed issues.

Ref: 1. Suspension letter dated 31-May-16
   (https://fcraonline.nic.in/home/PDF_Doc/LawyersCollective_01062016.PDF)

(13-July-16)

467: DEADLINE FOR PUBLISHING QUARTERLY FCRA RECEIPTS

All FCRA-registered NGOs must publish details of FCRA donations on quarterly basis. This can be done at FCRAonline.nic.in using an online utility. You can also publish these on the NGO’s web-site.

If you are publishing these on your own web-site, make sure you include:
1. Name of donor
2. Category: Institutional/Individual?
3. Office Address, Email, website
4. Purpose for which received
5. Amount
6. Date of Receipt

Last date for publishing details of Apr-Jun'16 quarter is 15th July’16.

Ref:
1. AccountAid Capsule 455, dated 1-Jan-16
2. Rule 13 of FCR Rules, as amended

(13-July-16)

466: ALL COMPANIES IN INDIA WON'T BECOME INDIAN!

The proposed amendment in FCRA 2010 will not benefit companies like Maruti Suzuki, Sesa Goa, Sterlite, Hindustan Lever, etc. These will still remain foreign source. How so?

This is because the proposed amendment applies only to one sub-clause out of ten. Companies listed above may not longer be a foreign source under sec. 2(1)(j(vi) of FCRA 2010.

But they will still remain a foreign source under sec. 2(1)(j)(iii), which covers a foreign company. This section must be read with sec. 2(1)(g) which defines a foreign company. Clause (ii) of this section says that a company which is a subsidiary of a foreign company will be treated as a foreign company.
Therefore, if you get any money from companies such as Maruti Suzuki or Hindustan Lever, don’t treat it as local. Check their subsidiary status first.

And if you are a political party, just don’t accept their money, okay? Or be prepared to become part of judicial and political history!

Ref:

1. AccountAble 106: CSR & FCRA. www.AccountAid.net (released Aug’13)

2. AccountAid Capsule 465: Indian Companies won’t be Foreign just because...

3. Sec. 2(1)(g) of FCRA 2010:

(g) “Foreign company” means any company or association or body of individuals incorporated outside India and includes—

(i) a foreign company within the meaning of section 591 of the Companies Act, 1956;

(ii) a company which is a subsidiary of a foreign company;

(iii) the registered office or principal place of business of a foreign company referred to in subclause (i) or company referred to in sub-clause (ii);

(iv) a multi-national corporation.

4. Para 56 and 57 of Delhi High Court order in ADR vs. UOI, dated 28-Mar-14

http://adrindia.org/sites/default/files/ADR%20vs.%20UOI%20%20Delhi%20High%20Court%20judgment%20on%20foreign%20%20funding%20received%20by%20INC%20and%20BJP%20%20.pdf

5. ‘FCRA Amendment Expected to Boost Foreign Source Firms’ CSR’ http://www.livemint.com/Companies/3srzCMahxa4nqypTVQ7bGP/FCRA-amendment-expected-to-boost-foreign-source-firms-CSR.html

(4-April-16)

465: INDIAN COMPANIES WON’T BE FOREIGN JUST BECAUSE...

Government is planning to change definition of ‘foreign source’ in FCRA 2010. This will make it easier for many Indian companies to give donation and CSR contributions to NGOs. It will also become legal for them to contribute money to political parties.

This amendment will cover companies such as HDFC Ltd. These companies were treated as foreign source, just because more than 50% shares were held by FII or foreigners. This was causing anguish.
among industry leaders such as Mr. Deepak Parekh. A number of media stories also appeared in press on this issue.

The proposed amendment, if passed, will be effective from the date FCRA 2010 became law. Therefore, any mistakes made in treating such funds as local contribution will become regularised.

Ref:


4. Clause 233 of Finance Bill 2016:

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

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

5. Present sec. 2(1)(j) of FCRA 2010:

(j) “foreign source” includes, —

(i) the Government of any foreign country or territory and any agency of such Government;

(ii) any international agency, not being the United Nations or any of its specialised agencies, the World Bank, International Monetary Fund or such other agency as the Central Government may, by notification, specify in this behalf;

(iii) a foreign company;

(iv) a corporation, not being a foreign company, incorporated in a foreign country or territory;

(v) a multi-national corporation referred to in sub-clause (iv) of clause (g);
(vi) a company within the meaning of the Companies Act, 1956, and more than one-half of the nominal value of its share capital is held, either singly or in the aggregate, by one or more of the following, namely:—

(A) the Government of a foreign country or territory;

(B) the citizens of a foreign country or territory;

(C) corporations incorporated in a foreign country or territory;

(D) trusts, societies or other associations of individuals (whether incorporated or not), formed or registered in a foreign country or territory;

(E) foreign company;

(vii) a trade union in any foreign country or territory, whether or not registered in such foreign country or territory;

(viii) a foreign trust or a foreign foundation, by whatever name called, or such trust or foundation mainly financed by a foreign country or territory;

(ix) a society, club or other association of individuals formed or registered outside India;

(x) a citizen of a foreign country;

(4-April-16)

464: INDIAN COMPANIES WON’T BE FOREIGN JUST BECAUSE...

Last date for filing renewal application has already been extended to 30-Jun-15. Now the Department has made another announcement. This applies to NGOs whose FCRA registration expires on or before 30-Sep-16.

In all such cases, the registration will remain valid till 31-Oct-16. If they want to get their FCRA renewed, they should file the renewal application by 30-Jun-16 in form FC-3 online.

Ref:

Capsule 463: Last Date for FCRA Renewal extended

Source: FCRA notice dated 29-Mar-16. Available at www.AccountAid.net and FCRAonline.nic.in

(31-Mar-16)
463: LAST DATE FOR FCRA RENEWAL APPLICATION EXTENDED

FCRA Registration of more than 30,000 NGOs is expiring on 30-Apr-16. All these NGOs were to file renewal application online in form FC-3. Last date for this was 15-Mar-2016. However, many NGOs found it difficult to login and apply.

Department has therefore extended the deadline to 30-June-2016.

Ref:

Source: Banner at https://fcraonline.nic.in.

(16-Mar-16)

462: DELAY IN FCRA RENEWAL PROCESS?

Suppose you've applied online for FCRA renewal well in time by 15th March 2016. You've also applied in correct form (FC-3), and have paid the fees as required. However, your FCRA registration is neither renewed nor rejected by 30th April 2016. What happens now? Can you continue accepting foreign contribution after 30th April?

The answer seems to be 'yes'. Though section 12(6) says your FCRA renewal is valid only for five years, the related rule creates some flexibility. According to this rule, the FCRA registration would lapse if proper renewal application with fees is not received by due date. This may also mean that if the application is indeed received properly, then the validity will continue - till the application is actually rejected.

Ref:

1. Above interpretation may or may not be accepted by FCRA Department. Please obtain independent advice or FCRA clarification on this before taking any decisions.

2. FCRR 2011, as amended Dec'15:

Rule 12. Renewal of registration certificate. -

(1) Every certificate of registration issued to a person shall be liable to be renewed after the expiry of five years from the date of its issue on proper application...

(5) In case no application for renewal of registration is received or such application is not accompanied by the requisite fee, the validity of the certificate of registration of such person shall be deemed to have ceased from the date of completion of the period of five years from the date of the grant of registration.

(16-Mar-16)
461: LIFE AFTER (FCRA) CANCELLATION

What happens after death? Where do people go? Can they still see what goes on in real world? No one knows for sure. People have similar doubts about cancellation of FCRA. What would happen? Will the Government chase us out of our office? Will it continue our programs? Will it sell off our assets?

No one knows for sure. However, FCRA provides for government taking over the FC assets and funds of the organisation, as discussed in AccountAble Handbook on FCRA:

...The assets and contribution can no longer be managed by the organisation itself. The ownership and possession will be transferred to the Central Government. The premises may be locked up and assets remain idle. Alternatively, the Government might decide that these should be used for public benefit. In such a case, the foreign contribution can be utilised for public benefit. This will be done by the prescribed authority. The Government can also sell off some of the assets, if required for managing the activities.....

The above view is supported by a cancellation order issued by FCRA department in Mar’15. This contains a list of 1142 NGOs whose FCRA was cancelled. The order gives direction to the concerned District Magistrates to 'manage the assets of the organisation' in such manner 'as considered necessary' and 'in public interest'.

Quite a task for the District Magistrates to locate the NGOs first, and then to start 'managing' their assets. Even Hercules would have shuddered at the thought!

Ref:
1. AccountAid Handbook on FCRA 2010: p. 93
2. MHA Order for cancellation [http://mha1.nic.in/pdfs/FCRACancellationOrder_180315.pdf](http://mha1.nic.in/pdfs/FCRACancellationOrder_180315.pdf)

(14-Mar-16)

460: PAYING FEES FOR FCRA RENEWAL (FORM FC-3)

Last date for filing form FC-3 online for renewal is 15th March 2016. If your FCRA registration took place before 15-Sep-2011, then you must file your renewal application by this date. This is required, even if you have already submitted paper application for renewal in old form FC-5.

After submitting the form, don't forget to pay the filing fees online. If you don't have internet banking, you can do this using a personal debit or credit card also. Once the fees are paid successfully, you will get an acknowledgment on-screen, as well as through email.

Ref:

(12-Mar-16)
459: EXPENSES ON RALLIES AND DHARNAS

FCRA Department appears to have expanded the definition of ‘political activities’ given in rule 3. Based on this, it has argued that reimbursing travel and food expenses to volunteers in a dharna (sit-in protest) or a rally out of FCRA funds is violation of FCRA.

Legal validity of this argument is doubtful, as rule 3 does not mention such peaceful protests at all. Rather it uses examples such as rail roko, rasta roko, jail bharo, bandh, etc.

Planning to protest against this at Jantar Mantar? Please make sure all volunteers bring their own water and poori-sabzi with them!

Ref:
1. Sec. 5(1) of FCRA 2010
2. Rule 3 of FCRR 2011

(14-Mar-16)

458: SEC. 35AC COMING TO AN END

In 1992, the Government introduced sec. 35AC. This allowed NGOs and companies spending money on priority social welfare projects 100% deduction for the amounts spent. Many NGOs raised and spent large amounts of funds under this. In 2014-15, companies spent nearly Rs.2,600 crores on projects under sec. 35AC.

This provision is now being retired after 25 years of active service. No deductions will be permitted under this after 31-Mar-2017.

(12-Mar-16)

457: REVISED FORM 10 FOR LONG TERM PROJECTS

Sometimes you receive money which you will use over 4-5 years. Income Tax Department allows you to accumulate this for up to five years, provided you file form 10. This form is filed manually.

Income Tax Department has now released a revised version of this form. This form should now be filed electronically, before the due date of tax return for NGOs and charitable trusts (30-September).

The new requirement is applicable from 1-Apr-2016.

Ref:
1. Rule 17(2) of Income Tax Rules
2. Form 10. Applicable for NGOs and charitable trusts.
We thank Mr. Dilip Bhadarge of Mumbai for drawing our attention to this notification. - Ed.

(18-Jan-16)

456: FORM 9A FOR CARRY FORWARD OF UNUSED INCOME

What happens if you are not able to use 85% of income during the year? You have to give an application to ITO for carry-forward of deficit. This application is generally made on plain paper, and filed before due date of tax return.

Income Tax Department has now released a new form 9A for this purpose. The form should be filed electronically, before the due date of tax return for NGOs and charitable trusts (30-September).

The new requirement is applicable from 1-Apr-2016.

Ref.:

1. Rule 17(1) of Income Tax Rules
2. Form 9A

We thank Mr. Dilip Bhadarge of Mumbai for drawing our attention to this notification. - Ed.

(18-Jan-16)

455: QUARTERLY FC RECEIPTS ON NGO WEB-SITE

Under revised FCR rules, all NGOs receiving foreign contribution must publish details of foreign contribution they have received during the quarter. Details should include name and address / country of donor, amount received, and the date of receipt. This can be presented in tabular form, separately for each quarter, on the NGO’s web-site. This must be done within 15 days of end of quarter.

The requirement is applicable from 14-Dec-15. Therefore you should upload the above details for the Oct-Dec’15 quarter at the earliest. Last date for doing this is 15-Jan-2016.

Ref.:

1. Rule 13 of FCR Rules, as amended

(1-Jan-16)

454: FCRA ACCOUNTS FOR 14-15 ON NGO WEB-SITE

Under old rules, NGOs receiving foreign contribution exceeding Rs. one crore had to publish summary receipts and utilization on their web-site. There was no time limit for doing so. Very few NGOs actually followed this practice.
Under revised rules, all NGOs receiving foreign contribution must publish complete set of audited FCRA accounts on their web-site. These should include Balance Sheet, Income & Expenditure Account, and Receipts & Payments Account. This must be done by 31st December each year.

The requirement is applicable from FY 2014-15. Therefore you should upload your audited FCRA accounts right away, if you've not done so already.

Ref:

1. Rule 13 of FCR Rules, as amended

(1-Jan-16)

453: POLITICAL DONATIONS & FOREIGN SOURCE DEFINITION

Some people suspect that the proposed change is designed to get Congress, BJP and other political parties out of the legal mess surrounding donations from Vedanta group companies like Sesa Goa and Sterlite. However, this seems doubtful for two reasons:

1. The change in 2010 Act will be effective only from 1-May-11, when the Act became operational. It is not clear whether this change will also affect the definition under 1976 Act despite sec. 54. The alleged offenses occurred under the 1976 Act.

2. Companies like Sesa Goa and Sterlite may still be treated as ‘foreign source’ under cl. iii of sec. 2(1)(j), read with sec. 2(1)(g), as they are part of Vedanta group, which is not an Indian MNC.

Ref:


2. Foreign source includes a 'foreign company' as defined in sec. 2(1)(g) of FCRA 2010. This includes a subsidiary of a foreign company.


(30-Dec-15)

452: MNCS & FOREIGN SOURCE DEFINITION

Will the proposed change also get international MNCs out of the definition of foreign source? This seems unlikely. Foreign MNCs and their Indian subsidiaries may still be covered by the definition under a different category of 'foreign company'.

Therefore, companies like Maruti Suzuki, Vodafone, Microsoft, Hindustan Lever etc. are likely to remain a foreign source despite the change.

Ref:

2. Foreign source includes a ‘foreign company’ as defined in sec. 2(1)(g) of FCRA 2010. This includes a subsidiary of a foreign company.

(30-Dec-15)

451: INDIAN COMPANIES & FOREIGN SOURCE DEFINITION

Government has proposed an important change in definition of ‘foreign source’ in FCRA 2010. The change will add the following proviso to sub-clause vi of Sec. 2(1)(j):

"provided that if the nominal value of share capital is within the foreign investment limits prescribed under the relevant rules and regulations issued under Foreign Exchange Management Act, 1999, then notwithstanding the nominal value of share capital being more than one-half at the time of making the contribution, such company shall deemed to be, and shall always deemed to have been not a foreign source."

What does this mean in practice? Any Indian company with majority foreign shareholding will not be treated as ‘foreign source’. This move will benefit companies like ICICI, HDFC, etc.

If you would like to offer any comments on this change, please send these to ak.dhyani@nic.in

Ref.:

Draft at FCRA web-site for comments:

Circular dated 21st December 2015

Subject: Suggestions on draft amendment to Foreign Contribution (Regulation) Act, 2010

1. In order to bring harmony in the meaning of foreign source as contained in the Foreign Contribution (Regulation) Act, 2010 (FCRA, 2010), Companies Act 2013 and FDI Policy of Government of India, it is proposed to amend FCRA, 2010 by inserting the following proviso below sub-clause (vi) of clause j) of sub-section (1) of Section 2:

"provided that if the nominal value of share capital is within the foreign investment limits prescribed under the relevant rules and regulations issued under Foreign Exchange Management Act, 1999, then notwithstanding the nominal value of share capital being more than one-half at the time of making the contribution, such company shall deemed to be, and shall always deemed to have been not a foreign source"
2. The suggestions/comments on the proposed amendment from the public and other stakeholders are solicited within one month and the same may be sent to the undersigned (address: Ministry of Home Affairs, Foreigners Division, FCRA Wing, 1st Floor, NDCC-11 Building, Jai Singh Road, New Delhi-110001). The suggestion may also be sent on e-mail: ak.dhyani@nic.in or may be faxed (at 0 11-23438042).

3. This issues with the approval of Competent Authority.

(30-Dec-15)

**450: ONLINE FC RETURN FILING DATE EXTENDED**

The last date for filing of FC return online in Form FC-4 has been extended to 15-March-2016 for the financial year 2014-15.

Ref: [https://fcraonline.nic.in/home/PDF_Doc/Annual_Return_Extension.pdf](https://fcraonline.nic.in/home/PDF_Doc/Annual_Return_Extension.pdf)

Ed:
We would like to thank Mr. Anil Goel for drawing our attention to this.

(23-Dec-15)

**449: FCRA ANNUAL RETURN IN NEW FORM FC-4**

The form of annual return has been changed to form FC-4. You must now file this form instead of form FC-6. All the attachments will also be uploaded online.

This does not apply to NGOs who have already filed their form FC-6 for 14-15 online. It also does not apply to those who have mailed their manually filled form by 14-Dec-15.

Ref:
1. Amendment to FCRA Rules 2015: [https://fcraonline.nic.in/home/PDF_Doc/doc00600120151214130739.pdf](https://fcraonline.nic.in/home/PDF_Doc/doc00600120151214130739.pdf)

(19-Dec-15)

**448: FEES FOR FCRA RENEWAL APPLICATION IN FC-3**

FCRA Department has banked renewal fee drafts of 2285 NGOs (see list). These NGOs need not pay the renewal fees of Rs. 500 online. All other NGOs applying for online renewal must pay this fee online.

What about NGOs who had enclosed the drafts? In most cases, FCRA department has not encashed the drafts. These are now being sent back to you by post. You can deposit them back in your bank account and get a refund.

Ref:

2. List of NGOs who need not pay renewal fees again: https://fcraonline.nic.in/home/pdf_doc/associations.pdf

(19-Dec-15)

447: FCRA RENEWAL APPLICATION – DATE EXTENDED

FCRA renewal has now moved online. If your FCRA registration is expiring on 30-Apr-16, then you must apply online in new form FC-3. Last date for filing the application is 15-Mar-2016.

This must be done even if you have already applied earlier using paper form FC-5.

Ref:

2. Link for logging in and filing FC-3 for renewal: https://fcraonline.nic.in/fc_public_login.aspx?Resp_Id=1

(19-Dec-15)

446: RECOVERING LIST FCRA LOGIN AND PASSWORD

You need online login and ID for filing FC-6 through internet. What if you have lost the ID or password and are unable to login? You can now apply online to get a new one. You will need to:

1. Scan your FCRA registration certificate,
2. Fill the application for modification online
3. Take a print of application on your letterhead
4. Scan and upload the application.

Simple enough? Visit http://fcraonline.nic.in/Fc_UserInfo_Home.aspx now to recover your lost ID or password.

(25-Nov-15)

445: FILING FC-6 ONLINE

If you are filing FC-6 online, please scan following documents as PDF and keep them ready. Documents should be signed manually before being scanned.

1. Certificate duly signed with seal from Chartered Accountant (Registration number of Chartered Accountant should be reflected on the seal). (up to 1 MB)
2. Declaration certificate from Chief Functionary duly signed with seal on the letter head of Association (up to 1 MB)
3. Audited Statements of FCRA Accounts (including Receipt and Payment Account, Income and Expenditure Statement, and Balance sheet) (up to 50 MB)
4. Copy of Statement of account from Bank duly certified by the officer of such bank. (up to 10 MB)

During filing, you will be asked to upload these documents. FC-6 need not be signed digitally. For detailed guidance, read http://fcraonline.nic.in/fc_fc3_help.pdf
If your FC-6 return has been filed online successfully with the attachments, there is no need to send a printed copy to FCRA Dept. by registered post.

(24-Nov-15)

444: SENDING FC-6 BY POST

FC-6 should be filed online if you can login and have a good internet connection. If not, please file your FC-6 by registered post. Filing online is not compulsory yet.

Send your FC-6 to by registered post to:
The Secretary,
Ministry of Home Affairs,
Foreigners Division,
NDCC-II Building Jai Singh Road, OFF Parliament Street, Near Jantar Mantar
New Delhi-110 001

Don't forget to write ‘For FCRA Wing’ on the envelope. Always keep a copy of the covering letter, complete set and the postal receipt.

You can also check delivery of your FC-6 letter at [http://www.indiapost.gov.in/speednettracking.aspx](http://www.indiapost.gov.in/speednettracking.aspx).
Take a print of the delivery track and keep it on file. Just in case.

(21-Nov-15)

443: PAY EXTRA TAX FOR KEEPING INDIA CLEAN!

Swachh Bharat cess @ 0.5% has been imposed on service tax with effect from 15-Nov-15. This means you have to pay 14.5% service tax on most services, instead of 14%.

Think of this next time you see someone littering the streets!

Ref:

(21-Nov-15)

442: FCRA RENEWAL – NOT FILED YET?

What about people who’ve not filed their FC-5 yet? They have two options:

1. Wait for the online forms to be announced and then file the application
2. File a paper application in FC-5, just in case.

Which one should you choose? Do a quick check on your risk appetite.

- If you ALWAYS wear a seat belt while driving, file the FC-5 before the October’15 deadline.
- If you don’t mind texting while walking or climbing stairs, then relax. Just enjoy the festive season!

Ref:
FCRA: Foreign Contribution (Regulation) Act, 2010 - Applicable in India

Capsule 441: FCRA Renewal – No Response?

Capsule 396: Apply for FCRA Renewal Now!

441: FCRA RENEWAL – NO RESPONSE?

FCRA registrations granted before May-11 will expire on 30-Apr-16. FCRA rules call on NGOs to file their renewal application 6-12 months in advance. Therefore, many NGOs have already applied for renewal using paper FC-5. FCRA Department is trying to move this process online since Jun’15, when draft rules were announced. Therefore, the paper applications have not been processed so far.

People who have already filed paper FC-5 should now wait till they hear from FCRA Department. If the Department asks them to file the application again online, then that’s what they should do.

Ref:
- FCRA: Foreign Contribution (Regulation) Act, 2010 - Applicable in India
- Capsule 442: FCRA Renewal – Not Filed Yet?
- Capsule 396: Apply for FCRA Renewal Now!


In 2010, Mr. P. Chidambaram told the Parliament that the Government does not mind if foreign contribution is used for ‘legitimate charitable social, educational, medical and activity that serves any public purpose’. However, it won’t allow foreign contribution to ‘dominate social and political discourse in India’. However, the FCRA Bill, passed after Mr. Chidambaram’s luminous speech, did not say what activities might influence the social and political discourse. The rules also left this undefined (except for a definition of political activities, given in rule 3).

This uncertainty will be cleared up once the FCRA rules are amended (click here to see the proposed draft). NGOs will be asked to tabulate their expenditure against a list of 81 purposes while filing the annual return for foreign contribution (the present list has only 56, including a residual item: other activities).

The new list also contains a useful code hinting at what is acceptable and what is not. The purposes are sub-divided into three categories: service delivery, civil rights advocacy, and research.

A. Service Delivery

This list has 56 activities - mostly around construction, welfare, education, income generation, agriculture, religion, disaster relief, etc. This is the classic formulation of charity, which is focused on helping others directly. Interestingly, the list includes theatre/films, empowerment of women, awareness camps, and seminars. Also included is ‘salary / honorarium to non-employees as part of specific projects’, whatever that might mean.

B. Civil Rights Advocacy

This, of course, is the bone of contention between government and NGOs. This is suitably limited to 20 activities, including rights, discrimination, justice, natural resources, climate change, and accountability. Child rights also show up here, as do public health, communication strategy and internet freedom. Though empowerment of women is classified as service delivery, violence against women, and sex workers’ rights are under civil rights advocacy.
Religious discrimination is listed here, though other religious activities are under service delivery. Capacity building is also included here - it would have to be somehow distinguished from awareness camps, meetings, and seminars, which are listed under service delivery.

C. Research

Research seems to be the new joker in the pack - you never know where it might take you! Therefore, all conferences, lectures, publications, seminars, are in this grey zone. Conferences and seminars are also listed under service delivery, probably due to an oversight. Therefore, if you spend most of the foreign contribution on service delivery, the FCRA department is unlikely to be bothered. But if your activities include civil rights advocacy or research, you should be prepared for some discomfiting scrutiny by the Department!

The complete list is given below.

**Category A: Service Delivery**

1. Celebration of national events (Independence/Republic Day), festivals, etc.
2. Theatre/Films
3. Maintenance of places of historical & cultural importance
4. Preservation of ancient/ tribal/ indigenous art forms
5. Cultural activities
6. Setting up and running handicraft centre/ cottage & khaki industry/ social forestry projects
7. Animal husbandry projects
8. Projects/ schemes for income generation for targeted groups
9. Micro finance projects, including setting up banking cooperatives and self-help groups
10. Agricultural activity
11. Rural Development
12. Construction and maintenance of school/ college
13. Construction and running of hostel for poor students
14. Grant of stipend/ scholarship/ assistance in cash and kind to poor/ deserving children
15. Purchase and supply of educational material - books, notebooks, etc.
16. Conducting adult literacy programs
17. Education/ Schools for the mentally challenged
18. Non-formal education projects/ coaching classes
19. Construction/ Repair/ Maintenance of place of worship
20. Religious schools/ education of priests and preachers
21. Publication and distribution of religious literature
22. Religious functions
23. Maintenance of priests/ preachers/ other religious functionaries
24. Construction / Running of hospital/ dispensary/ clinic
25. Construction of community halls etc.
26. Construction and Management of old age home
27. Welfare of the aged/ widows
28. Construction and Management of Orphanage
29. Welfare of orphans
30. Construction and Management of dharamshala/ shelter
31. Holding of free medical/ health/ family welfare/ immunisation camps
32. Supply of free medicine, and medical aid, including hearing aids, visual aids, family planning
33. Treatment/ Rehabilitation of persons suffering from leprosy
34. Treatment/ Rehabilitation of drug addicts
35. Welfare/ Empowerment of women
36. Welfare of children
37. Provision of free clothing/ food to the poor, needy and destitute
38. Relief/ Rehabilitation of victims of natural calamities
39. Help to victims of riots/ other disturbances
40. Digging of bore wells
41. Sanitation including community toilets, etc.
42. Vocational training - tailoring, motor repairs, computers, etc.
43. Awareness Camp/ Seminar/ Workshop/ Meeting/ Conference
44. Organising sports activities
45. Treatment and rehabilitation of persons affected by disease
46. Welfare of the specially/ differently abled, including provision of aids such as wheelchairs, hearing/visual aids, etc.
47. Welfare of the Scheduled Castes
48. Welfare of the Scheduled Tribes
49. Welfare of the Other Backward Classes
50. Survey for socio-economic and other welfare programs
51. Establishment expenses
52. Asset building
53. Establishment of Corpus Fund
54. Purchase of land
55. Construction/ Extension/ Maintenance of office, administrative and other buildings
56. Payment of salaries/ honorarium to non-employees as part of specific projects

Category B: Civil Rights advocacy
1. Human rights
2. Caste Discrimination
3. Religious Discrimination
4. Violence Against Women
5. Child Rights
6. Human trafficking
7. Bonded labour
8. Sex workers rights
9. Tribal/indigenous peoples’ rights
10. Democratic rights
11. Public accountability
12. Capacity building
13. Communication strategy
14. Criminal Justice System
15. Community rights
16. Issues regarding natural resources
17. Climate Change
18. Cyber Security
19. Internet freedom
20. Public health

Category C: Research
1. Research
2. Seminar
3. Conference
4. Publications
5. Lectures

[FCRA: Foreign Contribution (Regulation) Act, 2010 - Applicable in India; Originally posted at Linkedin.com on 25-Jul-15]
(31-Jul-15)

439: YOUR PERSONAL LIFE IN PUBLIC VIEW...

You probably never think twice before using personal credit cards for office expenses. Or the other way around. Especially if you head a small organisation. Your accountant will sort them out - debit your personal expenses to your ledger account, and the office expenses to office account.

Honest, convenient - and no real harm done. However, this also creates a vulnerability. If your organisation was investigated for tax or some other violation (such as FCRA), your very personal expenses could tumble out in full public view (click here to read an Indian Express story on this).

This can also happen if you use your personal email account or laptop for official mails or the other way around. The authorities could seize your laptop or demand access to your personal email account for 'discovering evidence' (click here to read 'Reversal of Fortune' for a real life example). Whether that evidence is found or not, much else may be found, to your enduring embarrassment.

All this was unheard of in India till a few years ago. But we seem to be catching up fast with the US. And keeping your personal and professional life separate in today’s 24x7 business world is really a quixotic idea. Keeping two credit cards might be feasible but would you carry two separate laptops on all your trips?

So what can you do about this? J D Roth offers five tips here, which might work for most mortals. However, if you head an NGO which challenges the State, then it might be a good idea to leave your personal laundry at home. Always.

[FCRA: Foreign Contribution (Regulation) Act, 2010 - Applicable in India; Originally posted at Linkedin.com on 22-Jul-15]
(31-Jul-15)
438: PLAYING OUT OF CREES?

You know what happens when you start playing out of crease in cricket. You get stumped. FCRA also has similar rules. And a little-known CREES. This one is the classification that you choose when you register under FCRA.

CREES is an acronym for Cultural, Religious, Economic, Educational, and Social activities. You can choose one or more at the time of registration. But you should stick to whichever ones you have chosen. What if you change your mind, and want to do different programs? You should first inform FCRA Department, and have your classification updated. You can then start playing in the new CREES.

What happens if you don’t bother to update your classification? The wicketkeepers at FCRA can stump you with one swipe!

[FCRA: Foreign Contribution (Regulation) Act, 2010 - Applicable in India; Originally posted at Linkedin.com on 20-Jul-15]

(31-Jul-15)

437: BEWARE INDIAN COMPANIES BEARING GIFTS...

Not because you cannot trust them! Rather because they might get you into trouble. Household names like ICICI, HDFC, Maruti Suzuki, Jet Airways, and many others are actually foreign sources under FCRA. And quite often, they themselves do not know this, happy in their status under Companies Act as an Indian company. Little do they know that FCRA 2010 hears a different drummer.

This blissful ignorance can lead to cascading defaults by the company, its CSR foundation, and by the receiving NGOs as well. Click here and here to see the legal troubles faced by Vedanta, BJP and Congress due to this. Click here if you want to read the full Vedanta judgement.

To find out how all this complicates CSR, click here. And click here to find out what our corporate leaders think about this.

To know more about the legal provisions and to insure yourself, read AccountAble 106.

[FCRA: Foreign Contribution (Regulation) Act, 2010 - Applicable in India; Originally posted at Linkedin.com on 15-Jul-15]

(30-Jul-15)

436: TRICKING NGOS WITH ANTI-MONEY LAUNDERING CERTIFICATES

An NGO is trying to raise funds. It approaches someone working in an MNC for some CSR funds. The person says - yes, we can give you a grant, but we need an Anti-money Laundering Certificate first.

Where would the NGO get this certificate?

The answer is ... nowhere! Unless of course it was willing to shell out fees to the very person who asked for it (or his agent)!!

To see a sample 'certificate', click here or here. To read more about similar scams here.

[Originally posted at Linkedin.com on 15-Jul-15]

(30-Jul-15)

435: RECALLED

Capsule recalled.

(30-Jul-15)
434: UPDATE YOUR FCRA INFORMATION ONLINE!

FCRA Department has uploaded a new utility for NGOs. All NGOs registered under FCRA are advised to go the site [http://fcraonline.nic.in/](http://fcraonline.nic.in/). They should then update their information using the topmost link. This should be done within the next 15 days.

This will allow the NGOs to avail all FCRA services online. FCRA Department plans to go fully online in the next 15-20 days.


[FCRA: Foreign Contribution (Regulation) Act, 2010 - Applicable in India; Originally posted on Twitter on 29-Jul-15]

(29-July -15)

433: DID YOU REALLY FILE YOUR FC-6?

Probably you did. But you'd be surprised at how many people forget to file, or simply send it to the wrong address.

There's no harm in making sure. Check the FCRA list to find out whether you are a non-filer. And if you are listed there, make sure you clear this up before your FCRA gets frozen!

Ref. FC-6 Returns Not Filed [http://bit.ly/1Hx4iV1](http://bit.ly/1Hx4iV1)

[FCRA: Foreign Contribution (Regulation) Act, 2010 - Applicable in India; Originally posted at LinkedIn.com on 16-Jul-15]

(17-July -15)

432: LANGO IN CAMBODIA

Cambodia, home to the world heritage Angkor Wat temples, had a difficult 20th century. After French occupation, it was ruled by a king for some time, and then taken over by Khmer Rouge. Khmer Rouge was driven by ideas its leaders picked up in France. It tried to create a socialist Utopia, and ended up killing hundreds of thousands. Cambodia was eventually liberated when neighbouring Vietnam sent in troops in 1978. Since then, Cambodia has moved forward, though at a slow pace.

Cambodia is now looking set to pass a new law to regulate foreign contribution. Called 'Law on Associations and Non-Governmental Organisations' (LANGO), has been debated for last several years. This law may allow the government to "deny registration to organizations of its choosing, compel groups to provide advance notice to the state of their activities, and implement laws criminalizing defamation, disinformation, and incitement" (Ref.3). NGOs in Cambodia have protested vehemently against this law in the past. Result?

The latest draft of the law is now being debated by the Government in secret!

Ref.:


(7-July -15)

**431: FCRA & THE COMPANY THAT YOU KEEP**

When the frying pan gets hot, you might be tempted to jump out... into the fire!

This is what seems to be happening with some NGOs. Not comfortable with the rigorous formalities and restrictions of FCRA 2010, they are registering as for-profit companies instead. Does this help?

Not really. The FCRA exemption applies only if a company is doing business. If a for-profit company takes up social work, programs, etc. with foreign contribution, it needs FCRA registration or prior-permission.

To get around this, some companies enter into service contracts with resident or non-resident donor agencies. However, this works only if the services are being delivered to the client agency who pays for them. It could also be to beneficiaries identified by the client, if the client has a presence in India. If the services are provided directly to public at large, this could be viewed as program activity.

And that could lead to FCRA asking uncomfortable questions!

Ref:

1. FCRA refers to Foreign Contribution (Regulation) Act 2010. Applicable in India.

2. Explanation 3 to sec. 2(1)(h) of FCRA 2010: ‘Any amount received, by any person from any foreign source in India, by way of fee (including fees charged by an educational institution in India from foreign student) or towards cost in lieu of goods or services rendered by such person in the ordinary course of his business, trade or commerce whether within India or outside India or any contribution received from an agent of a foreign source towards such fee or cost shall be excluded from the definition of foreign contribution within the meaning of this clause;...


(3-July -15)

**430: FC-6 AND ADMINISTRATIVE EXPENDITURE**

FCRA 2010 restricts administrative expenditure out of foreign contribution to 50% of FC receipts in a year. Spending more than 50% requires permission from FCRA department. Definition of administrative expenditure is given in rule 5 of FCRR 2011.

The present FC-6 does not ask for details of FC spent on administration. This will change once the new form FC-4 replaces the annual return in form FC-6. NGOs who file their annual return for FY 14-15 in the new form will have to give these details also.

However, NGOs who have already filed their annual return in form FC-6 online will probably be saved the trouble of compiling and reporting this for FY 14-15.

The new form FC-4 is likely to become effective sometime in July 2015.
429: RECONCILING TO FCRA CANCELLATIONS

The FCRA Department has now put up a query-based list on its web-site (http://mha1.nic.in/fcra.htm). This can give you the list of NGOs in each state whose FCRA has been cancelled.

This list has names of 11,509 cancellations as on 19-Jun-2015. The earliest entries are from 2011. There is no mention of 9,373 NGOs whose registrations were cancelled in 1996, 1997 or 2005.

According to this list:

- 4 cancellations date from 2011.
- 3,937 are from 2012.
- Another 4 are from 2013.
- 59 are listed from 2014.
- 7,505 are from 2015 (till 19-Jun).

Some of the figures do not match with earlier information. For example, 4,122 NGOs had their FCRA registration cancelled in 2012 (Capsule 428). The FCRA database shows only 3,937 from 2012. Where have 185 NGOs disappeared?

Most probably these NGOs had their FCRA registration restored later on. This happens when the NGO produces proof of having filed the returns, or files these after paying compounding fees.

So if your name shows up on the cancellation list for no reason, don't despair. Locate your proof of filing, and apply for restoration. Chances are you will get it back.

Ref:

1. 'Registration Cancelled List' at http://fcraonline.nic.in/fc8_cancel_query.aspx


(22-June-15)

428: WITH MALICE TOWARDS NONE...

The last one year has seen more headlines about FCRA cancellations than the previous 30 years. Is FCRA cancellation a new phenomenon, or is this being used maliciously by the present government to clamp down on civil society?

The facts do not support this popular view:
1. In Jul 1996, FCRA registration of 203 NGOs was cancelled.

2. In Sep 1997, FCRA registration of 497 NGOs was cancelled.

3. In Nov 2005, as many as 8,673 NGOs had their FCRA registration cancelled.

4. In mid-2012, FCRA registrations of 4,122 NGOs were cancelled.

5. In Mar 2015, FCRA registration of 1,142 NGOs were cancelled.

6. In Apr 2015, another 8,975 NGOs lost their FCRA.

It would seem, therefore, that large scale cancellation of FCRA registration is not malicious. Rather it’s only a housekeeping exercise. Most of the above registrations have been cancelled because the NGOs have either become defunct, have stopped received foreign contribution, or are not filing their FC returns.

Ref:

1. No. 423, Gazette of India - Extraordinary - Part II - sec. 3(ii). Dated 22-Jul-1996
2. No. 537, Gazette of India - Extraordinary - Part II - sec. 3(iii). Dated 19-Sep-1997
3. MHA Notification no., SO 1621(E), dated 26-October 2005, published in Extraordinary Gazette of India, Part II, Section (3)(ii) of 18th November 2005; AccountAid Capsule 190, dated 6-Feb-06
4. AccountAid Capsule 351: It’s Raining ... FCRA Cancellations!, dated 9-Aug-2012
5. F.No. II/21022/58(040)/2015-FCRA(MU) Cancellation Order dated 3-Mar-15; AccountAid Capsule
6. F.No. II/21022/58(040)/2015-FCRA(MU) Cancellation Order dated 6-Apr-15
(22-June-15)

427: MEET THE FCRA DIRECTOR

FCRA Department has fixed 5th of each month (or the next working day) for solving problems related to registration or prior-permission. The meeting will take place in room no. A-104/1 1st floor, NDCC-II Building, MHA, Jai Singh Road, from 10 a.m. to 1 p.m.

Only genuine representatives of the concerned NGO are allowed to meet the Director. You should make an appointment in advance. For this, send an email to ravinder.prasad56@nic.in. Remember to mention the following in the email:

1. Name and address of association
2. Name of the visitor
3. Application number (for registration / prior-permission)
4. Issues for discussion
Such meetings are often helpful in clarifying doubts, or getting your application moving forward, if it is stuck for any reason. Please make the best use of this opportunity.

Ref:

(20-June-15)

426: TWO MORE DONORS ON PRIOR APPROVAL

In addition to the 15 donor agencies named earlier, two more names have come to light. The first is Bertha Foundation. The second is Caritas Internationalis.

With this, there are now 17 donor agencies under referral category. Remittances from these organisations will not be credited to the receiver’s account without being cleared by the FCRA Department.

Ref:

(20-June-15)

425: THE ABC OF TRANSFER PRICING FOR INGOS

An International NGO might register a for-profit company in India to take up various kinds of socially-relevant consulting work. The Indian company may also provide partner selection and monitoring services to the parent charity. In most cases, the Indian company does not require FCRA permission, if it does not take up any charitable activities or programs in India. However, the company has to pay taxes like any other business organisation.

In some cases, this can also create complications. If the company is receiving fees from the parent NGO, then this may be treated as an International Transaction with an Associated Enterprise (AE). What does that mean?

Such transactions can be scrutinized by tax officers to ensure that the company is charging a fair price for its services (Arm’s Length Price). Where the department finds any laxity, it can refer the case for Transfer Pricing Audit. This can lead to demands for tax, interest and penalty.

An audit report in form 3CEB must be filed for all international transactions with AEs. If the transactions add up to Rs. 1 crore or more in an year, special documentation is also needed.
INGOs are particularly vulnerable to this. Most INGOs think in terms of cost-reimbursements (instead of fees) and are blissfully unaware of anything called Transfer Pricing.

Ref:

1. GrantAble 2: Setting up an Office in India. www.AccountAid.net

424: MONITORING FCRA RECEIPTS

The proposed FCRA Rules call for banks to report all FC deposits and withdrawals within 48 hours. This sounds like a lot of work for the banks. Or massive investment in software modification.

However, there is a simple solution to this problem. The Home Ministry is likely to link the FCRA designated or secondary bank accounts to something called PFMS. This will allow the ministry to get instant alerts on all transactions in these accounts. The system will also automatically red-flag any unusual transactions.

PFMS, or Public Financial Management System, is operated by the Comptroller General of Accounts, along with NIC (National Informatics Centre). The system covers about 90 banks at present.

Ref:

2. There are about 361 scheduled bank in India. These consist of 27 public sector banks, 30 private sector banks, 40 foreign banks, 196 regional rural banks, 52 urban cooperative banks and 16 rural cooperative banks. Source: second schedule, Reserve Bank of India, 1934. List updated as of 28-Feb-2009.

(20-June-15)

423: FEWER FORMALITIES FOR NPO COMPANIES

NGOs can also be registered as sec. 8 companies (old sec. 25). The new procedures allow quicker registration, in just about a month. They enjoy all the benefits of a charitable trust or society, with clearer governance rules.

In a welcome move, the Government has announced some more relaxations for these:
1. No minimum requirement for paid-up capital (sec. 2)

2. Minimum notice period for AGM etc. reduced to 14 days (sec. 101)

3. Consent to act as director neither needed (DIR 2), nor to be filed with ROC (DIR 12) (sec. 152)

4. Quarterly board meetings not needed. Once every six months enough (Sec. 173)

5. Lower quorum permitted for board meetings (sec. 174)

6. Disclosure or recording of interest in related-party transactions needed only if these exceed Rs. 1 lakh (Sec. 184, 188, 189)

Ref:
1. MCA notification dated 5-Jun-15. Available at www.AccountAid.net > notifications

2. Above listing is for general awareness only. Please seek professional advice from your auditors before taking any important decisions. - Ed.

(19-June-15)

422: FCRA RETURN – PROPOSED FORM FC-5

Forms FC-7 and FC-8 are to be merged into one form FC-5. This will include details of both articles as well as securities received. This is a good simplification, as two separate forms were not really needed.

Some comments:

1. The present format of FC-7 is quite clunky, being designed like a stock register. The new format is clearer. However, the details of utilisation / disposal are rather skimpy. Users may find it difficult to fill this up.

2. The format of FC-8 has also been simplified in the new FC-5. This should be fairly easy to fill up.

3. The CA certificate at the end of this form continues to confound. How will the articles be valued? How will unutilised balance of articles or securities be calculated? The rules do not mention a stock register for articles received as foreign contribution.

4. The certificate also refers to rule 17, instead of rules 4 and 11, which talk about investment register and other records.

5. The CA certificate refers to Balance Sheet and Receipts & Payments Account. Would these have any information about these transactions? As per general accounting practices in India, book entries are not passed for items or securities received as donation. Therefore, these do not show up in audited statements.

6. Rule 17 says that form FC-4 must be submitted electronically. However, it is silent about form FC-5. Will this be submitted online or in paper form? We'll probably know once the FCRA site is updated with the new formats.
421: FCRA RETURN – PROPOSED FORM FC-4

The proposed form FC-4 (present form FC-6) is being changed in a number of ways:

1. Association details to be furnished have been expanded.

2. The table of contribution received asks for more information (including web-site address and mobile number) about each donor.

3. Column for contribution in kind has been dropped. It is not clear whether this should be reported in form FC-4 as well as new FC-5. The related rule 17(2) does not refer to contribution in kind – it only talks about contribution received in bank.

4. The CA certificate at the end continues to imply that ‘contribution in kind’ should be included in the form (foreign contribution of / worth Rs._______ was received...).

5. The CA certificate continues to refer to rule 17 instead of Rule 11 for maintenance of accounts and records.

6. The CA certificate continues to ignore Income and Expenditure Account, though this is statement is also covered under rule 17(1).

7. The utilisation table is now project-wise. This would be simpler to fill up. Brief details of each project (100 words) are to be given.

8. A separate list of purposes is provided. These should be marked against each project.

9. The list of purposes has been classified into three categories: A – Service Delivery, B – Civil Rights Advocacy, C – Research.

10. Details of administrative expenses should now be given. This should be as per rule 5.

11. List of office bearers must be given with each form, including Chief Patron as well. For each of these people, you need to include their Facebook page, Twitter handle and mobile number.

12. Complete list of all branch offices, with number of employees and mobile number of branch in-charge is required.

13. List of designated primary bank account and the secondary utilisation bank accounts is required.

14. The Chief Functionary must also say that foreign contribution has not been used against national, public or economic interest of the State, etc.
15. The form will be signed digitally and uploaded electronically along with scanned balance sheet etc. There will be no need to send printed copies any longer.

Ref:
1. Proposed Form FC-4, available at www.AccountAid.net > notifications
2. AccountAid Capsule 419, dated 18-Jun-15

(18-June-15)

420: LET’S BE FACEBOOK FRIENDS – FCRA :)

The proposed form FC-3 for FCRA permission, registration and renewal breaks new ground in terms of a tech-savvy government. The form asks for the Facebook page and Twitter handles of the NGO as well as all the office bearers.

And if you were quietly thinking of changing your Facebook or Twitter id after getting your registration, please don’t. This information must be updated every year in the new form FC-4 (receipt of foreign contribution) as well.

This signals a wonderful coming together of social workers and the government on the social media. For all you know, you might end up with thousands of additional followers from among the Government....

Ref:
2. AccountAid Capsule 419, dated 18-Jun-15

(18-June-15)

419: THE FUTURE (OF FCRA) IS HERE!

MHA has proposed a number of amendments to the FCR Rules 2011. These are:

1. Forms FC-3, FC-4, and FC-5 have been merged into a single form: FC-3. Prior-permission, registration and renewal will all now take place through this form.

2. All organisations receiving foreign contribution must place their annual audited statements (FC) on their official web-site within nine months of year-end.

3. They must also make public any receipt of foreign contribution within seven days.

4. Banks must report all transactions in FC bank accounts (designated or secondary) to MHA within 48 hours.

You can study the proposed amendments at www.AccountAid.net (or the MHA web-site), and send your comments to MHA by post or by email (ak.dhyani@nic.in).

Ref.
1. F.No. II/21022/23(52)/2014-FCRA-III dated 17-Jun-2015; available at [http://mha1.nic.in/fcra.htm](http://mha1.nic.in/fcra.htm) and at [www.accountaid.net](http://www.accountaid.net) > notifications

2. AccountAid Capsule 415, dated 15-Jun-15

(18-June-15)

418: MUCH ADO ABOUT NOTHING?

In the last one year, FCRA has made more news headlines than it has in the last thirty years. Not all the headlines are sensible.

According to one report, FCRA registrations of Delhi University (DU) and Jawaharlal Nehru University (JNU) have been cancelled. They can not receive foreign funds any more.

The first part is true. The second is not. How so?

On 1-Jul-2011, the Government had issued a gazette notification. This exempted all universities totally from FCRA, if:

1. They were set up under a central or state law, and
2. Their accounts were required to be compulsorily audited by the CAG.

Both DU and JNU are in this venerable category. They don’t need FCRA permission to get foreign funding. And they don’t have to file any FCRA returns either. The same applies to many more universities on the list.

The report mentions the gazette notification, but fails to draw the obvious conclusion. The cancellation is merely housekeeping - these universities don’t need the registration at all!

Ref:


2. SO 1492(E), published 1-7-11 in the Gazette. Available at [www.AccountAid.net](http://www.AccountAid.net)

(15-June-15)

417: BUT WHO IS OUR CHIEF FUNCTIONARY?

This has been a confusing issue for FCRA holders. Now we have a clarification from the MHA. According to this:

'Association has to declare who is Chief Functionary at the time of registration, prior permission or renewal of registration. Therefore, associations who have not declared this so far, need to submit a declaration form to this effect now.'
Therefore, if your chief functionary’s name is not on record, simply fill up a declaration on the NGO letterhead, get it signed by all board members, add your FCRA number and send it to the MHA by registered post. Remember to mark the envelope as ‘for FCRA Wing’.

Ref:
2. Declaration form - last page of above circular.

(15-June-15)

416: FCRA GOING DIGITAL SHORTLY

MHA is revamping its online services. All online applications and returns will have to be signed digitally (DSC). Only the Chief Functionary can sign these. The DSC should be in the name of Chief Functionary. This change is likely to happen in mid-Jun’15.

If the Chief Functionary already has a valid DSC, the same can be used. If not, please apply for and get a class-II DSC. The DSCs are issued by agencies such as TCS, e-Mudhra, NIC, etc. These are available from vendors for about Rs. 700 and are valid for 1-2 years.

Ref:

(15-June-15)

415: CRITICAL FCRA AMENDMENTS PROPOSED?

The MHA has been working furiously to amend the FCRA for closer monitoring of NGOs with foreign funds. We now have an inkling of what these might be.

According to a news report, the changes may include:

1. Power for online monitoring of NGO bank accounts
2. Personal details, including bank details and bio-data of all board members to be furnished to MHA
3. Registration and reporting by foreigners coming to India for NGO visits
4. NGOs to provide listing of activities and declarations on web-site
5. Approval procedure for grants from foreign donors on prior-approval list
6. Modifying the definition of 'economic security' in line with Unlawful Activities Prevention Act

If all this is true, then may God have mercy on these NGOs, ... because the MHA is not likely to have any!
414: BUSINESS LIKE INCOME OF NGOS

Several years ago, the government placed restrictions on business activities of some charities and NGOs. Due to this, NGOs with general purpose activities could lose their tax exemption if their business receipts crossed Rs. 25 lakh per annum.

This rupee limit has been replaced with a percentage limit from current financial year (15-16). The percentage limit is 20% of total receipts of the NGO. This will help bigger NGOs. However, smaller NGOs will be at risk. For example, a general purpose NGO has total receipts of Rs.50 lakh per annum. Its business receipts are Rs 15 lakh. This NGO will lose its tax exemption now.

There is one more condition. The business activity must be an integral part of the general purpose charitable activity. This means that the business should actually help advance the general purpose charitable activity.

There's a silver lining too. The condition makes it clear that business income earned as part of the first five charitable purposes will not cause a default. Thank the FM for small mercies!

Reference:
- Sec. 2(15), Income Tax Act, 1961
- Capsule 268: Tax-exempt NGOs Have No Business …

(23-May-15)

413: ET TU, BILL?

Considering the Government’s resolve to close the gates on private foreign aid, it shouldn’t come as a surprise that Bill & Melinda Gates Foundation (BMGF) is also under scrutiny. However, as the MHA officers are at pains to point out, this scrutiny is not as piercing as with the others. What is the reason for this review of an agency which focuses primarily on health?

According to one source, this is due to a discrepancy in the amount reported by one of the recipients, Public Health Foundation of India. Foreign Contribution in India is reported on the basis of actual receipt, whereas donor agencies typically report the full amount on making a commitment (accrual basis).

Another source links this to the BMGF’s support to various drug companies for clinical trials, including death of seven tribal girls in 2009, allegedly during trials conducted by PATH, a grant recipient.

If true, then this is another illustration of how a donor agency could face difficulties due to actions of a grantee.

References:


3. Julius Caesar may never have uttered the famous phrase 'Et tu, Brute?', attributed to him by William Shakespeare. But the phrase lives on. -Ed. (6-May-2015)

412: CAVEAT DONATOR!

Don’t look a gift horse in the mouth, we were always told. However, times have changed since the Greeks gifted a horse to the people of Troy. They have changed even more since the FCRA 2010 became law. Donors are now coming under intense Government scrutiny.

In an unprecedented series of administrative actions, the FCRA authorities are placing donor agencies on the prior-approval list. So far, 15 donors are believed to have been placed on this list:

1. Danish International Development Agency (DANIDA);
2. Danish Institute of Human Rights (DIHR);
3. Catholic Organisation for Relief and Development Aids (CORDAID);
4. Dan Church Aid (DCA);
5. Mercy Corps, USA;
6. Inter Church Peace Council-Pax Christi (IKV-PC), Netherlands;
7. HIVOS Netherlands;
8. ICCO Stretegische Samenwerking (ICCO), Netherlands;
9. Greenpeace International;
10. Climate Work Foundation (CWF), USA;
11. 350.Org;
12. BIC, USA;
13. Avaaz, USA
14. Sierra Club USA
15. Ford Foundation, USA

However, the Home Ministry has informed the Parliament that 16 donors have been placed 'under the prior-permission category'.

Clearly, there is one more donor on the list, whose name is not yet known. Will they please raise their hand?

References:


2. Names of 10 donors are on the RBI circular referred above. Other five names are taken from press reports.


(6-May-2015)

411: THE SEVEN DEADLY SINS … UNDER FCRA

According to the Ministry of Home Affairs, most NGOs get into trouble with FCRA for one of the following reasons:

1. Clubbing foreign contribution account with domestic accounts i.e. failure to maintain exclusive accounts as required by FCRA,

2. Failure to submit annual accounts within the stipulated period,

3. Transfer of foreign contribution to unregistered NGOs,

4. Utilization of foreign contribution amount for the purposes different from the grant or different from the objectives of the recipient NGO,

5. Registration of assets from foreign contribution in the individual names of office bearers rather than in the name of NGO,

6. Utilization of more than 50% of foreign contribution received in a financial year on administrative expenses, and,

7. Change of more than 50% of the office bearers without prior approval

Therefore, if you like your FCRA registration and want to keep it, make sure you don't fall prey to temptation. For temptation leads to sin. And sin can land you in purgatory!

References:
1. 'Home Ministry lists 7 violations for action against NGOs,' Economic Times, 5-May-2015


3. Foreign Contribution (Regulation) Act, 2010. Applicable in India

(5-May-2015)

410: CBDT PERMISSION FOR NEPAL ON FAST TRACK

Tax-exempt NGOs wanting to take up earthquake relief work in Nepal need CBDT prior-approval for this. This permission normally takes 3-6 months. However, the CBDT today announced that the permission will be granted within two working days.

To get the permission you need to submit a completed application, setting out details of what you want to do, the area, and the amount to be spent. More details on this are given in AuditAble 12: Taxing NGO Programs Outside India.

Reference:
1. AuditAble 12: Taxing NGO Programs Outside India (www.AccountAid.net)
2. Sec. 11(1)(c) of Income Tax Act, 1961

409: CONTRIBUTING TO RELIEF IN NEPAL

Many individuals and businesses are keen to contribute directly to the earthquake relief in Nepal. One simple and immediate way would be to send money to the Nepalese PM’s Relief Fund. The Nepalese Embassy in Delhi has set up a dedicated bank account for for earthquake relief contribution. This account is for those who wish to contribute in cash for the relief of the victims of the devastating earthquake that hit Nepal on 25 April 2015:

Account Name: Embassy of Nepal (Relief fund)

Account No: 2254002100018449

Swift Code: PUNBIBBDOB

IFSC Code: PUNB0225400

Punjab National Bank

8th Floor, DCM Building

16, Barakhamba Road

New Delhi- 110001
The amount deposited in this account will be updated in this website on daily basis and the total amount collected will be transferred to the account of Prime Minister’s Natural Disaster Relief Fund in Kathmandu, Nepal.

Reference:

http://www.nepalembassy.in/

408: CSR IN NEPAL

Many companies would like to use CSR funds for earthquake relief in Nepal. Unfortunately, the present CSR rules do not allow this. CSR funds can be spent only within India.

Time for the Government to step in and relax the rules for six months?

References:
1. AccountAid Capsule 407
2. Rule 4 of Companies (Corporate Social Responsibility Policy) Rules 2014

407: CSR & EARTHQUAKE RELIEF

CSR is meant to help bring business and society closer to each other. However, strangely enough, earthquake or flood relief is not covered by sch. VII. To get around this, MCA had issued a clarification last year:

"Disaster relief can cover wide range of activities that can be appropriately shown under various items listed in Schedule VII. For example,

(i) medical aid can be covered under ‘promoting health care including preventive health care.’

(ii) food supply can be covered under eradicating hunger, poverty and malnutrition.

(iii) supply of clean water can be covered under ‘sanitation and making available safe drinking water’.

So if you want your company to spend CSR funds for earthquake relief, go right ahead. But do check the next capsule first.

References:
1. Sch. VII to Companies Act, 2013
406: HELPING HANDS FOR NEPAL - CBDT PERMISSION

The earthquake in Nepal has triggered an enormous outpouring of sentiment among Indians. Many businesses and individuals are sending material, money and people to help.

Some NGOs are also planning similar efforts. Some have trucks loaded with material, others are collecting money and food supplies. These NGOs, however, need CBDT approval before applying any of their funds outside India. Failure to do so can lead to problems in tax assessment.

As CBDT approvals are very tedious, the Government should consider issuing a general notification on Nepal Earthquake Relief under sec. 11(1)(c) of Income Tax Act, 1961. This will simplify matters for everyone and help India do what it should do in this hour of need for its closest neighbour.

Reference:
1. Sec. 11(1)(c)(i) of Income Tax Act, 1961

405: ADMINISTRATIVE EXPENSES AND FCRA – GREENPEACE LESSON

FCRA 2010 caps administrative expenses at 50% of foreign contribution received during the year. The term administrative expenses has also been defined in a special way. For example, salaries of staff is generally treated as administrative expenditure. There are some relaxations for salaries of teachers, doctors, trainers, etc. If your administrative expenses are likely to exceed 50%, then you must take government approval in advance.

Many NGOs are either not aware of this, or take the provision lightly. The time for this may be over. One of the reasons given for suspension of Greenpeace FCRA is:

'...the association has incurred more than 50% of the foreign contribution on administrative expenditure during the financial year 2011-12 and 2012-13, without obtaining prior approval...'

If your NGO is involved in advocacy, organising, or other forms of social awareness, your 'administrative expenditure' may well be over 50%. Keep watching it, and get prior approval if you can’t keep it below 50%.

References:
1. Sec. 8 and Rule 5 of Foreign Contribution (Regulation) Act, 2010 / Rules 2011. Applicable in India
2. See 'Administrative Expenditure' on page 80 of AccountAid Handbook on FCRA. Available at www.AccountAid.net
As a follow-up action, the FCRA assets of these 10,117 NGOs have been placed under Government management. The District Magistrates have been asked to take possession and manage the assets. This is as per the law, but implementing this order will be quite complicated.

Firstly, many of these NGOs are probably defunct. Others may have never received a single rupee of foreign contribution. The District Magistrates will be hard-pressed to locate these, identify the assets, and then place an office to 'manage the assets in public interest'.

Secondly, the order does not state that only FCRA assets are to be taken over. Under law, the government can not take over non-FCRA assets without court orders.

Thirdly, most NGOs do not keep FCRA and non-FCRA assets segregated. In some cases, a vehicle may be funded jointly with FC and non-FC funds. Similarly, land is mostly bought with non-FC funds, whereas the building is constructed with FC funds.

References:

2. Sec. 15(1) of FCRA 2010

In March’15, FCRA registration of 1,142 NGOs in Andhra Pradesh was cancelled. These NGOs were apparently not filing their FC returns. They also did not reply to the show-cause notice issued by Ministry of Home Affairs.

In another big cancellation, 8,975 NGOs have now lost their FCRA registration for similar reasons. More cancellations are likely in the next few months.

How to make sure that your name does not figure on the next list?

Firstly, check whether your FC-6 is showing online or not? if not, verify that it has actually reached the Ministry.

Secondly, check whether FCRA web-site shows your correct address (fcraonline.nic.in/fc8_statewise.aspx).

Thirdly, pray every day…. Always helps!

Reference:

1. F.No. II/21022/58(040)/2015-FCRA(MU) Cancellation Order dated 3-Mar-15
2. F.No. II/21022/58(040)/2015-FCRA(MU) Cancellation Order dated 6-Apr-15
402: SEPARATE BANK ACCOUNTS – THE GREENPEACE LESSON

Seasoned drinkers know that mixing your drinks can be dangerous. So is the case with mixing foreign funds and Indian funds. How so?

FCRA department has always insisted that FC funds should be kept in a separate bank account. Many NGOs follow this diktat. Others don’t. Almost none understand the reason for this strange rule.

The Greenpeace case shows us some light. According to FCRA officers, the NGO has transferred FC into Indian bank accounts, and vice versa. This may have been something simple as paying some FC expenses from Indian account, and then transferring funds to cover these.

Result: FCRA department has now frozen bank accounts with Indian funds also. Why? Because these might contain some FC funds.

Lesson for NGOs: Draw a very thick black line between FCRA and non-FCRA bank accounts. Don’t ever cross this line.

Ref:

Sec. 17 of FCRA 2010, applicable in India

(21-Apr-15)

401: 100% DEDUCTION FOR KEEPING GANGA CLEAN

The Government has set up another fund called Clean Ganga Fund for cleaning up river Ganga.

Any person donating money to this fund will get a 100% deduction from their taxable income. However, the person should be a resident for income tax purposes. This will be effective from Financial Year 2014-15 itself.

If the donation is from CSR funds, then the deduction will not be available.

Ref:

- Proposed amendment to sec. 80G of Income Tax Act

(3-Mar-15)

400: 100% DEDUCTION FOR CLEAN INDIA FUND

The Government has set up a special fund called Swacch Bharat Kosh for keeping the cities and villages clean.

Any person (whether resident or not) donating money to this fund will get a 100% deduction from their taxable income. This will be effective from Financial Year 2014-15 itself.
However, if the donation is from CSR funds, then the deduction will not be available.

Ref:

- Proposed amendment to sec. 80G of Income Tax Act
(3-Mar-15)

399: FEE-BASED YOGA ACTIVITIES

Yoga was earlier a part of the general public utility segment. An NGO earning fees from yoga sessions, etc. would have to make sure these remained below Rs.25 lakh annually.

The Finance Bill is set to change this. Yoga is being added as a specifically charitable purpose. This means that yoga centres will no longer have to keep any eye on the fees they earn from aspiring yogis!

Ref:

- Proposed amendment to sec. 2(15) of Income Tax Act
- AccountAid Capsule 398: Charitable Purpose and Business Activities
(2-Mar-15)

398: CHARITABLE PURPOSE AND BUSINESS ACTIVITIES

If general purpose charities get more than Rs. 25 lakh annually from incidental business-like activities, they can lose their tax exemption.

The new Finance Bill will modify this is two ways:

1. The business activities should be integral to the general purpose.

2. The business receipts should not exceed 20% of the total receipts during the year.

The first change adds another layer of complexity. The fees, etc. should be earned while carrying out the general purpose charitable activity. This may require careful thought and documentation.

The second change is good for some and bad for others. NGOs with gross annual receipts exceeding Rs. 1.25 crore will benefit from this. NGOs with lower annual receipts will find their ‘business activities’ pruned to a lower limit.

Ref:

- Proposed amendment to sec. 2(15) of Income Tax Act
(2-Mar-15)
In 1980, Mrs. Indira Gandhi had ordered the setting up of a commission of enquiry on foreign-funded NGOs. This commission, headed by Justice P.D. Kudal, submitted a report in six instalments, totalling 2,000 pages. This led to NGOs being asked to register or obtain advance permission from MHA before getting foreign donations. The present FCRA 2010 draws many of its provisions from the Kudal Commission report.

History may repeat itself again. A petition, floated by a select group of civil society members and intellectuals, is now online. It makes a number of charges, mostly based on erroneous facts and faulty logic. It also asks the government to:

1. Set up a powerful commission of enquiry which will find out whether foreign-funded NGOs have a hidden agenda, are corrupt, linked with secessionist outfits, engage in hawala, use funds for lobbying and campaigning, etc.
2. Evidence of corruption, if any, in the utilisation of foreign funds;
3. Prohibit use of foreign donations to political or religious activities, including criticism of development projects
4. Ensure CSR funds are deposited with a Government authority, who will then distribute these NGOs
5. Ensure foreign-funded NGOs display their accounts online and file their tax returns

Do visit the link given below to find out what you did last summer!

Ref:

http://www.manushi.in/articles.php?articleId=1816#.VOXUVuauEGPPetition

(23-Feb-15)

396: APPLY FOR FCRA RENEWAL NOW!

FCRA registration of old organisations will expire on 30-April-2016. They should file their renewal application in FC-5. This should be filed one year in advance. The last date for filing this is 30-April-2015.

Those who are receiving small amounts of foreign contribution can file FC-5 by 31-Oct-Oct-2015.

Ref:

• Form FC-5 at www.AccountAid.net.
• This applies to all organisations who received their FCRA registration before 1-May-2011.

(14-Feb-15)
395: TIME TO UNFREEZE OTHER DONORS?

The Greenpeace India order includes another very important observation. Justice Shakder said:

“According to me, there is no material whatsoever, on record, which would, presently justify, declining the petitioner’s request for allowing it access to its bank account maintained with IDBI Bank (Chennai branch). The stand taken by the respondents that the donor, [Greenpeace International and Climate Works Foundation], is on the "watch-list" of the Ministry of Home Affairs, is not enough, as no material of any sort has been placed on record which would warrant, respondents reaching such a conclusion.”

The order does not unfreeze other donors, as they had not petitioned the court. But the order clearly shows that the Government has not produced any evidence to support its view that funds from these donors should be kept out.

What happens if the ten donors listed in the RBI directive of 15-Jan-2015 also file an appeal? The Government might face some tough questions in the court!

Ref:

- Greenpeace India Society vs. Union of India, Delhi High Court, Judgement dated 20-Jan-15
- AccountAid Capsule 391: Placing FCRA Donors under Prior-permission
- AccountAid Capsule 390: Power to Give Directions under FCRA
- AccountAid Capsule 389: Ten Donors Under Prior Permission

(31-Jan-15)

394: GREENPEACE UNFROZEN

Last year, some of FC remittances to Greenpeace India were blocked by IDBI on MHA direction. Greenpeace went to court. The Court told IDBI to release the funds immediately. The court also said:

“There is no material placed on record, which would show... that the activities carried out by [Greenpeace India], as claimed by the [Government], are detrimental to national interest. [Greenpeace India’s] disagreement with the policies of the Government of India, could not, [as such] be construed as actions which are detrimental to national interest.”

The Court went on to say:

“Non-Governmental Organizations often take positions, which are contrary to the policies formulated by the Government of the day. That by itself, in my view, cannot be used to portray, [Greenpeace India’s] action as being detrimental to national interest. The government is free to
execute its policies as it has the mandate of the people behind it, notwithstanding a different point of view of Non-Governmental Organizations, such as the petitioner.”

Ref:

- Greenpeace India Society vs. Union of India, Delhi High Court, Judgement dated 20-Jan-15 (28-Jan-15)

393: SETTING UP A CSR ARM

Companies covered by compulsory CSR can set up a dedicated CSR trust, society or sec. 8 company. This CSR arm can be set up in collaboration with other group companies (holding, subsidiary or associate companies). This means separate CSR trusts are not needed for each group company.

This has now been relaxed further. The CSR arm need not be set up for one's own group exclusively – it can be set up in collaboration with any other company as well.

Ref:

- Companies Act, 2013

(24-Jan-15)

392: COMPANY FILING FOR ACCOUNT BOOKS

Many Companies keep their account books at the registered office. However, sometimes the registered office is just a simple address, such as the director’s residence. In such cases, the account books may be kept at the main office. If the accounting is outsourced to a BPO, the account books may be kept at their office.

The Companies Act allows all these things. However, if the account books are not kept at the registered office:

1. The Board of Directors must approve this by a resolution.
2. The resolution should include full address of the place where books are kept.
3. Companies must inform the Government within seven days.

This should be done by filing form AOC-5. The form is filed online at MCA 21. The form should also mention the related police station. Enclose a copy of the Board resolution also.

This applies to all companies, including non-profit companies with license under sec. 8 (old sec. 25).

Ref:
ACCOUNTAID CAPSULES

- Sec. 128 of the Companies Act 2013
- Form AOC 5 available at http://www.mca.gov.in/MinistryV2/Download_eForm_choose.html

(24-Jan-15)

391: PLACING FC DONORS UNDER PRIOR PERMISSION?

Which FCRA provision is the Government trying to implement through these directions?

Sec. 11(3) empowers the Government to place certain sources under prior-permission category. However, the law also says that this must be done through a Gazette notification. Has this notification been issued? This is not clear.

What happens if the gazette notification has not been issued? Any affected party can challenge the MHA instructions to RBI, as being bad in law. How so? The directions under sec. 46 can be issued only to implement provisions of the law. These cannot be used as a substitute to the provisions of the FCRA.

What if the gazette notification has actually been issued? Any organisation on the RBI list can still challenge the order in a High Court. The Courts have jurisdiction to examine evidence which supports the notification. They can also pass an order saying that notification issued under sec. 11(3) is not valid.

And we already know from the Greenpeace order that Indian courts are quite willing to take on the MHA on such issues!

Ref:
- AccountAid Capsule 390: Power to Give Directions under FCRA
- AccountAid Capsule 389: Ten Donors Under Prior Permission

(21-Jan-15)

390: POWER TO GIVE DIRECTIONS UNDER FCRA

RBI has issued these instructions to the banks on the basis of a letter from Ministry of Home Affairs. What is the legal basis for the MHA letter? Sec. 46 of FCRA empowers the Government to give directions to various persons. However, these directions should be issued to help implement the provisions of the Act.

Ref:
- AccountAid Capsule 389: Ten Donors Under Prior Permission
389: TEN FC DONORS UNDER PRIOR PERMISSION!

For quite some time, Indian banks have been asked by RBI to refer some international remittances to FCRA Wing. The RBI has now issued a general circular on this. Remittances from following donors are subject to prior-approval from Ministry of Home Affairs:

1. Danish International Development Agency (DANIDA)
2. Danish Institute of Human Rights (DIHR)
3. Catholic Organization for [Relief] and Development Aid (CORDAID)
4. Dan Church Aid (DCA)
5. Mercy Corps, USA
6. Inter Church Peace Council _ Pax Christi (IKV- PC) , Netherlands
7. HIVOS, Netherlands
8. ICCO Stretegische Samenwerking (ICCO), Netherlands
9. Green Peace International
10. Climate Work Foundation (CWF), US

If you are receiving funds from one of these donors, be prepared for long delays in credit of the funds to your accounts.

Ref:

  Available at http://icmai.in/upload/pd/RBI-Circular-16012015.pdf

(21-Jan-15)

388: SERVICE TAX ON FEES FROM FOREIGN CLIENTS

Services to foreign organisations may not be chargeable to service tax in some cases. To understand this, let’s take an example.

A foreign entity has retained you to provide advisory services in India. You visit and advise their grantees / partners in India, and report back to the client. The foreign entity does not have an office in India. Therefore, your contract is signed with the main office. Your fees also come from abroad. Will this be chargeable to service tax?
No. In most cases, service tax is now charged based on location of the receiver of services. In this case, the receiver is located abroad. Therefore, this service is not taxable. It does not matter that the service is actually performed in India.

Ref:

- AccountAid Capsule 381: From TDS to Service Tax, released 16-May-14
- The above offers only a general interpretation of law. Applicability of service tax is a fairly complex matter, and depends on a numbr of factors. Please seek responsible legal advice before acting on the above information. – Ed.
- We are thankful to Mr. Suresh Kejriwal, FCA for his inputs in this matter. – Ed.

(29-Oct-14)

387: CASH IS NO LONGER KING ... FOR FCRA HOLDERS

Cash makes the world go round, as they say. Most people therefore love being paid in crisp currency notes. Some absolutely refuse to accept cheques, especially from NGOs.

The FCRA Department has put a spanner into this scheme of things. From now on, NGOs should avoid cash payments of Rs.20,000 or more. These should be made by cheque / demand drafts (ideally crossed account payee). You can also make the payments by bank transfer.

If you ignore this warning, and continue drawing large amounts of cash from FCRA bank account, be prepared to face deeper scrutiny. Usually this means a polite invitation to visit FCRA office in Delhi with all your books and accounts. This can be quite an experience.

And the invitation card does not say RSVP either.

Ref:

- FCRA refers to Foreign Contribution (Regulation) Act, 2010. Applicable in India.

(27-Oct-14)

386: THE FINE ART OF NOT LISTENING TO GOOD ADVICE

FCRA prescribes stiff penalties for violation, including jail. If Congress finds itself in this deep FCRA hole today, it has its own UPA government to thank for it. How so?In 2008, the Parliamentary Committee on Home Affairs had found that the definition of ‘foreign source’ is vague. It recommended that Indian companies be totally excluded from this.

However, the Home Ministry chose to ignore this piece of sound advice. FCRA 2010 retained the original definition.
Then followed the writ petition in High Court. And the High Court’s order asking for action within six months.

And the rest may soon be history. Unless, of course, the Government rewrites history through a retroactive amendment to FCRA.

Ref:

- AccountAid Capsule 385: Indian Company, Foreign Source..., released 24-Jul-14


- ‘...when a foreign company or a foreign individual owns 51 per cent of an Indian company and he makes a foreign contribution, that has to be treated as a foreign contribution...’ Hon. Home Minister in Rajya Sabha on 19-Aug-2010. Extract reproduced in AccountAid Handbook on FCRA, p. 276, available at www.AccountAid.net

- FCRA refers to Foreign Contribution (Regulation) Act, 1976 / 2010

(25-Jul-14)

385: INDIAN COMPANY, FOREIGN SOURCE...

A company formed outside India is a foreign source, even if all its shares are held by Indians. Logically then, a company formed in India should be Indian source, even if all its shares are held by foreigners.

Not so. If shares held by foreigners are more than 50%, the company becomes a foreign source. This strange logic is found in a law called FCRA.

Figuring this our may be simple for closely-held companies. But what about publicly-traded companies? Their shares change hands every day, every hour. How do you which moment they are foreign and when do they become Indian?

Obviously, it’s easy to make a mistake. And that’s what the Congress and BJP may have done when they took political donations from an Indian company, which, unfortunately, was also a foreign source.

Talk about digging holes for others....

Ref:

- Association for Democratic Reform vs. Union of India, WP(C) 131/2013, Delhi High Court order dated 28-Mar-14

- ‘Congress moves Supreme Court over foreign funding’, ZeeNews.india.com, 23-Jul-14

- ‘They dug a pit in my path – but they fallen into it themselves’. Psalm 57:6, Holy Bible, New International Version
384: WHEN CSR BECOMES A SERVICE...

Donations and grants are not commercial payments. There is no service tax on these. Therefore, can the Government levy service tax on CSR grants to NGOs?

Unfortunately, the answer is yes. If the CSR agreement says that the NGO must display the corporate logo or name, etc. on project site or during events, then the grant or donation becomes a chargeable service.

If this happens, the NGO may be asked to pay service tax @ 12.36% of the total grant amount.

Ref:
- AccountAid Capsule 381: from TDS to Service Tax?
- Circular No. D.O.F. No. 334/1/2012-TRU dated 16-Mar-12
- Guidance Note para 2.2.2 on page 18, at http://www.cbec.gov.in/ub1213/do-jstru2.pdf, reproduced here:

‘2.2.2 What are the implications of the condition that activity should be carried out for a ‘consideration’?

• To be taxable an activity should be carried out by a person for another for a ‘consideration’

• 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.

• An act by a charity for consideration would be a service and taxable unless otherwise exempted. (for exemptions to charities please see Guidance Note 6)

• 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.

• Donations to a charitable organization are not 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.’

(18-Jul-14)

383: ONE PERSON COMPANY U/S 8?

How many persons do you need to form a non-profit Company? Can you form it with just one person?

Unfortunately not. A little noticed rule says that an OPC (one person company) will not be issued a non-profit license under sec. 8.
Therefore, the answer remains the same as before. You need at least one more person to keep you company - if you want to form a non-profit company.

Ref:
- Sec. 8 of Companies Act 2013, applicable in India
- Rule 3(5) of Companies (Incorporation) Rules, 2014
(17-Jul-14)

382: BUDGET, CSR AND NGOS

The new Finance Bill brings much desired clarity for CSR expenditure. This expenditure will not be allowed as a business deduction under section 37 of Income Tax Act.

This has a (counter-intuitively!) positive implication for NGOs. Companies looking for some tax advantage for their CSR spend will now be interested in donating to NGOs. This will help them get at least 50% deduction under sec. 80G.

And if the NGO is approved under sec. 35AC? The company can claim 100% deduction from taxable income!

Talk about having your cake and eating it too!!

References:
- Finance Bill 2014, proposed modification to sec. 37
- Sec. 135 of Companies Act 2013
- CSR Rules 2014
(11-July-2014)

381: FROM TDS TO SERVICE TAX?

Some NGOs conduct research studies, help in group formation or provide various other development support to Government Departments or donor agencies. CSR work is also an emerging category.

The payment is mostly treated as grant or donation by the NGO. However, in some cases, the donor agency or Government deducts tax at source. This might be done u/s 194C (1%) or 194J (10%). Though NGOs don’t like this, they often have to accept it. In any case, they can later claim a refund of the tax amount.

But now there is a new problem. The Income Tax Department is providing a list of such cases to Service Tax officers. They scrutinise the TDS amount u/s 194J. If it is high (say Rs. 1 lakh), then they check whether the NGO is registered under service tax. If not, they will pay a visit and issue a demand note.

So if you are one of these NGOs, be prepared for a visit from the Service Tax Department!

References:

1. Sec. 194(J) of Income Tax Act, 1961

(16-May-2014)
380: DELVING DEEPLY INTO DONATIONS...

Over the last few years, the Income Tax Department has tightened control over donations. Tax on anonymous donations (sec. 115BBC) is one example. Ensuring compliance with modified definition of charitable purpose is another reason.

The Assessing Officers have now started asking NGOs to provide full details of all the larger donations. This may include related correspondence, remittance details, PAN, purpose of the donation, etc. Documents generated by the NGO itself are not good enough – the Department wants to see what the donor has said.

The idea is to find out whether any of these donations are anonymous in reality. This exercise also helps the AO figure out whether any of the receipts are really service payments / fees, which have been disguised as donation or grant to avoid problems under sec. 2(15).

References:

2. AccountAid Capsule 369: Compulsory Tax Scrutiny for NGOs with IGP Income (8-Aug-13)
3. AccountAid Capsule 340: A Charity has no Business... (10-Mar-12)
4. Sec. 2(15) of Income Tax Act, 1961 (applicable in India)

(15-May-2014)

379: FILE YOUR FC-7 AND FC-8 ALSO

FCRA rules are not clear about filing of nil FC-7 and FC-8. Apparently, penalty can be imposed for not filing a nil FC-7 or FC-8.

Therefore, even if you have not received any material or shares from a foreign source, file a nil FC-7 and FC-8 along with CA certificate. Send these by registered post before 31st December.

(20-Dec-2013)

378: FILE YOUR FC-6 OR PAY PENALTY

FCRA Department is now levying heavy penalties for not filing FC-6 before due date. Therefore make sure your FC-6 is filed online by 31st December 2013.

If you are sending it by registered post, make sure you have the latest address (NDCC Building). Do write ‘For FCRA Wing’ on the envelope.

Also keep the proof of posting with you for future. This will be needed if your FC-6 does not reach FCRA Department.

Remember that you must file a ‘nil’ return even if you do not receive anything. This only applies to NGOs who have FCRA registration or prior-permission.

(20-Dec-2013)

377: FCRA GOES CRITICAL

The FCRA Department has strengthened its review and inspection procedures. Notices are being issued to NGOs and others if a violation is suspected. A list of about 30 questions is sent along with the notice,
asking for various details and documents. If the response is not satisfactory, the NGO may be called to Delhi with records and documents. In some cases, an inspection team may visit the NGO.

Reference:

- ‘Cancel licenses of NGOs misusing funds: FM’ Hindustan Times e-paper, 29 Oct’13
(19-Dec-2013)

376: FCRA SEMINAR - KOLKATA

FCRA Department is organising an outreach seminar for NGOs and others in Kolkata on 8th November ‘13.

The location is Royal Bengal Room, City Centre, Block DC, Sector 1, Salt Lake City. More information on this is available at the FCRA web-site (http://mha1.nic.in/fcra.htm).

Reference:

- http://mha1.nic.in/pdfs/KolkataFCRA_171013.pdf
(30-Oct-2013)

375: ONLINE FCRA REPORTING BY BANKS

All banks have to report certain receipts to FCRA Department. There are two kinds of receipts which have to be reported:

1. Where a person receives foreign contribution, without FCRA registration or prior-permission.
2. Where a person receives foreign contribution of Rs.1 crore or more in a calendar month.

In both cases, the report is to be sent within 30 days.

The Ministry now wants this information to be reported online. Banks have to create a user ID and password for this. The report can be created in Excel, CSV or txt formats, and then uploaded.

Online reporting for bank is optional till 31st October. From 1st November’13, it will become compulsory.

Reference:

- MHA online reporting login: http://fcraonline.nic.in/fc_login.aspx
(10-Oct-2013)

374: PRESIDENT’S ASSENT TO COMPANIES BILL 2013

The President of India has given his assent to the Companies Bill 2013. This law will now become operational as soon as the Act and rules are notified.

There are two provisions of interest for NPOs:
1. CSR will now become mandatory for large companies. This money can be spent through existing or dedicated NPOs as well.
2. Non-profit companies can now be formed with just one person.

Reference:
• AccountAid Capsules 371-373

(11-Sep-2013)

373: DRAFT CSR RULES FOR COMMENTS

Ministry of Corporate Affairs has released draft CSR rules. The rules will apply from the coming financial year. Key rules include:

1. Net profit before tax will form the base for calculating CSR spending. Profit from branches outside India will be excluded.
2. A company can also pool CSR resources with other companies.
3. Tax treatment will be according to Income Tax Act.
4. Activities creating ‘shared value’ which integrate the business model with social and environmental priorities are permitted.
5. Implementation can be done directly, through dedicated trusts, etc., or through other NGOs, trusts, etc.
6. All CSR activities must be conducted within India.
7. If an activity is exclusively for employees / their families, then it will not be treated as CSR.

The draft is available on MCA web-site as well as AccountAid web-site.

You can visit http://mca.gov.in/NCB/feedback/, create a user, login and leave your comments. The last date for comments is 8-Oct-13.

Reference:
• www.AccountAid.net

(10-Sep-2013)

372: ONE PERSON CHARITABLE COMPANIES

Companies Bill 2013 has introduced the concept of OPC or one-person company in India. This means that you no longer need two persons to form a company – just one will be enough.

And such an OPC will also be able to get a sec. 25 license to operate as a non-profit company.

This will allow a number of innovative initiatives to be registered as OPCs, without adding on a relative just to comply with company law.

Reference:
• An OPC can be formed under sec. 3 of the new Companies Bill.
• Non-profit companies are licensed under sec. 25 of Companies Act, 1956. This section appears as sec. 8 in the new Companies Bill.
371: Companies Bill and CSR

The Companies Bill 2013 has been passed by Rajya Sabha also. The Bill is now just two steps away from becoming law: President’s assent and notification in the Gazette.

The Bill expects large companies to spend 2% of average annual profits on CSR. By some estimates, this spending could be as high as Rs. 27,000 crores annually. Some of this money will probably be spent in partnership with NGOs and agencies.

Reference:
- CSR: Corporate Social Responsibility

(9-Aug-2013)

370: COMPULSORY TAX SCRUTINY FOR BIG FCRA NGOS

Tax returns of all NGOs with FCRA receipts exceeding Rs. 1 crore will now be taken up for scrutiny. This requirement applies for financial year 11-12.

How will this work? The Income Tax Department will download FC receipt data from the MHA web-site. It will then shortlist cases where the receipts exceed Rs. 1 crore. These cases will be added to compulsory scrutiny list.

Will your case be picked up for scrutiny? Don’t wait for the tax notice. Visit http://fcraonline.nic.in/fc3_amount.aspx now. Check whether your return is on the site and shows receipts of more than 1 crore.

Reference:
- FCRA: Foreign Contribution Regulation Act, 2010 – applicable in India
- CBDT: Central Board of Direct Taxes
- MHA: Ministry of Home Affairs

(8-Aug-2013)

369: Compulsory Tax Scrutiny for NGOs with IGP Income

Tax returns of all organisations which are hit by proviso to sec. 2(15) will now be taken up for scrutiny. This requirement applies for financial year 11-12.

Proviso to sec. 2(15) applies to organisations which advance ‘any other object of general public utility’. Most modern NGOs are covered by this (organisations working for relief of poor, education, medical relief, environment, etc. are not covered). Organisations affected by this proviso must restrict their business-like receipts to Rs.25 lakh per year.

Reference:
368: Writing to FCRA?

If you are sending a letter to FCRA Department, do write ‘For FCRA Wing’ on the envelope. This will help ensure that your letter does not get lost in the MHA labyrinth.

http://mca.gov.in/NCB/feedback/

Reference:

- FCRA notice dated 7-May-13. [mha.nic.in/fcra/intro/FCRA-NGOs-Inst-050613.PDF]

367: ARE YOU ON THE FCRA HOTLIST?

FCRA Department has put up a list of NGOs who have not filed their FC-6 in 2010-11 or 2011-12. A number of well-known NGOs figure on the list. This could be a clerical error or perhaps their return has actually not reached the Department.

Either way, do visit the web-site and find out whether your name is also on the list! You will find the link in the yellow sidebar, with the heading ‘FC-6 Return Not Filed’.

Or you can also copy and paste the following link in your browser:

[fcraonline.nic.in/fc3_notfiledwithadd.aspx]

366: NGOS MUST FILE ITR-7 ONLINE

NGOs and other charities must now file their Income Tax Returns electronically. Along with this, the tax audit report in form 10B must also be filed electronically.

This change is effective from 1st April 2013. If you have already filed your return in paper form, you may need to file it again electronically.

What does this mean? Most NGOs will have to get help in filing the return electronically. However, it will be easier for the Department to process the returns. The Department will also be able to cross-link returns to plug evasion. It will also become easier for NGOs to get their tax refund.

References:

• We thank P. Joseph Victor Raj of HOPE - Puducherry for bringing this notification to our attention. - Ed.

(17-Jun-2013)

365: NGOS EXEMPTED FROM PF TILL 2015

NGOs and other charities have been exempted from Employees’ Provident Fund Act for a period of five years (1-April-10 to 31-Mar-2015). This will apply only if the NGO or charity has been notified as such under the Income Tax Act, 1961. The NGO should not be receiving money from the Central or State governments towards employer’s contribution to PF.

However, the exemption is not available to any NGO or charity, which runs a college, school, hospital, nursing home, clinic, training or research institution, etc. against charging of fees from students or patients.

Most NGOs have been exempted from PF through regular notifications since 1986. The previous exemption had come to an end on 31-Mar-2010.

References:
• AccountAid Capsule number 201, dated 29-May-06; available at www.AccountAid.net
• AccountAble 32 and 110 at www.AccountAid.net
• We thank CA Devesh Shroff of CRY - Kolkata for bringing this circular to our attention. - Ed.

(4-Jun-2013)

364: HEAVY PENALTIES FOR DELAYED FC-6

What happens if you don’t file your FC-6 by 31-December? Usually nothing.

But the Government will now impose hefty penalties on delayed filing of FC-6:

<table>
<thead>
<tr>
<th>Delay</th>
<th>Penalty (higher of)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-90 days</td>
<td>2% of receipts</td>
</tr>
<tr>
<td></td>
<td>Rs.10,000</td>
</tr>
<tr>
<td>91-180 days</td>
<td>3% of receipts</td>
</tr>
<tr>
<td></td>
<td>Rs.20,000</td>
</tr>
<tr>
<td>More than 180 days</td>
<td>5% of receipts</td>
</tr>
<tr>
<td></td>
<td>Rs.50,000</td>
</tr>
</tbody>
</table>

For delays beyond 180 days, you also have to pay additional penalty of Rs.500 per day of delay.

Reference:
• ‘Centre acts tough on NGOs failing to submit returns’ – New Indian Express, 7-May-13; www.newindianexpress.com, last accessed 11-5-13
ACCOUNTAID CAPSULES

• The above is based on a news report. For correct interpretation, please refer to MHA notification of 29-Apr-13. – Ed.

(11-May-2013)

363: FCRA GRANTS TO FOR-PROFITS?

Does FCRA cover for-profit organisations also? For example, if a private limited company takes up some social work with grant funds from a foreign donor, will it need FCRA registration?

Yes. FCRA 2010 covers all kinds of organisations, including for-profit organisations. In such a case, the for-profit organisation will most likely need FCRA clearance.

Reference:

• Sec. 2(1) read with Sec. 11(1) of FCRA 2010
• Question 36 – FAQ on FCRA web-site (http://mha.nic.in)

(13-Dec-2012)

362: FILING FC-6 ONLINE – COMPULSORY OR NOT?

It is not compulsory for you to file FC-6 online. In fact, the filing is not really completed till you print the filled form, and send it by registered post along with annexures. This is clear if you compare rule 9 with rule 17. Rule 9 (for registration) clearly says that application should be filed electronically. Rule 17 (for FC-6 etc.) mentions no such thing.

Therefore, if you are facing problems in filing FC-6 online, you can go ahead and file it manually by registered post. Do make sure that you are sending the form to the latest address at NDCC-II Building.

Reference:

• Rule 17 of FCRR 2011
• Form FC-6 of FCRR 2011
• AccountAid Capsule 349 (9-Jul-12)

(10-Dec-2012)

361: FILING FC-6 – ADDRESS OF ACTIVITY

When filing FC-6 online, you are expected to provide address of each specific activity. There is a separate sub-routine for this. In this you can fill the address of the activity.

What if you have done the same activity at multiple locations? After filling the information in the sub-routine, simply click on ‘Add Address’. The window will open up again. Add the second address for the activity here. This can be repeated several times for each activity.
360: FC DONORS - BEHAVE OR BEWARE!

Can the Government prohibit an FC donor from donating? Not quite, but the Government can make it very difficult for them to run their program in India.

FCRA 2010 allows the Government to place a donor on prior-permission list. This means that even an FCRA Registered NGO cannot accept their funds. The NGO will have to get prior-permission from MHA before the funds are credited to their account.

FC Donors, take note - unless you want your India program to come crashing down!

Reference:

• Sec. 11(3) of FCRA 2010

(18-Oct-2012)

359: CSR AND FCRA

A number of big companies have launched CSR programs. Many more will do so if the new Companies Bill comes out with mandated 2% CSR. Is this money covered by FCRA?

If the company giving you money is a foreign MNC or closely connected with a foreign brand, then it is likely to be a foreign source. Unfortunately, few companies are familiar with FCRA. Therefore, quite often, the company cannot guide you properly.

Their status can be checked by searching for their foreign shareholding on the Internet. This information is usually filed with SEBI every quarter. If foreign shareholding is more than 50%, then the company is a foreign source.

References:

• Section 2(1)(g) and (j) of FCR Act, 2010

(18-Sep-2012)

358: FC-6 ANNEXURES

Ready to file FC-6? Don’t forget to send the following along with the printed copy:

i. FCRA Income & Expenditure Account
ii. FCRA Receipts & Payments Account

iii. FCRA Balance Sheet

iv. CA Certificate

v. Certified copy of the FCRA designated bank statement

The bank statement should be certified by an Officer of your bank.

References:

- Rule 17 of FCR Rules 2011

(14-Sep-2012)

357: THE ROLLING STONES AND FCRA CANCELLATIONS

Many NGOs are insisting that they have been sending their FC-3 regularly to the Department. The FCRA Department is insisting it never received them. Is one of them lying?

Probably not. Around 2005, FCRA Department shifted from Lok Nayak Bhawan to Jaisalmer House. It is likely that many NGOs continued sending their FC-3 to Lok Nayak Bhawan. If so, many of these would have never reached the FCRA Department.

Similarly, most NGOs keep shifting from one rented office to another. If these NGOs sent change of address notice to the FCRA after 2005, it is likely that these also went to Lok Nayak Bhawan. The FCRA database was not updated. Therefore, when FCRA Department sent notices to the NGOs, these would have remained unanswered.

Result? Hundreds of FCRA registrations cancelled.

Moral of the story! A rolling stone is likely to lose its FCRA registration!

FCRA Department has again shifted to NDCC Building in 2012. Any takers on how many NGOs will continue sending their FC-6 to Jaisalmer House?

References:

- AccountAid Capsule 349 (9-Jul-12)
- AccountAid Capsule 178 (29-Sep-05)

(21-Aug-2012)

356: FILING FC-6 – ADDRESS OF INDIVIDUAL DONORS

While filling FC-6 online do you have to give name and address of each individual donor? The old FC-3 form clearly said that you have to give only the amount and purpose for donors giving less than 1 lakh rupees. The new FC-6 form retains the classification, but format is not clear.

---

1 The Statement of Receipts and Payments should reflect all receipts of foreign grants / FCRA receipts (cash/cheque). The payments side would reflect all payments made out of FCRA funds (including purchase of assets, creation of revolving funds, loans, advances, etc.).
Secondly, the online FC-6 form asks for names and address of all donors by default. Therefore, many NGOs end up giving all the names and addresses. This can take quite a lot of time. If you get more than one crore each year, your form will be published online. Your donor information might leak to others. Some professional fund-raisers have even started harvesting this information!

However, some organisations simply give one consolidated amount for all donors below Rs. one lakh each. They enter the name of the donor as ‘Individual donors below 1 lakh’. The address is punched as ‘Not applicable’. Date is given as 31/3/12. This takes care of all such donations. This approach is perfectly fine.

For individual donors above one lakh each, all the normal details should be given.

References:

- Old Form FC-3 – FCRA Rules 1976
- New form FC-6 – FCRA Rules 2011
- FCRA Web-site: [http://mha.nic.in/fcraweb/fc_online.htm](http://mha.nic.in/fcraweb/fc_online.htm)

(17-Aug-2012)

**355: ITR 7 – SEC. 25 COMPANIES ON THE MAT?**

The new ITR 7 for charities calls for MAT calculations under sec. 115JB. This section applies to all companies, including sec.25 companies. Does this mean that sec.25 companies have to pay Minimum Alternate Tax now?

Not really. As the MAT calculations show, sec.25 companies with 12A registration can deduct charitable contributions while calculating book profits. This means that in most cases, no tax levy will arise under 115JB!

References:

- Schedule MATC in new ITR-7 for AY 2012-13
- Sec. 115JB of the Income Tax Act, 1961

We acknowledge CA Hafez Dalal’s inputs in raising this issue. – Ed.

(14-Aug-2012)

**354: FCRA CANCELLATIONS – NOTABLE NAMES**

A large number of the cancellations appear to be for defunct organisations. However, the list also includes the following well-known names:

- Catholic Hospital Association India, New Delhi
- Jamia Milia Islamia, New Delhi
- Jawaharlal Nehru University, New Delhi
• Kali For Women, New Delhi
• National Minorities Development and Finance Corporation, New Delhi
• Rugmark Foundation, New Delhi
• Smile Foundation, New Delhi
• Sovereign Order of Malta, New Delhi
• The Ashoka Foundation, New Delhi
• All India Catholic University Federation, Trichur
• Action Aid India, Tuticorin
• Madurai Kamaraj University, Madurai
• University Of Calcutta, Kolkata

References:

• AccountAid Capsule 351
• List of Registered Associations at http://mha.nic.in/fcra.htm

(11-Aug-2012)

353: FCRA CANCELLATIONS - PATTERN

The largest numbers of FCRA cancellations are from Tamilnadu. However, this is merely because Tamilnadu has the largest number of FCRA organisations!

The highest percentage of cancellations are from Kerala and Nagaland (16%), followed by Manipur (15%). Tamilnadu, Rajasthan and Delhi each have 13% cancellations. Next comes Andhra Pradesh (12%), Himachal and West Bengal (11% each). Madhya Pradesh follows close behind with 10%.

Karnataka and Maharashtra each have 9% cancellations. Other notables include Gujarat (8%), Orissa (6%), and Bihar with just 1%.

How many does that leave? 39,134 organisations with valid FCRA registration.

References:

• AccountAid Capsule 351 and 352
• List of Registered Associations at http://mha.nic.in/fcra.htm
• ‘List of Cancel Associations’ at http://mha.nic.in/fcra.htm

(11-Aug-2012)
352: KUDANKULAM FALLOUT?

The mass cancellation of FCRA registrations across India has sent shock waves through NGOs. Naturally. But is this connected with the Kudankulam agitation?

Apparently not. All the four NGOs mentioned in this matter still have their FCRA registration intact!

References:

- List of Registered Associations at [http://mha.nic.in/fcra.htm](http://mha.nic.in/fcra.htm)

(11-Aug-2012)

351: IT’S RAINING... FCRA CANCELLATIONS!

FCRA Department has cancelled 4,137 FCRA registrations. Most of these were cancelled in July and August 2012. The largest number is from Tamilnadu (794), followed by Andhra (669), and Kerala (450).

Delhi (299) and Karnataka (296) also show up in the list. The smallest numbers are from Uttarakhand (2) and Mizoram (1). Some states do not show any cancellations.

Of the total, 4126 cancellations are for ‘violation’ of FCRA. The other 11 are on request.

What could be the reason for this? In bulk of the cases, it would be non-filing of annual return. If your name appears on the list, and you have been filing the return, you should contact the FCRA Department immediately with proof of filing.

References:

- ‘List of Cancel Associations’ at [http://mha.nic.in/fcra.htm](http://mha.nic.in/fcra.htm)

350: NEW TAX RETURN FOR NGOS

Income Tax Department has released a new form of Income Tax Return (ITR-7) for NGOs. The new return has 29 pages in all, including 10 pages of instructions and the acknowledgement.

This form should be used for the AY 2012-13. This means returns for financial year ending 31-Mar-12 will be filed in this form. The return must be filed in paper form.

The new form asks for additional information about FCRA status, foreign contribution received, classification under sec. 2(15), among others.

The form and instructions can be downloaded from the Income Tax web-site (www.incometaxindia.gov.in/download_all.asp) or Accountaid web-site (www.AccountAid.net).

This change is effective from 26th July ’12. If you had already filed your tax return for 12-13 before that date, you do not have to file it again.

References:

- Notification number S.O. 1705 (E), dated 26th July 2012
349: NEW POSTAL ADDRESS OF MHA

FCRA Department has shifted from Jaisalmer House (26, Man Singh Road). Applications, letters, form FC-6, etc. should now be sent to the new address:

The Secretary,
Ministry of Home Affairs,
Foreigners Division,
NDCC-II Building, Jai Singh Road,
Off Parliament Street, Near Jantar Mantar
New Delhi-110 001

(9-Jul-12)

348: FCRA – PERSONAL GIFTS

Articles gifted for personal use do not amount to foreign contribution under FCRA 2010. But is there a ceiling on the value? The government has now notified the ceiling: Rs.25,000 for each gift.

Does this mean an NGO can receive and distribute 1,000 blankets from a foreign donor? No. The exemption applies only when the receiver will use the item himself or herself.

References: Foreign Contribution Regulation Rules 2011

"6A. When articles gifted for personal use do not amount to foreign contribution.—Any article gifted to a person for his personal use whose market value in India on the date of such gift does not exceed rupees twenty-five thousand shall not be a foreign contribution within the meaning of sub-clause (i) of clause (h) of sub-section (1) of section (2)."

NOTIFICATION NO. GSR 292(E), DATED 12-4-2012

(17-Apr-12)

347: FCRA RULE 24 MODIFIED FORMALLY

Rule 24 of FCR Rules had caused quite a bit of confusion last year. Now the Government has formally corrected it. If you are registered under FCRA, you don’t need permission to transfer FCRA funds to another FCRA registered organisation. The same applies in prior-permission cases as well.

The modified rule will remain applicable for proxy permission cases. This happens where an FCRA organisation wants to give funds to another NGO who does not have FCRA. In such a case, the donor NGO can apply for permission on behalf of the receiver.

Proxy permission can be sought for upto 10% of total FC received during the year.
“24. Procedure for transferring foreign contribution to any unregistered person.—(1) A person who has been granted a certificate of registration or prior permission under section 11 and intends to transfer part of the foreign contribution received by him to a person who has not been granted a certificate of registration or prior permission under the Act, may transfer such foreign contribution to an extent not exceeding ten per cent of the total value thereof and for this purpose, make an application to the Central Government in Form FC-10.

(2) Every application made under sub-rule (1) shall be accompanied by a declaration to the effect that

(a) The amount proposed to be transferred during the financial year is less than ten per cent of the total value of the foreign contribution received by him during the financial year;

(b) The transferor shall not transfer any amount of foreign contribution until the Central Government approves such transfer.

(3) A person who has been granted a certificate of registration or prior permission under section 11 shall not be required to seek the prior approval of the Central Government for transferring the foreign contribution received by him to another person who has been granted a certificate of registration or prior permission under the Act provided that the recipient has not been proceeded against under any of the provisions of the Act.

(4) Both the transferor and the recipient shall be responsible for ensuring proper utilisation of the foreign contribution so transferred and such transfer of foreign contribution shall be reflected in the returns in Form FC-6 to be submitted by both the transferor and the recipient.”

NOTIFICATION NO. GSR 292(E), DATED 12-4-2012

(17-Apr-12)

346: SERVICE TAX ON NGOS?

Earlier this month, the Hon. Finance Minister said that charities have been exempted from service tax. Really?

Reading the fine print in the Finance Bill 2012 tells us something different. Services provided by NGOs for a charge will be subject to service tax.

Donations will not be treated as a charge, unless the NGO has to provide something in return. This something can be service to a third party or a business advantage to the donor.

There is only a narrow list of services related to health care, religion, education for the disadvantaged, and environment, which are exempt. Also exempt are other general public benefit services, provided the gross turnover is Rs.25 lakh p.a. or less. Some agricultural services are also exempt.

Many NGOs have prided themselves on being service-oriented. Perhaps, now is the time for them to start paying a service tax as well!
345: SAY ‘NO’ TO CASH DONATIONS

Claiming deduction for fake donations is a popular tax evasion device. Most people simply go to a paper-trust and ask for a receipt. The donation is recorded in cash. The ‘donor’ gets tax relief, while the trust is able to launder some black money as legitimate.

To clamp down on this, the Finance Bill puts a cap of Rs.10,000 on cash donations. If you want to claim deduction under sec. 80G or 80GGA, make sure you donate by cheque / draft or credit card.

Not bothered about tax relief? Use a brown paper bag, as usual!

References:

• AccountAble 17 and 61 – www.AccountAid.net
• Finance Bill 2012

...
(16-Mar-12)

343: CHARITY BEGINS AT HOME...

And should remain there! Can charities take up work outside India? No – unless they are willing to pay tax on it.

The Income Tax Act allows deduction only for money applied to charitable purposes in India. Any money applied outside India is not deductible under section 11.

Therefore, if you are planning to expand your work abroad, set up a new organisation there. Or get the CBDT to approve your spending abroad as being charitable.

References:
• Section 11(1)(a) and (c) of Income Tax Act, 1961
(14-Mar-12)

342: FCRA GOES NUCLEAR

The old FCRA contained a provision to prevent organisations working against public interest etc. with foreign funds. The new FCRA 2011 has added a new provision.

Accordingly, FCRA registration or permission can be denied if your work affects the ‘security, strategic or economic interests of the State’. Clearly, this provision can cover protests against special economic zones, hydel power, nuclear energy, etc.

References:
• Section 12(4)(f) of FCR Act 2010
341: A FRESH ACCOUNT FOR FCRA

Are you applying for FCRA Registration? Open a fresh bank account first. This account should be exclusively for FCRA funds. This account number should be mentioned in your application in form FC-3.

The same applies if you are applying for prior-permission for the first time.

References:

• Rule 9(1)(d) and 9(2)(d) of FCR Rules 2011

340: A CHARITY HAS NO BUSINESS...

In 2008, the Government redefined charitable purpose. Unless you were a traditional charity, you could not get into business-like activities. This meant that general-purpose charities receiving more than Rs.25 lakh p.a. from sales, fees etc. would lose tax exemption.

The impact of that old amendment is being felt now, as these NGOs come up for tax assessment. What is the solution? One is to ask the Government to raise the limit. This is being explored by a group of NGOs.

Another is to spin off the business-like activities under a separate non-exempt trust or society. As the new organisation will not have much profit, the tax impact will be minimised. At the same time, your main sources of revenue (grants etc.) will remain safe from tax.

References:

• Section 2(15) of Income Tax Act, 1961
• AccountAble 141 (Charitable Purpose & Income Tax)
• AccountAble 142 (The Eleventh Commandment)

At www.accountaid.net

339: MUTUAL HARM

What possible harm can come to you if you invest your surplus foreign contribution in a mutual fund? None, you would think.

However, the FCRA Department thinks differently. If you put your FC money in any kind of speculative investment, prepare to lose your FCRA registration.

And if you don’t want to lose your FCRA registration, get out of your mutual funds! Before 31st March 2012.

References:

• Rule 4 of FCR Rules 2011
338: GOVT. BODIES EXEMPTED FROM FCRA 2010

Do Government or autonomous bodies such as Universities etc. need FCRA permission for accepting foreign donations? Not any longer.

With effect from 1-July-11, all Government bodies have been exempted from FCRA provisions. However, two conditions must be met for this:

1. The body should have been established by a Central or State Act.
2. Its accounts should be compulsorily audited by the CAG.

References:

- Section 50 of FCRA 2010
- Order S.O.1492(E), dated 1-7-2011:

SECTION 50 OF THE FOREIGN CONTRIBUTION (REGULATION) ACT, 2010 - POWER TO EXEMPT IN CERTAIN CASES - ACT NOT TO APPLY TO ALL BODIES CONSTITUTED OR ESTABLISHED BY OR UNDER A CENTRAL ACT OR A STATE ACT REQUIRING TO HAVE THEIR ACCOUNTS COMPULSORILY AUDITED BY THE COMPTROLLER AND AUDITOR GENERAL OF INDIA

WHEREAS the Central Government is of the opinion that it is necessary and expedient in the interests of the general public to exempt all bodies constituted or established by or under a Central Act or a State Act requiring having their accounts compulsorily audited by the Comptroller and Auditor General of India.

NOW, THEREFORE, in exercise of the powers conferred by section 50 of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010), the Central Government hereby exempts all the said statutory bodies from the operation of all the provisions of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010) with effect from the date of publication of this order in the Official Gazette.

(26-Jul-11)

337: FCRA & RIGHTS-BASED APPROACH

Can following a rights-based approach land you in trouble with FCRA?

This depends on the activities done under rights-based approach. Does it involve building people’s movements and conducting demonstrations etc.? Does it lead to holding of dharna, rallies, etc.? Would it cause a confrontation with the Government or administration?

If so, then you could end up being classified as ‘an organisation of a political nature. You will then not be allowed to accept any foreign contribution.

References:

- Views expressed by Sri GVV Sarma, Jt. Secy. (Foreigners), MHA while responding to a question at the SRRF-Plan FCRA Round Table on 16-Jun-11 at IHC, Delhi
- Section 3 of FCRA 2010, read with Rule 3 of FCR Rule 2011

(18-Jun-11)
FCRA 2010 became effective on 1-May-11. Should you file your annual return for 2010-11 in old FC-3 or new FC-6?

FCRA Department has clarified that for 10-11, the form is to be filed in the old form FC-3 itself.

References:
- Clarification by Sri GVV Sarma, Jt. Secy. (Foreigners), MHA while responding to a question at the SRRF-Plan FCRA Round Table on 16-Jun-11 at IHC, Delhi
- AccountAid Capsule 329, 6-May-11

(18-Jun-11)

Tax Return form (ITR-7) for charitable organisations has been revised. The new form will be used for filing tax returns for FY 10-11.

The Tax Department is also gearing up for closer scrutiny of NGOs and Trusts to ensure compliance, and to prepare the ground for implementation of Direct Tax Code, likely from April’12.

References:

(26-May-11)

Many agencies have developed useful programs around research and small program grants to individuals. These are often called Fellowship Grants. Under FCRA 1976, most people merely filed form FC-5 for such cases. What will happen to these under FCRA 2010?

By one reckoning, they are completely out of FCRA now. People getting scholarship or stipend are not required to file form FC-5. However, scholarships and stipends are really restricted to academic studies or research.

Secondly, FCRA has been extended to individuals also. And fellowships are different from scholarships. This didn’t matter as FCRA 1976 did not apply to ordinary individuals. FCRA 2010 does.

Under FCRA 2010, small program grants to individuals will not be permitted or legal. The receivers need to take FCRA registration or prior-permission.

With regard to research fellowships, you will have to do a careful re-assessment. Fellowships may be permitted only if these are clearly related to academic or scholarly pursuits.

References:
Sec. 11, read with sec. 2(1)(m). Also see sec. 4(g) of Foreign Contribution (Regulation) Act, 2010; available at www.AccountAid.net

(25-May-11)

333: RULE 24 – SAFEGUARDS

In view of the clarification issued by Ministry of Home Affairs on Rule 24, it would be wise for donor agencies to take some precautions:

1. Consider obtaining a written letter from each FCRA partner whenever you make a disbursement in the following format:

   This is to certify that our organization/institution has valid registration #.................. under the Foreign Contribution Regulation Act (FCRA), Government of India. We also confirm here that we have not been barred from receiving foreign contribution or put on the list for prior-permission by the Ministry of Home Affairs, Government of India. Further, there is no undisposed show-cause notice issued by FCRA Department to us.

   The banking information provided to the Centre is same as the one authorized by the FCRA Department in their approval letter. Our office operates from the same premises as mentioned in the FCRA registration notification.

   [In case the address mentioned in the FCRA does not match the current address, a change of address notification sent to FCRA Department to be attached]

2. Transfer the funds directly to the FCRA designated account. Or, if you are sending a cheque or draft, add the payee’s FCRA account number to the cheque. More details on this are given in AccountAble 12 at www.AccountAid.net.

3. Consider setting up an internal process for one of your officers to visit the FCRA web-site and confirm that:

   a. The NGO’s FCRA number is listed (http://www.mha.nic.in/fcraweb/fc8_statewise.aspx), and,

   b. The NGO has not been barred under any of the FCRA sections. The person should check through all the six lists under heading Penal Action on the FCRA web-site (http://www.mha.nic.in/fcra.htm.)

References:

- Rule 24 of Foreign Contribution (Regulation) Rules, 2011; available at www.AccountAid.net
- AccountAid Capsule 332, dated 12-May-11 at www.AccountAid.net

(13-May-11)

332: RULE 24 – FCRA CLARIFICATION

The FCRA Department has clarified in writing that prior-permission is not required for transferring funds to FCRA registered organisations. However, the transferor needs to make sure that the receiving organisation has not been ‘proceeded against’ by the FCRA Department.
This clarification was issued in response to a representation led by SRRF, Delhi, and appears to be applicable to all NGOs.

Laws in India may be written harshly – but are often implemented with gentle care!

References:

- Rule 24 of Foreign Contribution (Regulation) Rules, 2011; available at [www.AccountAid.net](http://www.AccountAid.net)
- AccountAid Capsule 324, dated 30-Apr-11
- “I am directed to refer to your letter dated 5th May, 2011 on the subject mentioned above and to say that in terms of Section 7 of Foreign Contribution Regulation Act, 2010, FCRA registered NGOs intending to transfer funds to other FCRA registered NGOs do not need prior approval of the Central Government subject to the condition that the recipient association/NGO has not been proceeded against under any provision of the Act.”
  
  (FCRA letter dated 10th May, 2011, issued to SRRF, New Delhi, signed by Sh. H.K. Kwallienthang, Under Secretary to the Govt. of India. F.No. II/21022/58(35)/2011-FC-I)

(12-May-11)

### 331: FCRA 2010 – DON’T CHANGE BORED MEMBERS

Another vain hope – the new FCRA will allow normal changes in Board members, especially as NGOs need to renew FCRA registration every five years.

The Ministry has retained the old requirement about Board changes. If change in Board members exceeds 50%, you will need FCRA approval. And this requirement now applies to those with prior-permission as well!

So don’t change your Board Members. Even they are very bored.

References:

- Foreign Contribution (Regulation) Rules, 2011; available at [www.AccountAid.net](http://www.AccountAid.net)
- New Forms FC-3 and FC-4 for registration and prior-permission

(7-May-11)

### 330: FCRA RULE 11 - SEPARATE ACCOUNTS

For a moment it had seemed that separate FCRA accounts will no longer be needed. The moment passed.

Rule 11 has been inserted into the final FCRA rules. This calls for maintaining ‘a separate set of accounts and records, exclusively’ for foreign contribution.

References:

- Foreign Contribution (Regulation) Rules, 2011; available at [www.AccountAid.net](http://www.AccountAid.net)
- Rule 11. Maintenance of accounts - Every person who has been granted registration or prior permission under section 12 shall maintain a separate set of accounts and records, exclusively, for the foreign contribution received and utilised.

(7-May-11)
329: FORMS OF A DILEMMA: OLD FC-3 OR NEW FC-6?

For the FY 2010-11, annual returns are now being filed. Should you continue using form FC-3 for this, or use the new form FC-10? There is no clarity on this.

For several reasons, it makes sense to use the old form FC-3 for this:

1. The electronic form FC-3 in Ministry’s web-site has not been modified yet.
2. Some people have already filed FC-3 for this year.
3. FC-6 calls for location details which the NGO may not have be able to compile for the last years.
4. Para iv of the CA certificate in form FC-6 asks the auditors to certify compliance with rule 16 (sic) of FCR Rules 2011. However, these rules were not operations in FY 2010-11.

Finally, if the Ministry rejects your filing of old form FC-3, you can always file the return again in form FC-6 before 31-December.

Provided your auditor is willing to certify compliance with Rule 16, of course!

References:

• Foreign Contribution (Regulation) Rules, 2011; available at www.AccountAid.net
• Old form FC-3 (www.AccountAid.net)
• New Form FC-6
• AccountAid Capsule 328: New FC-6 – Name Each Program Location!
• Rule 16. Reporting by banks of receipt of foreign contribution.

(1) Every bank shall send a report to the Central Government within thirty days of any transaction in respect of receipt of foreign contribution by any person who is required to obtain a certificate of registration or prior permission under the Act, but who was not granted such certificate or prior permission as on the date of receipt of such remittance.

(2) The report referred to in sub-rule (1) shall contain the following details:...

(6-May-11)

328: NEW FC-6 – NAME EACH PROGRAM LOCATION!

And in a clear sign of times to come, NGOs will now have to give address of each location where they conduct activities.

This information is to be added in the new Form FC-6. For this purpose a new column 14 has been added in the table under item 3. This column is titled:

‘Places with addresses of specific activities’

References:

• Foreign Contribution (Regulation) Rules, 2011; available at www.AccountAid.net
• New Form FC-10

(6-May-11)

327: FCRA 2010: AUTOMATIC RENEWAL FOR OLD FCRA HOLDERS

If you have an existing FCRA registration or prior-permission under FCRA 1976, do you need to renew this immediately?
No. The old registrations will remain valid for another five years. Your renewal will fall due on 1-May-2016. You will need to apply 6-12 months before that.

Old prior-permissions will continue to be valid, as under FCRA 1976.

References:

- Foreign Contribution (Regulation) Act, 2010; available at www.AccountAid.net. Proviso to sec. 11(1)

(30-Apr-11)

326: CAP OF TEN PERCENT ON FCRA RE-GRANTING

And in case, some hardy souls are still willing to work with the District Magistrate’s Office, Rule 24 introduces a cap of 10% on total transfers.

According to this rule, any redistribution of foreign contribution must be limited to 10% of the total FC received.

This limit applies only to case of proxy prior-permission. There is no limit on redistributing to those who have obtained FCRA registration or prior-permission on their own.

References:

- Foreign Contribution (Regulation) Rules, 2011; available at www.AccountAid.net
- 24. Procedure for transferring foreign contribution to other registered or unregistered persons.
  - (1) Any person intending to transfer the foreign contribution may make an application to the Central Government in Form FC-10....
  - (4) In case the foreign contribution is proposed to be transferred to a person who has not been granted a certificate of registration or prior permission by the Central Government, the person concerned may apply for permission to the Central Government to transfer a part of the foreign contribution, not exceeding ten per cent, of the total value of the foreign contribution received. The application shall be countersigned by the District Magistrate having jurisdiction in the place where the transferred funds are sought to be utilised. The District Magistrate concerned shall take an appropriate decision in the matter within sixty days of the receipt of such request from the person. The donor shall not transfer any foreign contribution until the Central Government has approved the transfer.

(30-Apr-11)

325: PROXY PRIOR PERMISSION – LIKE A PIE IN THE SKY

FCRA 2010 promised to make it easier to fund small NGOs. This was to be done by allowing donor agencies to get prior-permission on their behalf. However, what FCRA 2010 gave with one hand, the rules have taken away with the other!

To get this permission, the donor agency will need to make the application in form FC-10. However, this form is to be countersigned by the local District Magistrate! The DM has two months to decide on this.

Any guesses on how many DMs would countersign such applications?

References:

- Foreign Contribution (Regulation) Rules, 2011; available at www.AccountAid.net
- 24. Procedure for transferring foreign contribution to other registered or unregistered persons.
(1) Any person intending to transfer the foreign contribution may make an application to the Central Government in Form FC-10....

(4) In case the foreign contribution is proposed to be transferred to a person who has not been granted a certificate of registration or prior permission by the Central Government, the person concerned may apply for permission to the Central Government to transfer a part of the foreign contribution, not exceeding ten per cent, of the total value of the foreign contribution received. The application shall be countersigned by the District Magistrate having jurisdiction in the place where the transferred funds are sought to be utilised. The District Magistrate concerned shall take an appropriate decision in the matter within sixty days of the receipt of such request from the person. The donor shall not transfer any foreign contribution until the Central Government has approved the transfer.

(30-Apr-11)

324: FCRA RULE 24 – NO DISTRIBUTION WITHOUT PERMISSION

You must now seek prior-permission to make a grant out of foreign contribution. It does not matter that the recipient is already registered under FCRA.

This rule is effective from 1st May 2011. It will affect all grant-making agencies based in India, which have FCRA registration.

It will also affect all networks and nodal agencies which redistribute foreign contribution.

It will not affect an agency which makes disbursement directly from its foreign Head Office.

The message? Charity begins at home – and it should stay at home!

This rule comes in force from tomorrow, 1st May 2011.

References:

• Foreign Contribution (Regulation) Rules, 2011; available at www.AccountAid.net
• 24. Procedure for transferring foreign contribution to other registered or unregistered persons.
  –

(1) Any person intending to transfer the foreign contribution may make an application to the Central Government in Form FC-10.

(2) The Central Government may permit the transfer in respect of a person who has been granted the certificate of registration or prior permission under section 11 of the Act, in case the recipient person has not been proceeded against under any provision of the Act.

(3) Any transfer of foreign contribution shall be reflected in the returns in Form FC-6 as well as in Form FC-10 by the transferor and the recipient...

(30-Apr-11)

323: FCRA 2010 EFFECTIVE 1-MAY-11

The new FCRA 2010, more powerful than ever, has been notified. It is effective from 1-May-2011

References:

• Foreign Contribution (Regulation) Act, 2010; available at www.AccountAid.net
• We thankfully acknowledge CA Anil Goel ji’s help in promptly bringing this to our attention. – Ed.
322: FINAL FCRA RULES 2011 PUBLISHED

The final version FCRA rules have been published in the Gazette of India on 29th April 2011.

References:
- Published in the Gazette of India, part ii, section 3, sub-section (i), dated 29-April-2011. F. No. II/21022/10(1)/2010-FC-III

321: DONORS BEWARE – CATCH 23

Rule 23 introduces a new twist in the FCRA saga. Every donor agency registered under FCRA must make an application in form FC-10, for permission to transfer foreign contribution to another NGO. This applies even if the grantee NGO is already registered under FCRA!

The purpose of this Kafkaesque innovation is not clear from the Rules. It is apparently not authorised by the main Act either.

While not as elegant as Catch 22, Joseph Heller would nevertheless have categorised this as a good Indian attempt to catch-up.

References:
- Comments on draft FCRA Rules can be sent by post to:
  Deputy Secretary (FC), Ministry of Home Affairs,
  FCRA Wing, Jaisalmer House
  26, Mansingh Road, New Delhi
- You can also send these by email to ds-fcra@nic.in.
- Draft Foreign Contribution (Regulation) Rules, 2011 (available at www.AccountAid.net)
- Rule 23. Procedure for transferring foreign contribution to other registered or unregistered persons. –
  (1) Any person intending to transfer the foreign contribution may make an application to the Central Government in Form FC-10.
  (2) The Central Government may permit the transfer in respect of a person who has been granted the certificate of registration or prior permission under section 11 of the Act, in case the recipient person has not been proceeded against under any provision of the Act.
  (3) Any transfer of foreign contribution shall be reflected in Form FC-6 returns as well as in Form FC-10 by the transferor and the recipient.
  (4) In case the foreign contribution is proposed to be transferred to a person who has not been granted a certificate of registration or prior permission by the Central Government, the person concerned may apply for permission to the Central Government to transfer a part of the foreign contribution, not exceeding ten per cent of the total value of the foreign contribution received.
320: ONWARD GRANTS – DRAFT FCRA RULE 23

The draft rule 23 introduces a new facility. If you are a grant-maker, and you want to give funds to another NGO who does not have FCRA, then you can apply for permission instead of the NGO (see section 7). However, the amount to be transferred should not be more than 10% of the total foreign contribution you have received.

References:

• Comments on draft FCRA Rules can be sent by post to:
  Deputy Secretary (FC), Ministry of Home Affairs,
  FCRA Wing, Jaisalmer House
  26, Mansingh Road, New Delhi

• You can also send these by email to ds-fcra@nic.in.

• Draft Foreign Contribution (Regulation) Rules, 2011 (available at www.AccountAid.net)

• Rule 23. Procedure for transferring foreign contribution to other registered or unregistered persons. –

  (1) Any person intending to transfer the foreign contribution may make an application to the Central Government in Form FC-10.

  (2) The Central Government may permit the transfer in respect of a person who has been granted the certificate of registration or prior permission under section 11 of the Act, in case the recipient person has not been proceeded against under any provision of the Act.

  (3) Any transfer of foreign contribution shall be reflected in Form FC-6 returns as well as in Form FC-10 by the transferor and the recipient.

  (4) In case the foreign contribution is proposed to be transferred to a person who has not been granted a certificate of registration or prior permission by the Central Government, the person concerned may apply for permission to the Central Government to transfer a part of the foreign contribution, not exceeding ten per cent of the total value of the foreign contribution received.

(28-Mar-11)

319: MISSING – SEPARATE CASH BOOKS? – DRAFT FCRA RULES

The new FCRA rules do not call for separate cash book and ledger for foreign contribution. These also do not call for filing a separate set of Balance Sheet etc. for foreign contribution.

References:

• Comments on draft FCRA Rules can be sent by post to:
  Deputy Secretary (FC), Ministry of Home Affairs,
  FCRA Wing, Jaisalmer House
  26, Mansingh Road, New Delhi

• You can also send these by email to ds-fcra@nic.in.

• Draft Foreign Contribution (Regulation) Rules, 2011 (available at www.AccountAid.net)

(28-Mar-11)
318: MORE AUDITS – DRAFT FCRA RULE 16

The Ministry now wants you to file Form FC-6 which will show how much foreign contribution you received and spent. This is similar to the present form FC-3, and will have to be audited.

In addition to reporting the value of articles in form FC-6, the Ministry wants you to file form FC-7 also. This is the same as the stock register in present form FC-6. The Ministry wants that this should also be audited.

Similarly, form FC-8 will replace the present FC-7. This will contain all details of securities and shares etc. received from foreign sources. This will also have to be audited and filed.

References:

• Comments on draft FCRA Rules can be sent by post to:
  Deputy Secretary (FC), Ministry of Home Affairs,
  FCRA Wing, Jaisalmer House
  26, Mansingh Road, New Delhi

• You can also send these by email to ds-fcra@nic.in.

• Draft Foreign Contribution (Regulation) Rules, 2011 (available at www.AccountAid.net)

• Rule 16. Intimation of foreign contribution by the recipient. -

(1) Every person who receives foreign contribution under the Act shall submit a report in Form FC-6 accompanied by an income and expenditure statement, receipt and payment account and balance sheet for every financial year beginning on the 1st day of April within nine months of the closure of the financial year, to the Secretary to the Government of India, Ministry of Home Affairs, New Delhi.

(2) The annual return in Form FC-6 shall reflect the foreign contribution received in the exclusive bank account and include the details in respect of the funds transferred to other bank accounts for utilisation.

(3) If the foreign contribution relates only to articles, the intimation shall be submitted in Form FC-7.

(4) If the foreign contribution relates to foreign securities, the intimation shall be submitted in Form FC-8.

(5) Every report submitted under sub-rules (2) to (4) shall be duly certified by a chartered accountant.

(28-Mar-11)

317: TRACKING FOREIGN CONTRIBUTION – DRAFT FCRA RULE 15

Whenever any customer receives more than one crore in thirty days, the bank must inform the Ministry immediately.

In order to do this, banks will need to create an exhaustive list of all sources of foreign contribution. Remember, this might include a large number of MNCs, and foreign companies who have bank accounts in India. Then the bank will need to identify all remittances coming from these organisations into a bank account. Each time the remittances cross one crore in 30 days, the Bank will need to file a detailed report with the Ministry.

Banks who have exporters, BPOs, LPOs, and KPOs etc. as clients will be most affected by this rule.
316: OMNISCIENT BANKS – DRAFT FCRA RULE 15

While the banks have been struggling with very basic KYC (Know Your Customer) norms for years, the new FCRA rule 15 will be a real trip-up for them. This rule now calls on them to send a report to the Ministry whenever anyone receives foreign contribution, without being registered under FCRA.

While this may apparently sound sensible, it may not always be easy for a bank to figure out who should obtain FCRA and who need not.

For instance, a political candidate is not allowed to get any foreign contribution. But does the bank always know who has filed nomination papers? Suppose Jamal Bhai who runs a proprietorship business decides to run for a local corporator’s post. At this stage, FCRA kicks in. Now Jamal Bhai cannot receive a contribution from any foreigner. If he deposits a local cheque from John Roberts (who is a foreigner), the bank must find out and file a detailed report.

So either banks will need to spend a very, very great amount on enhancing their KYC, annoying their ordinary customers in the process, or will simply ignore the rule.

References:

• Comments on draft FCRA Rules can be sent by post to:
  Deputy Secretary (FC), Ministry of Home Affairs,

  FCRA Wing, Jaisalmer House

  26, Mansingh Road, New Delhi

• You can also send these by email to ds-fcra@nic.in.

• Draft Foreign Contribution (Regulation) Rules, 2011 (available at www.AccountAid.net)

• Rule 15. Reporting by banks of receipt of foreign contribution.

  Every bank shall send a report to the Central Government within thirty days of any transaction in respect of receipt of foreign contribution by any person who is required to obtain a certificate of registration or prior permission under the Act, but who was not granted such certificate or prior permission as on the date of receipt of such remittance.

(28-Mar-11)
This rule calls upon all organisations registered under FCRA to publish summary data about receipt and utilisation of foreign contribution on the internet. Apparently, this information should be displayed for two years. The format and timing etc. have not been specified in the rule.

The Government will also make this information public.

References:

• Comments on draft FCRA Rules can be sent by post to:
  Deputy Secretary (FC), Ministry of Home Affairs,
  FCRA Wing, Jaisalmer House
  26, Mansingh Road, New Delhi

• You can also send these by email to ds-fcra@nic.in.

• Draft Foreign Contribution (Regulation) Rules, 2011 (available at www.AccountAid.net)

• Rule 12. In the event of receipt of foreign contribution in excess of one crore rupees in a financial year.

  Any person to whom certificate of registration or prior permission has been granted receives foreign contribution in excess of one crore rupees or equivalent thereto in a financial year, shall keep in the public domain the summary data on receipts and utilisation of foreign contribution pertaining to the year of receipt as well as for one year thereafter and the Central Government shall also display or upload the summary data of such persons with the public through its website.

(28-Mar-11)

314: PERSONAL REMITTANCES – DRAFT FCRA RULE 6

Do you have a relative abroad? Perhaps he / she sends you Rs.10,000 a month for household expenses? Well and then get ready to file form FC-1 with the Government.

Rule 6 calls upon all persons receiving money from relatives abroad to file form FC-1 within 30 days. The cut-off is Rs. 1 lakh per annum.

Fortunately, if your relative is still an Indian, then this requirement does not apply to you. It comes into play only when the relative has become a foreign national.

References:

• Comments on draft FCRA Rules can be sent by post to:
  Deputy Secretary (FC), Ministry of Home Affairs,
  FCRA Wing, Jaisalmer House
  26, Mansingh Road, New Delhi

• You can also send these by email to ds-fcra@nic.in.

• Draft Foreign Contribution (Regulation) Rules, 2011 (available at www.AccountAid.net)

• Rule 6. Intimation of receiving foreign contribution from relatives. - Any person receiving foreign contribution in excess of one lakh rupees or equivalent thereto in a financial year from any of his relatives shall inform the Central Government in Form FC-1 within thirty days from the date of receipt of such contribution.
313: ADMINISTRATIVE EXPENSES – DRAFT FCRA RULE 5

The original FCRA 1976 was mainly about licensing of NGOs to receive foreign contribution. It did not really get into ensuring how the funds were to be used or managed. In that sense the old FCRA was more liberal than the new one. The new FCRA 2010 goes back to good old license Raj in India, when only the Government knew what was best for its citizens.

The restriction of 50% on administrative expenses is indicative of this approach. And what are administrative expenses? Any expense that does not involve direct program activities! Therefore, all salaries, rent, office expenses, most of the travel, etc. will be treated as administrative expenses.

If you are engaged in research and training, then the salaries of the field researchers etc. will be exempted from this. Similarly, if you are running a hospital or school, then the salaries of doctors, nurses, teachers etc. will again be exempt.

References:

- Comments on draft FCRA Rules can be sent by post to: Deputy Secretary (FC), Ministry of Home Affairs, FCRA Wing, Jaisalmer House 26, Mansingh Road, New Delhi
- You can also send these by email to ds-fcra@nic.in.
- Draft Foreign Contribution (Regulation) Rules, 2011 (available at www.AccountAid.net)
- Rule 5. Administrative expenses. - The following shall constitute the administrative expenses:

  (i) salaries, wages, travel expenses or any remuneration realised by the Members of the Executive Committee or Governing Council of the person;

  (ii) all expenses towards hiring of personnel for management of the activities of the person and salaries, wages or any kind of remuneration paid, including cost of travel by such personnel;

  (iii) all expenses related to consumables like electricity and water charges, telephone charges, postal charges, repairs to premise(s) from where the organisation or Association is functioning, stationery and printing charges, transport and travel charges by the Members of the Executive Committee or Governing Council and expenditure on office equipment;

  (iv) Cost of accounting for and administering funds;

  (v) Expenses towards running and maintenance of vehicles; cost of writing and filing reports;

  (vi) Legal and professional charges; and

  (vii) Rent of premises, repairs to premises and other utilities:

Provided that the expenditure incurred on salaries or remuneration of personnel engaged in training or for collection or analysis of field data of an association primarily engaged in research or training shall not be counted towards administrative expenses:

Provided further that the expenses incurred directly in furtherance of the stated objectives of the welfare oriented organization shall be excluded from the administrative expenses such as salaries to doctors of hospital, salaries to teachers of school etc.
312: SPECULATIVE ACTIVITIES– DRAFT FCRA RULE 4

Apparently, the Government is also concerned about foreign contribution being used for speculative activities. These have been defined in rule 4 to include any investment such as shares, mutual funds, etc. Land can be purchased only if it is linked directly to aims and objectives of the organisation.

These restrictions were earlier part of list of don’ts by FCRA Department. This restriction appears to be contradictory to the large-scale opening of stock markets to foreign institutional investors over the last twenty years. Can this be to prevent laundering of foreign contribution through stock market? Unlikely, as any gain on foreign contribution is treated as foreign contribution.

Also worth noting is the fact that section of FCRA prohibits ‘speculative business’. The use of word ‘business’ means that the activity is carried on continuously, as an end in itself. However, rule 4 does not maintain this distinction. Any incident of investment in equity-based mutual funds will be enough to attract this rule.

What could be the reasons for this retrograde step on part of the Government? One dare not speculate!

References:

• Comments on draft FCRA Rules can be sent by post to:
  Deputy Secretary (FC), Ministry of Home Affairs,
  FCRA Wing, Jaisalmer House
  26, Mansingh Road, New Delhi

• You can also send these by email to ds-fcra@nic.in.

• Draft Foreign Contribution (Regulation) Rules, 2011 (available at www.AccountAid.net)

• Rule 4. Speculative activities. - (1) The following activities shall be treated as speculative activities:-
  (i) any activity or investment that has an element of risk of appreciation or depreciation of the original investment, linked to market forces, including investment in mutual funds or in shares;
  (ii) Participation in any scheme that promises high returns like investment in land etc., not directly linked to the declared aims and objectives of the organisation or association.
  (2) A debt-based secure investment shall not be treated as speculative investment.

311: POLITICAL ACTIVITIES – DRAFT FCRA RULE 3

The proposed FCRA rules expand the definition of ‘political activities’ significantly. Apart from organisations such as trade unions etc., a voluntary action group ‘which comments upon political activities’ can also be classified as an organisation of political nature.

Further, various mass-based organisations can be notified as organisations of a political nature, if their objectives or activities ‘include steps towards advancement of larger socio-economic or political interests of the organisation’.

Going further, an organisation which habitually engages itself in protests through “common methods of political action like ‘bandh’ or ‘hartal’, ‘rasta roko’, ‘rail roko’, ‘jail bharo’ etc in support of public causes” can also be classified as an organisation of a political nature.
What happens if you run afoul of Rule 3? The organisation will no longer be able to receive foreign contribution (section 3 of FCRA 2010).

This is a draft rule, on which comments can be sent to FCRA Department till 31-March-11.

References:

- Comments on draft FCRA Rules can be sent by post to:
  
  Deputy Secretary (FC), Ministry of Home Affairs,

  FCRA Wing, Jaisalmer House
  
  26, Mansingh Road, New Delhi

- You can also send these by email to ds-fcra@nic.in.

- Draft Foreign Contribution (Regulation) Rules, 2011 (available at www.AccountAid.net)

- **Rule 3. Guidelines for declaration of an organisation to be of a political nature, not being a political party.** - The Central Government may specify any organisation as organisation of political nature on one or more of the following grounds:-

  16. organisation having avowed political objectives in its Memorandum of Association or bylaws;

  17. any Trade Union whose objectives include activities for promoting political goals;

  18. any voluntary action group with objectives of a political nature or which comments upon or participates in political activities;

  19. front or mass organisations like Students Unions, Workers’ Unions, Youth Forums and Women’s wing of a political party;

  20. organisation of farmers, workers, students, youth based on caste, community, religion, language or otherwise, which is not directly aligned to any political party, but whose objectives, as stated in the Memorandum of Association, or activities gathered through other material evidence, include steps towards advancement of larger socio-economic or political interests of the organisation;

  21. any organisation, by whatever name called, which habitually engages itself in or employs common methods of political action like ‘bandh’ or ‘hartal’, ‘rasta roko’, ‘rail roko’, ‘jail bharo’ etc in support of public causes.

(28-Mar-11)

### 310: LOOK WHO’S TALKING...

“The GOI should press for presidential approval to implement the Foreign Contribution (Regulation) Act 1976 [sic], which would extend foreign contribution reporting requirements to any non-profit organization that has a political, cultural, economic, educational or social focus and automate notification of suspicious transactions to the FIU.”

This statement does not come from the CPI or the CPM, who have no love lost for ‘agents of imperialist countries’. It also does not come from the BJP or the RSS, both of whom view anything non-Indian with suspicion. It comes not from President Hugo Chavez , known for his zeal in regulating NGOs in Venezuela or from Prime Minister Vladimir Putin, who re-launched this fashion in 2006 when he was presiding over Russia.

It comes from none other than the US Department of State itself! In its latest 2011 International Narcotics Control Strategy Report, it has urged the Government of India to implement the FCRA 2010 immediately. The purpose? Ensuring tighter control over movement of narcotics and money laundering.

But why? What could NPOs possibly have to do with drugs and money laundering? Nothing really by themselves. But it seems that money launderers and drug mafia can easily set up sham NPOs and use these to move their filthy lucre around.
References:

• Foreign Contribution Regulation Act, 2010 (available at www.AccountAid.net)

(16-Mar-11)

309: FOREIGN CONTRIBUTION IN 2008-09

After rising for several years in the wake of the 2004 Tsunami, foreign contribution had dipped sharply to 96.63 arab rupees in 2007-08. In 2008-09, it has risen again to Rs.1.08 kharab. This is about 12% higher than the previous year.

The number of organisation who filed FC-3 has also increased to 20,088. This would mean that the average amount per organisation would be about 54 lakh rupees (about 120,000 US dollars at current exchange rate).

References:

• Written reply by Minister of State in the Ministry of Home Affairs, Shri Mullappally Ramachandran in Rajya Sabha, 9th March 2010. http://pib.nic.in

(10-Mar-11)

308: YOUR COMMENTS ON FCRA RULES

The Ministry of Home Affairs would like to get your comments and sugestions on the draft FCR rules 2011. Last date for sending in your comments is 31-Mar-11.

You can send these by post to:

Deputy Secretary (FC)

Ministry of Home Affairs,

FCRA Wing

Jaisalmer House

26, Mansingh Road

New Delhi

You can also send these by email to ds-fcra@nic.in.

References:

• AccountAid Capsule 305
307: FCRA 2010 – PRESIDENT’S ASSENT

The FCRA 2010 received the President’s assent on 27-Sep-10. However, the FCRA rules have not been finalised yet. Therefore it has not yet been notified for application.

References:

- Gazette of India – Extraordinary – Part II, Section 1. No. 51. Published 27-Sep-10
- http://www.mha.nic.in/pdfs/FC-RegulationAct-2010-C.pdf

306: CHARITIES AND BUSINESS ACTIVITIES

In 2008, the Government had clamped down on business activities of modern charities. Later, this was relaxed a little by allowing them business income up to Rs.10 lakh per year. This limit is now being raised to Rs.25 lakh. This change, if approved, will become effective from Financial Year 2011-12.

Remember, however, that the business should be incidental (connected) to the main objects of the organisation. Further, a separate set of accounts must be kept.

References:

- Proposed change in sec. 2(15) of the Income Tax Act, 1961
- Sec. 11(4A) of the Income Tax Act, 1961

305: DRAFT FCRA RULES, 2011

The FCRA Bill was tabled in Rajya Sabha in 2006. It was later passed by both the houses of parliament in August, 2010. The Act is now awaiting President’s assent.

In the meanwhile, the Ministry of Home Affairs has put up draft FCRA rules on its web-site. These deal with important practical aspects such as:

1. Who can be classified as a political organisations?
2. What is the meaning of administrative expenses?
3. What are speculative activities?
4. Fees payable under the Act
5. Procedure for processing applications etc.
6. Various forms


304: DETAILS OF ELECTRONIC BANK TRANSFERS

When you get funds in your bank account through electronic transfer, some banks give the details of the remitter. Others do not. It becomes difficult to find out who has sent you the money. This creates problems in accounting and accountability.

RBI has now made it compulsory for the banks to provide the name of the remitter in the passbook / bank statement. Additionally, banks are free to provide any additional details they wish. All banks are to implement this latest by January 1, 2011.

References:

- Circular No. 788/04.03.01/2010-11 dtd 8th October, 2010

http://rbi.org.in/scripts/NotificationUser.aspx?Id=6034&Mode=0

303: COLLECTION OF THIRD PARTY ACCOUNT PAYEE CHEQUES

Collection of crossed account payee cheques through third party is not permitted under RBI guidelines. This has created difficulties in clearing cheques of members deposited by cooperative societies for collection. RBI has clarified, that banks can now collect third party account payee cheques for cooperative societies, provided:

- The cheque does not exceed ₹50,000.
- The payee is a member of the Co-operative Society.

References:

- Circular RPCD.CO>RCBD.BCNo,24/07.38.03/2010-11,dtd 19th October, 2010.
- Circular RPCD.CO.RRB.BC.No.19/03.05.33/2009-10, dtd September 11, 2010.


302: OPENING OF SALARY ACCOUNTS

What does one need for opening a Bank Account? There is an indicative list of the documents required. When it comes to opening bank accounts for salaried employees, some banks have done this simply on
the basis of a letter from the employers. RBI is worried that this can be misused to launder money. In case of Satyam, it has been alleged that many fake accounts were created in the name of employees.

RBI has now issued tougher norms for opening salary accounts.

In addition to the employer certificate, banks must also ask at least one identity document (Passport, Driving License, PAN Card or Voter’s Identity card) as provided in Prevention of Money Laundering Rules (PML).

References:

• Master circular on Know Your Customers, Anti Money Laundering Standards, Combating of Financing of Terrorism
• Circular on Obligations to Banks under PMLA, 2002 issued to Banks vide DBOD.AML.BC.NO. 2/14.01.001/2010-11, dtd July 01,2010.
• Section 35A of the Banking Regulation Act,1949
• Rule 7 of Prevention of Money Laundering rules,2005

http://rbi.org.in/scripts/BS_ViewMasCirculardetails.aspx?id=5783
(19-Nov-10)

301: NO SERVICE TAX ON MID-DAY MEALS

Providing outdoor catering is a service which attracts Service Tax. This also affects many NGOs providing food under the Mid-Day Meal Scheme.

The Central Government has now exempted such catering service from service tax, if provided by an NGO. However, the NGO must be one that is registered under a Central Act or State Act.

References:

• Sub-clause (zzt) of clause (105) of section 65 of the Finance Act
(1-Oct-10)

300: AND NOW: A WELCOME DELAY FROM DELHI!

The Income Tax Department (perhaps taking a clue from the CWG?) has deferred the due date for filing tax return. The due date (30-Sep-2010) has been extended to 15-October-2010. This will apply to all assesses who have to file an audit report with the tax return. It will also apply to all Trusts and NGOs.

References:
"On consideration of the reports of disturbance of general life caused due to floods and heavy rains, the Central Board of Direct Taxes, in exercise of powers conferred under section 119 of the Income Tax Act, 1961, hereby extends the due date of filing of returns of income for the Assessment Year 2010-11 from 30.09.2010 to 15th October 2010. Accordingly the due date for Tax Audit report u/s. 44AB of the Income Tax Act is also extended to 15th October, 2010."

* CBDT Order u/s 119 dated 27-Sep-2010 (F.No. 225/72/2010-ITA.II), issued by Sh. Ajay Goyal, Director (ITA. II)

- CWG: Common Wealth Games, scheduled to begin in Delhi from 3rd October 2010
- Issued for general information in good faith. Please confirm the applicability of above to your case with your tax advisers before taking any action based on this. - Ed.

(27-Sep-10)

299: DIRECT TAXES CODE 2010: CHARITY AS USUAL

The revised Direct Taxes Code Bill, tabled in Lok Sabha on 30th August is fortunately like old wine, mellowed and rich, though with a new smart label. A quick glance shows that it generally retains the existing structure, though some critical changes are still there, including compulsory accounting on cash basis and a tax of 15% on unspent income.

The proposed requirement to spend 100% of receipts in the same year has been dropped. The limit is now 90%. However, the balance 10% must also be spent within the next three years. Facility for carry-forward is now available only for amounts received in the last month.

Some of the nicer changes have also gone with the old Draft. The implied opening of charity work on international arena has been chopped. Opening up of investment options also appears to have disappeared. Tax on anonymous donations is back on the books.

The bureaucratic phrase ‘Permitted welfare activity’, which saw furious reactions from the sector has been replaced with the more acceptable ‘charitable activity’.

Overall, the modified Bill seems to be a good example of how the tradition of The Argumentative Indian continues to pull weight in India!

References:

- Direct Taxes Code Bill, 2010 (www.Accountaid.net)
- Above comments are made on a tentative basis, and are subject to revision on deeper analysis of the provisions. – Ed.

(31-Aug-10)

298: FCRA BILL PASSED IN LOK SABHA

Foreign Contribution (Regulation) Bill, 2006 has been passed in the Lok Sabha on 27th August 2010. It has already been passed by the Rajya Sabha on 19th August 2010. The Bill will now go to the President for her assent. It will become operational only when the Rules are framed and Bill is notified. The text of the bill can be seen on www.accountaid.net
297: FCRA BILL INTRODUCED IN LOK SABHA

Foreign Contribution (Regulation) Bill, 2006 which was passed by Rajya Sabha on 19th August 2010 has now been introduced in Lok Sabha on 27th August 2010. Introducing the Bill, the Minister of State for Home Affairs Mr Ajay Maken said that the government has accepted 12 of the 14 amendments recommended by the Standing Committee. Once it is approved by Lok Sabha, it will go to the President for her consent. If passed by Lok Sabha in the current session, it is likely to become law before the end of this calendar year.

References: www.anhourago.in/show.aspx?id=5705702&amp;d=502

(27-Aug-10)

296: FCRA BILL PASSED BY RAJYA SABHA

Rajya Sabha on 19th August’10 passed the Foreign Contribution (Regulation) Bill, 2006 which will replace the Foreign Contribution (Regulation) Act, 1976 eventually. The Honorable Minister for Home Affairs, Sh. P. Chidambaram replied to the debate on the Bill.

The bill will now go to Lok Sabha. Once it is approved by Lok Sabha, it will go to the President for her consent. After this the Bill will be notified, along with Rules. It is possible that the bill could become law before this year is over.

In line with many other countries, FCRA 1976 is designed to prevent influence of foreign funds on Indian politics and establishment. However, the Act also covers NGOs under the apprehension that they could be used as surrogates by political parties.

The Bill simplifies some of the procedures, while significantly tightening others. The focus of the Bill is more on NGOs, with the government trying to ensure "that the foreign money does not dominate social and political discourse in India. There is enough money within India."

Electronic media will also be covered by FCRA provisions once the Bill becomes law.

References:

- http://www.rajyasabha.nic.in
295: REGISTRATION OF SOCIETIES IN DELHI NOW DECENTRALISED

Delhi Government has decentralized the registration of Societies. It will now be placed under Sub-Divisional Magistrates. You would need to go to your area office for new registrations. Records for societies already registered will remain with the present Registrar of Societies till these record are eventually transferred to the respective SDM (HQ).

<table>
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<th>S.No.</th>
<th>Name</th>
<th>Address</th>
<th>Phone No.</th>
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<tr>
<td>01</td>
<td>SDM H.Q (North)</td>
<td>1, Kripnarayan Marg, Sham Nath Marg, Delhi</td>
<td>23918044</td>
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<tr>
<td>02</td>
<td>SDM H.Q (South)</td>
<td>B.D.O. Office, M.B. Road, Saket, New Delhi</td>
<td>29536773</td>
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<td>14, Darya Ganj, Delhi</td>
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<td>12/1, Jam Nagar House, New Delhi</td>
<td>23384549</td>
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<tr>
<td>05</td>
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<td>Admin. Blk. Old Terminal Tax Building, Kapashera, New Delhi</td>
<td>25069185</td>
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<tr>
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<td>25951140</td>
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</table>

References:


- Notification No- CI/ Admn./RFS-1/2009/1903 dated 26/03/2010 issued by the Office of the Commissioner of Industries.

Note: We thankfully acknowledge the contribution of Shri Anil Goel, CA in bring this to our attention. – Ed.

(12-Jul-10)
294: SOME RELIEF UNDER SECTION 2(15)

The Finance Minister has offered a small, but welcome relief under section 2(15). NPOs which were earlier required to give up all business-like activities can continue these. The condition is that such business-like receipt should not exceed Rs.10 lakhs.

This relief is being offered from F.Y. 2008-09. This means NPOs need not give up occasional sale of publications, hiring out of equipment etc.

References:

- Sec. 2(15) of Income Tax Act, 1961, as modified by Finance Act, 2008
- AccountAid Capsules 262, 263, 265, 268 and 274

AccountAble 141: Charitable Purpose and Income Tax at www.accountaid.net

(27-Feb-10)

293: AWARD FOR BEST ACCOUNTS

The Institute of Chartered Accountant of India is inviting participants for the ICAI Awards for Excellence in Financial Reporting for the year 2008-09. This award is presented among seven categories of organizations. NGOs, Educational Institutions, Charitable Hospitals and Section 25 Companies can file their nominations under category VII.

Last date for receipt of entries is 15th October, 2009. No fee is to be paid for entry. At present very few NGOs are filing their nominations, so there are good chances that your organization may get the first or the second award.

The entry form and conditions for entry are given on the ICAI website www.icai.org/resource_file/16823icai_awards_efr.pdf. The completed forms, along with the relevant enclosures, need to be sent at the following address:

The Secretary, Research Committee,
The Institute of Chartered Accountants of India,
ICAI Bhawan, Post Box No.7100,
Indraprastha Marg, New Delhi - 110002. E-mail: research@icai.org

References:


(7-Oct-09)
292: NO MORE 100% DEDUCTION FOR DONATIONS?

Another scalp claimed by the Code is 100% deductibility of donations under section 35AC (80GGA). If the Code becomes applicable from 1st April 2010, donors will no longer be able to claim 100% deduction (from income) of donations made to approve NGOs.

On the other hand, every NPO will automatically be approved for 50% deductibility of donations. Deductible donations will continue to be restricted to 10% of Gross Total Income.

Sources:

Section 72, read with Sch. 16. Direct Taxes Code Bill 2009. Applicable in India

(20-Aug-09)

291: TAXING TIMES AHEAD FOR NGOS?

Government of India has drafted a new Tax Code. If passed, this may become effective from FY 2010-11.

The code proposes several changes to the way NGOs are taxed. The most important is loss of financial sustainability.

NGOs will no longer be able to accumulate funds for sustaining programs. If any unspent funds remain at the end of the year, they will have to pay 15% tax on these.

All NGOs will need to account on cash basis. They will not be able to claim provisions for expenses / grants not paid out before the end of the year.

Sources:

• Chapter IV. Direct Taxes Code Bill 2009. Applicable in India

(19-Aug-09)

290: SOME FC INFORMATION FOR 2007-08...

In 2006-07, a total of 1659 NGOs received over a crore Rupees. In 2007-08, this number has nudged up slightly to 1695.

Sources:

• Written reply by Minister of State in the Ministry of Home Affairs, Shri Mullappally Ramachandran on 29-Jul-09 to a question in Rajya Sabha

• AccountAid Capsules 273, Dec’08

(29-Jul-09)

289: TAXING SHOCK COMING UP...

If your accounts show any business-like income in 2008-09, you may be in for a shock. Of a taxing kind.
It appears that the Income Tax officials are going to carefully scrutinise the returns to find out whether any modern NGO has been earning business-like income. This could include sale of cards or souvenirs, consultancy fees, hire charges, etc.

And if they find a trace of such income, they will try to see whether the NGO has become ‘uncharitable’ due to changes in sec. 2(15). If this does happen, then the NGO will be assessed as a business. Its income will be recalculated based on business accounting. And any ‘profit’ that emerges, will be taxed.

If you have earned any ‘business’ revenue in 2008-09, please consult your tax advisers (or auditors) before you file your tax return. Grant makers should also warn their partners. Or be prepared to see their grant-funds being used to pay income tax!

Sources:

- AccountAid Capsules 262, 285
- Section 2(15) of the Income Tax Act, 1961. Applicable only in India.

(25-Jul-09)

288: UNCHARITABLE EDUCATION?

Private schools in UK have long enjoyed tax exemption, as education is considered a charitable object. In 2006, this was changed. The schools were required to show they provide a public benefit. In a recent review by the Charities Commission, two out of five private schools failed the test. They now have one year to make up. Or start paying taxes.

Indian law normally catches up with UK law sooner or later. Already there have been loud murmurs about how many schools are being run for profit, instead of education. The UK law may, therefore, be an advance warning for public schools in India.

Sources:


(23-Jul-09)

287: LONG LIVED 80G

Section 80G approvals for fund-raising have a limited life. You need to renew them every five years. This means trooping down to an encounter with your ITO every fifth year.

The Finance Minister wants to save you this trip. Approvals under section 80G will now be in perpetuity. That means these will remain valid throughout your life. Unless, the Tax Commissioner decides to withdraw it in your specific case.

Would the Honourable Finance Minister kindly consider moving to Home Ministry after this, and making the same change to FCRA Bill 2006?
Sources:


(7-Jul-09)

**286: BANDAID FOR DONORS ‘ORPHANED’ BY 2(15)**

When sec. 2(15) was amended, many NGOs became ‘uncharitable’ under law from 1st April 2008. As a result, they automatically lost their 80G approvals. However, donors continued to give them money without knowing this.

The budget proposes giving such donors some relief. They can claim a tax benefit under section 80G for their good deed. But only for the year 2008-09!

Sources:

- Capsule 263: Charitable Purpose – For Whom the Bell Tolls.... Dated 9-April-2008
- Clause 33 of Finance Bill 2009. Proposed amendment to section 80G(5). Effective for last Financial Year 2008-09 only.

(7-Jul-09)

**285: SOME RELAXATION OF SECTION 2(15)**

Beginning 1st April 2008, a modern NGO getting fees etc. could lose its tax exemption, as well as approval under section 80G. This also affected NGOs involved in raising funds for wild-life by selling greeting cards etc.

The budget proposes a relaxation for two categories of NGOs:

- Involved in preservation of environment (including watersheds, forests and wildlife); or
- Engaged in preservation of monuments or places or objects of artistic or historic interest.

‘Charitable purpose’ will now have six limbs. The first five (relief of poor, education, medical relief, environment, monuments etc.) will remain charitable even if the NGO has any business-like income. The residual category (‘advancement of any other object of general public utility’) will become uncharitable the moment they sell anything or earn any fees.

Sources:

- Capsule 262: No trading for Charities – Budget 2008; dated 3rd March 2008
- Clause 3 of Finance Bill 2009. Proposed amendment to section 2(15). Effective from last Financial Year 2008-09.
- AccountAble 141 and 142. Available at www.AccountAid.net

(7-Jul-09)
284: ‘GUPT DAAN’ MADE EASIER

In 2006, all anonymous donations to charitable organisations became taxable @ 30%. This included even coin-box collections of 2-5 rupees. Many NGOs withdrew their collection boxes in frustration.

The new Budget proposes an exemption of Rs.1,00,000 or 5% of total income, whichever is higher. This means that an NGO with a total income of 1 crore can report anonymous donations of Rs.5 lakhs, without any bother of tax.

A smaller NGO with income of just Rs.5 lakhs can also report anonymous donations of Rs.1 lakh, without any tax.

So go ahead, and tap that shy donor – without any tax implication!

Sources:
- Capsule 196 dated 22-Mar-06: Anonymous Donations

(7-Jul-09)

283: CREDITING FC TO NGOS ON PROHIBITED LIST

Another issue that the RBI is concerned about is that NGOs / other organisations put on prohibited lists by MHA have continued to receive foreign contribution. This has happened due to laxity on part of the banks.

RBI has advised careful scrutiny of the MHA lists of frozen FCRA registrations before crediting funds to bank accounts of NGOs or other organisations.

Also Refer:

Sources:
- Capsule 277 dated 13-May-09: FCRA Amnesty Scheme till 9th August 2009

(6-Jul-09)

282: MULTIPLE ACCOUNTS FOR FCRA FUNDS

All NGOs receive foreign contribution in the designated bank account. However, later some NGOs move these to other bank accounts, for operational or accounting convenience. This is actually violation of FCRA rules. You need to get FCRA permission to keep FCRA funds in secondary bank accounts for operational purposes.

RBI has now identified this as a common irregularity:
“Certain associations were found to be operating more than one account, either in the same branch or in different branches (other than the account specified in the communication for registration), for carrying on transactions of foreign contributions.”

It has advised the banks to scrupulously follow the FCRA rules in this regard.

Sources:


(6-Jul-09)

281: REFUSING REDEPOSITS IN FC ACCOUNT

Often NGOs complain that some banks refuse deposit of local cheques into the FCRA account. This is because these banks mistakenly think that foreign contribution must come from outside India. Mostly the problem is solved if you give a letter saying the funds are FCRA funds, which have been received from a foreign source in India, or are a redeposit of FCRA funds.

RBI has now clearly said that even donations received in Indian currency from a foreign source should be deposited to FC account:

“Therefore, banks should not ordinarily refuse to credit the legitimate proceeds of any ‘foreign contribution’ to the designated bank account of an association, which has either obtained prior permission or registration under FCRA from the Ministry of Home Affairs.”

The FC funds given by the first recipient to a second or subsequent recipient would also have to be deposited in FC account. It does not matter that these are in local currency. Similarly, interests earned on any investments made out of FC funds are also treated as foreign contribution and should be credited to FC account.

Sources:


(3-Jul-09)

280: HALF YEARLY REPORTS BY BANKS TO FCRA

Did you know your bank reports all receipts in your FC designated bank account to the MHA? This is done through six monthly reports. The report gives details of your organization, registration number, date and amount credited to the account. The name of the donor agency is also mentioned where available.

Sources:
279: YOUR BANKER IS WATCHING YOU...

Did you know that your bank manager keeps a special watch on your bank account, if you are an NGO? This happens whether or not you are registered under FCRA.

Why does this happen? Well, RBI has instructed all banks to report any suspicious transactions to Ministry of Home Affairs. This is to prevent any violation of FCRA provisions. An example would be receipt of foreign remittances in a non-FCRA account. Similarly, transfer of funds from an FCRA account to a non-FCRA account may be reported to the MHA.

Sources:


(2-Jul-09)

278: OFAC SANCTIONS AND CHARITY FUNDS

The Office of Foreign Assets Control (OFAC) in US maintains a list of SDNs (Specially Designated Nationals) on its web-site. The list presently runs into 420 closely-typed pages. It contains names of thousands of individuals, companies and charities who are believed to be supporting terrorism or narcotics trafficking, or belong to some specified countries. Some countries (Burma, Cuba, Iran and Sudan) are also under full sanction.

According to the US law, any funds related to these persons / countries should be seized, if these pass through a US bank anywhere in the world. US banks have to scrutinize all transactions and check whether there is any connection with the SDN list. If yes, the funds are liable to be frozen.

The list also contains a large number of charitable organizations. This is based on the current international view that charities can be used to move funds related to terrorism or contraband.

Sources:

- A Study on Money Laundering: An Accountant’s Perspective. ICAI, Jan-2005

(13-May-09)
Some registered NGOs and others were placed on prior-permission list in Nov’05 as they had not filed their FC-3 for three years (2001-02, 2002-03, 2003-04). This effectively meant that their FCRA registration had been cancelled.

Later, some of these NGOs were taken off the prior-permission list when they filed their pending accounts by 31st Dec 2006.

Now the FCRA Department has announced another amnesty scheme for those still remaining on the prior-permission list of Nov’05. These NGOs can now file their pending returns for seven years (2001-02 to 2007-08). If they did not receive any funds in a particular year, they should file a NIL return. This should be done before 9th August 2009.

The FCRA Department will then review the documents filed, and restore the FCRA registration in due course, by publishing another notification.

References:


* For guidance on how to fill and file the form FC-3 correctly, please see AccountAble issues on FCRA at http://uttaryee.freewebspace.com/Accountaid_web/AccountAble_Topical.htm

(13-May-09)

276: GENEROUS GRENADA

Who gives more of its money to India – USA or Grenada? If you said USA, you may not be quite right.

In 2006-07, USA gave Rs.30 arab ($743 million) to India. This was 24% of the total FCRA inflow. However, it was just 0.005% of USA’s GDP.

Compare this with Grenada, a small island nation in Caribbean Ocean. In the same year, it remitted Rs. 3.33 arab (US $ 83 million) to India. That is nearly 13% of its GDP!

Surely, when it comes to generosity, Grenadians must be miles ahead of the Americans!!

[References:


* USA’s GDP for 2007 was Rs.57 neel (US $ 14 Trillion). Source: https://www.cia.gov/library/publications/the-world-factbook/geos/us.html. If you want to find out what a ‘neel’ is, please read AccountAble 121 at www.Accountaid.net!


(31-Mar-09)
275: ‘ONE PERSON COMPANY’ FOR CHARITY

The Companies Bill, 2008 proposes a new type of company called OPC, which can be formed by just one person. This company can also obtain the license for charitable companies.

Hopefully, now the much maligned ‘one-man show’ in NGOs will have some legitimacy!

[References:
  * Section 2(1)(zzk), Section 3(1)(c), Section 4 of The Companies Bill 2008

With due apologies for using the phrase ‘one-man show’. The Bill uses the correct phrase ‘One Person Company’ instead. – Ed.]

(30-Mar-09)

274: CBDT ON SEC. 2(15)

Government of India has come out with a clarification on loss of charitable status if an NGO is conducting any business activities (modified definition of ‘Charitable Purpose’ under section 2(15) of the Income Tax Act, 1961). The clarification (which unfortunately does not add much to one’s clarity), says:

“… whether the assessee has for its object ‘the advancement of any other object of general public utility’ is a question of fact. If such assessee is engaged in any activity in the nature of trade, commerce or business or renders any service in relation to trade, commerce or business, it would not be entitled to claim that its object is charitable purpose. In such a case, the object of ‘general public utility’ will be only a mask or a device to hide the true purpose which is trade, commerce or business or the rendering of any service in relation to trade, commerce or business. Each case would, therefore, be decided on its own facts and no generalization is possible. Assessee, who claim that their object is ‘charitable purpose’ within the meaning of Section 2(15), would be well advised to eschew any activity which is in the nature of trade, commerce or business or the rendering of any service in relation to any trade, commerce or business.”

The clarification that ‘each case would … be decided on its own facts and no generalization is possible’ is especially worrisome. This would mean that the Assessing Officers would need to examine each case, and decide the matter on the facts. If this comes to pass, then NGOs in the fourth category may want to either gird up for a lot of appeals and court cases, or avoid taking up any activities which appear to be business-like.

[References:
  * Sec. 2(15) of Income Tax Act, 1961, as modified by Finance Act, 2008
  * Circular No. 11/2008, New Delhi, the 19th December, 2008; F. No.134/34/2008-TPL, Government of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, (Tax Policy & Legislation Division)

  * AccountAid Capsules 262, 263, 265 and 268
  * AccountAble 141: Charitable Purpose and Income Tax at www.accountaid.net

We thank CA Atul J Trivedi, Ahmedabad for bringing the above circular to our attention. – Ed.]

(29-Dec-08)
273: FCRA STATISTICS FOR 2006-07

As on 31st March 2007, as many as 33,937 associations had valid FCRA registration. However, for 2006-07, only 19,011 out of these (56%) have filed their form FC-3.

Of these organizations:

• 147 associations received more than Rs. 10 crores
• 169 associations received between Rs. 5 - 10 crores
• 1,343 associations received between Rs. 1 - 5 crores
• 7,430 associations received no funds and filed a nil return
• Balance 9,922 associations received various amounts up to Rs. 1 crore

[References:
Source: FCRA Annual Report 2006-07 (http://www.mha.nic.in/fcra.htm) (29-Dec-08)
]

272: FOREIGN CONTRIBUTION IN 2006-07

In 2006-07, a total of Rs.123 arab (12,289.63 crores, ~US $249.3 million) was received by Indian NPOs from foreign sources. This is a relatively large jump (56%) over the previous year's inflow of Rs.78.78 arab.

In 2004-05, foreign contribution stood at Rs. 62.5 arab (~US $126.9 million). Thus, it appears to have doubled in just two years, even though the Rupee remained quite stable over this period.

[References:
Source: FCRA Annual Report 2006-07 (http://www.mha.nic.in/fcra.htm) (20-Dec-08)
]

271: STANDING COMMITTEE’S REPORT ON FCRA BILL 2006

The Parliamentary Standing Committee on Home Affairs has submitted its report on the FCRA Bill 2006 recently. The recommendations of the Committee include the following:

1. Indian companies with foreign shareholders of 50% or more should not be classified as ‘foreign source’.

2. Scholarships or stipend for academic pursuits should not be treated as ‘foreign contribution’.

3. Introduce time-limit for a decision after an organisation is declared as being of political nature, and provide for an appeal mechanism.

4. Distinguish between foreign hospitality accepted during an official visit and on a personal visit.
5. Allow ‘mother NGO’ to obtain prior-permission on behalf of small NGOs getting FCRA funds from it.

6. ‘Administrative Expenditure’ should be defined in the Bill to remove confusion; the limit of 50% is otherwise considered reasonable by the Committee.

7. Introduce time limit of 3 months for dealing with application for FCRA registration.

8. Simplify the requirement of ‘meaningful project for ... people’ when granting prior-permission. FCRA should not get into the subjective question of whether a project is ‘meaningful’ or not.

9. Requirement of renewal of FCRA registration every five years can be retained – however, the Department should grant the renewal within three months.

10. Banks need to report only bigger remittances (above Rs. 10 lakhs) to the Government.

11. Municipal councils and Panchayati Raj Institutions should also be included in the definition of ‘legislature’. This will place some restrictions on work being done with Panchayat members and candidates for Panchayat elections.

12. Some minor changes are also suggested with regard to imprisonment, fines, and prohibition etc.

References:

- FCRA Bill 2006

We acknowledge with thank the support provided by Sri Anil Goel, CA in pointing us to above link. – Ed.

(5-Dec-08)

270: FRAUDULENT INVITATION TO CHILD ABUSE CONFERENCE

The following conference invitation is fake. There is no such organisation. Its web-site has been shut down for sending out fake invitations to a conference in USA. Later they will get you to transfer money for the hotel booking in Dakar, Senegal. After which you will never hear from them again.

If you want to know more about how this kind of fraud works, please visit www.vitalsecurity.org/labels/conference.html

Please circulate this warning to your friends as a goodwill gesture and help keep internet fraud down.

Conference Invitation :

Dear Sir/Madam

We are cordially Inviting Interested individuals to a Combined Conferences against Racism and Child Abuse that will be held from the 16th - 20th of August 2008 In Anaheim California and from the 25TH -28TH of August 2008 in Dakar Senegal.
You may contact the Secretariat of the Organizing Committee for details and information. You are to also inform them that you were invited to participate by (Miss Petelyn Wright), who is a member of the American Youths for Peace and a staff of (World Youths Conference Organization).

Registration is Free and the Benevolent Donors of the Organizing Committee will provide round trip air tickets and accommodation for the period of participants Stay in the U.S to all registered participants. You will only be responsible for your own hotel booking in Dakar where the second phase of the conference will be held.

If you are a holder of a Passport that may require visa to enter the United States you may inform the Conference Secretariat at the time of Application, as the organizing committee is responsible as for all visa arrangements and travel assistance.

WORLD YOUTH ORGANIZATION FOR WELFARE

TEL: +1 (516) 3030022 or +1 (516) 3030020 FAX +1 (760) 284-5664

Email: conference_wyohw2008@usa.com

registrationdesk@worldyouthsorganization.org

Sincerely,

Petelyn Wright
p.wright@worldyouthsorganization.org

(19-July-08)

269: ONLINE FCRA PRIOR-PERMISSION NOW COMPULSORY

With effect from 1st August 2008, all prior-permission applications must be filled up and filed online. After that a printout should be taken, signed and sent to FCRA Department by registered post. All relevant documents should be sent with this.

The FCRA online service for prior-permission is available at MHA's web-site: http://www.mha.nic.in/fcraweb/fc_login.aspx. Help in filling the form is available at http://www.mha.nic.in/fcraweb/fc1A_help.htm

For filing the online application, you have to first create a login ID (Username and password). Then you can log in for filing application FC-1A for prior-permission.

The above has been notified by FCRA-III section on the MHA web-site. The related amendment to the rules has apparently not yet been notified.

[References:

- Undated, un-numbered notice for FCRA-Online service for prior-permission application (http://www.mha.nic.in/fcra.htm)
- http://www.mha.nic.in/fcraweb/fc1A_help.htm]

(4-July-08)

268: TAX EXEMPT NGOS HAVE NO BUSINESS ...

...To do business. That’s what the Government in India now says, taking us back to the pre-’84 position.
With the passing of the Finance Act 2008, the definition of charitable purpose under section 2(15) has changed. Tax exempt NGOs are no longer allowed to take up any business activities. This bar has gone into effect from 1-Apr-2008 (Assessment Year 2009-10).

This bar does not apply to religious organizations or to those engaged in traditional modes of charity, such as education, health or relief of poor. However, even some traditional charities such as those offering food, shelter or water to passersby may be affected. Remember, even a very small bit of business will lead to taxing of the entire income.

While the Government has promised a circular to help clarify the matter, this is still awaited. In the meantime people are worried about their tax status. One solution may be to segregate the business activities and conduct these in a separate organization.

Therefore, if you are a modern NGO and carry on any business activity, please discuss this with your tax advisers. If need be, please feel free to call our office.

References:
- AccountAble 141 at www.AccountAid.net
- AccountAid Capsules 262, 263 and 265
- Sec. 2(15) of the Income Tax Act, 1961. Applicable in India

(3-June-08)

267: POLITICS AND CHARITIES IN USA

Tax exempt charities, including religious organizations, in USA are not allowed to participate in election campaigns or endorse a particular candidate. If they do so, they may lose their tax exemption.

This has led to the launch the ‘Pulpit Freedom Sunday Initiative’ by an organization called Alliance Defence Fund (ADF). The initiative encourages pastors to preach about politicians in such a manner so as to invite an investigation by the Inland Revenue Service (IRS). ADF hopes that this may lead to a court challenge to the present ban. On the other hand, Americans United for Separation of Church and State (AU) monitor the activities of the priests and file complaints where they find a violation.

One such investigation centred on the United Church of Christ inviting Senator Barrack Obama to address its general meeting. Another involved a priest belonging to First Southern Baptist Church endorsing a Mr. Mike Huckabee. In both cases, the IRS found no violation.

In India, a similar rule is found in Foreign Contribution Regulation Act, 1976 (FCRA). Organisations registered under FCRA are not allowed to engage in any political activities. However, there is not much clarity on what constitutes political activity.

References:

(2-June-08)
266: FC-3 TO BE FILED BY 31 DEC

The last date for filing FC-3 used to be 31st July of each year. By a recent notification, this has been revised. The last date for filing the FC-3 is now 31st December, each year.

This amendment comes into effect from Financial Year 2007-08 itself.

[References:
  • Rule 4 of FCRA Rules, 1976
  • Special thanks to Sh. Martin Pinto, FCA, Delhi for drawing our attention to this notification. – Ed.]

(7-May-08)

265: THE RELUCTANT TAX PEOPLE

Recently there has been an important legislative proposal in India, which will effectively bar all unconventional charities from any business-like activities. This will be done by taking away their income tax exemption.

Now the curious part is that the Government of India does not at all want to do this. However, it is finding it difficult to keep business groups out of the bounds of tax-exemption for charities. During discussions, the Government representatives have expressed helplessness, as it is difficult to think up a legal definition of philanthropy which allows for the vast diversity of the sector, and yet ensures that business groups are not able to crash in.

It appears that this is symptomatic of the ‘coming closer’ of not-for-profit and for-profit sectors, in some ways at least. There is an increasing borrowing of management terminology, there is sharing of strategies, and sometimes the two work in partnership to bring innovative products and services to deprived. In some sense, charities are becoming more business-like, while at the same time, some corporations are becoming more charitable.

However, this also creates a legislative challenge. How will the tax authorities ensure that the tax shelter for charities doesn’t get crowded with businesses masquerading as charities? As this has enormous revenue implications, the tax people may find it difficult to continue to be charitable to charities.

And this may mean a more complicated existence for charities with economic activities.

[References:
  • AccountAid Capsule 263 at www.AccountAid.net
  • Proposed change in Sec. 2(15) of Income Tax Act, 1961
  • Europe - Survey of the Treatment of Economic Activities of Nonprofit Organizations in Europe (2007) available through online library at www.ICNL.org
  • Special thanks for the exceptionally useful resources provided by Prof. Douglas Rutzen at ICNL, and the invaluable help and ideas generously shared by Prof. Mark Sidel at University of Iowa. – Ed.]
264: OPEN LETTER TO PM ON FCRA BILL

Several legal luminaries and NGOs have written to the Prime Minister, urging him to reconsider the FCRA Bill 2006.

The signatories include Commonwealth Human Rights Initiative, Centre for Youth and Social Development, Development Alternatives, Centre for Policy Research, Voluntary Health Association of India, Centre for Science and Environment, Centre for Media Studies, M. S. Swaminathan Research Foundation and Transparency International India, apart from the former Attorney General of India, Sh. Soli S. Sorabjee, the former Supreme Court judge, Ms. Ruma Pal, and Sh. Fali S. Nariman.

The basic argument offered against FCRA Bill 2006 is that it runs counter to the spirit of the National Policy on Voluntary Sector. The signatories believe that it may lead to curtailment of civil society activities, as the Bill provides scope for subjective action by the executive.

The signatories suggest that the present framework of UAPA 1967, FCRA 1976, FEMA 1999, and PMLA 2002 is sufficient to regulate the sector. The cap of 50% on administrative expenses is seen as ‘unwarranted interference’ in the internal affairs of the NGOs.

[References:

- FCRA Bill 2006 [www.AccountAid.net]
- AccountAble 122-128 at [www.AccountAid.net]

(10-Apr-08)

263: CHARITABLE PURPOSE – FOR WHOM THE BELL TOLLS...

The proposed change in definition of ‘Charitable Purpose’ will directly affect a large number of organisations. This will happen if any part of their income is related to any business, trade or commerce, and they are receiving fees, cess or other income from it.

Following is a partial list of the type of organisations that are at risk of losing their tax exemption (sec. 12A) and incentives (sec.80G).

1. All chambers of commerce and industry, federations, registered societies and trade associations established with the object of promoting trade, commerce and industry.

2. All companies incorporated without a profit motive, for maintaining and running a stock exchange or for promoting road safety.

3. All societies incorporated without a profit motive, for any of the following objects:
   a) For the improvement and promotion of agriculture and agriculturists.
   b) For the improvement and advancement of scheduled castes and tribes (tribals).
   c) For the welfare of the members of the police force and their families.
   d) For imparting technical education, setting up model industries and reducing unemployment in poor village folk.
e) For developing various kinds of plants that restored environmental balance and also helped in the conservation of various plants in the State of Tamil Nadu.

f) For organizing seminars, conferences and workshops to educate people on commercial laws, tax laws, auditing, accounting, direct and indirect taxes.

4. Trusts for promoting cottage / village industries, handicraftsmen and teaching unemployed men arts, handicrafts, etc.

5. Trusts to promote artistic principles, literature, fine arts, music, dance, etc.

6. Trusts owning auditoriums, memorial halls for cultural activities, ‘wadis’, dharamshalas, gaushalas and sanatorium which are let out for rent while their primary objects are charitable.

7. State Road Transport Corporations formed to provide transport services to the public without the object of earning any profit.

8. Foundations for the development of botanical gardens etc. and for carrying on literary and cultural activities like setting up and maintenance of museum, library, etc.


10. Trusts for preservation of places of historic interest or natural beauty.

11. Trusts for feeding travellers and promoting unity amongst the members of any community and developing all the aspects of their life.

12. Trusts for promotion of cricket or other sports amongst the public.

13. Trusts for bringing about closer understanding between two countries and for improving international relations.

14. Trusts for the benefit of returned soldiers or for the promotion of the armed and police forces.

[References:

• Union Budget 2008

• Sec. 2(15) of Income Tax Act, 1961


• ‘…send not to know for whom the bell tolls, it tolls for thee.’ from ‘No Man is an Island’ by John Donne (c.1572-1631)]

• Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity;”]

(9-Apr-08)

262: NO TRADING FOR CHARITIES – BUDGET 2008

The 2008 budget has proposed changing the definition of ‘charitable purpose’. This will mean that certain charitable organizations, which have business-like activities, will be denied tax exemption from the coming financial year.
This move will not affect schools or hospitals, or organizations which work for relief of the poor. However, other charitable organizations will be hit hard, if they have any business-like activities, or charge any fees or consideration from others. This could even cover cases where an NGO publishes a magazine and charges subscription fees or accepts advertisements for money.

This may include the following kind of organizations:

1. Training organizations
2. Resource organizations
3. Human Rights organizations
4. Micro-credit organizations
5. Environmental organizations
6. Advocacy organizations
7. Research organizations
8. Chambers of Commerce
9. Professional associations
10. Fund-raising organisations
11. Networking organizations, etc.

If the amendment goes through, there will be two options for such organisations:

1. Give up any activities which can be seen as trade, business or commercial, or
2. Show that they are only working for relief of poor or are only running schools or hospitals

If they cannot do either of the above, they may have to prepare to pay income tax from the coming financial year.

References:

- Union Budget 2008
- Sec. 2(15) of Income Tax Act, 1961
- Text of proposed definition of charitable purpose:

“Charitable purpose” includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility:

(3-Mar-08)

261: ADD-ON MODULES FOR TALLY 9

A Mumbai-based software company, Antra Web Technologies Pvt. Ltd. is offering some useful add-on modules for Tally 9. These modules can be purchased separately and installed on your computer. This will allow you to increase the features of your Tally accounting software:

1. Voucher-Type Level Security: Restrict user to creation/alteration of a specific voucher type
2. Report Generator for Tally: Construct your own reports using data from Tally without programming knowledge.
3. Audit Trail: Entire trail of a voucher starting from when it was created, by whom and on what date.

For pricing and other details you will need to get in touch with the company:

202, Mahavir Industrial Estate, 
Nr. Paper Box Factory, Opp. Nelco, 
Off. Mahakali Caves Road, 
Andheri (East), Mumbai - 400 093 
Tel: - 26875114, 26874491/2. Fax: - 26874493 
sales@anraweb.com

[References: 
www.anraweb.com

Please note that AccountAid has not evaluated this product or the company. This capsule is meant for general information only. –Ed.]

(23-Oct-07)

260: DIVINE PARTNERS

Over the last three years, Sh. KV. Ramani, a software engineer from Chennai made about Rs.200 crores from the booming share market in India. He attributed this success to the blessings of Sai Baba of Shirdi. He has now given Rs.68 crores to the Sai Baba Mandir Trust, Shirdi for construction of a rest house for the devotees. According to him, this is Sai Baba’s share of the profits which he made from the market!

This is not an isolated instance. In many regions, Hindu business persons formally put down their isht-dev as a partner in the partnership deed. His / her share is also specified and regularly paid out in the form of contributions to charity. This arrangement is also recognised by income tax authorities.

[References: 
Sai Baba of Shirdi (1838-1918) is different from Sathya Sai Baba (b. 1926) of Puttaparthi. - Ed. 
isht-dev: Patron God, a particular whose favours are sought by the devotee.
‘Aay 200 crore, baba ko 68 crore’, Rajasthan Patrika, p.1, 4-Oct-07]

(11-Oct-07)

259: VODAFONE INDIA FOUNDATION

Recently, Vodafone took over Hutch in India. And the Hutch mascot decided that change was good.

There is now news of more change – Vodafone is setting up its 24th foundation, to be called Vodafone India Foundation. And the mother, Vodafone Group Foundation, based in UK, has committed $10 million to the new baby. That’s about 39 crore Rupees.
Vodafone’s Chief Executive, Sh. Arun Sarin, will also be the Chairperson of this foundation. The Foundation plans to support local and international NGO on projects related to education and skill-building.

References:

http://www.vodafonefoundation.org/5.0.html/news/item11.xml

(9-Oct-07)

258: GET RID OF MUTUAL FUNDS?

If you are holding any FCRA investments in mutual funds, should you then get rid of them?

Not straight away. The statement on the FCRA web-site is a general information statement, of unclear origin. It is not a signed order issued by the Government. It also does not offer any reference to the section or rule in FCRA 1976, which supports this interpretation.

Secondly, it is difficult to categorize all mutual funds as speculative investments. Growth-based mutual funds are subject to market-risks, because these invest in equity shares. Others, such as debt-funds invest in corporate bonds etc. Debt-funds (such as gilt or liquid funds) which invest in government securities and money markets cannot really be called speculative. Remember also that all mutual funds approved by SEBI are eligible for investment of trust funds under Income Tax Act (NGOs in Maharashtra and Gujarat face some extra restrictions).

Therefore, if you receive a letter from your bank, don’t offload your investments straight away. First establish that your bank is following a clear legal procedure, based on authentic sources. Secondly, consult your advisers. They may even suggest that you make a representation or approach the courts for relief. Third, take a decision based on your evaluation of the advice and your own situation.

References:

FAQ on FCRA web-site at http://www.mha.nic.in/fcra.htm

AccountAid Capsule 257, 8-Oct-07

(8-Oct-07)

257: FCRA ON MUTUAL FUNDS

FCRA Department has taken the following position on mutual fund investments:

“Q.29 Can NGOs use the foreign contributions for investment in Mutual Funds and other speculative investments?

A. 29 No. The foreign contributions received after prior permission/ grant of registration under the Act are to be utilized for the purpose for which they have been received and they are not to be invested in any Speculative investments…. “
Based on this, some banks have started asking their clients holding FCRA accounts with them to disinvest in mutual funds.

[References:
FAQ on FCRA web-site at http://www.mha.nic.in/fcra.htm
(8-Oct-07)

256: AWARD FOR BEST ACCOUNTS

The Institute of Chartered Accountant of India is inviting participants for the ICAI Awards for Excellence in Financial Reporting for the year 2006-07. This award is presented among seven categories of organizations. NGOs, educational institutions, charitable hospitals and section 25 companies can file their nominations under category VII.

Last date for filing your nominations is 30th September, 2007. No fee is to be paid for entry. At present very few NGOs are filing their nominations, so there are good chances that your organization may get the first or the second award.

The entry form and conditions for entry are given on the ICAI website http://www.icai.org/icairoot/announcements/announ1077.pdf The nominations should be sent to the Technical Directorate, The Institute of Chartered Accountants of India, ICAI Bhawan, Post Box No.7100, Indraprastha Marg, New Delhi – 110 002. E-mail: research@icai.org and tdte@icai.org.

[References:
ICAI website http://www.icai.org/icairoot/announcements/announ1077.pdf
(12-Sep-07)

255: FREE SOFTWARE FOR NGOS

NASSCOM Foundation, India and Tech Soup, USA have launched an initiative to give legal software at nominal charges to NGOs in India. About 35,000 NGOs are likely to be eligible to receive such software.

To get the software, you have register online at Big Tech web-site giving your tax exemption [under section 12A or 10(23(c)] and FCRA approval number. After this you can select and apply for particular software. A software company is likely to make only one donation per year to your NGO, so plan your requirement carefully. Once your application is approved, you will be asked to pay a small administrative fee. After this the software will be delivered to you. The whole process may take about two weeks.

For more details, please visit Big Tech web-site at http://www.bigtech.in/about-bigtech-program.

In most cases, the donation will be treated as foreign contribution in kind. Please record it in your FC-6, and report the value of the contribution in the annual FC-3.

[References:
NASSCOM Foundation http://www.nasscomfoundation.org/newsite/
TechSoup: [www.techsoup.org/](http://www.techsoup.org/)


(29-Aug-07)

254: PRECAUTIONS FOR WIRE TRANSFERS

Reserve Bank of India has recently issued a circular regarding wire transfers (TTs or Telegraphic Transfers). This circular is intended to prevent misuse of wire-transfers by terrorists and other criminals.

Accordingly, if you are expecting funds to be transferred to your account, ask the donor agency to include the following information with the payment message:

1. Their bank account number. If there is no bank account number, then a unique reference number must be included.

2. Their name and address

Banks have been asked to withhold any transferred funds till this information becomes available. This applies to all international transfers, no matter what the size of the transfer.

Similar conditions apply to domestic transfers of Rs.50,000 or more.

[References:


(14-Aug-07)

253: FCRA BILL TO BE MODIFIED?

In a pleasant surprise, some Congress heavy-weights have supported the NGO sector in its campaign to rationalize the FCRA Bill 2006. In a meeting on Wednesday, the leaders stressed on “increased safeguards” to ensure “transparency and natural justice” while taking any steps to prevent the misuse of such funds.

In a balanced editorial, Indian Express has also called for avoiding paranoia regarding foreign funds, while agreeing to the need for reasonable precautions: “Another problem is the ‘home ministry mindset’ that heavily informs this piece of legislation currently... Instead of putting large collectivities under the bureaucratic scanner, we need to efficiently zero in and screen out money flows from only those elements and agencies that pose a credible threat to the country. Precautions, not paranoia, should be the watchword.”

[References:

© AccountAid India 2001-2019


(27-Jul-07)

252: FILING FC-3 ONLINE - OPTIONAL

Online filing of FC-3 has been introduced by FCRA department recently. This is an optional facility for the time being.

You can continue to file your paper FC-3 as before, if you do not wish to use online filing.

[References:
AccountAid Capsule 227, 251

[http://mha.nic.in/fcraweb/fc_login.aspx](http://mha.nic.in/fcraweb/fc_login.aspx)

[http://mha.nic.in/fcraweb/fc_fc3_help.htm](http://mha.nic.in/fcraweb/fc_fc3_help.htm)

(16-Jul-07)

251: HOW TO FILE FC-3 ONLINE

First you have to create your user ID and password ([http://mha.nic.in/fcraweb/fc_login.aspx](http://mha.nic.in/fcraweb/fc_login.aspx)).

Then you need to login and fill up the form while online. Step by step instructions are given at [http://mha.nic.in/fcraweb/fc_fc3_help.htm](http://mha.nic.in/fcraweb/fc_fc3_help.htm).

After the form has been filled, and you have checked it, you have to file it by clicking on 'submit'.

Then you should take a printout of the online return and sign it. Send the form by registered post to MHA within seven days. Also send the usual printed audit report (part of FC-3), and audited accounts with the printout.

[References:
AccountAid Capsule 227, 252

[http://mha.nic.in/fcraweb/fc_login.aspx](http://mha.nic.in/fcraweb/fc_login.aspx)

[http://mha.nic.in/fcraweb/fc_fc3_help.htm](http://mha.nic.in/fcraweb/fc_fc3_help.htm)

(16-Jul-07)

250: SAFEGUARDING ACCOUNT PAYEE CHEQUES

You may think that by marking a cheque 'a/c payee, not negotiable' it remains quite safe. We ourselves have told you this in the past.

Unfortunately, this is not true anymore. Consider the following two cases:
1. A donor agency sends an account payee draft of Rs.3,80,000 payable to an NGO called 'Sravanti'. Some person steals the draft, opens an account in the name of 'Sravanti Chakraborty', and encashed the cheque. Police are investigating the case.

2. A firm issues an 'a/c payee, not negotiable' cheque to an employee. The employee deposits the cheque in H bank's drop box. The cheque is stolen by someone, who opens an account in the same name in Bank S, and encashes the cheque. H Bank simply denies that the cheque was ever deposited in their branch. Police simply don't bother, as the amount is too small.

What are the lessons to be learnt?

First, if you are issuing a cheque, make it by writing the person's name, account number and bank / branch also. E.g., the draft could have been made in name of 'Sravanti's a/c no. 246129 with XYZ bank, Maldah'.

Second, if you are depositing a cheque that you have received, insist that the bank stamps the deposit slip, and a bank officer signs / initials the slip.

Third, reconcile your bank account statement every month with your account books.

You make your money with a lot of hard work. These simple precautions will help safeguard it.

(13-Jul-07)

249: FRAUD ALERT: FUNDS FOR CHARITY!

The following is a typical sample. Its simplicity itself is a warning.

However, as scamsters say, a sucker is a born every minute. Just make sure that you or your friends don't fall for this kind of a trick.

-------------------------------
----- Original Message -----}
From: "Mrs.Tina Smith" <tina2007smith2007@yahoo.com>
To: <accountaid@vsnl.com>
Sent: Thursday, 12 July, 2007 10:11 AM
Subject: CHARITY DONATIONS

> Dear beloved,
> I'm Tina Smith from London, I have some funds to donate
> for charity in your country .
> Pls if you can be of help, get back to my
> lawyer for more details:
> Name:Barrsiter Bill Carson
If you receive this kind of an e-mail, just ignore it. Or better still, send it to your friends, with a warning.

(13-Jul-07)

248: FRAUD ALERT: GRANTS BY LOTTERY!

Fraudsters have now discovered a new line – offering you a grant from a well-known grant-maker. Following is an e-mail received recently at our office:

----- Original Message ----- 
From: dkshowli@midsouth.rr.com
Sent: Thursday, 12 July, 2007 9:36 AM
Subject: GRANT/DONATION 2007 (£850,000.00)
CHRISTIAN AID ORGANIZATION
35 Lower Marsh
Waterloo London
SE1 7RL.

Dear Sir/Madam,

This is to notify you that you have been chosen by the Board of Trustees of the Christian Aid (NGO UK) as one of the final Recipients of a Cash Grant/Donation for Economic Growth and a Poverty Alleviation Scheme Through your email.

Contact Christian Aid(UK) Secretary below.
Terry Williams
Christian Aid (UK)
TEL: +44-704-571-9080
Email: enquiries_terrywilliams101@yahoo.co.uk

On behalf of the Board, kindly accept our warmest Congratulations!

Yours faithfully,
Dr Deanna Showli
Christian Aid Director
How does one know that this e-mail is a fraud? Well, people don’t give you 850,000 pounds out of the blue. Secondly, a search on the internet shows that this kind of an e-mail is listed on a scam e-mail depository (see link below). Thirdly, a visit to the Christian Aid web-site shows no references to Terry Williams or Deanna Showli.

The scam depository also warns that such scamsters can be quite dangerous. You should avoid all contact with them – simply ignore the e-mail.

Do pass this fraud alert on to your friends.

[References:

Scam e-mail Depository at http://www.repository.izone.me.uk/repository.pl?action=read_email&email=20070514045618&month=June&year=2007

Christian Aid Web-site at http://www.christianaid.org.uk ]

(12-Jul-07)

247: CHANGES IN ITR-7 (INCOME TAX RETURN)

As proposed in the Finance Bill 2007, the form ITR-7 (Income Tax Return) has been changed. This has been also notified by Income Tax Department vide Notification No.169/2007, dated 14-5-2007.

All NGOs who are registered under section 12A or 10(23C) of Income Tax Act need to file their annual Income Tax Return in this revised form only.

This form is applicable from the assessment year 2007-08. It means this form must be used for filing the Income Tax Returns for the financial year 2006-07.

You can download this form, which is available in PDF format at http://incometaxindiaefiling.gov.in/download/newforms/I.T.R-7.pdf.


(13-Jun-07)

246: RENDER UNTO CAESAR...

A small church in Canada has become involved in a large tax scam.

The All Saints Greek Orthodox Church, Toronto contracted out its fund-raising a few years ago to a company called ICC Worldwide Missions Ltd. ICC enticed about 3000 donors to give it money in name of the church.
The donors were given inflated receipts against the amounts they donated. A donor giving $3,405 would get a receipt for $20,650. How? ICC told the donors it would appraise the goods purchased with the money at a higher value.

From 2001 through 2005, ICC collected 46 million dollars. Of this amount, it retained 55% as 'handling charges'. Some of the remaining money was used to purchase goods, which went around the world. Some of the goods even came to India!

ICC issued receipts for 273 million Canadian dollars against the collection of 46 million Canadian dollars.

The Canadian Revenue Agency has launched an audit. It is suspected that the Government could have lost about 107 million dollars as taxes through this scam.

Perhaps ICC was not paying attention when Lord Jesus held up a dinar and said to his followers, a long time ago: "Render unto Caesar the things which are Caesar’s, and unto God the things that are God’s".

[References:

Currency references are to Canadian dollars (CAD). 1 CAD = Rs.37

'Dinar', which is a currency used in some Arab countries even now, was called 'denarius' in Roman times. It is also found in Sanskrit as 'deenarah', meaning a gold coin. – Ed.]

(1-May-07)

245: FOREIGN CONTRIBUTION IN 2005-06

In 2005-06, a total of Rs.78.78 arab was received by Indian NPOs from foreign sources. This is a relatively large jump (26%) over the previous year’s inflow of Rs.62.57 arab. As the Rupee remained stable during this period, the increase is seen as a real increase in flow of private aid to India.

In 92-93, foreign contribution stood at Rs. 15.84 arab. Since then it has been growing at an average of 13.13% annually.

[References:
Source: FCRA Annual Report 2005-06 (http://www.mha.nic.in/fcra.htm)]

(30-Apr-07)

244: IMPACT OF RUSSIAN FCRA

A US NGO which trained journalists and media persons in Russia is likely to temporarily shut down its Moscow office.
The NGO, called Educated Media Foundation, was raided last week by Government authorities. Its Executive Director, Ms. Manana Aslamazian, was recently detained at an airport after failing to declare excess cash. This raid could be connected with her detention, or it could be based on the new NGO law in Russia.

The new law, passed by Russia in 2006, restricts the activities of foreign NGOs, particularly in connection with political or quasi-political activities.

[References:


(24-Apr-07)

243: MORE ACCOUNTABLE INGOS

The International NGOs (INGOs), which signed an accountability charter last year have now launched a web-site for the charter.

The charter includes principles and practices, which are expected to make INGOs more accountable, transparent and better, governed.

It may be noted that the charter does not break new ground with regard to financial accountability. It merely promises to disclose what is required under law or what many INGOs disclose any way for purposes of fund-raising.

[References:
Charter web-site at http://www.ingoaccountabilitycharter.org/index.html

AccountAid Capsules 221, 222 (26-Jun-06), www.AccountAid.net ]

(29-Mar-07)

242: EXECUTIVE DISCLOSURE IN US

In USA the rules of disclosure have changed recently. The Securities and Exchange Commission now requires listed companies to file details of top executive compensation. And newspapers are feasting on the scandalous headlines.

The top package that has emerged so far is that of Mr. Ken Lewis, who heads Bank of America. His annual salary is a modest 114 million dollars. That comes to just a little over 5 arab Rupees. Annually.

The voluntary sector in America has been living with such disclosures since early nineties. The American tax code requires all NGOs (except religious bodies) to disclose top five salary payments along with top five consultancy payments.
In India, all companies are required to disclose salaries of highly paid executives in their annual report. However, this rule does not apply to NGOs. So far.

[References:
‘The politics of pay’, The Economist, March 24\textsuperscript{th} 2007, p.67-68, \url{www.economist.com}

1 arab = 100 crores ]

(29-Mar-07)

\textbf{241: FCRA IN PERU AS WELL?}

FCRA seems to be spreading across the world like a virus. In December 2006, Peru amended its International Cooperation Legal Framework to create Peruvian Agency for International Cooperation (APCI). The APCI will have extensive powers to direct and influence the activities of NGOs in the country.

The law will also allow the Government to regulate flow of foreign funds, especially to NGOs engaged in human rights work.

[References:
Peruvian Law No. 27692 Creating the Peruvian Agency for International Cooperation (in Spanish), \url{http://www.apci.gob.pe/portal2/portal/quienes_somos/leyes/Ley%20No.%2027692,%20Ley%20APCI.pdf}

‘12-08-2006: Recent Changes to Peru’s International Cooperation Legal Framework Raise International and Comparative Law Issues’ \url{http://www.icnl.org/knowledge/news/2006/12-08.htm} Last visited 29-Mar-07

(29-Mar-07)

\textbf{240: FCRA IN UZBEKISTAN…}

The Venezuelan development has attracted a lot of attention. However, some time ago (2003), Uzbekistan set up a similar regulatory structure.

Among other things, the changes require NGOs and public foundations to deposit all donations in Government-controlled banks. This allows the Government to monitor the funds closely, and withhold payments, if found necessary.

This led to a choking of foreign funds – by some estimates over 80\% of foreign grants have been blocked as a result of these changes!

The uproar over this led to a significant development. Recently, the Uzbekistan Senate approved a law called “On guaranties of activities of the non-state non-profit organizations”. This law is supposed to ensure an NGO friendly administration and Government financial support to NGOs.

Whether the new law will actually help NGOs remains to be seen.

[References:
An overview of the Uzbekistan laws affecting NGOs is available at \url{http://www.icnl.org/journal/vol4iss4/cr_NISuzb.htm}


(12-Mar-07)

**239: CHARITY BEGINS IN THE BOARDROOM…**

Keeping true to the Indian tradition of ‘gupt daan’ (donating in secrecy), Indian companies gave away more than Rs.110 arabs in 2005-06. That's nearly twice the amount that came in through the FCRA route.

If you haven’t seen any of the money, and are worried about a missed opportunity, don’t bother. A large portion of this charity may have been to in-house corporate projects approved under section 35AC. Then some of it may have been on paper only.

Olga Alexeeva has also pointed out that the new philanthropy in the BRIC countries (Brazil, Russia, India, China) tends to be hands-on. Entrepreneurs prefer to set up their own charities and run the show themselves.

And the Ministry is somewhat suspicious. The revenue foregone statement shows that the Government lost some 35 arabs in taxes due to such deductions. And in 2006-07, this is set to go up to 51 arabs!

This also ties in quite neatly with the rumours of people going around to NGOs offering them big corporate donations if they have 35AC. The catch, of course, is that you have to return most of it in cash.

[References:

"India Inc. turns generous to survive tax axe", Economic Times, 9th March 2007, [http://economictimes.indiatimes.com/articleshow/1733780.cms](http://economictimes.indiatimes.com/articleshow/1733780.cms). The Economic Times estimate of Rs.220 arabs is based on the assumption that most of the money was donated under section 80G. However, over the past few years, section 35AC approvals for corporate charity have increase manifold. Our estimate assumes that a large portion of the donations were made u/s 35AC. –Ed.


1 arab = 100 crores = 1 billion = 1000 million]

(10-Mar-07)

**238: FCRA SURFACING IN VENEZUELA?**

A framework law is under consideration in Venezuela. Venezuela, in South America is under a Socialist Government, headed by Mr. Hugo Chavez.

Under the law, all NGOs will be required to register as legal entities. They will also be required to comply with all civil and tax regulations. An agency will be set up to oversee the receipt and disbursement of foreign funds.
NGOs will be required to provide information on activities and financing on request. This is somewhat similar to the requirement in USA, where charities must make their detailed income tax return available to public.

[References:
Draft Law on International Cooperation, approved by National Assembly of Venezuela on 13 June 2006
http://www.heritage.org/Research/LatinAmerica/em1005.cfm Last visited 9-Mar-07

(9-Mar-07)

237: BUDGET 2007 – HIGHER CESS

An Education Cess of 2% was introduced several years ago. This is applicable to service tax, income tax etc.

Now a new cess of 1% will be added to this. This will be called Secondary and Higher Education Cess.

Hopefully, higher education includes doctoral theses also, else next year, we may see another cess of 0.5% towards Post Graduate Education Cess!

[References:
Clauses 130 of the Finance Bill, 2007]

(1-Mar-07)

236: BUDGET 2007 – TDS FOR CONSULTANTS

Section 194 J provides for deduction of 5% tax at source when you pay any fees to a consultant or professional. This rate is now being doubled to 10%.

This move will probably have two implications:

1. Many professionals having their own offices will be forced to seek tax refunds of excess deductions.

2. Full time consultants working with corporate houses may prefer to become employees instead. This will help them avoid 12.24% service tax, which is applicable presently.

This change, if approved will apply from 1-June-2007.

[References:
Clauses 48 of the Finance Bill, 2007 – amendment of section 194J]
235: BUDGET 2007 – CONDONATION OF DELAY

Fortunately, the Budget 2007 largely ignores the NGO sector, so far as taxes are concerned. However, not altogether.

A new procedure for registration under section 12AA is to be introduced. This will become effective in three months (1-June-2007).

According to this, tax exemption for NGOs will be available only from the year in which they apply. This means that they need not apply in the first few years, if their income is nominal.

However, at the same time, the Department will no longer be able to condone delays in application. What does this mean?

Suppose a large NGO has not applied for registration so far, but applies in July 2007. Now, its income will be exempted from the year 2007-08 onwards. However, it may be asked to pay tax on the past years' income!

[References:
Clauses 8-9 of the Finance Bill, 2007 – amendment of section 12A and 12AA]

(1-Mar-07)

234: FCRA BILL 2006 - 'SHALL NOT LEAD TO…'

Clause g of section 12(3) contains some unusual wording. Accordingly, before granting FCRA registration, the Department should be sure that this:

(i) shall not lead to incitement of an offence;

(ii) shall not endanger the life or physical safety of any person.

This wording is likely to create difficulties in processing applications. The clause effectively asks the approving authority for an iron-clad guarantee that no such problems shall arise if the permission is given. In practice this is impossible to ensure in all cases. Logically speaking, every approval will carry some risk, no matter how nominal.

It would be more practical if the word “shall” is substituted by 'is not likely to…'

[References:
AccountAid Capsule 229, 232 at www.AccountAid.net
AccountAble 122-126, 127-128 at www.AccountAid.net]

(27-Feb-07)
The new FCRA Bill 2006 proposes a cap of 50% on administration expenses for NPOs. Administration expenses are not defined. Elements to be included in administrative expenses will be notified later through rules.

This provision has immense potential for confusion. Firstly, 'administration' is a functional classification. The same expense can be classified as 'administration' or 'program' depending on the purpose of the expense. For example, salary of a person may be 'administration' or 'program' depending on what the person does.

This kind of classification is very difficult to use in actual accounting work. Further, it is almost impossible to certify or audit in a reliable manner.

Secondly, should the Government determine how much an NPO spends on administration? And if yes, then is FCRA Department equipped to deal with the issues that will arise?

The ratio of administration expenses would vary from one category of NPOs to another. And there is very little information available on what is adequate for different types of NPOs.

There are other problems also. Suppose an NPO is getting core financial support from FCRA funds for managing an existing micro-credit revolving fund. Most of the FCRA funding may be for administration in such a case. How will the authorities deal with this? The Department has enough on its plate without getting into internal administration of NPOs.

[References:
AccountAid Capsule 229, 232
AccountAble 122-126, 127-128 at www.AccountAid.net]

(22-Feb-07)

232: COMMENTS TO STANDING COMMITTEE ON FCRA BILL 2006

The Parliamentary Committee has invited comments and memoranda from individuals and organisations on the new FCRA Bill 2006. Last date for submission of the memoranda is 20th March 2007. The Bill is available at http://rajyasabha.nic.in. A copy is also available at www.AccountAid.net.

Your comments should be sent to Shri Rohtas, Under Secretary, Rajya Sabha Secretariat, Parliament House Annexe, New Delhi – 110001 (Ph.: 23034252, Fax: 23012007). The comments should be in English and Hindi. Two copies of each should be sent.

The comments that you send are treated as confidential. No one is allowed to print, circulate or publicize these. This can be treated as a breach of privilege of the Committee.

[References:
AccountAid Capsule 229
Advertisement published on p.14 of Hindustan Time, Nw Delhi on 19-Feb-2007
AccountAble 122-126, 127-128 at www.AccountAid.net]
231: MOTHER OF ALL CASH PAYMENTS

Many NGOs face constant criticism by their auditors for making excessive cash payments. Now the US Government, known for its sophisticated accounting and control system, is facing similar problems.

The problem arose when the US administration sent 12 billion dollars recently for paying salaries to the local employees in Iraq. The money was in cash and was packed in crates. It weighed 363 tonnes. Translated into Indian money, the figure comes to approximately 540 arab Rupees, or 10 times what the Indian NGOs received in entire 2003-04!

The US administration is now facing a congressional hearing over this, as large amounts of this money has disappeared. It is suspected that a lot of it has found its way into the hands of Iraqi rebels.

[References:
BBC news-story, broadcast 7-Feb-07, 8:30 a.m. IST]

230: SERVICE TAX ON NGOS

In the Finance Act 2006, a quiet change was made in the sections related to service tax. The phrase 'commercial concern' was replaced with 'any person', when it came to listing services on which service tax is applicable.

What does this mean? Theoretically, now service tax applies even if a service is being provided by an NGO or a non-commercial organisation. For instance, if IIM undertakes a development study for a donor agency, then it may have to pay service tax, as this may fall within clause 105(r) read with clause 65 of section 65.

Similarly, if an NGO is providing training or helping in group formation, it may be required to pay service tax. However, it must be shown that the service is being provided to the client and not to the beneficiaries.

The rate of service tax, including cess etc. is currently 12.24%. This is expected to go up in the coming budget, possibly to 15% or more.

(16-Jan-07)

229: FCRA BILL 2006 REFERRED TO STANDING COMMITTEE

The new FCRA Bill, introduced in the Rajya Sabha last month, has been referred to a Standing Committee. This is expected to delay the passing of the new FCRA.

The Committee is inviting public representations, and is expected to give its final report by end of March 2007.

(16-Jan-07)
228: NGO IN TROUBLE WITH FCRA

An organisation (name withheld) based in Jamia Nagar has been accused of operating several illegal bank accounts in Saudi Arabia and Delhi.

The case came to the notice of Enforcement Directorate when the NGO received Rs. 9 crores in its Daryaganj bank account in 2002. The ED then fined the NGO and one of its office bearers for Rs. 2 lakhs each. Around the same time, Saudi authorities froze the accounts of one of its donors, Islamic Investment Company.

Later a case was filed under FCRA by MHA. The Court has now asked for evidence to be submitted in the case. In the past, in 1997, one of the NGO’s accounts in Saudi Arabia was also frozen.

[References:
‘Foreign Donations: Islamic Centre probed’; Times of India, New Delhi, 12-Jan-07
http://timesofindia.indiatimes.com/articleshow/1140260.cms
(16-Jan-07)]

227: FCRA ONLINE SERVICES

Ministry of Home Affairs has introduced FCRA Online Services. This allows:

• Online filing of annual account in FC-3 Form
• Online filing of application for grant of registration under FC(R) Act, 1976 (FC-8 form).

Instructions for online filing of annual account and for registration are given on the web-site itself. This involves registering yourself for online services and creating a username and password.

[References:
http://mha.nic.in/fcraweb/fc_login.aspx
(16-Jan-07)]

226: FCRA BILL 2006 INTRODUCED IN RAJYA SABHA

The minister of State for Home Affairs introduced Foreign Contribution (Regulation) Bill 2006 in the Rajya Sabha on 18th December 2006.

The Bill seeks to regulate the acceptance, utilization and accounting of foreign contribution and acceptance of foreign hospitality by a person or an association and repeal the existing Foreign Contribution (Regulation) Act, 1976.

It is expected that the new law and its effective implementation thorough utilization of tools of information and communication technology will put in place more efficient system to regulate the acceptance, utilization and accounting of foreign contribution in the country by ensuring greater accountability, transparency and simplification.
225: APPROVAL OF FCRA BILL BY CENTRE

Centre has approved the final draft of FCRA Bill. This will become law only when it passed by the Parliament and signed by the President.

The bill also takes care of NGO concerns regarding periodically renewal of FCRA and cap on administrative expenses.

Now, registration will be automatically renewed except for defaulters. Also cap on utilisation of funds for administrative purpose will be 50%.

[References:

(10-Nov-06)

224: 8,673 NGOS CAN REVIVE THEIR FCRA NOW!

Remember those 8,673 NGOs who lost their FCRA for not filing their FC-3? Well, now they have been given a chance to revive it.

All they need to do is file their pending FC-3 for the years 2001-02, 2002-03 and 2003-04. This must be done latest by 31-December-2006. Remember, you need to file FC-3 even if your receipts during a year were NIL.

In case they had multiple FCRA registration numbers, then they can submit proof of filing their FC-3 for at least one of these.

In case they had already filed their FC-3 for these years earlier, then they should submit proof of having filed their FC-3 (proof of sending registered post letter to FCRA). Along with this they can also send a copy of the FC-3 for the relevant years.

If you are filing your FC-3 now, remember that it must include copy of audited FCRA accounts, and audit certificate. For more guidance on this, see AccountAble 20, 72 and 73. Latest form is available as AccountAble 21. All these are available at www.accountaid.net

[References:
AccountAid Capsule 190

MHA Notification No. II/21022/52 (25)/2005-FCRA-II (MU), dated 16-June-2006]

(30-Aug-06)
223: ACCOUNTABILITY CHARTER AND CORRUPTION

The charter also promises that acts of bribery or corruption by staff or consultants etc. will be specifically prohibited.

However, this statement may cause some confusion, particularly among the critics of the sector. Everyone thought such acts were not permitted anyway!

[References:


For viewing the charter itself, please visit: http://www.survival-international.org/files/related_material/432_769_INGO_Accountability_Charter.pdf

AccountAid Capsule 207, 221, 222]

(26-June-06)

222: ASSESSING THE ACCOUNTABILITY CHARTER

The Accountability Charter makes commitments regarding responsible advocacy, fair criticism, and ethical fund-raising, among others.

Expectedly, it also talks about transparency. However, this is limited to essentially doing what most INGOs are already doing or are required by local laws to do anyway.

For instance, they promise to comply with 'relevant governance, financial accounting and reporting requirements' in the countries where they operate.

They also commit to reporting once a year, and including some financial information in the reports. They also promise to ensure that accounts are audited by independent auditors.

The Charter mentions that signatories will 'make information publicly available'. However, it is not clear whether this will also mean the signatories will publish their audited accounts in print or on internet.

[References:


For viewing the charter itself, please visit: http://www.survival-international.org/files/related_material/432_769_INGO_Accountability_Charter.pdf

AccountAid Capsule 207, 221, 223]

(26-June-06)

221: INGOS SIGN ACCOUNTABILITY CHARTER

Eleven International NGOs have recently signed an Accountability Charter. The charter is designed to ensure that international NGOs remain responsible, accountable, transparent and well-governed while they go about their work.
The signatories include ActionAid, Greenpeace, Oxfam, Save the Children Alliance, Terres des Hommes, Transparency International, and World YWCA.

The initiative will also affect partners of these INGOs, as the signatories have committed to 'ensuring that [their] partners also meet the highest standards of probity and accountability'.

[References:

For viewing the charter itself, please visit: http://www.survival-international.org/files/related_material/432_769_INGO_Accountability_Charter.pdf

AccountAid Capsule 207, 222, 223]

(26-June-06)

220: GOVERNMENT TO UNVEIL NATIONAL POLICY ON NGOS?

According to a news-story in Hindustan Times, the Government of India is shortly expected to announce a national policy for NGOs. The policy has been formulated by the Planning Commission in consultation with NGOs and the concerned Government agencies. A final draft of the policy is with the Prime Minister for approval.

Some of the significant regulation related changes that the policy is expected to announce are:

1. Modifying tax and FCRA laws to allow Indian NGOs to expand their programs to outside India;

2. NGOs to set up a self-regulatory agency, and also to help formulate a reliable accreditation methodology;

3. NGOs to file documents related to constitution, board, membership etc. with the Government, and make them available over the internet

4. Classification of NPOs into public utility organisations (schools, hospitals) and public benefit organisations (NGOs) to help tailor suitable tax-exemptions and incentives

5. Study feasibility of enacting a central law which will offer an option to NGOs to register in order to operate across state-boundaries and also outside India

6. Liberalisation of FCRA

7. Tax rebate on donations in the form of shares and stock-options

8. Assess feasibility of liberalising minimum-spending norm of 85%

9. Tighter administrative and penal procedures to check misuse of such benefits by paper-charities

[References:

(23-June-06)
219: ZAKAT ADMINISTRATION IN PAKISTAN

In Pakistan, the collection of Zakat is mandated under the Zakat and Ushr Ordinance, 1980. Each state has a Minister for Zakat and Ushr. Zakat was initially collected from all Sunni Muslims, but in 1999, the Supreme Court made it a voluntary payment. About 4 arab Rupees is collected annually.

The Ordinance provided for use of Zakat funds for elimination of poverty and beggary and the creation of a welfare state. However, this was modified in practice in view of certain technical difficulties. Currently, Zakat funds are handed over to the Zakat Committees at the District level, who look after its redistribution.

As there are thousands of Zakat Committees, it is somewhat difficult to monitor proper distribution of Zakat funds. As a result, Zakat sometimes ends up with relatives of people who chair the Zakat Committees. In 2003-04, about 150 such cases were reported in Punjab, involving about 70 lakh Rupees.

According to present rules, Zakat funds can be distributed to individuals and to madarsas, on the basis of list of individual students. Hospitals can also treat the poor, and claim the cost from Zakat funds.

[References:


AccountAble 113: Accountability and Islamic Charity, www.AccountAid.net

arab = 1 billion = 100 crores

Zakat is like a poor tax of 2.5% payable by all wealthy Muslims. Authority for Zakat comes from The Quran Sharif. In some countries, the collection and administration is centralised, whereas in other countries, the concerned individuals manage it. – Ed.]

(22-June-06)

218: GERMAN CHARITY AND CHURCH TAX

A large amount of foreign contribution to Indian NGOs comes from Germany. In 2003-04, Germany contributed 8 arab Rupees (15%), and ranked second, just after USA, with 31% of contribution.

Bulk of this aid comes from German donor agencies. How do these agencies raise their funds? Well, from an innovative tax, commonly called 'church tax'.

Church tax is to be paid by every person registered as a Christian in Germany. The tax is collected by the German Government, and passed on to the main churches (Protestant, Catholic, Lutheran, etc.). Payment is compulsory for registered Christians. The amounts collected are very significant, at around 10 billion dollars annually (approximately 4.5 kharab Rupees).

The church tax, introduced under a concordat signed between the German government and the Vatican in 1933, is primarily meant to support the church infrastructure and clergy salaries. The surplus is used for charity at home and abroad.

[References:
217: INCREASING REGULATION FOR NGOS ACROSS THE GLOBE?

According to a report released by Oxford Analytica, NGOs are gradually becoming subject to more and more regulation across the world. Examples include Eritrea, Sudan, Nepal, Russia, Kazakhstan, and European Commission. Recently we have also heard about Uganda and Bangladesh, as well as India.

According to the think-tank, this is primarily because "In many countries, NGOs are exercising significant and increasing degrees of influence on decision-making through their research, public education and media campaign[s]." Such influence may not always be to the liking of the host country or it’s Government, particularly in the economically poor regions.

Analytica goes on to add that "NGOs are not elected entities, and their constituencies may be too selective or narrow. ... The transparency of NGO processes often remains poor, in part because they remain largely unregulated."

However, some Governments often work closely with NGOs, examples include UK and France. USA is another example, which often provides funds to NGOs for research and consultation on policy issues.

[References:


(21-June-06)

216: USE OF FUNDS BY SCHOOLS IN DELHI

Delhi School Education Act, 1973, governs use of surplus funds with schools in Delhi. The Act allows schools to use surplus funds to set up another school. However, in 1999, the Delhi High Court restrained schools from transferring funds to another body, whether it’s parent institution or another school. The Supreme Court later confirmed this in 2004.

Based on this, St. Columba’s, a premium school in Central Delhi has been de-recognized by the Delhi Education Directorate. Reason: the school has transferred Rs.1.83 crores from its surplus to its parent body, the Congregation of Christian Brothers of India (CCBI). This was possibly based on an arrangement that 12% of the annual fees collection was to be transferred to CCBI.

These transfers have occurred in 2002-03 (Rs.53 lakh), 2003-04 (Rs.71 lakh), and 2004-05 (Rs.59 lakh).

The officials are also apparently concerned that the school still reported surpluses in each of the three years (59 lakh, 43 lakh, and 68 lakh). The Department’s conclusion? The school is overcharging its students.
Another 150 schools are also being examined for irregularities.

[References:

(21-June-06)

215: FIVE HIV-AIDS NGOS BLACKLISTED

According to a news-story in Indian Express, Kolkata, five NGOs working on HIV-AIDS have been blacklisted by Health Department. Charges against them range from lack of transparency, to poor quality of work.

The story also indicates that some of the NGOs took funds from multiple sources for the same project. Some showed false bills running into lakhs of rupees. Bills for purchase of contraceptives were also false.

One innovative technique was taking photographs of same Focus Group Discussion from different angles, and passing these off as separate discussions. This allowed them to charge the same expense several times in the accounts.

The scam was detected by West Bengal Project Support Unit, working under the State Health Department.

[References:

(19-June-06)

214: FUNNELLING FCRA FUNDS

The same story goes on to suggest how some NGOs funnel foreign funds. Methods include:

1. Using a private (personal?) bank account in a non-computerised branch

2. Using a company account

3. Shadow –lending (using another FCRA registered NGO to bring in funds)

4. Using an export-import business to bring in foreign contribution as receipts for goods sold

If the above were true, then it would certainly be a matter of concern for the FCRA Department.

However, while shadow-lending is a fairly common method of bypassing FCRA, other methods are more exotic.

Secondly, while all this may be a violation of FCRA, it would not necessarily mean that the funds are misused or misapplied. Proper use or misuse of funds is not really dependent on whether the funds came in legally or illegally.
213: GOVERNMENT FUNDING AND ACCOUNTABILITY

According to a story published in Hindustan Times, NGOs are facing increasing competition for raising foreign funds for their programs.

Accepting corporate funds as an alternative often means a quid-pro-quo, thus compromising their independent image. If they turn to the Government, they have to toe the Government line. They also need to deal with corruption, which is almost endemic in the governance system now. According to an estimate, almost 20-30% of the funds may get paid as bribes to get funds.

There is no estimate available of how much funds the Indian Government spends through NGOs.

The story ends up suggesting that while foreign contribution is being closely monitored, the Government’s own financial contribution is not monitored as well.

That is but natural: a lamp lights up the world, but its own underbelly remains in darkness (deepak toley andhera...)


(19-June-06)

212: FROM EU TO DELHI, VIA SWITZERLAND?

A human-rights NGO based in Delhi has been accused of channelizing foreign contribution illegally, without FCRA registration or prior-permission. An enquiry has been launched by the Ministry of Home Affairs, and OLAF (European Union’s Anti-Fraud Office).

According to the news report, the NGO opened a branch office and a bank account in Switzerland. It also opened four bank accounts in the name of a private limited company in Delhi. The name of the company was quite similar to the name of the NGO. The foreign contribution was received into the bank accounts of the company.

Large amounts, running into several crores, were received by the Company into its bank accounts. The money primarily came from USA, UK, and Europe.

The concerned NGO has denied the allegations, stating that it received money only for international consultancy contracts, on which taxes were duly paid.

[References: ]
211: EVERYBODY LOVES A GOOD HURRICANE ALSO...

Last year, in September and October 2005, US coast was lashed by several hurricanes. Some of the people who were evacuated from the hurricane path were put up in Ramada Inn, Texarkana, Texas. Their bills were to be paid by Red Cross.

The Hotel manager reportedly thought up a way to make some money out of this. She continued to the show them as staying in the hotel, even when they had checked out. When there was a shortage of rooms, the evacuees were shown as staying in ‘off-market rooms’. These are rooms that are temporarily closed due to repainting or renovation.

The manager allegedly helped the hotel earn $19,980 (~9 lakhs rupees) through her cleverness. In the process, she may have earned a jail sentence of Upto 20 years for herself.

The problem of hurricane fraud seems to be so widespread, that the Attorney General has set up a 'Hurricane Fraud Task Force' to identify and persecute such cases.

[References:

(14-June-06)

210: ANNUAL REGISTRATION FOR NGOS IN UGANDA

In April 2006, Ugandan Parliament also passed a law called 'Non-Governmental Organizations Registration (Amendment) Bill'.

This bill requires NGOs to re-register annually. Requests for re-registration can be rejected for various reasons, including that of the organisation being against "any government policy, plan or public interest".

The Bill is now awaiting the President's assent. Freedom House and ICNL have urged the Ugandan President to reject the bill.

This bill is seen by ICNL as part of the growing trend. Similar laws have been passed in other African countries, including Eritrea, Sudan, and Zimbabwe, as well as in former Soviet nations like Russia, Kazakhstan, Uzbekistan, and Belarus.

Closer to home, Bangladesh is considering regulation of micro-credit NGOs. In India, a draft FCMA bill is under consideration, which will require NGOs to revalidate their FCRA registration every five years.

[References:
209: REGULATION FOR MICRO-CREDIT NGOS IN BANGLADESH

A draft Bill called 'Micro Credit Regulatory Authority Act, 2006' has been placed in the Bangladesh Parliament. The Bill proposes a micro-credit regulatory authority. The law will cover all micro-credit programs, whether run by NGOs or by the Government.

The new law is expected to ensure accountability of micro-credit institutions. They will have to get approval of the MCRA afresh. They will not be allowed to get into any activities, transactions or services that run against the 'purpose and spirit of the act'.

Each institution will be required to have a minimum reserve fund as specified by the law. They will not be able to use the reserve fund without approval. No institution will also be able to distribute the profit without the permission of the MCRA Board, an authority being constituted under the law.

Violators can be punished with Up to one year in prison, as also a fine of Up to 5 lakh Taka.

[References:
'Bill to clip NGO wings placed' The Daily Star, Dhaka, Bangladesh. 8th June 2006; http://www.thedailystar.net/2006/06/08/d60608011812.htm]

(8-June-06)

208: NGOS IN KENYA

The NGO Coordination Board, Kenya has warned 'briefcase' NGOs in Kenya that they will be identified and closed down shortly. The Executive Director has requested donors to be more careful in choosing and funding the right kind of NGOs.

Currently, there are over 4,000 NGOs in Kenya, employing. More than 20,000 people.

[References:

'Briefcase NGOs' is a local colloquial term for NGOs which exist only in a briefcase. – Ed.]

(7-June-06)

207: ACCOUNTABILITY CHARTER FOR NGOS

A group of international charities are launching an Accountability Charter for NGOs today in London. The charter is the result of work done by five international NGOs: Oxfam, Amnesty, Save the Children, Greenpeace and Care.

This is reportedly in response to increasing off-the-record criticism of NGO accountability.
The details of the initiative are not yet known. It is likely to be a code of conduct, with a commitment by signatories to make themselves more accountable to the stakeholders.

[References:

(6-June-06)]

206: ZAKAT COLLECTIONS

According to the Saudi Director General of Zakat and Income Tax, total zakat collections have risen to $960 million (43.20 arab rupees). This is an increase of 20% over the last year.

Zakat is an annual Islamic tax, much like the Christian tithe, levied at 2.5% of assessable wealth on an annual basis. In most countries, both tithe and zakat are voluntary. However, in some countries these are enforced through or managed by the Government.

In Saudi Arabia it is levied both on individuals as also on companies.

[References:

(6-June-06)]

205: CHARITABLE INSTITUTIONS AND MISUSE OF INCOME TAX ACT

In this year’s budget speech, our learned Finance Minister made an important comment:

‘The Standing Committee on Finance has expressed concern that many charitable institutions misuse the provisions of the Income Tax Act. I propose to focus on one misuse...’ (para 168)

What does the Honourable Minister have in mind? Is the tax on anonymous donations just the beginning of a long taxation winter for NGOs? Or will it help protect them from pseudo-charities?

Only future budgets will tell.

[References:
UPD.BPD.CIR.No. 30/14.01.062/2005-06, dated 30-Jan-06 - ‘Collection of Account Payee Cheques - Prohibition on crediting proceeds to third party account’
Also see AccountAble 12 and 66 at www.AccountAid.net]

(11-April-06)

204: PSEUDONYMOUS DONATIONS

The Finance Ministry has recently proposed introducing a tax on anonymous donations.
Also covered are pseudonymous donations. What does that mean? A person comes and gives you Rs. 1,000. He gives you his name and address. Later the same turns out to be fictitious. This could be treated as a pseudonymous donation.

So what is the solution? Should NGOs ask the donor for a voter card? Or carry out address verification before accepting the donation?

Probably not. However, they will be required to maintain a record showing the name and address of the donor. Also for their own protection, they may prefer to receive donations through account payee cheques.

[References:
FM’s budget speech (2006) – para 168
Proposed section 115BBC. Finance Bill, 2006; India
AccountAid Capsule 196]

203: RBI ON ACCOUNT PAYEE CHEQUES

Most people think that an account payee cheque can not be credited to another person's account. In reality, it happens all the time, under the guise of 'prudent market practice'. This problem has assumed the proportion of an epidemic with the rush of IPOs.

The RBI has now come out with a circular under the Banking Regulation Act, 1949. Accordingly, banks have been prohibited from crediting the payment to a third party’s account. If the customer insists on this, then the bank should tell them to get 'account payee' crossing cancelled by the person who issued the cheque.

[References:
UPD.BPD.CIR.No. 30/14.01.062/2005-06, dated 30-Jan-06 - ‘Collection of Account Payee Cheques - Prohibition on crediting proceeds to third party account’
Also see AccountAble 12 and 66 at www.AccountAid.net]

202: US GOVERNMENT AND RELIGIOUS CHARITY

With the coming of the Bush administration, US Government has increasingly supported faith-based charities. A recent White House report has disclosed that the amount given to religious charities by the US Government last year came to nearly $2.15 billions (approximately 96.75 arab Rupees).

The US public has always been supportive of faith-based charities. According to Indian University’s Centre on Philanthropy Panel study, nearly 62% of all giving in USA is to faith-based charities. However, the Bush Government initiative has drawn some flak as the USA is constitutionally secular - i.e. committed to keeping religion separate from Government.
The Bush years have also seen 11 government agencies setting up religious offices to help coordinate the provision of social services by faith-based organisations.

Will this move make the faith-based organisations better governed? Or will it make the US Government more faithful?

Only time will tell.

[References:
The Hindu, 12-March-06, Madurai. P.13

(30-March-06)

201: CHARITIES EXEMPTED FROM PF

NGOs and other charities have been exempted from EPF Act for a period of five years (1-April-05 to 31-Mar-2010). This will apply only if the NGO or charity has been notified as such under the Income Tax Act, 1961.

However, the exemption is not available to any NGO or charity, which runs a college, school, hospital, nursing home, clinic etc. against charging of fees from students or patients.

[References:
AccountAble 32 and 110 at www.accountaid.net
We thank Ruchika Social Service Organisation, Bhuwaneswar for bringing this circular to our attention. - Ed.]

(29-March-06)

200: CREDITING RUPEE FUNDS TO FCRA BANK ACCOUNT

Many NGOs and charities face difficulties in crediting rupee funds to their bank accounts. This is because some banks think that foreign funds can come only in foreign currency. However, this is not always correct. For example, if you receive a donation in Indian rupees from a foreign visitor, it remains FCRA. Same applies to redeposit of funds withdrawn from the bank account, or those transferred by another NGO out of their FCRA account.

The MHA has now requested the RBI to clarify this matter to all the banks, so that NGOs do not feel harassed on this account.

[References:
MHA Office Memorandum No. II/21022/23(17)/2006-FCRA I, dated 27.2.06
We acknowledge Vani’s help in bringing this memorandum to our attention. – Ed.]

(29-March-06)
199: INTEREST OF FCRA FUNDS

There has been a long-standing confusion regarding interest on FCRA funds. Some people think that it is not to be treated as FC fund. Others think that it should be treated as FCRA fund.

From a legal point of view, the first view appears to be correct. However, if one takes the accounting logic of FCRA into account, then the second conclusion becomes inescapable (interest on FCRA funds needs to be credited in FCRA Receipts & Payments Account).

To resolve this confusion, the Ministry had modified the form FC-3 in July 2001. The modified form required that interest on FCRA should be reported in FC-3.

However, die-hard adherents of the first continue to argue that the position is not clear. Now the MHA has come out with an office memorandum on this.

Accordingly, “...interest earned from deposits made out of foreign contribution is also to be treated as FC under the Act. Non-deposit of these types of FC in the designated bank account of an organisation constitutes violation of the Act...”.

[References:

MHA Office Memorandum No. II/21022/23(17)/2006-FCRA I, dated 27.2.06

We acknowledge Vani’s help in bringing this memorandum to our attention. – Ed.

Also see AccountAble 20, 22 and 72 at www.AccountAid.net]

(28-March-06)

198: LAST DATE FOR FILING FC-3 EXTENDED

The FC-3 for 2004-05 was due for filing on 31st July 2005. However, many organisations have not filed this return so far.

The law requires that every organisation registered under FCRA (or having and active prior-permission) should file FC-3 each year. This applies even if they have not received any funds during the year.

Earlier the Ministry had extended the date to 31st October 2005. Now the date has been extended further to 31st March 2006.

If you have not filed the FC-3 (for 2004-05) so far, make sure you send it by registered post within the next three days.

The form should be sent to:

FCRA Department – Foreigners Division
Jaisalmer House,
26, Mansingh Road,
New Delhi - 110011
197: RBI SAYS 'NO' TO MULTIPLE FCRA BANK ACCOUNTS

Can you open and operate multiple FCRA Bank accounts? Section 6(1)(b) of FCRA says clearly that you should receive FCRA funds in the FCRA designated bank account only.

What happens after you receive the funds? Some people argue that rule 8(1)(b) is ambiguous on this. Therefore, they receive FCRA funds in the designated bank account. After this, they move the funds to other bank accounts.

These bank accounts may have been opened in far away locations, for operational convenience. Or these may have been opened in the same city for segregating donor funds.

In March 2005, RBI has come out with a master circular on FCRA provisions. Under the heading 'Common Irregularities Observed', the RBI says:

"5. Some of the irregularities observed in this regard are as under:

(a) Certain associations were found to be operating more than one account, either in the same branch or in different branches (other than the account specified in the communication for registration), for carrying on transactions of foreign contributions."

The circular concludes with advice to the banks, requesting them to ensure strict adherence to the instructions issued. Further, it tells the banks that any lapses will be viewed seriously.

196: ANONYMOUS DONATIONS

Not yet. The Minister has dealt a big blow to the practice of 'gupt daan' by blocking anonymous donations.

If a charitable trust or NGO receives any anonymous donations, then they will have to pay tax @ 30% on it.

As it is worded, even coin-box collections will attract a tax of 30%. So don’t be surprised if you are asked to show your voter card or driving license before dropping loose coins in a hospital collection box!
Apparently, the move is targeted at the practice of laundering business funds through charity. NGOs are not likely to be affected, as most of them maintain detailed records of their donors.

Religious organisations have been exempted from this provision, in view of wide prevalence of 'gupt daan' from devotees, for earning of 'punya'.

[References:

Proposed section 115BBC. Finance Bill, 2006; India

Anonymous donations are not eligible for deduction from taxable income under 35AC or 80G, as donations need to be itemised in the tax return before deduction can be claimed. - Ed.]

(22-March-06)

195: BUDGET 2006

Before the Budget was read out, many people were expecting that this time the Finance Minister will wield the big stick on the NGO sector. As it happened, the Finance Minister has completely ignored the sector.

Time to celebrate?

[References:

Finance Bill, 2006; India]

(18-March-06)

194: 'WE SERVE FUDGE'?

Outlook has recently published a provocative news story with the imaginative title 'We Serve Fudge'.

Some of the content is equally imaginative. For instance, the story concludes that 8,673 FCRA registrations were cancelled because the concerned NGOs were 'receiving foreign funding and not accounting for it' (p.34).

Or that the move to put them on the prior-permission list was 'unprecedented' (p.34). Or that because an NGO could not be located at the given address, means that it had furnished the wrong address to begin with (p.36).

There is no doubt that there are many organisations which fudge their accounts. Such organisations may be from the Public sector, corporate sector or from the NGO sector.

However, it is probably illogical to conclude that all NGOs fudge their accounts, just because the FCRA Department has just cleaned up its registration records of defunct FCRA numbers.

[References:

Outlook, New Delhi, March 14th-20th, 2006, pp.34-36]

(18-March-06)
193: THE ECONOMIST ON PHILANTHROPY

The Economist, a London-based weekly, which has an opinion on everything under the Sun, has come out with a survey titled 'The Business of Giving'.

This is not intended to indicate that philanthropy is becoming a business. It merely means that it is becoming more business-like, which is possibly intended as a compliment.

The survey contains some interesting snippets of information, such as how Gordon and Betty Moore have given away more than 7.05 billion dollars (Rs.3.17 kharab) over the last five years. Or how religious giving accounts for 62% of the total giving in USA.

Unfortunately, the survey contains very little information on individual giving, or on giving in the East. That probably is not due to lack of giving, it is more likely due to lack of ready information on giving.

Overall, the survey concludes that philanthropy is becoming bigger, more sophisticated, and better targeted. And so it has a future after all.

[References:
The Economist, Feb 25th-March 3rd, 2006
(17-March-06)]

192: STILL MORE ON CANCELLATION OF FCRA

Some of the better-known names include University of Delhi, IIT, CII, Diakonia, Ramakrishna Mission Hospital, Catholic Hospitals Association of India, Escorts Heart Institute and Research Centre, and IGNOU.

What will now happen to these organisations? In many cases, the organisations have stopped receiving foreign contribution, and will not be affected. In other cases, they have obtained registration under a slightly different name, and do not use the listed registration any more.

Still, there are bound to be some cases, where the organisation is active and will be affected adversely by the cancellation.

In such cases, the concerned organisation should approach the FCRA Department for a revalidation of their FCRA registration.

[References:
(6-Feb-06)]

191: MORE ON CANCELLATION OF FCRA

The list of organisations whose FCRAs have been cancelled includes associations almost from each states: 1,277 in Andhra Pradesh, 974 in Maharashtra, 944 in Tamilnadu, 749 in Kerala, 732 in Uttar Pradesh. 441 organisations in Delhi have had their FCRA cancelled. There are many more in other states.
The list includes Universities, Chambers of Commerce, Religious organisations, hospitals, Institutes, and NGOs of every shade and opinion. For once, no one can say that the FCRA Department has been discriminatory. Because it has been quite indiscriminate!

References:

(6-Feb-06)

190: 8,673 FCRA REGISTRATIONS CANCELLED

The FCRA Department has cancelled 8,673 FCRA registrations for non-filing of FC-3 for last three years (2001-02, 2002-03, 2003-04). This is the largest single cancellation in the history of FCRA.

The last time this happened was in 1997, when 497 FCRAs were cancelled.

References:

"MHA bars 8,000 NGOs from seeking foreign funds", Indian Express, New Delhi, 4-Feb-06, p.1

(6-Feb-06)

189: MORE ON GIVING IN USA - 2

Contd. from 188...

However, not all endowments are as big. Georgia Perimeter College had just $370,000 (Rs.1.7 crores) in June 2004. Still, the average size of each institution’s endowment is fairly big: $360,651,000 (Rs.16.60 arabs). 741 institutions participated in the survey.

The University endowments in USA have also come in for some criticism. Most tend to spend only 5% of their asset base each year. This was meant to be the minimum spending requirement. However, in effect, it is being seen by the Universities as the maximum spending limit!

What is the nature of this criticism?

Historically, the endowments have been earning around 10-11%each year. Out of this they spend 5%. Another 3% can be said to be used to cover inflation. That still leaves another 2-3%, which could be spent safely, without hurting the endowment. If this was to happen, then possibly the tuition fee could be cut to half at some of the Universities.

References:

188: MORE ON GIVING IN USA - 1

The US economy is the biggest in the world. Giving in USA also tends to be appropriately big. Take for instance endowment funds that American Universities have.

Some of the richer ones each have endowments, which may add up to a billion dollars or more (Rs.45 arabs).

For example, Harvard has more than 9400 separate endowments. These added up to more than $22 billion (Rs.10.18 kharabs) as of June 2004.

In an earlier year (2003), its return on the investments came to 12.5%. It then spent 5% of the total endowment ($770 million, Rs.35.42 arabs) during the year, per tax requirements. Of course, this was only a small part of its total budget ($2.4 billion, Rs.1.10 kharabs)!

Contd. in 189...

[References:

(26-Dec-05)

187: RELIGIOUS GIVING IN USA

An article in The Economist has described how some churches in USA are reinventing themselves by applying sound business practices to church activities. The article also provides some glimpses into American religious giving. For example:

- Lakewood Church in Houston had an income of $ 55,000,000 in 2004. Translated into Indian figures, this comes to Rs.2.58 arabs. This is one out of 1000 churches in USA, which are counted as mega-churches. Broadly speaking, you qualify as a mega-church if 2,000 or more people attend.

- The Fellowship Church in Grapevine, Texas, has an annual budget of $30,000,000 (Rs.1.38 arabs). It spends 15% of its budget (Rs.21 crores) on technology.

- Willow Creek Association, the consulting arm of the Willow Creek Church, offers advice to 11,500 member churches. It earns $ 20,000,000 (Rs.92 crores) a year from this.
• Mr. Creflo Dollar, chief pastor of World Changers Church International in Georgia, drives a Rolls Royce and travels in a private Gulfstream jet.

• Ms. Joyce Meyers, often seen on GOD TV, owns a house worth $2,000,000 (Rs.9.20 crores). She also owns private jet worth $10,000,000 (Rs.46 crores).

[References:
‘Jesus, CEO: America’s most successful churches are modeling themselves on businesses’, The Economist, London, p. 51, 24-December 2005

While all 501(c)(3) charities in USA are required to disclose their finances to public, churches (including non-Christian religious organizations) are exempt from this requirement. Therefore, relatively little is known about religious giving and spending in USA. – Ed.]

(23-Dec-05)

186: SHREE VENKATESWARA’S DIAMOND HEADBAND

On Thursday night, a devotee offered a bejewelled headband to Bhagwan Shree Venkateswar at Tirupati. The diamond-studded band, valued at Rs.1.4 crores (~$300,000), was received by Shri APVN Sharma, officer of the Thirumala Tirupati Devasthanam Trust.

Now two questions arise:

1. Can the unnamed devotee claim this as a deduction from his / her income tax?

2. How will the gift be valued and accounted in the Trust’s books?

Well, the devotee cannot claim it as a deduction under section 80G. Reason is that Income Tax Act in India does not recognize donations in kind as donations at all.

With regard to accounting, the situation is equally peculiar. The ICAI has not released any accounting standards for charitable or religious organizations. As a result, most people try to apply the standards issued for commercial organizations in such situations. The result? A gift valued at Rs.1.4 crore will probably be accounted in the Trust books at Rupee 1.

[References:
‘Bhagwan Venkateswar ko 1.4 karod ke jowar arpit’, Dainik Jagran, New Delhi, p. 11, 23-December 2005

Accounting Standards 10 and 12, issued by the Institute of Chartered Accountants of India]

(23-Dec-05)

185: SALE OF TRUST PROPERTY

Recently, the Delhi High Court has said that prima-facie, trust property can not be sold, mortgaged or exchanged without prior-permission of court.

The observation was made by Justice Vikramjit Sen in a matter relating to sale of some land by Sarvadeshik Arya Pratinidhi Sabha to Shri Ashok Mehra.
The case is presently being heard and a final order is expected in due course.

It may be noted that in some states such as Tamilnadu, Maharashtra and Gujarat, official permission is required under law for a charity to alienate or mortgage land etc.

[References:
'Trust can't sell assets wihout permission', Hindustan Times, New Delhi, p. 4, 12-December 2005]

(15-Dec-05)

184: ANOTHER CESS (POOL)?

NGOs in Maharashtra are quite familiar with the term cess. They have been paying 2% of their income every year to the Charities Commissioner. Tax-payers also know about the 2% education cess introduced last year. This yields about 80 arabs annually. There has also been some talk of a health cess, in addition to the education cess. Why all these cesses, when the Government already collects, income tax, VAT, Service tax, road tax, etc.

Well, a cess is levied on a limited number of users, who benefit from a particular service. A key feature is that the money can not be spent on general objects. It should be spent on specific purposes.

Now the Delhi Government is planning to introduce a 1% cess on the building industry. This will be added to the cost of a building and ultimately recovered from the buyers. The cess will be used to provide insurance and other benefits to construction workers.

This is a strikingly ambitious scheme. Construction workers often migrate from one place to another and from one trade to another. Administering the scheme would probably be quite a challenge. In the past, Government has found it difficult to administer schemes such as Provident Fund, ESI, etc., where the odds are not so high.

Let us then hope and pray that this cess also does not turn into a cess-pool.

[References:
Capsule 182: Education Cess and Right to Education

1 arab = 100 crores = 1 billion

'Social Security for workers', Hindustan Times, New Delhi, 30-November 2005]

(13-Dec-05)

183: AND NOW: FCRA IN RUSSIA!

We had earlier reported how Russia is one of 23 countries, which place legal restrictions on foreign funding of elections. In this, Russia was among illustrious company, notably that of UK, USA, France, Germany, Japan, Canada, and Spain.

India also imposes such a ban through FCRA, which is all set to be strengthened further with a new bill called FCMC. However, the Indian legislation is different in that FCRA also monitors funding of NGOs, in
order to ensure that foreign funds are not used for political activities. India’s neighbors, such as Pakistan and Bangladesh, also exercise some form of control over NGOs.

Now Russia is also planning to extend similar controls over private charities, which may be supporting political activities. This has led to protests by the affected groups and some uncharitable headlines in the Western press.

What provisions does the bill contain? Details are not available, but some of the key provisions include the following:

1. Foreign organisations would need to register in Russia as Russian organisations. They would not be allowed to register as branch offices or representative offices.

2. Such organisations should be governed by Russians or by foreigners living permanently in Russia. This would give Russian authorities legal jurisdiction over them.

3. It may become more difficult for them to receive foreign funding.

4. The State Commission would have powers to investigate them and shut them down if found justified.

[References:
FCRA: Foreign Contribution Regulation Act, 1976
FCMC: Foreign Contribution Management and Control Bill

"Kremlin out to stifle NGOs, charities - New law aims to restrict foreign support for political activity; Greenpeace, Amnesty affected", p. 25, Times of India / Times International, New Delhi, 25-Nov-2005

"Nationalists take aim at NGOs 'plotting' to destabilise Russia" Neil Buckley, FT.Com, Published: November 26 2005 http://news.ft.com/cms/s/9c9dc506-5e42-11da-a9e8-0000779e2340.html]

(26-Nov-05)

182: EDUCATION CESS AND RIGHT TO EDUCATION

Presently, the Government spends about Rs.470 arabs annually on elementary education. After the Right to Education Bill is passed, this will probably double to Rs.1000 arabs. Where will the Government get the extra money for this?

The Government has introduced education cess of 2% last year. However, annual collections are coming to just about Rs.80 arabs. So the Government is likely to either borrow money or raise taxes further.

Incidentally, 6% of GDP, planned to be spent on education, comes to around Rs.1700 arabs. If that target is to be reached, then the Government has to either cut expenditure on other heads or raise taxes even more.

Service tax is a likely candidate for further increase. In some Scandinavian countries, service tax is as high as 25%. This is surely serving as a beacon to the Finance Ministry.

[References:
An arab (100,00,00,000) is equal to 100 crores or 1 billion.
181: SERVICE TAX ON NGOS

If Economic Times is to be believed, then NGOs may also be soon be paying service tax. This may be done next year by removing the present requirement that the service provider be a 'commercial concern'.

A small beginning in this direction has already been made in 2005 by bringing in clauses 25A and zzze. However, an exception is provided for activities 'which are in the nature of a public service and are of a charitable, religious or political nature'.

References:
Section 65 (25A), Chapter V and VA of the Finance Act, 1994, as amended by the Finance Act, 2005
Section 65 (105) (zzze), Chapter V and VA of the Finance Act, 1994, as amended by the Finance Act, 2005

180: SERVICE TAX ON CLUBS

In June 2005, service tax was introduced on fees and subscriptions collected by clubs and associations from its members. Does this mean that NGOs have to pay service tax on dues collected from their members?

No. This applies only where the members receive services, facilities or advantages against the dues paid.

This means tax would be due from clubs such as Delhi Golf Club, Gymkhana Clubs, etc. Resident Welfare Societies collecting security charges etc. could also end up paying service tax. However, this is applicable only when their turnover exceeds Rs. 4 lakhs (400,000) per year.

References:
Section 65 (25A), Chapter V and VA of the Finance Act, 1994, as amended by the Finance Act, 2005
Section 65 (105) (zzze), Chapter V and VA of the Finance Act, 1994, as amended by the Finance Act, 2005

179: ESCORTS HOSPITAL AND CHARITY PRIVILEGES

The Escorts Hospital (EHIRC) was set up in Delhi a couple of decades ago as a charitable trust by the Escorts group of companies. The hospital specialized in heart care and bypass surgery. It soon developed an excellent reputation. People stopped going to USA for their heart bypass operations.

About three years ago, EHIRC was converted from a charitable trust to a non-charitable trust and then later to a company. The hospital was then sold to Fortis Healthcare, a company of the Ranbaxy group.
Considering its goodwill and the value of real-estate, it must been an immensely valuable deal for the both the parties.

One of the trustees of EHIRC took the matter to court. The Minister of Finance also made a statement saying that such misuse of charity law would not be permitted. DDA also tried to intervene in the matter saying that the deal violated conditions of allotment of the land at concessional prices.

Fortis has recently made a statement to clear the air, saying that no law has been violated, and that DDA consent is not required.

There have been several other cases across India where charitable hospitals have been taken over by upcoming Medicare chains. Escorts has drawn more attention because it is a well-known hospital and a pioneer in heart-surgery.

These takeovers point to a general trend where powerful corporate groups are changing the shape and structure of medical care in the country. This may be partly due to emergence of a rich class of patients who demand and expect attention and courtesy during hospitalization and are willing to pay for it. Another reason could be the growing popularity of medical insurance policies, where the patient doesn't have to foot the bill and doesn't care if he/she is charged more.

Irrespective of what happens in the Escorts case, it is likely that this deal will have far-reaching implications for the NGO sector. The case may lead to further tightening of charity law and erosion of other privileges to charitable organisations.

References:
EHIRC: Escorts Heart Institute and Research Centre
DDA: Delhi Development Authority

"Fortis says DDA consent not required", p. 5, Hindustan Times, Delhi, 16-nov-2005

(16-Nov-05)

178: A SHIFT IN FCRA

The NGO sector has been requesting the Government to shift the FCRA Department out of the Ministry of Home Affairs. So far the Government has not agreed. However, the Department has shifted its office away from Khan Market.

The new address is:

Ministry of Home Affairs, Foreign Division (FCRA)
Jaisalmer House,
26, Maan Singh Road
New Delhi –110 011
Ph: 011- 2338 3075, 2469 8009

References:
177: THE NEW FCRA BILL

On 24th June, the MHA and ICAI organised a workshop at Delhi on FCRA and money-laundering. At this workshop, it was also announced that the Government is planning to replace the FCRA with a new law.

The proposed bill is now available at [www.AccountAid.net](http://www.AccountAid.net). It is called the Foreign Contribution (Management and Control) Bill, 2005. It proposes far-reaching changes in the FCRA.

[References:

MHA: Ministry of Home Affairs; [http://mha.nic.in/fore.htm](http://mha.nic.in/fore.htm) Also see [http://mha.nic.in/fcmc-bill-05.pdf](http://mha.nic.in/fcmc-bill-05.pdf) for a copy of the bill.

ICAI: Institute of Chartered Accountants of India; [www.icai.org](http://www.icai.org)]

176: ICAI ON FCRA

The ICAI has recently come out with a useful publication on FCRA. It is titled 'A Study on Foreign Contribution (Regulation) Act 1976.

The booklet explains the basic provisions of FCRA and contains some useful practice notes for Chartered Accountants. It also covers some frequently asked questions. The FCRA Act and Rules are also included though without the forms.

Some of views contained in the book need to be carefully assessed before taking any important steps. These include views on transactions between FCRA and local funds (pages 5, 64), and multiple bank accounts (pages 10, 63) for FCRA funds.

Containing 129 pages, the booklet is priced at Rs.100 and is available from ICAI sale counters.

[References:

ICAI: Institute of Chartered Accountants of India; [www.icai.org](http://www.icai.org)]

175: MPLAD FUNDS TO OPEN UP TO NGOS?

According to a news report, the MPLAD limit may now go up to Rs.3 crores, from the present Rs.2 crores. The MPs have been asking for the limit to be raised to Rs.5 crores.

Two important features of the revised scheme may be that firstly, a certain percentage may have to be spent on drinking water, roads, education, electricity, etc.

Secondly, the MPs may be allowed to spend the money through private institutions, trusts etc. The MPs have been raising this demand for quite some time. Initially, there may be a limit of Rs.5 lakhs on this.
Why do the MPs want to spend this money through the NGOs? Well, for one thing, the NGOs are much better equipped for this and possibly closer to the people. Secondly, it is easier to work with NGOs, as there is lesser paperwork. Thirdly, the accounting is less complicated.

Whatever may be the reasons, one thing is for sure: the modified scheme will help bring the MPs closer to the NGOs.

References:

'Saansadon ko kshetriya vikas ke liye milegi jyada raashi', p.1, Dainik Jagran, New Delhi, 17-May-2005

MPLAD: Member of Parliament Local Area Development Scheme. Under the scheme, each MP is authorised to commit and spend upto Rs.2 crore in his/her constituency on various public works and other schemes beneficial to the constituents.

Rs. 1 crore = Rs. 10 million, ~230,000 US $

Rs. 1 lakh = Rs.100,000, ~ 2,270 US $

This is based on a news report about a proposal. It has not yet been implemented.- Ed.]

(17-May-05)

174: CHECK YOUR FCRA APPLICATION STATUS ON INTERNET!

The FCRA Department has recently revamped its web-site. You can now check the status of your application (for registration or prior-permission) by visiting the following web-site:

http://mha.nic.in/fcra.htm

Follow the following steps once you reach the site:

· Click on 'Application Status'.
· Choose the applicable option.
· Punch in your file number in the window that opens up.

You can use this facility only once you receive an acknowledgement for your application. This acknowledgement letter contains the file number.

(13-May-05)

173: WHAT DOES THE TAX AMENDMENT BILL CONTAIN?

This Thursday, the Government has tabled a bill in the parliament. It is called Taxation Laws (Amendment) Bill 2005. Some of the provisions may make NGOs' fiscal management more complicated.

According to the news report, the provisions include the following:

· Exempt schools and hospitals, with receipts below Rs. 1 crore, will also need to file income tax returns.
· Public trusts with mainly related persons as trustees may face tougher tax provisions.
Rules related to registration and exemption of charities under Income Tax are being tightened. These may involve deeper scrutiny before registration is granted.

Donations above Rupees 20,000 can be accepted only through account payee cheques or drafts.

Audit rules for charities will be tightened.

Please note that these are only proposals in the Bill. These are not yet law. These will become law only when both Houses pass the bill, and the President gives his assent.

[References:
'Nakad donation se pravesh ka khel ab nahin chalega', p.1, Dainik Jagran, New Delhi, 13-May-2005

'Anti-tax evasion bill introduced', p.11, Indian Express, New Delhi, 13-May-05

Rs.20,000 = ~ 460 US $; Rs. 1 crore = Rs. 10 million, ~230,000 US $

Also see AccountAid Capsules 168, 171 and 172

The text of the Bill is not yet available on the Finance Ministry or Lok Sabha web-sites. - Ed.]

(13-May-05)

172: MAKING NGOS MORE ACCOUNTABLE...

According to a news report, the Finance Minister plans to 'increase the accountability of charitable organisations'. A Bill to amend the tax laws will be introduced by Friday. This Bill will bring funds received by charities under the government scanner.

The Minister has also said that the aim is 'only to ensure there is a trail of the financial transactions in such organisations and not any form of harassment.'

Why choose Friday, the 13th, which is traditionally associated with bad luck?

Well, be thankful that he did not choose Wednesday, the 11th instead, which happens to be Akshay Teej!

[References:
'Funds to charitable bodies to be tracked', p.16, Hindustan Times, New Delhi, 11-May-2005

Also see AccountAid Capsules 168 and 171

According to the Hindu Lunar calendar, Akshaya Teej falls on 11th May this year. Anything done this day is considered to be long-lasting and of great permanence. This is why many Indians, particularly in Rajasthan, choose to get married on this day- Ed.]

(11-May-05)

171: YET ANOTHER PROPOSAL TO AMEND FCRA!?

According to a news-report, there is now another proposal to amend the FCRA. The objective is to prevent 'massive diversion of foreign funds by NGOs'.

The latest proposal involves the following changes:
1. Making it mandatory for banks to report on transactions
2. Setting up five regional offices of FCRA to improve enforcement
3. Review of FCRA registration every five years

According to the Minister of State for Home, Shri Sriprakash Jaiswal, 'the aim is to ensure that funds are received and used by the right people and is used for the specified purpose, the changes will not make receiving foreign funds more difficult.'

No one will disagree with the sentiments of the Honourable Minister. However, FCRA was not designed to ensure that NGOs use their funds properly. It was designed to ensure that foreign funds are not used to influence Indian electoral politics. Therefore, if the Ministry is now getting interested in the proper use of funds by NGOs, then this is a significant change indeed.

According to the report, the Home Minister, Shri Shivraj Patil has cleared the proposed changes. A note will be put up to the cabinet soon. After that, the Parliament is likely to be informed in the current session.

It is said that history repeats itself. There have been several such proposals in the past: in 1988, then in 1996, again in 2002 and now in 2005. None made it to the Parliament. Let us see whether this proposal fares any better.

[References:
FCRA: Foreign Contribution (Regulation) Act, 1976. Applicable in India
'Centre to scan flow of funds to NGOs', p.4, Indian Express, New Delhi, 1-May-2005]

(2-May-05)

170: IS GRATUITY PART OF SALARY?

In a recent judgment, the Supreme Court has ruled that gratuity can not be debited to the salary account.

The application had been moved by Rajasthan Welfare Society, and several other educational societies. These societies get grant-in-aid from the Government. They were debiting gratuity to the budget head of salary in their grant accounts.

The High Court of Rajasthan had ruled against this practice earlier. Now the Supreme Court has confirmed the judgment.

The Supreme Court has also clarified that it is compulsory for such societies to pay gratuity under Payment of Gratuity Act, 1972.

[References:
'Gratuity veta ko hissa nahin', Rajasthan Patrika, New Delhi, 11-April-05
Payment of gratuity is compulsory for NGOs employing 10 or more persons. - Ed.]

(11-Apr-05)
In 2002-03, NGOs and other charitable or religious organisations in India, received a total of 50.47 arab Rupees as foreign contribution. This includes money as well as materials.

The biggest donor country, as usual, was USA, with Rs.16.80 arab. It was followed by Germany with Rs. 7.15 arab. Next came UK with 6.85 arab Rupees.

Maximum amount of funds were received by organisations registered in New Delhi: about 8.8 arab Rupees.

According to the Home Ministry, there are about 12 lakh (1.2 million) NGOs active in India.

References:

'NGO funds under scanner', Hindustan Times, New Delhi, 18-Feb-05

'Swayamsevi Sangathanon per kasegi lagaam', Hindustan, Nai Dilli, 18-Feb-05

One arab is equal to 100 crores (one billion or 1000 million.)

(1-Apr-05)

168: COMPREHENSIVE LEGISLATION FOR NGOS?

If Indian NGOs sometimes feel that the Government does not care for them, then the Government seems all set to make amends.

The Home Minister chaired a high-powered meeting earlier this month. The meeting was attended by HRD Minister (Sh. Arjun Singh), Rural Development Minister (Sh. Raghuvansh P. Singh), Minister for Social Justice & Empowerment (Su. Meira Kumar), and Minister of Culture (Sh. Jaipal Reddy).

The meeting commended NGOs for their good work. It also felt that some NGOs need to be more transparent in their working.

What was decided at the meeting? First, that a national database should be set up on NGOs. Second, that an expert group should be formed to frame a national policy on NGOs. Third, a comprehensive legislation on NGOs should be passed.

Curiously, just a month prior to this meeting, the Planning Commission had organised a consultation to draft a national policy on NGOs. Four expert groups have also been formed to work on this.

What could be the reason for this seeming overlap? Possibly there is a mistake in the latest news report.

Or it could be due to the way all good Governments should work: the left hand knoweth not what the right hand doeth!

In the meanwhile, let's keep our own hands crossed and hope for the best.

References:

'NGO funds under scanner', Hindustan Times, New Delhi, 18-Feb-05

'Swayamsevi Sangathanon per kasegi lagaam', Hindustan, Nai Dilli, 18-Feb-05

(31-Mar-05)
A few years ago, foreign banks in India started a system of drop-boxes for collecting cheques. Then Indian banks also followed suit. Some customers have always wondered how safe are these.

Not very safe, it seems. Delhi Police have arrested two security guards for stealing cheques from drop-boxes. These guards, from a private security agency, were posted at the Preet Vihar Branch of Indian Overseas Bank. They would steal the cheques, erase the names from the cheque, write their own names and get the cheques encashed. According to the police, they had encashed at least five such cheques. At the time of their arrest, they were tampering with a sixth cheque.

According to the newspaper, several such cases have come to light in recent months.

What can you do about this? One option is to stop using drop-boxes.

Another, more practical solution, is to read AccountAble 9: Banking, and AccountAble 12: Filling Cheques Safely. Both are available at www.AccountAid.net. Both the issues contain practical tips on how you to protect your cheques from alteration.

[References:
'Two bank guards arrested for stealing cheques', P.3. Hindustan Times, New Delhi, 4-Feb-05]

(4-Feb-05)

166: CORPORATE TAKEOVER OF CHARITABLE HOSPITALS

In a new twist to their sense of Corporate Social Responsibility, some corporate groups in Delhi are eyeing charitable hospitals for take-over.

Unfortunately for them, the land allotment rules of DDA do not allow alienation of land allotted as low prices to charitable institutions.

So what? There is always a way around an inconvenient law. The corporate groups are now entering into 'management contracts' with the concerned Trusts. This allows them to run the hospital as they wish, including raising the fees 4-5 times. The land allotment rules are also not violated in a technical sense.

Why takeover an existing hospital instead of building a new one? For several reasons: prime location, existing clientele, infrastructure, staff, etc.

The first hospital to go corporate is 'Jessa Ram Hospital' in Karol Bagh, which is now renamed 'Fortis Jessa Ram Hospital'. Other cases include Devki Devi Foundation in Saket, and Balaji Trust in Patparganj, both of whom have entered into management contracts with Max Healthcare. Mool Chand Khairati Ram Hospital may also go the same way.

What are the implications for charitable hospitals in general? If this trend continues, the Government will, sooner or later, be forced to revise the rules related to tax exemption for charitable hospitals.

Curiously, this trend towards more expensive healthcare is driven by mediclaim insurance. If you are insured you don't really care how much the treatment costs you. Someone else will be footing the bill.

[References:
DDA: Delhi Development Authority

'Corporates cast net on hospitals', P.3. Hindustan Times, New Delhi, 31-Jan-05]
165: FCRA RELAXATION FOR TSUNAMI RELIEF

FCRA Department has relaxed FCRA provisions for Tsunami relief. Organisations which do not have FCRA can now accept FCRA funds / materials by opening a separate bank account. They should designate this account as 'name of organisation - Tsunami Relief Account'. This account should be used only for FCRA funds received for Tsunami relief.

They should apply for FCRA permission in form FC-1A within one week of opening the account. They need not wait for the prior-permission to start accepting funds or materials.

Intimation of receipt should be sent in form FC-3 by 31st July 2005.

This relaxation is valid only upto 31-March-2005. A copy of the press release and the notification are available at www.AccountAid.net.

[References:
http://mha.nic.in/Tsunami-I.pdf
http://education.vsnl.com/accountaid/Tsunami_FCRA.htm]

(10-Jan-05)

164: NOBEL PRIZE (?) IN ECONOMICS...

A Kolkata court has admitted a petition challenging the depiction of Shri Amartya Sen as a Nobel Prize winner. The petitioner, Shri Subidh Chandra Roy, has filed a case of cheating against the publisher of the translated book 'Unnayan O Swakhamata' (Development as Freedom).

Shri Roy has argued that Shri Amartya Sen did not win the Nobel Prize. He won a prize called 'The Bank of Sweden Prize in Economic Sciences in Memory of Alfred Nobel'.

This prize is different from the Nobel Prizes and was started only in 1968. The publishers are allegedly depicting him as a Nobel Prize winner in order to increase sales.

What is the truth? Truth, presently, is sub-judice.

But you can visit the Nobel Prize site yourself and make up your own mind about it. The links are given below.

[References:
http://nobelprize.org/
http://nobelprize.org/economics/]

(25-Nov-04)
163: TAX ST. PETER, AND PAY TO MARX…

Communist parties often criticise religious intolerance. But their own intolerance for all religious behavior is not so well known.

In a move that is designed to generate controversy, the Communist parties have now proposed taxing all religious institutions.

The tax is to take the form of a cess and will be used to fund rural development.

Once the precedent to tax religious charity is set, how long will it be before charity itself is taxed?

Also proposed is a tax on private schools, nursing homes and hospitals.

[References:
"Left wants cess on holy houses", 4-Nov-04, Hindustan Times, New Delhi]

(4-Nov-04)

162: FAKE FRANKING FRAUD

The Delhi Police has arrested one person from Delhi for swindling lakhs of rupees by using a fake franking machine. The person was working as a mailing contractor for several organisations, including a public limited company.

The fraud came to light accidentally. One of the Post Office staff became suspicious about a letter, which had been franked. On checking, it was found to be done with a fake machine. The Post Office staff then discovered about 42,000 letters franked in the same way.

On contacting the concerned company, they directed the police to their mailing contractor. He confessed to the fraud. The original machine issued by the Post Office was lying unused in one corner.

Moral of the story? Check carefully before you hand over your mass mailing to an outside contractor. Also, if you are using a franking machine in your office, make sure that your payment procedures are foolproof.

[References:
'Nakli daak tikat ghotala pakda', 11-Oct-04, Dainik Jagran, New Delhi]

(11-Oct-04)

161: REVENUE STAMPS

The Indian Stamp Act has been amended. The cut-off limit for revenue stamps on receipts has been revised.

You now need to fix a revenue stamp only where the amount received exceeds Rs.5,000.

The value of the stamp remains unchanged at Re.1.

This change has become effective from 10th September 2004.

[References:}
In February 2000, a writ was filed in Delhi High court. The writ prayed that CAG should probe how BCCI spends its money. Later the Central Government also became a party to the case.

BCCI argued that it was a private club. It was neither the state nor an instrument of the state. Therefore, the petition was not maintainable.

The Court has passed an order on this. It has said that BCCI's affairs can be scrutinised by the judiciary. That is so because BCCI has a public function also. It is these public functions that can be scrutinised.

Technically speaking, BCCI is an 'NGO'. Therefore, this ruling has significant implications for NGOs also. Most NGOs have a public function. If this precedent is followed, then people can bring writ petitions against NGOs they don't like. They can ask for judicial scrutiny or how an NGO spends its money.

References:

BCCI: Board of Cricket Control in India

"BCCI's business is your business too", Hindustan Times, 5-Oct-04

"HC tells BCCI its affairs liable to judicial scrutiny", Pioneer, 5-Oct-04

See also AccountAid Capsule 157 and 159 at [www.AccountAid.net](http://www.AccountAid.net)

Does BCCI have FCRA? No.

Then how is it able to accept so much foreign funds?

Simple. BCCI has been formed for promotion of sports. Sports is not covered by section 6 of FCRA. This section applies only to NGOs with a cultural, economic, educational, religious or social program.

References:

Section 6(1)(a) of Foreign Contribution (Regulation) Act, 1976

www1.cricket.indiatimes.com/articleshow/851406.cms

See also AccountAid Capsule 157 at [www.AccountAid.net](http://www.AccountAid.net)

Do you operate your bank account on the internet? If yes, then you may be vulnerable to the following fraud:
You receive an e-mail message on your bank's stationery. It says that the bank is updating its customer database or revalidating its software. Or there may be some other similar excuse. It then asks you to log on to your bank account by clicking on a link contained in the message.


Because if you click on the link, it will take you to a dummy address and form. When you fill up the form with your log in information, the information will be stolen.

These people will then use the information to log on to your account. They will then very kindly relieve you of the money in your bank account.

They might later send you a thanks message, but well, don’t bank on it.

(23-Sep-04)

157: THE RICHEST 'NGO' IN INDIA...

Can you name the richest non-profit organisation in India? It has Rs. 181 crores in bank deposits, and earned Rs. 73 crores last year (2003-04)?

It is in the public eye most of the time. Its employees are some of the highest paid individuals in India. They also spend a lot of their time out of India. You also know most of them by name.

Got it? It is none other than Board of Cricket Control in India.

Surprised? Well, it is registered as a society under the Tamil Nadu Societies Registration Act, 1975.

[References:  
www1.cricket.indiatimes.com/articleshow/851406.cms]

(20-Sep-04)

156: THE WAR ON TERROR...

Saudi Arabia plans to dismantle all international charities operating in the kingdom. Their investments and other assets will be placed under a new commission. According to the Saudi and US authorities, this will stop the flow of their funds to terror groups.

The charities to be dissolved include Al Haramain Islamic Foundation, which was raising as much as 50 million US dollars at the peak of its operations.

Five of the Al Haramain offices (Afghanistan, Albania, Bangladesh, Ethiopia and Netherlands) have been designated as "terror financiers".

The new commission will be called "The Saudi National Commission for Relief and Charity Work Abroad". It will be responsible for disbursing about 100 million US Dollars () annually.

How much is that in Indian rupees: just 4.50 arab rupees or 10% of the annual flow of FCRA funds to India.

[References:  
"Saudi Arabia plans to dissolve charities to block terror funding", p. 7, Indian Express, N. Delhi, 4-June-2004]
155: A FODDER SCAM IN BARMER?

Last year saw a severe drought in West Rajasthan. To prevent the villagers from selling off their cattle during the drought, the State Government helped arrange fodder for the cattle. This massive effort, which was much appreciated, was organised with the help of local NGOs and charitable organisations.

According to a newspaper report, clever truck owners and local middlemen may have siphoned off some of the money for the transportation grant. How? During verification of weighbridge slips, it was found that the fodder was not purchased from one place, and the supporting documents were obtained from another place.

The District Administration has rejected claims aggregating Rs.13 lakhs so far. The reporter fears that this may just be the tip of the iceberg.

The claims rejected include:

1. Prani Mitra Sansthan, Barmer: Rs.8 lakh
2. Manav Seva Sangh, Barmer: Rs.1.50 lakh
3. Bhansali Trust, Barmer: Rs.1.25 lakh
4. Zilla Gau Seva Samiti, Barmer: Rs.50,000

The concerned NGOs have stated that they purchased the fodder from truck drivers. They were in no position to verify where the truck owners were getting the fodder from.

[References:
"Barmer mein karodon ka parivahan anudan ghotala", P.9, Rajasthan Patrika, Jaipur, 6-Mar-04]

(5-Mar-04)

154: 60% FCRA FUNDS FOR RELIGIOUS ORGANISATIONS?

According to the same report, 60% of the funds go to religious organisations, mainly Christian.

Is this true? It is difficult to say.

Our analysis of the top 25 receivers shows that:

• They received Rs.1,097 crores in 2001-02.
• Of this, as much as 79% of the funds were received by organisations with religious linkages.
• The balance 21% was received by organisations which do not have any religious linkages.

[References:
Please note that funds received by a religious organisation may be spent for secular purposes. - Ed.
"NGO ko videshi madad aage rajya sarkar ke niyantran mein", P.3, Rajasthan Patrika, Jaipur, 2-Mar-04]

(2-Mar-04)
153: FCRA DEPARTMENT ON FCRA

According to Shri Praveen Shrivastava, Secretary, FCRA Department at Delhi, they receive many reports of cheating related to FCRA every year.

Although they seal dozens of NGO accounts each year, it is difficult for them to monitor the work of all the NGOs with just 20-25 staff in the FCRA Department. The District Authorities will find it easier to monitor the work.

[References:
"NGO ko videshi madad aage rajya sarkar ke niyantar mein", P3, Rajasthan Patrika, Jaipur, 2-Mar-04
AccountAid Capsules 10, 65, 151 at www.AccountAid.net]

(2-Mar-04)

152: ANOTHER GLIMPSE OF THE NEW FCRA LAW

According to a news report, the Central Government is planning to pass the new FCRA law, called Foreign Contribution Management Act, soon.

The final draft is awaiting cabinet approval. It has been finalised after several meetings between NGOs, the Home Minister and the Law Minister.

Under the new Act, the District Authorities will have a say in the kind of foreign assistance that is accepted.

[References:
"NGO ko videshi madad aage rajya sarkar ke niyantar mein", P3, Rajasthan Patrika, Jaipur, 2-Mar-04
AccountAid Capsules 10, 65 at www.AccountAid.net]

(2-Mar-04)

151: FCRA REQUIRED FOR MULTI-LATERAL FUNDING?

The UN organisations and many other international agencies have been exempt from FCRA restrictions for quite some time.

This means that an NGO without FCRA may receive funds from one of these.

The new guidelines make a strange sideswipe at these exempt funds. Para 9 of the guidelines says:

"Bilateral and Multilateral Partners that are exempt under section 2(1)(e)(ii) of the FC(R) Act, 1976, may also restrict their assistance to organisations that are registered under the Act or are permitted to receive assistance under the Act."

Does this mean that UN funds are now being restricted to FCRA registered NGOs only?

[References:
See also AccountAid Capsule 135, 148, 149, 150 and AccountAble 40 at www.accountaid.net]
150: A GUIDE TO THE GUIDELINES...

* Do the guidelines apply to all grants coming out of an Embassy's office?

No. These apply only to grants made to NGOs out of the bilateral assistance. These do not apply to grants made by the Embassy out of other, non-bilateral funds.

* Do these guidelines apply to grants from international donor agencies?

No. These do not apply to non-bilateral agencies at all.

[References:

See also AccountAid Capsule 135, 148, 149 at www.AccountAid.net]

149: GUIDELINES FOR THE PERSISTENT BILATERALS...

What do the guidelines say?

* Bilateral assistance from the other countries can now be transferred directly to Indian NGOs (para 7).

* However, autonomous bodies, which are largely funded by the Government of India, can not accept these funds.

* The donors will have to follow a procedure for transfer of bilateral assistance to NGOs.

* They should submit a list of the NGOs to be funded twice a year to the Department of Economic Affairs (DEA). A proforma has been given in the guidelines for this.

* These NGOs should have FCRA registration or get prior-permission.

* DEA may make suggestions for modifications. The concerned donor is expected to consider these and modify the list.

* Monitoring will be done directly by the concerned donor agency.

[References:

See also AccountAid Capsule 135, 148 at www.AccountAid.net]
148: SAY 'NO' TO ... BILATERAL ASSISTANCE.

Last year in March 2003, the Government of India announced that it would no longer accept bilateral assistance from donor countries with 'smaller aid packages'.

In June 2003, it announced that only six bilateral donors could continue to work with Indian government. These are Japan, UK, Germany, USA, EC and the Russian Federation.

In September 2003, it announced some guidelines for bilateral assistance cooperation. These guidelines do not apply to bilateral assistance from the above six donors.

[References:

'Bilateral assistance' means aid or loan transfer from one nation's Government to another nation's Government.

See also AccountAid Capsule 135 at www.AccountAid.net

Ministry of Finance & Company Affairs Press release dated 2-Jun-03; Guidelines for Future Development Cooperation with Bilateral Partners, dated 12-Sep-03]

(1-Mar-04)

147: FAITH-BASED FUND-RAISING

According to a news report in Pioneer:

• A senior Catholic priest wanted funds for an awareness campaign in Palamau district, near Ranchi. He asked for money from the Jesuit Society and other sister concerns of missionaries. However, they refused as accounts for an earlier installment of Rs.14 lakhs were still pending.

• So he turned to his followers in the church. After church prayers, they were asked to invest money in a Mumbai-based organisation called Trust India Concept. Some 20,000 persons found the scheme attractive enough to invest Rs.20 crores!

• Initially the investors got the monthly installments regularly. Later the scheme started floundering. The investors then started raising a hue and cry.

• Currently, Father Dharamsheel Kujur and two of his assistants are confined to the Manresa House office of the Jesuit Society. The police are investigating.

[References:

For more details see, 'Ranchi priest lured followers to invest money', The Pioneer, Delhi, 25-Feb-04, P.8; also at http://www.dailypioneer.com


(25-Feb-04)

146: NEW DIMENSIONS OF RELIGIOUS CHARITY

Tehelka is back as a weekly newspaper. The inaugural issue carries a cover story alleging that the US government is collaborating with missionaries and church groups to promote religious conversion in India.
The story, spanning across two issues of Tehelka, describes the methodology, the sources of funding and names some of the organisations that are allegedly involved in the evangelisation drive.

One of the key ideas of the story is that funds for religious activities are being brought into India by church-based organisations under the cover of HIV/ Aids work.

The newspaper goes on to allege that the Indian Government is not doing much to prevent this drive, which may lead to more rifts in the Indian society.

The news-story is likely to have major implications in the long run for the proposed FCMA bill, and the way foreign contributions are accounted and managed.

Bush Administration's move to fund religious organisations has also met with some criticism in USA itself.

References:
1. Tehelka, New Delhi, 7-Feb-2004: "Preparing for the harvest...", p.6; "Jesus comes to Karla", p.10; "Those that shall deliver", p. 13; "A private faith made dangerously public", p. 18

2. Tehelka, New Delhi, 14-Feb-2004: "Saving lives, harvesting souls", p.32

3. www.tehelka.com

4. www.constitutionparty.com/Bushs_faith_based_fascism.htm

5. christianity.about.com/library/weekly/aa013001.htm


See also AccountAid capsules 9 and 33]

(13-Feb-04)

145: GLOBAL DEVELOPMENT CURRENCY

An organisation in Netherlands has come up with a novel idea on fund-raising. It has launched 'currency' notes called Raam NL. NL stands for Netherlands. Raam stands for Shri Ram Chandra who is worshipped by Hindus as an avatar of Shri Vishnu ji.

The organisation is a part of Maharishi Mahesh Yogi's group. The currency is fully backed by equivalent Euro deposits in the Fortis bank. Each Raam NL is worth 10 Euro or about Rs.580.

About 167 shops in 45 Dutch cities and villages have started accepting the currency. The Dutch Central Bank has clarified that there is no violation of Dutch laws so long as the 'currency' is not presented as legal tender.

According to BBC, the Raam is also circulating as a currency in Maharishi Vedic City, Iowa, USA.

References:
"[Shri] Raam goes Dutch", P.54, India Today, New Delhi, 6-Oct-03

"Maharishi's 'raam' wins" The Telegraph, Calcutta, 5-Feb-2003

"Dutch give nod to 'guru currency'", BBC News. 5-Feb-2003 at http://news.bbc.co.uk/1/hi/business/2730121.stm

144: FOREIGN BANKS AND NGOS

Several foreign banks are now offering special customised services to charities, including assistance with FCRA formalities.

Flattered by this irresistible wooing, some NGOs are even shifting their FCRA accounts to distant metropolitan locations, hundreds of kilometers away from their operational area.

What is the reason for this sudden interest?

Is it because the banks have suddenly become conscious of their duty to the society? Or could it be the idle money sitting in some charity accounts that the banks are interested in?

Not likely. Moreover, the banks are chasing only those NGOs which get foreign funds.

It seems that a critical factor in this monetary romance is the commission on foreign remittances.

So if you are approached by a banker for shifting your FCRA account, ignore the sweet talk. And focus on making sure that your NGO is not short-changed in the deal.

[References:

(3-Sep-03)

143: MORE ON SHRI TIRUPATI

The Economic Times survey also gives some more information about Shri Tirupati Devasthanam’s finances. The income figure of Rs.532 crores includes:

a. Rs.188 crores from direct offerings (hundi collections)

b. Rs.145 crores from interest on deposits

c. Rs. 50 crores from sale of laddoos

d. Rs.20 crores from sale of hair

The temple's assets include Rs.560 crores in fixed deposits and about five tonnes of gold (worth app. Rs. 250 crores).

The trust runs numerous colleges and schools in surrounding areas and another college in Delhi. It also runs a 250-bed hospital (BISRR), offering free treatment for complex medical problems.

[References:
Also see AccountAid Capsule 141, 142]
142: TEMPLE DONATIONS

According to a survey published in Economic Times, some of the larger temples in India reported the following earnings in 2001-02:

1. Shri Tirupati Devasthanam Trust, Andhra: Rs.532 crores
2. Shri Shirdi Saibaba Sansthan, Maharashtra: Rs.62 crores
3. Shri Sabarimala Temple, Kerala: Rs.21 crores
4. Shri Arasuri Ambaji Mata Devsthan Trust, Gujarat: Rs.15 crores (app.)
5. Shri Siddhi Vinayak Temple, Mumbai: Rs.11 crores

The money is mainly used for the maintenance of temples, religious activities. However, significant amounts also go for non-religious charitable activities.

Some of these temples are under Government administration. All are exempt from tax on their income.

In most cases, donors are not entitled to any tax incentives on the amounts donated, as religious charity is not tax-deductible in India.

[References:
"Temple of boom: God's the all-mighty money spinner", Economic Times, January 6, 2003. The article is not as irreverent as the heading may suggest. - Ed.

A crore is equal to 10 million. Current exchange rate: US$ 1= Rs.45. – Ed.

A deduction is allowed to the donor under section 80G only where a temple, church, mosque etc. is notified as a place of public renown and the money is required for repair or renovation of the structure. - Ed.]

(22-Aug-03)

141: CONTRIBUTION IN KIND

Two persons have been arrested for stealing 10 kgs of hair offered by the devotees at Shri Venkateshwar Temple in Andhra Pradesh, India. This is the fifth such attempt in recent years.

Devotees get their heads shaved as part of their religious vows at Tirupathi. The hair is graded and sold by the temple trust through public auctions. According to the reporter it is estimated to fetch Rs.50 crores per year. The trust is managed by the Government.

[References:
'A bad hair day for two Andhra thieves', p.1, Pioneer, Delhi. 14-August-2003

AccountAble 61: Tax Relief on donations. The donation of hair is not tax-deductible.]
Can an NGO make profits? Or generate income? People often get confused on this issue. The ICAI’s NGO guide provides some useful clarity:

“‘Not-for-profit’ does not mean the organisation must run at a perpetual loss.... An NPO may certainly derive profit from extension of services or sale of products. What it cannot do is distribute the profits among trustees...etc. In other words, the NPO may be ‘income-generating’ or ‘profit-making’, but it cannot be ‘profit-distributing’.”

[References:
Para 2.8, P. 9; ‘Technical Guide on Accounting and Auditing in Not-for-Profit Organisations’, 2003, Research Committee of ICAI]

139: MORE ON ICAI TECHNICAL GUIDE

The ICAI’s ‘Technical Guide on Accounting and Auditing in Not-for-Profit Organisations’ has generated a lot of excitement in the NGO and accounting circles.

Mrs. Rozmin N. Ajani, FCA, has drafted the comprehensive guide. The draft was thoroughly reviewed by the ICAI research Committee, and finalized only after inviting comments from a wide section of people.

Here is what the Lepra India web-site says about the effort:

“LEPRA India sets recommended guidelines. Mrs Rozmin Ajani, Head of Finance & Administration for LEPRA India, was asked to give a presentation on how Non-Profit Organisations within India raised funds, at a conference held in Bangalore in August. This was an extremely prestigious conference attended by Government, Finance Professionals, and representatives of other Non Profit Organisations.

As a result of Mrs Ajani’s presentation, she was requested by the Institute of Chartered Accountants for India to produce accounting and auditing guidelines to be used by all Non-Profit Organisations in India. To assist her in this task she recently spent 10 days in England with Ian Gibbons, Finance Director of LEPRA, formulating the content needed for the guidelines and look at the procedures followed in England under the Statement of Recommended Practice.

This is a extremely important assignment and following on from the input that LEPRA India had into the last World Bank loan shows the continued high regard that LEPRA is held in India.”

[References:
‘Technical Guide on Accounting and Auditing in Not-for-Profit Organisations’, 2003, Research Committee of ICAI
138: WORKING OUTSIDE INDIA

Can a non-profit registered in India spend money on international welfare?

Yes. There is no restriction on spending the money under FCRA.

Will the Income Tax people also allow this as an expense?

Only if the money is spent to ‘promote international welfare in which India is interested...’.

[References:
Sec.11(1)(c)(i) of Income Tax Act, 1961. Applicable in India only

You are, of course, free to spend the 15% leftover from the minimum spending requirement of 85% in any way appropriate for your organisation. -Ed.

FCRA: Foreign Contribution (Regulation) Act, 1976. Applicable in India only]

(13-Jun-03)

137: ICAI ON NGOS

The Institute of Chartered Accountants of India has come out with a ‘Technical Guide on Accounting and Auditing in Not-for-Profit Organisations’.

The 195-page guide focuses on applying the existing accounting and auditing standards to the not-for-profit organisations. It also provides illustrative formats for financial statements and audit report of not-for-profit organisations.

[References:
‘Technical Guide on Accounting and Auditing in Not-for-Profit Organisations’, 2003, Research Committee of ICAI]

(11-Jun-03)

136: CRA FOR FUND-RAISERS?

The Law Commission has suggested setting up a Contribution Regulatory Authority (CRA) to monitor fund-raising in India. The focus of the CRA appears to be fund-raising that follows a natural calamity, such as the Orissa cyclone or the Gujarat earthquake.

The CRA will have a full time chairman. It will also have members from various disciplines, including five members from NGOs, media, legal or medical profession.

According to the consultation paper, the fund-raisers will have to be registered with the district collector. They should also have at least three years’ experience in social service before they can get registration.

[References:
“Law panel moots new rules for fund-raisers”, Times of India, New Delhi, 4-June-2003, P. 11]

(10-Jun-03)
135: NO MORE AID...

The Government of India has decided not to accept any more bilateral aid from countries with ‘smaller’ packages. These countries will be encouraged to work directly with Indian NGOs instead of with the Government of India.

This decision will not affect aid from larger donors such as USA, UK and Japan.

[References:

(9-Jun-03)

134: BUDGET FOR 2003-04

For the last several years, the Government has been tinkering with non-profit taxation. This year also, Dr. Kelkar’s committee had made some important suggestions relating to NGO taxation.

However, the budget this year has been quite different – in this respect at least. There has been no significant change in tax provisions affecting NGOs.

Should we feel worried at this neglect of the NGO sector? Or perhaps feel relieved...

[References:

A new proviso is being inserted in section 11(3A). This proviso would be relevant if an NGO was being dissolved. – Ed.]

(4-Mar-03)

133: DR. KELKAR’S REPORT – 80G LIMIT

The overall ceiling of 10% under 80G may also go. Presently deductions under 80G (for donations to NGOs etc.) are limited to 10% of income. Obviously, the Government believes that people should be charitable, but not too charitable!

The committee feels otherwise. It has suggested that people should be allowed to donate as much as they want – even 100% of their income.

So what happens when you donate 100% of your income to a charity? Let’s say your income is Rs. 2,00,000. You have donated all of this to NGOs. Is it all over now? Unfortunately no.

Deductible amount is 50% i.e. Rs.1,00,000. Tax credit @ 20% of this comes to Rs.20,000. Tax on Rs. 2,00,000 comes to Rs.35,700. What is the difference?

Rs.15,700. And that is the additional amount you have to pay to the Government as income tax!

[References:
Report of the Task Force on Direct Taxes (Kelkar Committee; Dec-2002; http://.finmin.nic.in/kelkar/direct_taxes_index.htm; Extracts can be viewed at www.AccountAid.net]

(26-Feb-03)
132: DR. KELKAR’S REPORT – 80G DEDUCTION

Remember Dr. Kelkar’s consultation paper? The Task Force released the final report on 27th December 2002. It has suggested that deduction for donations under section 80G be allowed as a tax-credit of 20% of the deductible amount. Sounds confusing?

The report clears away the confusion by giving an example: Suppose you donate Rs.1,000 to a charity. How much is the deductible amount? 50% of this. That comes to Rs.500. How much will be the tax credit? 20% of this. So it will come to Rs.100.

How is this different from the present scheme? Presently a person with high income gets a higher tax benefit. Let’s say that your taxable income is 2,00,000. Your tax benefit will come to Rs.(1,000 x 50% x 30%), or Rs.150.

However, suppose your income is Rs.1,50,000. Your marginal tax rate will be 20%. So your deduction will be lower at Rs.(1,000 x 50% x 20%), or Rs.100.

Obviously the committee was concerned that the present tax treatment is ‘inequitable’. So it has reduced the tax deduction to a more ‘equitable’ figure for all.

How we wish that the committee were willing to apply the same logic of equity to the tax-rates also!

[References:
Report of the Task Force on Direct Taxes (Kelkar Committee; Dec-2002; http://finmin.nic.in/kelkar/direct_taxes_index.htm;
Extracts can be viewed at www.AccountAid.net]

(26-Feb-03)

131: FATF REPORT AND RISK MANAGEMENT

How should donor agencies respond to these developments?

Should they close down their international programs? Or shrink their funding to give only where they are absolutely certain of the grantees? This way they can avoid the risk of their funds falling in wrong hands. This is called Risk Minimization.

Fortunately, there is a middle path, called Risk Management.

This involves accepting the fact that grant-making involves risk-taking. Latent risk exists in every grant. Therefore, you can set up procedures to assess the risk of a particular grant at the beginning.

You should also design procedures to manage or optimise the risk.

Finally, you should know how to handle the latent risk if it crystallises into evident risk.

[References:

Risk-management will be discussed in detail at the AccountAid Workshop for donor agencies on 11th and 12th February ’03. More details about the workshop at www.AccountAid.net. – Ed.
130: CHARITIES AND FUNDING OF TERROR

Are charities really used for financing terror? There is not much clarity.

There have been isolated instances where funds meant for charity have been diverted to fund terror or pseudo-charities have been used as conduits for financing terror operations.

One such case appears to be that of Benevolence International Foundation, based in Chicago, which apparently was passing on funds to Al Qaeda. In India also, there have been some cases where charities were used to pass funds to terrorist networks in J&K.

On the other hand, International Development Foundation, an Islamic NGO based in UK, was recently cleared by the British Charity Commission of similar allegations.

However, it is becoming clearer that one way of the other, charities are caught in this crossfire. They may, therefore, have to be prepared for closer regulation and scrutiny of their accounts. They may also have to become more careful about selection of their partners.... The resulting uncertainty and press coverage may also have a negative effect on their fund-raising from private sources.

[References:
AccountAid Capsules 54, 66, 126, 127, 129. www.AccountAid.net
“Charity Commission - Charity cleared of terror links”, Aug-02 http://www.cfdg.org.uk/topic82.asp

(24-Dec-02)

129: NEW US GUIDELINES TO PREVENT TERROR FUNDING

U.S. Government has recently issued new guidelines for U.S. based charities.

These call for increased scrutiny of grantees’ background and finances before a grant is made. The guidelines are ‘voluntary’ – compliance may reduce chances of a charity’s funds being blocked by the U.S. Government.

These are likely to affect NGOs around the world, including India. U.S. based charities sent Rs.1,493 crores to Indian non-profits in 2000-01 – this comes to 33% of the total FCRA flows during the year.

The move may also generate a ‘chilling effect’ in U.S. fund-raising, as individual donors may become more worried about where their funds might end up.

[References:
AccountAid Capsules 126 and 127. www.AccountAid.net

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128: FOREIGN AID THROUGH MINISTRY OF FINANCE – FOR GOVT. NGOS ONLY!

Remember the confusion over news-reports regarding the above? At least two newspapers from Kerala had reported that foreign contribution to Indian NGOs would now be routed through the Ministry of Finance.

The news reports did not carry any file reference – Ministry of Finance and Ministry of Home Affairs both were unable to help without a definite reference.

The matter has now been cleared up. The changed procedure applies only to societies, trusts etc. sponsored or set up by the Government.

It does not apply to any other NGO or non-profit organisation.

References:
AccountAid Capsule 115 at [www.AccountAid.net](http://www.AccountAid.net)


127: FATF REPORT ON ABUSE OF NON-PROFITS

The FATF (Financial Action Task Force on Money Laundering) was set up in 1989 by G-7. It currently has 28 member countries.

Recently it has come out with an 8-page document titled ‘Combating the Abuse of Non-profit Organisations’. The document details International Best Practices in this area.

The document focuses on abuse of non-profits for channelling terror funds. It also gives an idea of the international attention that this subject has drawn. In our view, it is likely to generate significant changes in the way Governments look at non-profits.

Another related document (Typologies) points out that Trusts (as compared to societies or non-profit companies) are preferred for money-laundering, as these can be set up easily in most countries, with little or no identification trail.

References:
AccountAid Capsules 54, 66, 126. [www.AccountAid.net](http://www.AccountAid.net)


126: CHARITIES, AUDITORS AND TERRORISTS

The Saudi Government has decided that auditors are an invaluable weapon in fighting terrorists. Terrorists are sometimes funded through charity conduits. So they have set up a High commission to oversee charities. From now on, all charities in Saudi Arabia will have to get their accounts audited.

Earlier this was not the case. There is no income tax in Saudi Arabia, so no one files a return of income. Charities are also not required to file any return or financial statements.

So we once again have the setting for the classic question, which remains unanswered till date: “Which is mightier: [a bunch of coloured pencils] or the sword?”

[References:

(4-Dec-02)

125: FCRA AND MACCS

Does a mutually-aided credit cooperative society (MACCS) also need FCRA registration, if they plan to receive foreign funds?

The answer to this also appears to be ‘yes’. These are ‘associations’ within the meaning of section 2(1)(a). Further, their program may fall within the definition of ‘economic’ programs listed in section 6(1) of FCRA.

[References:

Five categories under section 6(1) are: cultural, economic, educational, religious or social.]

(18-Nov-02)

124: FCRA AND COOPERATIVES

Does a cooperative society also need FCRA registration, if they plan to receive foreign funds?

The answer is ‘yes’. These are ‘associations’ within the meaning of section 2(1)(a). Further, their program normally falls within the definition of ‘economic’ programs listed in section 6(1) of FCRA.

Some examples where cooperatives have obtained FCRA registration:

1. Indian Farm Forestry Development Cooperative Limited, Delhi
2. National Federation Of Fishermen’s Cooperatives Ltd., Delhi
3. Dharampur Tal Carpet & Handicraft Cooperative Society, Valsad
4. St. Joseph’s Cooperative Farming Society Ltd., Rampur
5. Tibetan Multipurpose Cooperative Society, Distt. Lohit
6. Sikkim Co-Operative Milk Producers' Union Ltd., Gangtok
7. Malabar Region Co-Op Milk Producers Union Ltd., Kozhikode
8. Sri Gopal Milk Producers Sahakari Mandali Ltd., Bhavnagar

References:


National Dairy Development Board is associated with the Amul group of cooperatives. Other group cooperatives apparently do not have FCRA.

Five categories of section 6(1) are: cultural, economic, educational, religious or social.

(16-Nov-02)

123: FCRA AND PRIVATE COMPANIES

Does a private limited company need FCRA registration, if they are carrying out development activities?

The answer seems to be ‘yes’. These are ‘associations’ within the meaning of section 2(1)(a). Further, if they have a program which falls within one of the five categories of section 6(1), then they may need FCRA registration.

There are several examples where private companies have been granted FCRA registration:

1. Development Services (India) Pvt. Ltd., Chennai
2. The Siloam Youth And Children's Aid Mission Pvt. Ltd., Chennai
3. Services Association Of SDA Pvt. Ltd., Hosur
5. Progressive Research Aids Pvt. Ltd., Pune
6. The Poona Catholic Educational Association Pvt. Ltd., Pune
7. Good Books Trust Association Pvt. Ltd., Ranchi
8. Theosophy Company India Pvt. Ltd., Mumbai
10. The Vizagapatam Diocesan Corporation Pvt. Ltd., Vishakhapatnam

References:


Five categories of section 6(1) are: cultural, economic, educational, religious or social.
122: KELKAR COMMITTEE – THE GRADING SYSTEM

All charities will be required to file tax returns. Some will be selected for scrutiny. This will be done using a computerised risk assessment method.

The assessing officer will examine the case. If he/she feels that the charity may not be charitable, the case will be referred to a specialist rating agency.

The rating agency will be selected from a panel drawn up by the C&AG. The rating agency will examine the case. It will grade the charity.

There will be only three grades: A+, A, B. What do these mean?

A+: Definitely charitable.

A: Charitable this year, but may not be charitable next year.

B: Not charitable.

A+ can rest on its laurels. A should tread with care. B will lose its tax exemption.

[References:
Consultation Paper: Task Force On Direct Taxes (Kelkar Committee; Nov-2002; http://finmin.nic.in/kelkar/Full_Report.pdf; Extracts can be viewed at www.AccountAid.net]

121: KELKAR COMMITTEE – DELETE 10(23C)

Several people complained to the Task Force that approvals under section 10(23C) take a long time. The Task force has noted that this is a natural problem with specific approvals. Therefore, section 10(23C) (iv)/(v) should be deleted. Instead all trusts should get the same treatment under section 11 to 13.

Remember Marie Antoinette of France? The story goes that someone told her that people have no bread to eat. She responded with becoming innocence: ‘Why don’t they eat cakes then?’

[References:
Consultation Paper: Task Force On Direct Taxes (Kelkar Committee; Nov-2002; http://finmin.nic.in/kelkar/Full_Report.pdf; Extracts can be viewed at www.AccountAid.net]

The Marie Antoinette story may or may not be true. – Ed.]

(8-Nov-02)
120: KELKAR COMMITTEE – WHITTLING DOWN 80GGA

The same treatment has been suggested for 80GGA, 35(1)(ii)/(iii) also. This will result in some loss to bigger donors who may be paying tax at 30%

[References:
Consultation Paper: Task Force On Direct Taxes (Kelkar Committee; Nov-2002; http://finmin.nic.in/kelkar/Full_Report.pdf; Extracts can be viewed at www.AccountAid.net)

(8-Nov-02)

119: KELKAR COMMITTEE – A SWEETER 80G

At present donors get 50% deduction from taxable income u/s 80G for most of the donations to NGOs. The maximum marginal rate of tax is 30%. This means that presently the maximum tax benefit to a donor may range from 5% to 15%. Secondly, there is a ceiling of 10% of gross income on total donations u/s 80G.

Donations to priority segments (armed forces welfare funds, government relief funds, etc.) offer 100% deduction. Here the effective tax rebate ranges from 10% to 30%.

Kelkar Committee has suggested that everyone be offered the same tax rebate of 20%. The ceiling on donations should also be removed.

[References:
Consultation Paper: Task Force On Direct Taxes (Kelkar Committee; Nov-2002; http://finmin.nic.in/kelkar/Full_Report.pdf; Extracts can be viewed at www.AccountAid.net)

(8-Nov-02)

118: THE WORLD BANK’S BLACKLIST

As part of its campaign against corruption, the World Bank has put up a list of firms on its web-site. These are firms / individuals who will not be allowed to work with the World Bank for the period of debarment.

In most cases, they were debarred because they tried to bribe or influence World Bank officials.

A total of 71 firms / individuals have been listed. Following is a country-wise summary of the ineligible firms:

1. Ireland: 1
2. Netherlands: 1
3. Singapore: 1
4. India: 2
5. Canada: 2
6. UAE: 2  
7. Uzbekistan: 2  
8. Japan: 4  
10. USA: 7  
11. Sweden: 8  
12. United Kingdom: 37  

Looks as if someone had turned the Bribe Payers’ Index upside down, doesn’t it?  

[References:  
The list can be seen at http://www.worldbank.org/html/opr/procure/debarr.html Total exceeds 71 as 2 firms have offices in two countries each.  
Some of the names from Nigeria (3), UK (6) and USA (1) appear to belong to persons of Indian origin.  
See also:  
AccountAid Capsule 100: Barrett’s Believe it or Not...Corruption Worldwide  
AccountAid Capsule 117: Bribe Payers’ Index 2002 ]  
(21-Oct-02)  

117: BRIBE PAYERS’ INDEX 2002  

In May-02, Transparency International launched a new index: Bribe Payers’ Index.  
In part, this was due to constant criticism that the Corruption Index was not fair. It showed the developing countries in a poor light. Transparency International decided to do something about it.  
The following Bribe Payers’ Index is based on perception surveys in 15 emerging markets of Asia, Africa South America etc. (including India). The more honest are on top, the least honest at the bottom.  

1. Australia: 8.5  
2. Sweden: 8.4  
3. Switzerland: 8.4  
4. Austria: 8.2  
5. Canada: 8.1  
6. Netherlands: 7.8  
7. Belgium: 7.8  
8. United Kingdom: 6.9
Curiously, an index intended to make the developing countries feel better, ends up making them feel worse. As you can see, they are still at the bottom. The phrase domestic companies represent, in one lump, firms from the 15 countries that were surveyed!

One wonders why the bribe-seekers give out any contracts to foreign companies at all, when their own swadeshi companies are so much more obliging.

It is also heard that the index is proving very popular among bribe-seekers: it is helping them focus their bribe-seeking behaviour more accurately...

[References:
See also AccountAid Capsule 100: Barrett’s Believe it or Not...Corruption Worldwide]

(16-Sep-02)

116: LOST FUNDS / KICKBACK SHARES / WINDFALLS FROM AFRICA

Have you recently received such an e-mail message from Nigeria or another African country? Or this may be a fax or even a letter.

If you have, please do not, repeat, DO NOT, respond at all. Not even out of curiosity. Just press ‘Delete’.
This is a long standing, notorious scam operated by some criminal gangs mainly from Nigeria. They lure people into parting with sensitive financial information and misuse it. Sometimes people even go over to Africa to ‘sign the papers’ and then have to be ransomed.

The story and the e-mail addresses keep changing. But the windfall bait does not.

[References:

AccountAid Capsule 21: Fraud Warning for Charities. 21-Jun-01

Recently, a highly reputed Indian non-profit narrated to us how they had received such a message regarding an inheritance and wrote back, turning it down. – Ed.]

(13-Sep-02)

115: FOREIGN AID THROUGH MINISTRY OF FINANCE?

According to press reports from Kerala, the Central Government has made some changes in the way foreign aid is received:

- All organisations receiving foreign aid should apply to the respective state Governments.
- The bylaws, names and addresses of office bearers, brief history of the organisation, present area of operation, and FCRA clearance should be attached with the application.
- The state Government will forward the application to the Union Ministry of Finance. Ministry of Finance will then issue an NOC in deserving cases.
- The funds should be remitted to the Central Government’s account with RBI.
- The aid utilisation will be monitored by the Government and will be subject to audit by CAG.

The above is apparently based on an official release. The provisions apply across India, and not just to Kerala.

FCRA Department is not aware of this.

Can this be true? Out of a clear, blue sky? Strangely, this appears to have been reported only in Kerala.

[References:

“Fresh norms for foreign aid”, The New Indian Express, Cochin. 29-Aug-02

Also see Malayala Manorama of 29-Aug-02

NOC: No Objection Certificate

FCRA: Foreign Contribution (Regulation) Act, 1976. Applicable in India]

(13-Sep-02)
It now seems that Shri Anirudh Bahl, a journalist (became known for his work with Tehelka.com) has received Rs. 1.75 crores (75,000 British pounds + $ 250,000 at current exchange rates) as advance and royalties for a novel titled ‘Bunker 13’. The book is not yet available in the market.

The receivers would have to pay around 30% in income tax.

Do either of these transactions violate FCRA? Prima-facie, no. Judges and journalists are covered by restrictions in section 4. However, both the above payments fall within the exception in section 8.

Still, if it is proved that the payments were a conspiracy to bypass provisions of FCRA, then there can be problems for the receivers.

References:
http://news.indiainfo.com/spotlight/tehelka/20020723tehelka.html

Foreign Contribution (Regulation) Act, 1976. Applicable in India
(4-Sep-02)
112: GRANT MAKERS -- SWITCH YOUR GRANTS TO ACCRUAL BASIS...NOW!

From financial year 2002-03, you will have to spend at least 85% of your income. What happens if you are not able to pay out all your grants by 31st March '03?

The solution may be to switch the books to accrual basis. If you do this, then you can account for an outward grant in full, the moment your Board or Committee approves the grant and the grant agreement is signed.

Ideally this switch should be done for financial year 2001-02 itself, as there is no effect on tax this year. Switching the basis in 2002-03 will allow the Income Tax Department to recompute the income on the ground that there is a loss of tax revenue due to the switch.

Remember, you can still make the switch easily if your audit for the consolidated Balance Sheet for 2001-02 has not yet been completed. It does not matter that your FCRA books are on cash basis.

[References:

(26-August-02)

111: AND NOW ... PYRAMID CHARITIES!

Pyramid Schemes are highly controversial 'get-rich-quick' schemes where older members gets a percentage of the membership fees of new members. All pyramid schemes survive on positive cash flow. Sooner or later all crash.

Pyramid Schemes were invented in America. These resurfaced in India a few years ago. Pyramid schemes try to look like multi-level marketing (MLM) schemes by using a non-product as an anchor. No one really makes any money buying or selling the product. Everyone gets rich by slicing money from the entry fees of newer members.

The latest non-product, it seems, is charity. Pyramid Companies are now asking you to ‘donate’ to them and encourage others to donate. You get a percentage of whatever your downstream members donate!

After all, ‘Charity begins at home.’ is an old saying. In this case, it really does.

[References:
The ‘donation’ may be simply buying a non-product like a membership pack or may involve buying some low-value, high-price food product with a fancy name.

Also look for NourishTheChildren.com, HelpingHands.com, HumanitarianEffort.com, and American Cancer Aid Foundation. These organisations may or may not be involved in multi-level marketing. This is a complex legal question about which we are unable to express an opinion. – Ed.

Source: worldwidescam.com mail dated 25-Aug-02. More on this at http://www.worldwidescam.com/ntcalt.htm]

(26-August-02)

110: BIGGEST FCRA RECEIVERS IN 2000-01

The top three recipients of foreign contribution:
• Sri Sathya Sai Central Trust, Andhra Pradesh: Rs 88.18 crores. Received Rs. 50.2 crores in the previous year. Annual growth rate (5 years): 17%

• World Vision of India, Tamil Nadu: Rs 85.42 crores. Received Rs. 55.1 crores in the previous year. Annual growth rate (5 years): 26%.

• Watch Tower Bible and Tract Society India, Maharashtra: Rs 74.88 crores. Received 14.6 crores in 97-98. Annual growth (4 years): 72%. Associate of Watch Tower Bible and Tract Society, USA. According to MHA annual report, it seems that they did not file the FC-3 in 98-99 or 99-00.

More information about these three is given in AccountAble 64 and 65, available for viewing at www.AccountAid.net.

[References:
MHA web-site http://mha.nic.in/
FCRA stands for Foreign Contribution (Regulation) Act, 1976. Applicable to India]

(23-August-02)

109: HOW SAFE ARE ‘ACCOUNT PAYEE’ CHEQUES?

Most people think that a cheque crossed as ‘account payee’ can not be misused. Unfortunately this is not true.

An account payee cheque remains negotiable. It is within the discretion of a banker to collect or encash the cheque for someone else, provided it is endorsed to him or her.

Using this loophole in the Negotiable Instruments Act, there is a thriving scam in which people steal cheques from couriers or mail-boxes. These are ‘sold’ to others, who collect the money through connivance of some bank officers.

To prevent this from happening to your cheque, cross it as ‘account payee, not negotiable’. In such a case, you will be able recover the money from the collecting bank (if your cheque is encashed fraudulently).

[References:
AccountAble 9, 12, 66 at www.accountaid.net
Section 13 of The Negotiable Instrument Act, 1881. Applicable to India
Also see section 4 of Cheques Act, 1957 (applicable in Britain). However, in Britain, an account payee cheque loses negotiability (amendment made in 1994).]

(14-August-02)

108: BIGGEST FCRA DONORS IN 2000-01

The top three donors were all from USA:

1. World Vision International: Rs 80.43 crores. This is a big jump from the Rs.51.93 crores donated in 99-00. As a result they have moved up from the fourth place to first. Their contributions to India are now growing at 23% annually.
2. Foster Parents Plan International: Rs. 76.37 crores. Their grants had peaked at Rs.70.78 crores in 96-97, but now seem to be picking up again. However, they have lost the first place to World Vision International this year.

3. Watch Tower Bible and Tract Society: Rs. 68.11 crores. A new addition to the big league. This is the first time in five years that their name has appeared in the top 25 donors’ list.

More information about the first two is given in AccountAble 68, available for viewing at www.AccountAid.net.

References:
MHA web-site http://mha.nic.in/

Information about top donors is dependent on the receivers filing the FC-3 by the time MHA compiles its annual report. Funds from Watch Tower, USA are mainly given to its associate with the same name in India. See Capsule 108 for more.

FCRA stands for Foreign Contribution (Regulation) Act, 1976. Applicable to India

(13-August-02)

107: SURETY MONEY DEPOSIT

An NGO asks for an investigation into a purported ‘Aluminium Scam’. It offers to deposit Rs.1 crore as surety. The money will be forfeited if nothing is discovered.

The investigation may take a couple of years. In the meanwhile, what is the tax implication of this? Will the amount of deposit be allowed by the Income Tax people as application of funds?

If it is not allowed, then will the NGO have to pay income tax, as its application of funds is less than 85% (minimum required expenditure to maintain tax-exempt status)?

References:


(12-August-02)

106: BIGGEST FCRA DONOR COUNTRIES IN 2000-01

USA tops the list of donor countries with Rs 1,492.62 crores. This is a huge jump from Rs.1,086.32 crores in 99-00. Inflows from USA have been growing at over 26% annually for the last five years.

Next comes United Kingdom with Rs 677.59 crores. In the previous year, this was Rs.662.73 crores. Growth in flows from UK appear to have slowed down this year – till last year the funds were growing at 30% annually (96-97 to 99-00).

Third on the list is Germany with Rs 664.51 crores. Growth in these funds is practically at a stand-still (5% annually for the last five years).

References:

MHA web-site http://mha.nic.in/
105: FC-3 FILED IN 2000-01

Only 14,598 associations filed their returns in 2000-01. The figure includes those who filed Nil return as well. This is about 60% compliance.

Average funds received per NGO came to Rs.31 lacs. In 92-93, this figure was Rs.15.5 lacs. This amounts to a compounded annual growth of 9% over the last nine years.

References:
MHA web-site http://mha.nic.in/

104: FCRA FLOWS IN 2000-01

A total of Rs. 4,535.23 crores was received in 2000-01. In the previous year, this was Rs.3,925 crores. The flow has been growing at 13.84% annually since 91-92, when it was just Rs.1,412 crores.

References:
MHA web-site http://mha.nic.in/

103: LOCAL CONTRIBUTION AND FCRA

Does your FCRA funded project require local contribution also? Be careful how you account for it.

Any local contribution, whether cash or in kind, can not be brought into FCRA account books.

This should be accounted in the General or Indian cash book and posted to another sub-ledger maintained for concerned project. Please note that this sub-ledger is part of the Indian set of books and is different from the FCRA project ledger.

Also do not include this local contribution in the FCRA Receipts & Payments Account when you file your FC-3. If you do, you may get a notice from FCRA ‘for mixing up local and FCRA funds’.

References:
Rule 8(1)(b) of Foreign Contribution (Regulation) Rules, 1976

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102: ESTABLISHMENT EXPENSES AND FCRA

The new FC-3 form has a separate item called ‘Establishment Expenses’. What should be included under this?

In our view, the 'Establishment Expenses' in form FC-3 mean the expenses required to maintain the establishment. These would include salary of administration staff, rent for main office, telephone, audit fees etc., which are not related to a particular activity.

Salary of the program staff can be shown as part of the relevant program / activity itself.

[References:
Form FC-3, revised 26-July-2001
FCRA stands for Foreign Contribution (Regulation) Act, 1976. Applicable to India] (16-July-02)

101: THE PEACEMAKER

The word ‘payment’ is a noun. It comes from the verb ‘pay’.

And where does ‘pay’ come from? It’s been used in English for more than 800 years.

It seems that the original root of ‘pay’ was the Latin word ‘pax’. ‘Pax’ means ‘peace’ (as in Pax Romana or the current ‘Pax Americana’...).

One of the Latin forms of ‘pax’ was ‘pacare’, which meant ‘pacify’. The idea was that you could pacify an angry creditor by paying him!

The French changed ‘pacare’ to ‘payer’. From there, it reached English in the 12th century as ‘pay’. (‘Well, he weened with this tiding for to pay David the king, ‘Cursor Mundi 1300 CE).

‘Pay’ was often used in the sense of ‘pacifying’ people till the 16th century. After that, this meaning died out.

For the last 500 years, ‘payment’ has been used only to mean ‘the act of giving money’.

And we all know, what a great peacemaker that can be!

[References:

(28-June-02)

100: BARRETT’S BELIEVE IT OR NOT...CORRUPTION WORLD-WIDE

Many think Indians are a corrupt lot. This is quite contrary to what you and we may experience in the street or in a village. So let’s look at it from another angle. How corrupt are others? David Barrett worked out the following figures for the world in 1990:

- Computer crime $44 billion (Rs. 2,20,000 crores)
- Credit Card fraud $500 million (Rs. 2,500 crores)
- Ecclesiastical crime $1.1 billion (Rs. 5,500 crores)
ACCOUNT AID

- Shoplifting $90 billion (Rs. 4,50,000 crores)
- Tax cheating $180 billion (Rs. 9,00,000 crores)

If we look carefully at the nature of cheating above, ‘ordinary white-collar citizens’ would have siphoned off most of this money.

Secondly, the figures are from late eighties, when computers and credit card had just entered India. Few shops, if any, employed shop detectives or closed-circuit surveillance.

So India’s share of the above figures would be very nominal.

Where does that leave us: feeling better,…or trying hard to catch up with the world?!

[References:

The above listing does not include international organised crime ($700 billion; Rs. 35,00,000 crores) or money-laundering through banks ($1.3 trillions; Rs.65,00,000 crores).

This perception about India is reinforced by publications like “Index of Corruption”, [Transparency International] which placed India as 62, on a list of 1-100 (1 being least corrupt). It is our submission that the Index gives a distorted picture because it does not take honesty levels of ordinary citizens into account. – Ed.

In 90-91, India’s GDP was Rs.535,000 crores at current market prices. – Ed. ]

(22-June-02)

99: ACCUMULATION UP TO 15% ALLOWED

The Finance Minister has modified the proposed amendments to section 10(23C) and section 11. NPOs can now accumulate up to 15% of their income.

Till last year (March 2002), this figure stood at 25%. The Budget suggested bringing this down to 0%. Now it appears that the figure will settle down at 15%.

Narrow shave, wasn’t it?

[References:
Amendments proposed to Section 10(23C) and 11 in Union Budget 2002-03

The above is based on news reports, presented here for information only. The final law may be different. The interpretation may also vary somewhat on a deeper study / in a specific case.

The above amendment also proves Einstein’s Theory of Relativity. 15% accumulation sounds much better than 0%, though actually it is much worse than 25%. – Ed.

AccountAid Capsules 85, 93 and 94

NPO: Non-profit organization

“Trusts can accumulate 15% of income”
98: ELECTION CANDIDATES AND FCRA

An NGO has FCRA registration. Can the Chief Functionary of this NGO fight elections to the Assembly or Parliament?

Yes. The NGO is distinct from its office-bearers. Therefore, there is no need to resign from the NGO before filing nomination papers.

A clear example of this principle is Rajiv Gandhi Foundation, which is chaired by Mrs. Sonia Gandhi, leader of the opposition.

[References:

Section 4 of FCRA

Rajiv Gandhi Foundation at [http://www.rgfindia.com/rgf2/about.htm](http://www.rgfindia.com/rgf2/about.htm). The Foundation is registered under FCRA (see [http://www.indiaconnect.com/rgfindia/donforgen.htm](http://www.indiaconnect.com/rgfindia/donforgen.htm)).

FCRA stands for Foreign Contribution (Regulation) Act, 1976. Applicable to India]

97: TAX EXEMPTION FOR CHURCHES IN USA

Under the US Tax laws, churches are exempt from income tax. Further, they are not required to file any return of income with the authorities. This exemption extends to other church-related organizations also.

Under Indian Tax laws, all ‘public religious organizations’ are also exempt from tax. However, they are required to file tax returns, just like other NPOs in India.

[References:

AccountAid Capsule 1: Public Disclosure in USA

Under US tax laws, all religious organisations (mosques, temples, synagogues, gurudwaras, etc.) are called ‘churches’. This benefit is, therefore, available to all faiths. Indian tax laws use the term ‘for public religious purposes’ instead of a faith-specific term.

US religious organisations have an advantage over other NPOs who have to file form 990 each year. Form 990 is also open to public. – Ed.

Section 11, Income Tax Act, 1961. Applicable to India]

96: RURAL DEVELOPMENT AND FC-3

The new FC-3 has at least 55 heads of expenditure. It appears quite confusing. Instead of using so many heads, can you classify all your expenditure under one head such as ‘Rural Development’?

Some NGOs follow this procedure. It is simple and convenient.
However, FCRA Department does not appreciate this.

Their argument is that the activity must be specified more clearly. You should use as many heads as required, depending on the nature of expenditure.

But if you can’t find a suitable heading at all, use number ‘56: Activities other than those mentioned above’.

[References:
FCRA stands for Foreign Contribution (Regulation) Act, 1976. Applicable to India]

(8-May-02)

95: ARE YOU USING THE LATEST FC-3?

Form FC-3 was last revised on 26-July-2001. When you file this year’s FC-3, make sure you are using the latest one.

How to check whether you are using the latest form? This one has a list of 56 activities – the previous one only had 27. Also, the new form asks you to show the amount of interest earned on FC funds.

[References:
FCRA stands for Foreign Contribution (Regulation) Act, 1976. Applicable to India]

(8-May-02)

94: BUDGET 2002 –NO GRANTS FROM ACCUMULATED FUNDS (PART 2)

... contd.

Why has the Government proposed such a change? It may have thought that people will be able to avoid the 100% expenditure requirement by passing the unspent balance around*. This change will help the Government put a stop to it. However, in this process, Indian grant-making agencies may fold up. Financial networks** will become unviable. However, foreign grant-makers will remain unaffected.

One is reminded of a Panchatantra story at this point: A king had a faithful monkey for a bodyguard. One day the monkey was fanning the king while he slept. Just then a small fly started buzzing around the king. The monkey tried to wave the fly away using his fan. When this did not work, he picked up the king’s sword and slashed at the fly, which had now settled on the king’s chest. The fly flew away, and the king was ...

So as Kartak, the jackal says to his friend Damanak in Panchatantra, it is better to have an intelligent enemy rather than a foolish friend...

[References:
Proposed amendments to Section 10(23C) and 11.
Union Budget 2002-03 http://indiabudget.nic.in/ub2002-03/bill.htm]
The above are budget proposals, presented here for discussion only. The final law may be different. The interpretation may also vary somewhat on a deeper study / in a specific case.

NPO: Non-profit organization

Section references to Income Tax Act, 1961. Applicable to India

* LJM passes on its unspent balance to XYZ as a grant in year 3, who in turn gives to ABC in year 5, who in turn passes it back as a donation to LJM in year 7.

** Where one NPO receives a consolidated grant and in turn makes grants to 10-20 other smaller NPOs.


(23-Apr-02)

93: BUDGET 2002 – NO GRANTS FROM ACCUMULATED FUNDS (PART 1)

Many NPOs in India make grants to others. These organisations are allowed a deduction for the grants (made) from their taxable income. The NPOs are also allowed to accumulate up to 25% of their income for future use.

The new Budget has proposed that NPOs must spend 100% of the income in the year of receipt. If this is not possible, then they can accumulate it for a specific project. The accumulated amount must be spent within the next four years. Spent, on what?

If the new Budget bill is passed, then:

- The expenditure from accumulated funds must be direct expenditure (spent by the NPO itself). This means that accumulated funds cannot be used to make grants to other organisations.

This does not make a difference to most implementing NPOs. However, grant-making agencies will be in great difficulty. They must make their grants in the first year itself. Or pay 35% tax on the grants made next year!

....contd.

[References:

Proposed amendments to Section 10(23C) and 11.

Union Budget 2002-03 http://indiabudget.nic.in/ub2002-03/bill.htm

The above are budget proposals, presented here for discussion only. The final law may be different. The interpretation may also vary somewhat on a deeper study / in a specific case.

NPO: Non-profit organization

Section references to Income Tax Act, 1961. Applicable to India]

(23-Apr-02)

92: THE INFAMOUS FCRA NOTICES OF SEP-99 (PART 3)

This story has an important insight into how FCRA works.
We all know that it restricts political activity with foreign funds.
But now we know that FCRA also restricts organizations funded by foreign sources from getting into election politics at all.
Does this mean that NGOs cannot get involved in politics? No.
It means that NGOs getting foreign funds should not get involved in election politics or related campaigns.

[References:
FCRA stands for Foreign Contribution (Regulation) Act, 1976. Applicable to India]

(25-Mar-02)

91: THE INFAMOUS FCRA NOTICES OF SEP-99 (PART 2)

However, the ad campaign had cost a lot of money. The question remained: where did the money come from?

For an answer to this, we turn to Humanscape of November 1999. Meher Pestonji interviewed Javed Anand and Teesta Setalwad, editors of ‘Communalism Combat’:

**Question:** The ad campaign is reported to have cost approximately 1.5 crores. Who funded it?

**Answer:** The Congress, CPI, CPM and about ten prominent individuals.

[References:
Humanscape, Nov-99. Article available on request.
FCRA stands for Foreign Contribution (Regulation) Act, 1976. Applicable to India]

(25-Mar-02)

90: THE INFAMOUS FCRA NOTICES OF SEP-99 (PART 1)

In September 1999, Ministry of Home Affairs (MHA) issued notices to 11 NGOs under section 5. These organizations had signed some press advertisements issued by ‘Communalism Combat’ during the Lok Sabha election campaign (Aug-Sep ’99).

MHA asked these NGOs to explain why they should not be listed as organizations of a political nature. Some BJP members argued that money had come from foreign sources.

After a heated debate in NGO circles and the Press, the furore died down after a while. No one lost their FCRA either.

[References:
Irrespective of hair-splitting, the advertisements clearly had a political purpose and were released during elections. They carried more weight because they were ‘issued’ by NGOs and not a political party. – Ed.
Also see AccountAid Capsules 9 for Mr. Vidyasagar Rao’s statement; AccountAid Capsule 89 for explanation of section 5 of FCRA.
FCRA stands for Foreign Contribution (Regulation) Act, 1976. Applicable to India]
89: ORGANISATIONS OF A POLITICAL NATURE

Organisations of a political nature (not being political parties) must seek prior-permission before accepting foreign funds. What is the basis for declaring an organization as being of political nature?

The Government must make up its mind about this, based on the organisation’s:

- Activities;
- Programme;
- Ideology [propagated by it]; or,
- Relationship with activities of a political party.

By May’98, some 128 organisations had been notified under this provision.

[References:
Also see AccountAid Capsule 36 for a list of the organizations notified under this provision.
See Capsule 16 for Congress (I) plans to set up a foundation for political education.
Section 5 of FCRA
FCRA stands for Foreign Contribution (Regulation) Act, 1976. Applicable to India]

88: FOREIGN CONTRIBUTION AND GOVERNMENT SERVANTS

Section 4 of FCRA bars people in sensitive positions from accepting foreign contribution. In such a case, can a serving Government officer accept salary payments from a foreign source?

Yes. Section 8 allows such payments without prior approval or reporting.

However, all Government officers must meet standard service rules. Accordingly, the Officer has to obtain permission from the Government to take up such a job on deputation.

[References:
FCRA stands for Foreign Contribution (Regulation) Act, 1976. Applicable to India]

87: BUDGET 2002 VS. SHOME COMMITTEE REPORT

What happened to the much-feared Shome Committee report? Here’s a quick status report:

Shome Committee recommended that:

1. NPOs getting less than 90% of their income as donations should be taxed as ‘commercial NPOs’.
   [Status: Not accepted]
2. Donors should get only 10% tax credit for 80G / 35AC donations. [Status: Not accepted]

3. NPOS exempt under sec. 10(23C) should also file return. [Status: Accepted]

[References:
Proposed amendment to Section 10(23C).
Union Budget 2002-03 http://indiabudget.nic.in/ub2002-03/bill.htm

The above are budget proposals, presented here for discussion only. The final law may be different. The interpretation may also vary somewhat on a deeper study / in a specific case.

NPO: Non-profit organization
‘Not accepted’ here only means ‘not accepted so far’

AccountAid Capsules 76-80
Section references to Income Tax Act, 1961. Applicable to India]

(1-Mar-02)

86: BUDGET 2002 – SECTION 10(23) NPOS MUST FILE RETURN

Presently NPOs exempt under section 10(23) need not file an annual tax return. NPOs registered under section 12A have to file a return.

If the new Budget bill is passed, then:

▪ NPOs exempted under section 10(23C) will also have to file annual income tax return.

This is in line with the Shome Committee recommendations.

[References:
Proposed amendment to Section 10(23C).
Union Budget 2002-03 http://indiabudget.nic.in/ub2002-03/bill.htm

The above are budget proposals, presented here for discussion only. The final law may be different. The interpretation may also vary somewhat on a deeper study / in a specific case.

NPO: Non-profit organization

AccountAid Capsules 76-80

Section references to Income Tax Act, 1961. Applicable to India]

(1-Mar-02)

85: BUDGET 2002 – SPEND 100% OF YOUR INCOME

At present NPOs exempt under section 10(23C) or registered under section 12A must spend 75% of their income each year. The rest can be accumulated for an indefinite period.

If the new Budget bill is passed, then:

▪ All NPOS will have to spend 100% of their income each year.
However, the NPO will still be allowed to accumulate part of its income for spending over next five years. This must be for a specified project / purpose.

[References:
Proposed amendment to Section 10(23C) and 11.
Union Budget 2002-03 http://indiabudget.nic.in/ub2002-03/bill.htm
The above are budget proposals, presented here for discussion only. The final law may be different. The interpretation may also vary somewhat on a deeper study / in a specific case.
NPO: Non-profit organization
Section references to Income Tax Act, 1961. Applicable to India]

(1-Mar-02)

84: BUDGET 2002 – NPOS NEED NOT PUBLISH ACCOUNTS

Last year, section 10(23) and section 12A were amended. NPOs with income exceeding Rs.1 crore were asked to publish their abridged accounts in a local newspaper. This was meant to encourage transparency and accountability.

If the new Budget bill is passed, then:

- NPOs will no longer be required to publish accounts. Accounts for 2001-02 also need not be published.

This amendment is proposed as many NPOs wrote to the Ministry saying that the information about their income can be misused by anti-social elements (extortion, black-mail etc.).

[References:
Proposed amendment to Section 10(23C) and 12A.
Union Budget 2002-03 http://indiabudget.nic.in/ub2002-03/bill.htm
The above are budget proposals, presented here for discussion only. The final law may be different. The interpretation may also vary somewhat on a deeper study / in a specific case.
NPO: Non-profit organization
Crore= 10 million; Rs. 1 crore =~ 200,000 US Dollars
Section references to Income Tax Act, 1961. Applicable to India]

(1-Mar-02)

83: BUDGET 2002 – MISUSING 35AC MADE DIFFICULT

If a project approved under 35AC is not implemented properly, then approval can be withdrawn under sub-section 4 or 5 after a show-cause notice. However, the section does not provide any penalty for funds misused.

If the new Budget bill is passed, then:
The total amount raised under section 35AC will be added to the income of the NGO / company. The NGO / company will have to pay tax at the maximum marginal rate on the total amount added back.

This provision appears to be aimed at deterring some dummy organizations, which issue inflated receipts for donations.

(References:
Proposed amendment to Section 35AC.
Union Budget 2002-03 http://indiabudget.nic.in/ub2002-03/bill.htm

The above are budget proposals, presented here for discussion only. The final law may be different. The interpretation may also vary somewhat on a deeper study / in a specific case.

AccountAble 17: Raising Funds in India
AccountAble 61: Tax Relief on Donations

Section references to Income Tax Act, 1961. Applicable to India]

(1-Mar-02)

82: BUDGET 2002 – 35CCB MAY END SOON

35CCB relates to donations for organizations engaged in conservation of natural resources or afforestation. Presently 100% deduction is allowed under this section.

If the new Budget bill is passed, then:

- No deduction will be provided for donations made to NGOs approved under section 35CCB after 31-Mar-02.

However, NGOs working in this area will be able to get approval under section 35AC instead.

(References:
Proposed amendment to Section 80GGA(2).
Union Budget 2002-03 http://indiabudget.nic.in/ub2002-03/bill.htm

The above are budget proposals, presented here for discussion only. The final law may be different. The interpretation may also vary somewhat on a deeper study / in a specific case.

AccountAble 61: Tax Relief on Donations

Section references to Income Tax Act, 1961. Applicable to India]

(1-Mar-02)

81: BUDGET 2002 – GUJARAT EARTHQUAKE DATE TO BE EXTENDED

If the new Budget bill is passed, then:

- The time limit for utilization of Gujarat Earthquake funds [received under section 80G(2)(d)] will be extended to 31st March 2003.
Unspent funds as at 31-Mar-03 will go to PM’s Relief Fund.

Accounts will have to be submitted by 30-Jun-03.

[References:

Proposed amendment to Section 80G(5C).

Union Budget 2002-03 http://indiabudget.nic.in/ub2002-03/bill.htm

The above are budget proposals, presented here for discussion only. The final law may be different. The interpretation may also vary somewhat on a deeper study / in a specific case.

Section references to Income Tax Act, 1961. Applicable to India]

(1-Mar-02)

80: SHOME REPORT – BANISH ALL CHARITY

Contd. From Capsule 79...

Will the Shome Committee report succeed in banishing charity from India?

Highly unlikely. First, the recommendations are not in tune with general public sentiment.

Second, the Government is quite intelligent and is unlikely to accept something so outlandish.

Third, even if the recommendations are implemented, the work will continue as before. Only the nomenclature of transactions will change: sales will be called donations; project-specific grants will be shown as lump-sum grants.

At this stage, it is good to remember this: What do you get by asking for the impossible?

Nothing.

[References:


(23-Feb-02)

79: SHOME REPORT – RS.3000 CRORES IN NGO TAXES...

Contd. From Capsule 78...

And why should the Finance Ministry accept these recommendations? Well, by exempting all NPOs, the Government is losing Rs.3,317 crores annually. By taxing most of them, the Government could raise about 3,000 crores in taxes.

Sounds like a lot of money? Well, 98% marginal rate of tax also sounded like big money in the 1960s. What did it get us? A national habit of evading taxes. We are still trying to figure out the size of ‘underground economy’, which it spawned.

Obviously, this suggestion seems to be based on the assumption that all NPOs are simply waiting breathlessly for an opportunity to pay tax on their grants.
Now we come to the juicy part. If Shome Committee recommendations are accepted, 98% of the NGOs will end up paying Income Tax! How?

Most of the NGOs work with project grants. Many get income from sale of handicrafts etc. There are very few NGOs who get 10% or more as donations from public.

Same will be the fate of old corpus based trusts. They depend on investment income – not on public donations.

[References:

NGOs: Non-governmental organizations. The term usually excludes religious trusts.
Applicable to India]
(23-Feb-02)

77: SHOME REPORT – COMMERCIAL NPOS

Contd. From Capsule 76...

The second one talks about overall exemption policy for NPOs.

According to the Committee, commercial NPOs should not be entitled to income tax exemption. No one would argue with that.

However, the catch is in deciding who is a commercial NPO. According to the committee, any one who is not a donative NPO must be a commercial NPO.

The committee defines a ‘donative NPO’ as one who gets 90% of its income through donations.

One more ‘small’ twist: earmarked project grants are not to be called ‘donations’ for this purpose!

[References:
NPO: non-profit organization. Strictly speaking, the term 'commercial NPO' is a misnomer. Probably the committee is referring to commercial organizations disguised as NPOs. Applicable to India.

(23-Feb-02)

76: SHOME REPORT – UNIFORMITY IN EXEMPTIONS

The Shome Committee was set up to advise the Government on Tax Policy and administration. It has made several important recommendations related to non-profit organizations.

The first one is related to differences in exemption between 10(23C) and section 12. Organisations registered under 10(23C):

- Do not have to file a return,
- Do not have a minimum spending requirement (75% of income for other non-profits), and,
- Are not barred from distribution of surplus / payments to key-persons.

Shome Committee has suggested that this distinction should be removed. All organizations should meet the requirements of sections 11 to 13 (listed above).

[References:

Section references are to Income Tax Act, 1961. Applicable in India]

(23-Feb-02)

75: REASSESSING THE INDIAN DONOR - 2

On the other hand, a recent survey pegged total Indian donations to organizations at Rs.811 crores (in 99-00). This is just 13% of the amount based on income tax estimates.

Assuming that both the survey and the income tax figures are correct, what could be the explanation for this gap?

Possibly something quite innocent. Majority of Indian donors are shy about broadcasting their charity and seem to be following the ancient tradition of 'gupt daan'.

[References:
For results of survey referred above see p. 31 ‘Giving and Fund Raising in India’, 2000, Sampradaan ICP]

‘Gupt daan’ is a Hindi expression and means ‘secret donation’. In such a case, the donor keeps his / her identity secret. The donation is shown in the accounts merely as ‘gupt daan’. Such donations are traditionally considered better than open donations. Donations at public functions are considered, by some, to be the worst form of publicity-seeking behaviour.]

(22-Feb-02)
74: REASSESSING THE INDIAN DONOR - 1

It is estimated that the Government lost Rs.1,100 crores in tax revenue due to deductions under section 80G/80GGA in F.Y. 99-00. What does this mean?

- Indian taxpayers donated around Rs.6,000 crores under these sections in 99-00.
- In the same year, foreign donations (FCRA) came to just Rs.3,925 crores.
- Apparently, even a well-known organization like CRY has only touched the tip of this charitable iceberg. They received just Rs.7.97 crores (from Indian sources) in 99-00 (0.13% of 6000 crores).

[References:
CRY Indian donations taken from p. 19 of CRY Annual Report for 1999-00
FCRA stands for Foreign Contribution (Regulation) Act, 1976. Applicable in India]
(22-Feb-02)

73: OR PAY INCOME TAX ON THESE...

What happens if you do not deposit unspent Gujarat Earthquake funds with PM Relief Fund?
You will have to pay income tax on these, despite your existing income tax exemption.
{This does not apply to most of FCRA funds}.

[References:
See also AccountAid Capsule 72
Sections 80G(2)(d), 80G(5C), tenth proviso to section 10(23C), section 12(3) of the Income Tax Act, 1961. Applicable in India
Interpretation of Income Tax law is an intricate matter. Please consult your income tax advisers before applying this in your case.
FCRA stands for Foreign Contribution (Regulation) Act, 1976. Applicable in India]
(21-Feb-02)

72: UNSPENT FUNDS FOR GUJARAT EARTHQUAKE

If you have unspent funds for Gujarat Earthquake relief, should you deposit these with the Prime Minister’s Relief Fund?

Yes. But only the amount that remains unspent on 31-Mar-2002.
Secondly, this applies only to funds for which a receipt was issued under section 80G(2)(d).
In other words, this requirement does not apply to most of FCRA funds.

[References:
Sections 80G(2)(d), 80G(5C), tenth proviso to section 10(23C), section 12(3) of the Income Tax Act, 1961. Applicable in India]
You may have issued an 80G(2)(d) receipt for a donation from a foreigner (or foreign company) taxable in India. If such funds remain unspent, then you should deposit these as well.

Interpretation of Income Tax law is an intricate matter. Please consult your income tax advisers before applying this in your case.

FCRA stands for Foreign Contribution (Regulation) Act, 1976. Applicable in India]

(21-Feb-02)

71: FCRA IN UNITED KINGDOM?

In 2000, UK also joined a growing list of countries, which regulate or prohibit foreign donations to their political parties.

According to section 54 of the PPER Act 2000, political parties in UK can accept donations only from indigenous voters and organizations based in UK. Other donations must be returned within 30 days. Northern Ireland has been exempted from these provisions for the time being.

In India, foreign donations to political parties have been banned since 1976 through FCRA.

[References:

PPER Act stands for Political Parties, Elections and Referendums Act 2000 [c.41]. Applicable in UK. This is not an expert comment but a general interpretation only.

‘NI parties ‘exempt’ from funding bill’; BBC News, 6-Feb-01, http://news.bbc.co.uk

FCRA stands for Foreign Contribution (Regulation) Act, 1976. Applicable in India]

(20-Feb-02)

70: SHADES OF FCRA IN OTHER COUNTRIES

By 1997, at least 22 countries had placed restrictions on foreign funding of elections:

1. Albania
2. Algeria
3. Brazil
4. Canada (partial ban)
5. Egypt
6. France
7. Germany (partial ban)
8. India
9. Israel (partial ban)
10. Japan
11. Jordan
12. Malaysia
13. Moldova
14. Poland
15. Romania
16. Russia
17. Spain
18. Taiwan
19. Turkey
20. Ukraine
21. United States
22. Yemen

In India, these restrictions were imposed on 1976 through the FCRA.

[References:
Taken from the ACE draft report of April’99. ACE stands for ‘Administration And Cost Of Elections’. It is a joint endeavour of IFES, UN-DESA and IDEA. Copyright 1999 http://www.aceproject.org/main/english/pc/pcd04d03.htm
FCRA stands for Foreign Contribution (Regulation) Act, 1976. Applicable in India]

(20-Feb-02)

69: ELECTIONS AND FOREIGN FUNDING-2

The following comment appears in a report prepared by the ACE Project on Administration and Cost of Elections in April 1999:

“Secret Money Provided By Foreign Governments

Continued from capsule 68:

...As revelations following the fall of the Soviet regime have shown, the Soviet Union provided regular funds to foreign Communist parties and to pro-Communists organisations.

Soon after its formation in 1947, the Central Intelligence Agency of the United States also became active in making payments to anti-Communist politicians, parties, and trade unions in a large number of foreign countries. In the era of the Cold War, political parties in Africa and elsewhere reportedly received financial support from the Soviet Union and from China as well as from the United States. Some oil-rich countries such as Libya are also alleged to have been active in providing money for foreign political causes.”

[References:
The ACE project is titled ‘Administration And Cost Of Elections’. It is a joint endeavour of IFES, UN-DESA and IDEA. These comments have been taken from the draft report on the Internet http://www.aceproject.org/main/english/pc/pcd02h.htm
Copyright 1999]

(19-Feb-02)
68: ELECTIONS AND FOREIGN FUNDING-1

The following comment appears in a report prepared by the ACE Project on Administration and Cost of Elections in April 1999:

“Secret Money Provided By Foreign Governments

Governments have traditionally used secret service funds to bribe (or, putting it differently, to assist) prominent foreign politicians and their election campaigns. Other political uses of secret service funds have included payments to foreign trade unions and to foreign newspapers.

Such payments have a long history. In modern times, the 'Reptile Fund' used by the German Chancellor, Otto von Bismarck, provided a precedent followed by subsequent German regimes. During the First World War, the German Foreign Ministry encouraged the Bolsheviks by sending them money through devious routes across the Baltic. Hitler used similar techniques. After the Second World War and at least until the 1970s, a secret 'Chancellor Fund' was at the disposal of successive West German Chancellors.

Secret payments to Chilean politicians in the 1960s and to Portuguese and Spanish anti-Communists in the 1970s reportedly came from this source...

Continued in capsule 69

[References:
The ACE project is titled ‘Administration And Cost Of Elections’. It is a joint endeavour of IFES, UN-DESA and IDEA. These comments have been taken from the draft report on the Internet http://www.aceproject.org/main/english/pc/pcd02h.htm. Copyright 1999]

(19-Feb-02)

67: TOP RECEIVERS OF FOREIGN CONTRIBUTION

According to the Home Ministry sources, some Hindu organizations are among the largest recipients of foreign contribution. These include Maharishi Ved Vigyan Vishwa Vidyapeeth (Rs.68.09 crores), Mata Amritanandmayi Mission (Rs.53.07 crores), and Sri Satyasai Central Trust (Rs.50.15 crores).

[References:

FCRA stands for Foreign Contribution (Regulation) Act, 1976. Applicable in India

A crore is equal to 10 million.]

(14-Feb-02)

66: FOREIGN CONTRIBUTION AND HAWALA

According to the Home Ministry sources, separatists and terrorist groups mostly receive funds through hawala channels. The money often comes from Bangkok and Dubai.

The Ministry has instructed its intelligence agencies to crack down on Hawala agents to control this menace.

[References:
- AccountAid Capsule 10

- FCRA stands for Foreign Contribution (Regulation) Act, 1976. Applicable in India

- ‘Hawala’ literally means ‘reference’. This emerged as a popular mode of illegal transfer of money and foreign currency in the seventies.

- A crore is equal to 10 million.

(14-Feb-02)

65: MORE ON THE NEW FCRA BILL

According to the Home Ministry, the new FCRA is likely to have tighter provisions to reduce irregularities in accounting of foreign contribution.

[References:

AccountAid Capsule 10

FCRA stands for Foreign Contribution (Regulation) Act, 1976. Applicable in India.

(13-Feb-02)

64: FOREIGN CONTRIBUTION IN 99-00

According to the Home Ministry report for 99-00,

- 13,986 organisations filed their FC-3;

- These organizations received a total of Rs. 3,924.63 crores;

- 735 organisations in Delhi received Rs. 636.10 crores;

- USA contributed the maximum funds: Rs.1,086.32 crores;

- Among Islamic countries, Saudi Arabia gave Rs.17.27 crores.

- And even Iraq sent us Rs.3,000!

[References:

- AccountAid Capsule 13

- FCRA stands for Foreign Contribution (Regulation) Act, 1976. Applicable in India

- A crore is equal to 10 million.

(12-Feb-02)
63: FCRA REGISTRATION STATISTICS

How many NGOs get FCRA registration each year? We have the figures for last seven years:

- 94-95: ~690
- 95-96: ~1300
- 96-97: ~800
- 97-98: ~760
- 98-99: 1336
- 99-00: 1419
- 00-01: 1613

The above trend possibly indicates a more liberal attitude to FCRA registration.

[References:
- MHA web-site http://mha.nic.in/
- MHA Annual Report for 2000-01

FCRA stands for Foreign Contribution (Regulation) Act, 1976. Applicable in India
Figures for 94-95 to 97-98 are approximations based on an MHA chart.]

(11-Feb-02)

62: DUAL CITIZENSHIP AND FCRA

The Government of India has recently promised dual citizenship to the Indian Diaspora. It is estimated that about 2 crore (20 million) Indians live abroad. This includes NRIs and PIOs.

What would this mean, so far as FCRA is concerned? Will donations of the dual-citizenship status Indians be treated as Indian funds? Or will FCRA still apply to their donations?

Surprisingly, a literal interpretation of the Act indicates that their money will still be foreign contribution. How?

Section 2(1)(e) lists a citizen of a foreign country as a ‘foreign source’. A person with dual-citizenship may be an Indian, but will also be citizen of a foreign country...!

[References:
Section 2(1)(e)(x) of FCRA, 1976

FCRA means Foreign Contribution (Regulation) Act, 1976. Applicable in India
NRI: Non-resident Indian; PIO: Person of Indian Origin.

61: TAX EXEMPTION FOR NGOS

The Economic Times conducted an internet-based poll yesterday, with some strange results:

“Should the government scrap tax exemption for charitable bodies [in India]?

Yes 93%

No 7%

Can't Say 0%”

The Times of India, when reporting this, was charitable enough to add a disclaimer: ‘The poll reflects the opinions of Net users who chose to participate, and not necessarily of the general public.’

[References:
Economic Times 'ET Insta Poll' of 8-Jan-02 at http://economictimes.indiatimes.com/
The Times of India, New Delhi, 9-Jan-02, p.15]

60: WHERE IS THE NEW FCRA?

The new FCRA could not make it to the Parliament in this session also. Apparently, the bill was not even listed on the agenda. So the suspense continues.

In the meanwhile, please note that the draft bill remains a state secret till it is tabled in the Parliament. So no one can really say what it contains, and whether it’s good or bad for the voluntary sector.

[References:
Also see AccountAid Capsules 9, 10, 33, 53 and 54 at www.AccountAid.net]

59: FILING FC-3 REPEATEDLY?

Are you filing form FC-3 every time you receive a foreign donation?

According to FCRA rules, the form should be filed only once a year. The form should contain details of all donations (cash, kind, shares etc.) received during the year from April to March. The form should reach Ministry of Home Affairs by 31st July.

Also see:
- Rule 8 of FCRA Rules, 1976]
58: SALE OF FCRA ASSETS

Can you sell off assets purchased with FCRA funds?

Yes, you can sell these assets, if the donor does not object. You don’t need any permission from FCRA people for this.

But what do you do with the money you get?

You should deposit the money in the FCRA bank account. And show it as a receipt in the FC-3 and FCRA Receipts & Payments Account.

And yes, if the value of the asset has gone up, the extra money also goes into FCRA account.

[References:
FCRA means Foreign Contribution (Regulation) Act, 1976. Applicable in India
Also see AccountAble 22: Mysteries of FCRA on www.AccountAid.net]

(18-Nov-01)

57: PERQUISITES, FORM 12BA AND FORM 16

Income Tax Department has changed the rules (Rule 3) for valuation of perquisites to employees. The change is applicable from 1st April 2001.

A new form (no. 12BA) has been introduced. This form will show the valuation of the perquisites. This form will be used where the employee is getting more than Rs.150,000 per year.

Form 16 (TDS certificate) has also been changed.

[References:
(2001) 170 CTR (Statutes) 64]

(18-Oct-01)

56: THE COOLEST ONE...

Once upon a time, there was an NGO in Kerala. One day they bought a refrigerator for Rs.5,445. They kept it at the Managing Trustee’s house in Kottayam.

The income tax people wanted to know the reason for this.
The NGO said: ‘Our office building was not ready. We wanted to offer cold water to our Swedish donors’.

Result? Tax people rejected the explanation and withdrew the NGO’s income tax exemption. The High Court also confirmed it.

Moral of the story? Make sure the Trustees or key persons do not use the NGO’s assets. And if they are used, recover hire charges from them.

References:
Agappa Child Centre v. CIT, (1997) 137 CTR (Ker) 295
Section 13(2) of Income Tax At, 1961. Applicable in India
AccountAble 52 at www.AccountAid.net

(16-Oct-01)

55: GUJARAT EARTHQUAKE – FCRA RELAXATION EXTENDED

Yes. It’s been extended again. This time the extension is upto 31st December 2001.

References:
Also see AccountAid Capsules 6 and 28 at www.AccountAid.net
Full text of the press release dated 31-Aug-01 at www.AccountAid.net and at http://mha.nic.in/pr082001.htm#31081

(15-Oct-01)

54: LAUNDERING FOREIGN CONTRIBUTION?


The persons involved in this were bringing in money, apparently for philanthropic purposes but were diverting it to militants. To do this, a trust was set up by a Jamat-e-Islami worker in 1991.

The initial amount for the trust came from ISI, Pakistan via Saudi Arabia. Later, the money went through regular channels to Delhi, where it was paid to business houses as an advance. Finally it found its way to a leader of the Hizbul Muzahideen in north Kashmir.

References:
“Ordinance soon to nip terrorist fund-raisers;,” The Pioneer, New Delhi, 7-Oct-2001, p.4. Also at www.dailypioneer.com
ISI means Inter Services Intelligence.
Also see AccountAid Capsules 9, 10, 33 and 53 at www.AccountAid.net

(8-Oct-01)
53: FCRA ORDINANCE TO BE ISSUED?

According to a news report, the Government is planning to issue an ordinance on FCRA soon. The ordinance contains strict measures to prohibit funding to terrorist groups, particularly those in J&K, Northeast and some Southern states.

The ordinance will later be passed as an Act of Parliament.

[References:
“Ordinance soon to nip terrorist fund-raisers,; The Pioneer, New Delhi, 7-Oct-2001, p.4. Also at www.dailypioneer.com

FCRA means Foreign Contribution (Regulation) Act, 1976. Applicable in India

Also see AccountAid Capsules 9, 10, 33 and 54 at www.AccountAid.net]

(8-Oct-01)

52: FCRA FOR UNIVERSITIES AND INSTITUTES

FCRA regulations cover all Universities and Institutes in exactly the same way as any other NGO.

This is because these are ‘associations’ within the definition of section 2(1)(a), and also have a definite educational programme [section 6(1)].

So if you are planning to give a grant or consultancy assignment (out of FC funds) to IIM, IIT, IRMA, JNU etc., make sure that they have obtained FCRA registration or taken prior-permission.

[References:

(3-Oct-01)

51: RELATED PARTY DISCLOSURE

AS-18, issued by the ICAI became applicable on 1st April 2001. This Accounting Standard covers disclosing names of and transactions with related parties.

Accounting Standards apply to NGOs also in some cases. For more information on this, see ‘AccountAble6: Indian Accounting Standards’ at www.accountaid.net

This means that many NGOs will have to disclose salary and other payments to Chief Functionary, top management and associated NGOs.

This disclosure will form part of annual audited financial statements. This applies from financial year 2001-02.

[References:
‘AccountAble 6: Indian Accounting Standards’ at www.AccountAid.net

Institute of Chartered Accountants of India at www.icai.org]
50: INCOME TAX FORM 3A CHANGED

People who keep complaining that nothing ever changes in India should take a look at the Income Tax Rules. On an average, these change every 40 days or so!

The latest change is form 3A, which is used by non-profits to report their income. The revised form has been issued on 17-Aug-01.

You should use the revised form for any returns filed after this date.

The new form has been completely revamped and looks smarter.

Gazette of India, Extraordinary, Part II, s. 3(ii) dt. 17th August 2001
(2001) 169 CTR (Statutes) pp. 66-78]

49: DISCLOSING DONATIONS IN INDONESIA

Indonesian Parliament has passed the ‘Law on Charity Foundations’ in July this year.

Some of the rules:

1. Donations above $70 (~INR 3,300) must be publicized.
2. The Justice Ministry must ratify new Foundations.
3. Justice Ministry can withdraw the license of any foundation it regards as a ‘threat to public welfare’.


48: DON’T LOSE YOUR VOUCHERS

World Bank refused to reimburse Rs.4.49 crores to the West Bengal Government. This money had been spent on different projects (vocational training, safe motherhood, shrimp farming, AIDS, sericulture etc.) up to 31-Mar-1998.

Reason? No vouchers are available for these amounts!

Another Rs.11.53 crores was not reimbursed on account of diversion.

Together, this comes to about 10% of the total amount claimed (Rs.170.27 crores).
This loss relates to eight projects funded by IDA from 89-90 to 31-Mar-98 under separate credit / loan agreements. – Ed.]

(8-Sep-01)

47: CHARGING DEPRECIATION

If an NGO has any commercial or business activities (no matter how small), the Accounting Standards apply to the entire organization.

These include AS-6: Depreciation Accounting. According to this, you should charge depreciation on assets. You should also disclose related information. This standard became applicable from 1st April 1995.

If you don’t follow this standard, your auditors will have to mention this in their audit report.

[References: AS-6: Depreciation Accounting. Full text at http://www.icai.org/]

ICAI clarification on applicability of accounting standards to NGOs, The Chartered Accountant, Sep-95, Page 79

AccountAble 6: Accounting Standards. www.AccountAid.net]

(4-Sep-01)

46: COST OF PUBLISHING ACCOUNTS

From 2001-02, large non-profits have to publish their accounts in a local newspaper (see Capsule 15).

How much will this cost? Current rates in Delhi range from Rs.100 per column cm in Veer Arjun to Rs.2,050 per column cm in Times of India. Others include: Statesman @Rs.250, Dainik Jagran @Rs.400 and Punjab Kesari @Rs.450.

You need about 12 column cm for brief accounts and 30 column cm for more detailed accounts.

If you select an economical option such as Veer Arjun or Statesman, then the advertisement will cost you between Rs.1,200 to Rs.7,500 per annum.

(30-Aug-01)

45: TEASERS ON TEHELKA AND FCRA

Tehelka.com is owned by Buffalo Network Pvt. Ltd. Majority shares of Buffalo Network Pvt. Ltd. are held by Indians.

Sometimes ago Tehelka reporters carried out a sting operation to expose corruption in arms deals. For this, a company called Westend International was formed and registered in London. Tehelka reporters, posing as Westend employees, paid bribes and/ or provided gifts and ‘hospitality’ to some politicians and government servants. Much of this evidence is on video and audiotapes.
Tarun Tejpal, the editor-in-chief of Tehelka.com, has said the seed money of his web newspaper, that his reporters used to bribe the politicians and military officers in India’s biggest investigative media scoop, came not from benami sources, but from the seed venture capitalist funding.

Teaser 1: Is Westend International a foreign source as defined in section 2(1)(e) of FCRA?

Teaser 2: Did the politicians and government servants violate section 4 or section 9 of FCRA in accepting these ‘donations’, gifts or ‘hospitality’?

Teaser 3: Did the Tehelka team members also violate section 4 in ‘assisting’ the politicians / government servants in this?

Teaser 4: Can the politicians or the Tehelka investigators, be penalized under section 23 or section 25 of FCRA?


The above is based on various news reports and internet sources and may not be true or accurate. It has been designed for academic purpose only. – Ed.

(27-Aug-01)

44: HDFC DONATION

The Government of India promoted HDFC in the ’70s. It is involved in housing finance. In April 2000, HDFC gave Rs.50,000 to an Indian NGO from its own resources. Would this be FC or Indian donation?

Answer: FCRA. Foreign investors own more than 56% of HDFC.

Moral of the story: Beware...

[Source: Section 2(1)(e)(vi) of Foreign Contribution (Regulation) Act, 1976. Applicable in India

Shareholding information on HDFC web-site at www.hdfcin.com

The above situation is fictional and designed for academic purpose only.

Information on HDFC shareholding is valid as of 25-Apr-2000. – Ed.

(24-Aug-01)

43: MYRIADS OF STARS...

Do large numbers scare you? Did you just scrape through in arithmetic at school?

Don’t be embarrassed – you are in illustrious company!

The ancient Greeks, who gave us philosophers like Aristotle and Plato, also had problems with numbers. So much so that they could count only up to 10,000.

In fact, their term for 10,000 was ‘myriad’ (pronounced like ‘period’ with a short ‘e’ sound).

The word ‘myriad’ also meant (and still does) ‘countless’ or ‘an indefinitely large number’!!
42: CHECKLIST FOR NGO NEWSLETTERS...

If you have FCRA registration and are bringing out a newsletter, make sure it does not contain:

- public news;
- comments on public news;
- political news;
- views or comments on political news;
- article or reference criticizing or commenting on any religion, faith, ritual or practice;
- Any objectionable material related to things listed in proviso to section 10 of FCRA.

If the above conditions are not met, then marking it ‘For Private Circulation only’ does not help.

[References:
Section 1(1) and part VA of The Press and Registration of Books Act, 1867 (PRBA)
Section 4(1)(b) of Foreign Contribution (Regulation) Act, 1976 (FCRA). Applicable in India
Declaration in Form annexed to S.O. 760(E) dated 3-Aug-87. Published Gazette of India on same date]

(22-Aug-01)

41: NEWSLETTER OR NEWSPAPER?

What is the difference between a newsletter and a newspaper?

A newsletter contains ‘informal or confidential news’ which is of interest internally only (WBD).

A newspaper contains ‘public news or comments on public news’ (PRBA). Many people may be interested in such news.

‘News’ means ‘something told as having just happened; information about something that has just happened or will soon happen’.

If your newsletter contains public news, then it will be treated as a newspaper. Marking it as ‘For Private Circulation only’ will not help.

[References:
40: FCRA AND NEWSPAPERS

NGOs registered under FCRA are not allowed to bring out newspapers or magazines with FC funds. They cannot bring out a newspaper with Indian funds either.

The restriction does not apply if the newspaper / magazine does not contain any public news or comments on public news.

For more information, please see AccountAble 42: FCRA Registration.

[Section 1(1) and part VA of The Press and Registration of Books Act, 1867; Section 4(1)(b) of Foreign Contribution (Regulation) Act, 1976. Applicable in India]

(20-Aug-01)

39: DONATION FROM JET AIRWAYS...

Jet Airways Pvt. Ltd. is a company registered in India. Tailwinds Ltd., a company registered in Isle of Man, UK, owns all its shares. Mr. Naresh Goyal, who holds an Indian passport, owns all the shares of Tailwinds Ltd.

Jet Airways makes a donation to an Indian NGO. Will this be treated as Indian or as foreign contribution?

According to our understanding of FCRA, this will be a foreign contribution. According to FCRA, Jet Airways is a subsidiary of a foreign company (Tailwinds). Therefore, Jet becomes a foreign source.

[Source: Press release by Jet Airways on its ownership structure, published in Indian Express, Delhi, page 2, 18-Aug-01]

Sec. 2(1)(e)(iii), (iv) of Foreign Contribution (Regulation) Act, 1976

Sec. 591 of The Companies Act, 1956]

(18-Aug-01)

38: THE ORIGINS OF DOUBLE ENTRY BOOK-KEEPING - 2

Luca Pacioli did not claim to be the inventor of double entry book-keeping. He gave credit for this to one Benedetto Cotrugli (Benedikt Kotruljevic of Dubrovnik, Croatia).
Cotrugli had written about double entry system in his book called “Of Trading and the Perfect Trader” (Delia Mercatura et del Mercante Perfetto). This book was written around 1458 but not published for more than a hundred years.

It is also believed that traders and bankers in Venice were using some concepts of double entry book-keeping a hundred years before Cotrugli wrote his book.

ACCAUS believes that this had become possible due to introduction of Arabic numerals to Europe, which was a big improvement over Roman numerals (I, II, V, IX...). But that is another story (Capsule 4: The Number System).

[Source: web-site of Association of Chartered Accountants in the US]
(17-Aug-01)

37: THE ORIGINS OF DOUBLE ENTRY BOOK-KEEPING - 1

Who invented double-entry system of book-keeping? Just as in the case of fire and wheel, no one knows this really.

But we know that an Italian monk named Luca Pacioli was the first to make it popular on a large scale. In 1494 he published a book called “Everything About Arithmetic, Geometry and Proportion” (Summa de Arithmetica, Geometria, Proportioni et Proportionalita). Book-keeping was one of the five topics in this book. The book became widely available, thanks to the Guttenberg press (which had just been invented by the Germans).

[Source: web-site of Association of Chartered Accountants in the US]
(16-Aug-01)

36: FCRA AND “ORGANISATIONS OF A POLITICAL NATURE”

Till May’98, 128 organisations had been notified as organizations of a political nature.

These include some well-known names such as ABVP, AIDWA, AIDSO, Anand Marg, NFPW, NSUI, PUCL, PUDR, RSS, SGPC, SIMI, Tabligh Jamat, and VHP.

Full list (upto May-98) can be viewed at www.AccountAid.net.

Such organizations cannot be given FC registration. They must apply to the Central Government in form FC-1 for permission before accepting any foreign contribution.

[Section 5 of Foreign Contribution (Regulation) Act, 1976. Applicable in India]
(14-Aug-01)

35: FCRA AND ELECTRONIC MEDIA

You cannot give foreign contribution to a journalist (see capsule 30). But the same restriction does not apply to media-persons with TV networks!
Why? Is it because the Government thinks very highly of TV networks?

No. It’s just that the FCRA has not been amended since 1985. At that time, electronic media was under Government control. So there was no need to extend the restriction to TV networks.

It is possible that the Government will take care of this also in the new FCRA bill.

(11-Aug-01)

34: VALUATION OF PRAGATI MAIDAN - CONCEPT OF NOMINAL PRICING

The Pragati Maidan complex at Delhi is shown at Rupee 1 in the ITPO Balance Sheet. Why? Because the Government sold the land to them for a nominal price of Re.1. Its market price at that time would have been billions of Rupees.

How did the concept of nominal pricing come into accounting? We don’t know for sure.

However, a clear-cut link is given in Adi Parva of Mahabharata. Mahabharata war is estimated to have occurred around 1400 BCE. Adi Parva relates to period much before that.

The link is in a dialogue between Vasuman and King Yayati. Yayati refuses to accept a donation of good deeds from Ashtak and then again from Pratardan.

At this Vasuman says: ‘O King. I give all my worlds to you. If you are hesitating to take these as a donation, then you can buy these for a blade of grass.’

Yayati responds: ‘This sale-purchase is a complete fiction. I have never entered into such transactions. Why should I do this, when no true person does it?’

[Note: The land was originally sold to Trade Fair Authority of India. It merged with TDA in 1991 to form ITPO. – Ed.

Also see AccountAid Capsule 26: The First Accounting Manual]

[Sources: 1. For ITPO fixed asset schedule: http://www.indiatradepromotion.com/a_r1998-99-en/42a.htm#fixed_assets


(10-Aug-01)

33: FCRA BEING REPEALED – CURSE OF THE MONKEY’S PAW?

Several NGO groups have been demanding for a long time that FCRA should be repealed. The Government has apparently granted their wish.

However, FCRA 1976 is likely to be replaced with a tougher law. The new law is designed to plug existing loopholes. It is expected that this will help ensure that funds are not used for religious conversions or by subversive elements.
The new bill is with the cabinet and is likely to be introduced in the current session of the parliament. FCRA has not been amended since 1985, though these were proposed several times e.g. in 1988 and again in 1995.

[Nearly a hundred years ago (1902), W.W. Jacobs wrote a story titled “The Monkey’s Paw”. This was later adapted for the stage by David Mauriello. The moral of the story is: Be careful what you wish for – it just might come true!]

Curiously, the spell on the monkey’s paw had been put by an Indian fakir!!

The full story is available at http://gaslight.mtroyal.ab.ca/mnkyspaw.htm. – Ed.]

[Source: Times of India, New Delhi 7-Aug-01: Centre to control foreign fund flow]

(9-Aug-01)

32: FORM FC-3 REVISED AGAIN

Form FC-3 has been revised again with effect from 26th July 2001. There are three significant changes:

1. You have to now separately disclose interest earned on FCRA bank account and investments. This practically means an end to the old controversy about whether this interest is foreign contribution or not.

2. The earlier form contained 27 items under which you classify FC utilization. This list is now expanded to 56 items.

3. Establishment expenses have been further sub-classified to show things like corpus, land, salaries, publications etc.

Strictly speaking, this means that all FC-3 filed after 26-7-01 should be in the new format. However, in practice, the FCRA Department may allow FC-3 for 2000-01 to be in the old format.

[Notification number GSR 557(E) dated 26-7-01; published in The Gazette of India, part 2, no. 387 dated 26-7-01. FCRA means Foreign Contribution (Regulation) Act, 1976, applicable to India.]

(6-Aug-01)

31: CONSULTANCY CONTRACTS AND FCRA

Does FCRA apply to consultancy contracts also? Yes, IF the contract is with an NGO and the NGO receives funds under the contract.

[Section 2(1)(c) read with section 6(1) of Foreign Contribution (Regulation) Act, 1976, applicable to India]

(1-Aug-01)
30: ADVOCACY AND FCRA

Supporting an advocacy program in India? Go ahead, but make sure that FC funds do not reach Indian journalists (sec. 4).

This restriction includes fellowships, scholarships and stipend. However, journalists are not prohibited from going on sponsored foreign trips (sec.7).

This restriction does not apply when a journalist is working for a foreign newspaper or media group.

Penalty for violation? Up to five years in prison or fine or both (sec 23).

A journalist is defined as correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper.

(31-Jul-01)

29: CONSOLIDATED TDS CERTIFICATE – FORM 16A

Are you tired of issuing TDS certificates in 16A every month? If yes, read fourth proviso to Income Tax Rule 31(3).

According to this rule, you can issue one consolidated annual TDS certificate to each party in 16A. There are only two conditions for this:

1. The party should give you a request for this.

2. There should be more than one payment in the year.

[NGOs are required to deduct tax at source in some cases, such as professional fees. For this, they must issue a TDS certificate. This allows the payee to claim a tax credit.-Ed.]

(27-Jul-01)

28: GUJARAT EARTHQUAKE: FCRA RELAXATION UP TO 31-AUGUST

Relaxation of prior-permission procedures for Gujarat Earthquake Relief has been extended upto 31st August 2001.


It is also available at www.AccountAid.net.


(5-Jul-01)

27: FEMA AND FCRA

FEMA applies to all NGOs in India [sec.2(u) read with sec. 3 etc. of FEMA]. But this does not mean that FCRA will not apply. FCRA applies to NGOs in addition to FERA [sec.3 of FCRA].
26: THE FIRST ACCOUNTING MANUAL

Kautilya's Arthashastra (~300 BC) is the world's first known systematic treatment of accounting concepts, including modern ones, such as changing prices, distinction between work in process, finished goods, raw materials, as well as current and deferred revenues.

[Kautilya, also known as Vishnugupt Chanakya, was the Prime Minister during Chandragupta Maurya's reign. – Ed.]


25: REVENUE STAMP ON OFFICE ADVANCES

Revenue stamp is not required when you give advance to a staff member for office expenses. Similarly, no revenue stamp is required when you receive a refund from such advance. These are payments without consideration.


24: REVENUE STAMP AND DONATIONS

Revenue stamp is not needed on receipts for donation. These are payments without consideration. [Exemption b. Article 53, schedule I of the Indian Stamp Act, 1899.]

Apparently, this exemption does not apply to grants from donor agencies.

23A: REVENUE STAMP - LIMIT

A revenue stamp is required only for transactions exceeding Rs.500. No stamp is needed if the amount is Rs.500.

Stamp duty is levied under the Indian Stamp Act, 1899. For more information on this, see AccountAble 34 at www.accountaid.net

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23: FC FUNDS FROM CAPART?

Can a grant from CAPART be FC fund? The answer seems to be 'Yes'.

CAPART is an autonomous body registered under the Societies Registration Act 1860. It is functioning under the aegis of the Ministry of Rural Areas and Employment, Government of India.

CAPART is also registered under FCRA. Some of its funds come from foreign sources such as DANIDA. These funds are passed on to NGOs also (see http://capart.nic.in/vscapart/function.htm#INTERNATIONAL).

Therefore, it is possible that a CAPART grant to you may have come from CAPART's FCRA account. If so, you must deposit this in your FCRA bank account and report it in FC-3 in the second or subsequent recipient column.

[The above is a general statement. Please confirm the source of your grant with CAPART before taking any decision on this. (E-mail: capart@caparthq.delhi.nic.in)]

(21-Jun-01)

22: FELLOWSHIP OF THE RING...

If you are receiving fellowship, scholarship or stipend (exceeding Rs.36,000 p.a.) from a foreign source, you must file form FC-5 with Ministry of Home Affairs.

Many fellowships offered by Indian NGOs are ultimately funded by foreign sources. Form FC-5 should be filed in such cases also.

[This does not apply if you have only received a set of Tolkien from a foreign source. - Ed.]

(19-Jun-01)

21: FRAUD WARNING FOR CHARITIES

The Charity Commission in UK has posted the following information on its web-site: "Charities in the UK are increasingly being targeted by overseas crime syndicates posing as solicitors and offering huge sums of money from legacies, bequests or even the funds of deposed political leaders. Although largely West African in origin, these approaches have come from as far apart as South Africa and Holland.

Getting the money is invariably conditional on the charity sending these "solicitors" its details, letterhead and/ or a range of "advanced fees". None of these approaches have ended in money being handed over to the charity and many have found that sending details results in money being taken from the charity's bank account. Even sending a letterhead could be asking for trouble.

Our advice to charities is not to respond and to refer such approaches to the West African Organized Crime Section at NCIS (National Criminal Intelligence Service) at PO Box 8000, London SE11 5EN or via e-mail at: westafrican@spring39.demon.co.uk. Further information on NCIS can be found at www.ncis.gov.uk"
In the past, business-persons in India have been approached by similar groups from Nigeria, promising large business deals. It is possible that NGOs in India will be their next target.

(16-Jun-01)

20: NATIONAL COMMITTEE FOR 35AC

A new committee has been notified for approving projects under section 35AC. The committee has a three-year tenure beginning 21st May 2001. Justice R.S. Pathak (former CJI) continues as Chairman.

Names of other members and additional information on 35AC are available in AccountAble 17. Follow the AccountAble link from www.AccountAid.net

[Indian NGOs approved under 35AC of the Income Tax Act, 1961 can offer 100% deduction from taxable income to their donors.]

(15-Jun-01)

19: 125% DEDUCTION FROM INCOME

Responding to the endless calls of 'YEH DIL MANGE MORE' from fund-raisers and donors...

- Under section 35(1)(iii) you can offer 125% deduction from taxable income to your donors.
- This extra benefit is available to donors who have business or professional income.
- Other donors can claim 100% only under section 80GGA(2)(aa).
- Organizations doing research in social sciences or doing statistical research are eligible for approval under section 35(1)(iii) by the CBDT.

For more information, see AccountAble 61.

(14-Jun-01)

18. FCRA ITEMS BELOW RS.1000

Are items below Rs.1,000 in value exempt from FCRA?

No. These are exempt only when received as a gift for personal use. Personal gifts can be given to individuals, not to organizations.

(12-Jun-01)

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2 This heart yearns for more...

3 Section references are to Income Tax Act, 1961, which applies to India.
17. FC AND NON-FC

Indian citizens living abroad can send donations to Indian NGOs without attracting FCRA. There is no upper or lower limit on this.

However, foreigners (including former Indian citizens) living in India or abroad are on a different footing. They cannot give funds / material to Indian NGOs who do not have FCRA registration or permission.

The type of currency (Rupees or dollars) does not matter in either case.

(12-Jun-01)

16. FUND-RAISING BY CONGRESS

Congress is planning to raise a corpus of Rs.50 crores through graded subscriptions from members, ticket-seekers, public and corporate houses.

It also plans to get funds from NRIs. However, FCRA does not allow this. Therefore, Congress is planning 'to set up a foundation to organize political education and training'. Funds from non-resident Indians will presumably be taken into the Foundation, after the Foundation gets FCRA clearance.


(10-Jun-01)

15: PUBLISHING YOUR ACCOUNTS

NGOs with receipts / income of Rs. 1 crore (10 million) or more should publish their accounts in a local newspaper. This applies from financial year 2001-02 onwards. If they don’t do this, they will lose their income tax exemption.

This also applies to clubs, temples, churches, gurudwaras, traditional Trusts, universities, hospitals etc. -- in short, any non-profit organization which enjoys income tax exemption under section 12 or under clauses (iv), (v), (vi) or (via) of section 10(23C).

(8-Jun-01)

14: FUNDING TO BIMARU STATES

In 99-00, following FC Receipts were reported (in Rupees Crores):

Delhi 572; Tamil Nadu 554; Andhra 531; Karnataka 420; Kerala 366; and, Maharashtra 351.

What about the BIMARU states? We have information on two of these (Rupees crores):

Bihar 109; and, Uttar Pradesh 107.

While Bihar's inflow has risen by 9%, UP shows a drop of 20%.

[Source: Statement of Mr. Vidyasagar Rao, Union Minister of State for Home Affairs. Published in the Hindu, 30-May-2001]
13: FC RECEIPTS IN 99-00

In 99-00, FC Receipts came to Rs.3,810 crores.

This is higher than 98-99 (Rs.3,403 Crores) by 12%.

However, the rate of growth has come down: in 98-99, the receipts had grown by 18.8%.

[Source: Statement of Mr. Vidyasagar Rao, Union Minister of State for Home Affairs. Published in the Hindu, 30-May-2001]

(4-Jun-01)

A crore is equal to 10 million. A US Dollar fetches 47 Rupees. There are four BIMARU states: Bihar, Madhya Pradesh, Rajasthan, and Uttar Pradesh. The acronym BIMARU sounds similar to the Hindi word 'bimar', which means ill or unwell. FC is short for foreign contribution. The above is a partial listing out of a total receipt of Rs.3,810 crores. FCRA state-wise classification is not very accurate as funds are passed on from Agencies in one state to NGOs in another.

(5-Jun-01)

12: FOREIGNERS ON YOUR CAMPUS?

Inform the local Police Station whenever you have a foreigner staying in your house, office or campus.

According to other press reports in The Times of India:

1. This is an old standing order. The Government plans to enforce it more strictly.

2. You have to report only if the foreigner stays with you for 24 hours or more. Rule covers house, office, campus, etc.

3. You can phone in the details to local Police Station.

[Source: MHA Press Release dated 8th May 2001, see below]

INTIMATION REGARDING PRESENCE OF FOREIGNERS

This is for the information of General Public that as per Foreigners (Report to Police) Order, 1971, made under the Foreigners Act, 1946 (31 of 1946), every householder or other person shall report to the Officer-in-charge of the nearest Police station about the arrival or presence in his household or in any premises occupied by him or under his control of any foreigners, if he knows or has reasons to believe that he is a foreigner.

Non-Compliance of this order would attract punitive action under the Foreigners Act, 1946 (31 of 1946) i.e. imprisonment upto a period of five years or with fine or with both.

(1-Jun-01)

11: LAST DATE FOR FILING FC-3

There has been no change in last date for filing FC-3. The last date remains unchanged as 31st July.

[FC-3 is the annual return for foreign contributions received by Indian NGOs.}
Over the last couple of weeks, several NGOs have been asking whether last date for filing FC-3 has changed.

(1-Jun-01)

10: FCRA AMENDMENT ROUND THE CORNER?

Probably. The Centre is proposing to amend FCRA to make sure:

1. NGOs maintain proper accounts;
2. District Collectors or Deputy Commissioners can keep a watch over the NGOs;
3. FC funds are not used for political purposes;

This information comes from Mr. Vidyasagar Rao, Union Minister of State for Home Affairs (The Hindu, 30-May-2001). He had said this earlier also in October 2000 at Hyderabad (The Hindu, 2-Oct-2000)

(31-May-01)

9: BUILD-UP TO FCRA AMENDMENT...

In October 2000, Mr. Vidyasagar Rao, Union Minister of State for Home Affairs said:

"... the Centre was firm that foreign funds were properly used considering that they would cross the Rs. 4,000 crore mark during 2000-01. It would be detrimental to national interests if the money was misused.

He asserted that the Centre had no proof of misuse of these funds by some organisations for religious conversions. But, 11 such recipients had issued advertisements denouncing the Vajpayee Government before the last Lok Sabha poll following which they were placed in the list of outfits, which required permission for receiving funds. The organisations subsequently apologized for having indulged in activities of political nature.

Mr. Rao said the amendment was also necessitated by the fact that several organisations were utilizing the funds, furnishing accounts much later and approaching his Ministry for condoning the delay."

[Source: The Hindu, 2-Oct-2000]

(31-May-01)

8: LAST DATE FOR FILING INCOME TAX RETURN

Last date for filing the Income Tax Return by NGOs remains unchanged as 31st October. The proposed change (31st July) has been withdrawn by the Finance Minister.

However, this is valid only if the NGO’s income exceeds Rs.50,000 and they are filing an audit report in form 10B. For other (smaller NGOs), the last date remains 31st July.

(30-May-01)
7: FCRA AND THE PURPOSE OF REGISTRATION

Indian NGOs registered under FCRA (Foreign Contribution Regulation Act, 1976) for social work cannot take up religious activities. Similarly, religious groups (missions, ashrams etc.) registered for religious work cannot take up social work.

So if you want to do both, then you must say tick both at the time of applying for FCRA registration.

(17-May-01)

6: FCRA & GUJARAT EARTHQUAKE

FCRA rules have been relaxed for Gujarat Earthquake relief. You can receive the money and then apply in form FC-1A. Approval will be almost automatic. Right?

Right. But only till 31st May 2001. The relaxation (see Gujarat_Earthquake_FCRA_ITax.htm), which was valid till 31st March 2001, has been extended to 31st May (MHA press release dated March 28, on their web-site).

(11-May-01)

5: GRATUITY & NGOS

A small example of how things change. Gratuity originally meant a voluntary payment or a gift. It is now enforced by law! Thus, in India, all societies or Trusts with 10 employees or more come under Payment of Gratuity Act, 1972. This happened through a notification (S.O. 228 dated 20-Aug-1997) in 1997.

Further, they must take a policy from Life Insurance Corporation of India to cover this liability. Certain trusts (which have an approved gratuity fund) do not have to take the LIC policy.

(Incidentally, this law applies to profit-oriented sector as well.)

(9-May-01)

4: THE NUMBER SYSTEM

The Western numerals (1,2,3, ...0) used throughout the world today originated in India. From here, these passed to the world through Arab scholars. These are, therefore, known as Arabic or Hindu-Arabic numerals. The Arabs themselves called these as Hindu figures (Al-Arquan-Al-Hindu). There are also visual similarities between the current Devangari (Indian) symbols and the Western (English) numerals.

The numerals for 1-9 were developed in India by 200 BC. The numeral for zero was developed around 500 AD. These traveled to Baghdad along with Arab merchants on the monsoon winds

(According to Ginsburg, a Hindu scholar named Kanka from Ujjain was invited to Baghdad for this purpose by Abbaside Khalif Al Mansur). From Baghdad, these spread to Europe, which was then using the cumbersome Roman numerals (III, IX, XXXIII, etc.).

[Sources: The Dawn of Indian Civilization, edited by G.C. Pande. 1999. Published by PHISPC; pp. 672-673.]
3: REGULATION OF CHARITIES IN UK

All charities in UK must register with the Charity Commission for England and Wales. They must also file an annual return and accounts. Copies of the accounts can be obtained by public. The Commission also has supervisory and investigative powers. The Commission's register of charities is open to public and can be searched through the internet (http://www.charity-commission.gov.uk/).

Some charities are exempt from registration. These include friendly societies, industrial / provident societies, and charities with annual income less than 1000 British pounds (~ Rupees 70,000).

(6-May-01)

2: TRUST REGULATION IN INDIA

Unlike Societies, there is no law governing public charitable trusts in India. They are governed by civil law. Indian Trusts Act, 1882 applies only to private trusts.

Public trusts are formed by simply registering the trust deed with a court registrar. They also register under Income Tax Act to get tax exemption.

However, trusts in Maharashtra and Gujarat are governed by Bombay Public Trusts Act, 1950.

(5-May-01)

1: PUBLIC DISCLOSURE IN USA

In USA, all tax-exempt NGOs have to file form 990 with the Internal Revenue Service. This form is open to public for inspection and must be provided on request.

The form includes extensive information on income, expenditure, assets, and liabilities as also remuneration of five top officers and five top consultants.

The US law allows the NGOs to make the form available on its web site instead of mailing to each person who asks for it.

Quite sensible: World Vision's latest form 990 runs into 69 pages! And this, when USA has a law called Paperwork Reduction Act, 1995!

(25-Apr-01)