

AccountAble™

118. Consultancy Fees and NGOs – 2

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In the previous issue of AccountAble, we discussed various legal aspects of income of NGOs from consultancy services. In this issue we continue the discussion.

d. FCRA

If the consultancy income is received from an Indian source, then FCRA does not enter into the picture. However, if the income is from a foreign source¹, the situation becomes more complex.

FCRA Theory

The reason for this is that definition of 'foreign contribution' does not distinguish between various types of receipts. It uses the phrase 'donation, delivery or transfer'. This would include donations, grants, fees, loans and all other types of receipts.

¹ What does foreign source mean? Foreign agencies are of course defined as a foreign source. Foreign corporations are also a foreign source. Also, an Indian NGO that gives you FCRA funds will be treated as a foreign source. For more on this, see AccountAble 84: 'Foreign Source' in FCRA

"Section 2(1)(e): "foreign contribution" means the donation, delivery or transfer made by any foreign source,-

(i) of any article, not being an article given to a person as a gift for his personal use, if the market value, in India, of such article, on the date of such gift, does not exceed one thousand rupees;

(ii) of any currency, whether Indian or foreign;

(iii) of any foreign security as defined in clause (i) of section 2 of the Foreign Exchange Regulation Act, 1973 (46 of 1973);

Explanation– A donation, delivery or transfer of any article, currency or foreign security referred to in this clause by any person who has received it from any foreign source, either directly or through one or more persons, shall also be deemed to be foreign contribution within the meaning of this clause;"

When we look carefully at the exceptions provided in section 8, the situation



becomes clearer. Section 8 exempts certain type of receipts from the definition of foreign contribution. The benefit of this exemption is restricted to persons listed in section 4². Section 8 reads as under:

"Section 8. Persons to whom Section 4 shall not apply-

Nothing contained in section 4 shall apply to the acceptance, by any person specified in that section, of any foreign contribution, where such contribution is accepted by him, subject to the provisions of section 10-

(a) by way of salary, wages or other remuneration due to him or to any group of persons working under him, from any foreign source or by way of payment in the ordinary course of business transacted in India by such foreign source; or

(b) by way of payment in the course of international trade or commerce, or in the ordinary course of business transacted by him outside India; or...

(f) by way of remittance received, in the ordinary course of business, through any official channel, post office, or any authorised dealer in foreign exchange under the Foreign Exchange Regulation Act, 1973 (46 of 1973)...."

It can be seen that clauses a, b and f, all refer to non-grant payments, such as fees. Therefore, it is clear that if fees were not covered by the definition in

² Politicians, judges, public servants, journalists etc.

section 2(1)(e), there would have been no need to refer specially to business income in the exemption³.

Consultancy Fees and FCMC Bill



This legal view is further supported by another development. Recently⁴, the Government has drafted a new bill called the Foreign Contribution (Management and Control) Bill. In this Bill, a new explanation has been inserted:

"Explanation 3, section 2(1)(f):

Any amount received, by any person from any foreign source in India, by way of fee for attending any conference held in India or as subscription for a journal or printed material published in India or as tuition fee for studies in an educational institution in India or *in lieu of services rendered by such person*, shall be excluded from the foreign contribution within the meaning of this clause." [emphasis added]

According to the explanation, consultancy receipts against services will not be treated as foreign contribution. The

³ As mentioned earlier, these exemptions apply only to persons listed in section 4. These exemptions do not apply to NGOs, which are covered by section 6.

⁴ June 2005

need for this explanation arose because the present definition treats consultancy receipts as foreign contribution.

Please note that this provision is contained in FCMC Bill. This Bill has not become law as yet. It may be two or three years before the FCMC Bill becomes a working law.

FCRA Practice

However, in practice, FCRA Department does not treat consultancy receipts as foreign contribution. There have been no cases where FCRA Department issued show-cause notice to a school for accepting fees from a foreign student. Similarly, no NGOs have been prosecuted for accepting consultancy fees from foreign agencies or for selling goods to foreigners.



Due to this liberal perspective of the Department, an explanation has been inserted in section 2(1)(f) of the FCMC Bill. This explanation has already been discussed in the earlier paragraph.

2. Accounting Aspects

How does one account for consultancy income? This will depend on whether you follow cash basis of accounting or accrual basis.

a. Cash Basis

Entry is passed when the consultancy income is actually received. However, if you receive an advance, the same should not be accounted as income, till the time the work has been completed.

The following table shows how entries are passed:

1. On Receipt of advance

Dr. Bank / Cash	10,000
Cr. Advance from Client	10,000

2. When final payment is received

Dr. Bank / cash	85,000
Dr. Advance from Client	10,000
Dr. TDS Recoverable	5,000
Cr. Consultancy Income	1,00,000

b. Accrual Basis

In accrual basis, income is accounted when the bill is raised or work is completed. Therefore, the entries are slightly different:

1. On Receipt of advance

Dr. Bank / Cash	10,000
Cr. Advance from Client	10,000

2. When bill is raised / payment becomes due

Dr. Client	90,000
Dr. Advance from Client	10,000
Cr. Consultancy Income	1,00,000

3. When final payment is received

Dr. Bank / cash	85,000
Dr. TDS Recoverable	5,000
Cr. Client	90,000

c. TDS entry

If TDS has been deducted then you must remember to make an entry for it. This has been shown above. This is especially important if you are following cash basis of accounting.

d. Entry for refund of TDS

You will receive a refund in the next year or even one or two years later. Till

then the amount deducted as TDS will appear as a recoverable amount in your Balance Sheet.

When the Income Tax Department sends you a cheque for refund, pass the following entry:

Dr. Bank / cash	5,000
Cr. TDS Recoverable	5,000

And don't forget to deposit the cheque immediately. The cheque is valid only for three months. And it may reach you via snail-mail on the 80th day.



Should you deposit the cheque for TDS refund in the Indian Account or in the FCRA bank account? This depends on how you treated the original receipt: as FCRA or as Indian.

Taxing Oddities

Historically, Kings and Governments have cast their nets far and wide to raise taxes. One example is the entertainment tax. This is essentially a tax on laughter, which survives to this day. Other oddities include:

Beard Tax: Introduced by Peter the Great, (r. 1682-1725) in Russia. The poorest had to pay a *kopec* for keeping a beard. Richer people had to pay 100 *roubles* annually. A bearded person also had to carry a 'beard license' saying 'Beards are a ridiculous ornament.'

Nose Tax: Imposed by the Danes on Irish household in 9th century. Amounted to an ounce of gold. People who did not pay, were punished by having their noses cut off. Possibly, this practice is the origin of the phrase 'paying through one's nose'!

If the original cheque for the fees was deposited in FCRA account, then the related refund should also be deposited in FCRA account. Similarly if the original fee cheque was deposited in the Indian bank account, then the refund cheque should also be deposited in the Indian bank account.

This aspect has already been discussed in more detail in AccountAble 117.

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