AccountAble™

142. The Eleventh Commandment

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AccountAid

It is a believed that God himself spoke to Moses on the Mount of Sinai. God gave him guidance for his people in the form of the Ten Commandments.

These Commandments were an early form of law. Failure to follow these could lead to harm and unhappiness. Even today, these ommandments are commemorated in the US Supreme Court in the form of a sculpture.

For NGOs in India, the present tax law is somewhat different, but no less compelling. This law gives no less than Eleven commandments, to be followed religiously by all NGOs.

This issue of AccountAble lists all the Eleven Commandments. It also suggests ways to make sure that a modern NGO does not fall foul of the new Eleventh Commandment.

you shall spend at least 85% of the funds each year for charitable or religious purposes. This includes funds spent on fixed assets needed for your work.

But, what if you are not able to spend 85% of the funds? You shall apply for a carry forward to next year. This means that you can meet the shortfall in spending next year.

What if you receive funds for a project that will last for 3-4 years? You shall apply for accumulation using form 10. You will then be permitted to spend these for the specific project within the next five years.

What if you have not received all the funds that you have accounted as income? You shall spend these in the year you receive the funds, or in the following year.

1. You shall register...

....under section 12A[1] as soon as your income crosses Rs. 1.5 lakh per annum to get exemption from tax.

You shall also apply for the issue of a PAN[2] so that you can be counted and tracked all the time.

2. You shall not hoard...

...the funds that you collect for charity[3]. Further

3. You shall not spend...

...your funds on any object outside India, unless it is for a purpose in which India is interested.

[1] See AccountAble 15 for more on this.
[2] Permanent Account Number
[3] Excluding those received for your corpus

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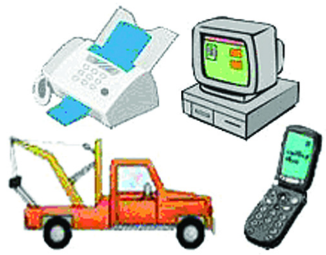
4. You shall not covet...

...the assets of the NGO. This applies to all key persons[4], i.e. people who run the NGO. They shall not use the equipment, vehicles, assets, premises of the NGO, without fair payment.

Also, you shall not divert any funds of the NGO to key persons by paying them salaries or fees etc. If such payments are necessary, then they shall be reasonable. They shall also be made against actual services. These transactions shall also be disclosed by the auditors in form 10B, a part of the audit report for Income Tax return.



They shall not use the equipment, vehicles, assets, premises of the NGO, without fair payment.

5. You shall not invest...

...any of the funds directly in the stock market or any business, unless the business is incidental to the completion of the objectives of the trust. If you receive any shares in a private company as a donation, you shall get rid of these shares either by transferring or by disposing them off within the year in which the shares are received (i.e. the following 31st March).

However, you shall be allowed to invest in mutual funds, and certain public sector undertakings.

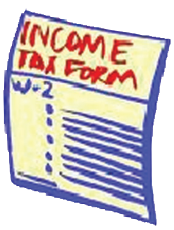
Also, you shall keep your money in a scheduled bank, post office, or cooperative society[5].

6. You shall divulge...

...full details of your income by filing an Income Tax return if your income exceeds the taxable limit[6]. This shall be in form ITR 7 and shall be filed on or before the 30th day of September each year.

7. You shall not lend...

... funds to the key persons at low rates of interest. You shall also not borrow money from key persons at high rates of interest.



8. You shall deduct tax...

... from salaries, rent, payments to contractors, fees, etc. according to the law, and shall deposit this tax with the Government as per law.

You shall also file TDS returns showing the amount of tax collected and deposited quarterly.

If you receive any shares in a private company as a donation, you shall get rid of these shares either by transferring or by disposing them off within the year in which the shares are received.

9. You shall not sell...

...your property or assets to key persons at low prices. You shall also not purchase any property or other assets from key persons at high prices.

10. You shall not amend...

...your Trust Deed or Memorandum and bylaws without getting prior approval from the Income Tax Department.

11. You shall not trade...

...or carry on any business like activity if you are a modern NGO, engaged in 'the advancement of any other object of general public utility'[7] .

Organisations engaged only in education, medical relief, or relief of the poor shall not be called upon to follow this Eleventh commandment.

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[4] See AccountAble 52 for more on this.

[5] Please refer to Section 11(5) of Income Tax Act, 1961 for other forms of investments.

[6] Presently Rs. 1,50,000

[7] Applicable from financial year 2008-09 onwards. Please see AccountAble 141 and AccountAid Capsule 274 for more on this.

Solution to crossword on Pg 4:

West To East: *Register, Charity, Keypersons, Audit, Transfer and Dispose, Income.*

North to South: *Moses, Accumulation, Salaries and Fees, Stockmarket, Government*

[Top Secret] Psssst....

Are you a modern Indian NGO with a guilty secret, such as selling greeting cards or handicrafts to raise funds?

Well, you could be in for some harassment or big trouble, unless you spin this 'business' activity off into a separate profit oriented entity. This entity will have a separate legal identity and tax registration. It will also have an independent board and ownership.

What about the buildings and equipment being used for the business activity? These can be sold to the new business entity. If the business entity does not have money to pay for these, the same can be sold through long term credit. Suitable interest should be charged on the loan to ensure that there is no problem with key person transactions.

All the income from business like activities should be received into this new entity. All the related expenses should also be accounted in this entity. Each year, the entity should prepare a Profit & Loss Account, get an audit done, if applicale and file the Income Tax return.

Chances are that the business entity will not really make any profit, once you account for all the relevant expenses. Therefore, it will pay a small tax or no tax at all. In such a case, the advantage is that your main charitable activity will get insulated from the risk of losing its Income Tax exemption and fund raising approval.

What if the entity is actually making large amounts of money? Well, then you should apply for 35AC approval for the NGO itself. And whatever profit is generated in the business entity can be donated to the NGO each year, for a 100% deduction. The business entity won't have any taxable income left. No income means no income tax! Simple, isn't it?

What is AccountAble?

Each issue of 'AccountAble' covers a different topic related to NGO regulation or accounting and is mailed to about 3,500 persons in NGOs, Agencies and audit firms. AccountAid encourages reproduction or re-distribution of 'AccountAble' in workshops or NGO newsletters for non-commercial use, provided the source is acknowledged.

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Interpretation of law given here is of a general nature. Please consult your advisors before taking any important decision.

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AccountAble in Hindi

अकाउण्टेबल हिन्दी में 'लेखा-योग' के नाम से उपलब्ध है।

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You can also discuss these over the phone.

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NGOs and Income Tax

A Word Search game to exercise your brain

R	K	Q	O	Y	R	A	S	B	S	X	Q	Q	E	I	G	E	R	O	S
L	F	U	X	U	O	C	S	C	G	Z	E	S	F	C	K	U	C	M	T
F	I	R	O	A	H	C	A	U	D	K	Y	O	S	J	L	K	L	P	O
P	S	T	I	G	X	U	L	P	W	Z	C	V	Y	M	M	G	F	O	C
Y	C	I	K	O	W	M	A	Y	F	C	H	A	R	I	T	Y	R	O	K
P	Z	J	X	V	M	U	R	Z	N	Y	A	P	Q	H	K	N	Q	C	M
U	C	A	Y	E	J	L	I	F	H	M	M	Z	Z	M	P	V	I	E	A
Q	N	Y	O	R	E	A	E	I	N	O	U	P	T	G	U	K	G	K	R
Y	K	D	J	N	J	T	S	I	B	S	W	I	N	C	O	M	E	H	K
Q	J	J	O	M	Q	I	A	Z	V	E	T	V	H	N	D	K	M	L	E
E	D	B	Q	E	B	O	N	L	Q	S	W	S	R	A	U	D	I	T	T
W	S	U	T	N	U	N	D	Q	G	A	H	L	W	E	Y	C	D	V	Y
P	L	V	K	T	D	L	F	H	W	P	T	N	B	J	R	N	Z	A	N
K	T	R	A	N	S	F	E	R	A	N	D	D	I	S	P	O	S	E	C
W	A	H	U	C	S	R	E	G	I	S	T	E	R	J	H	Q	D	G	P
D	S	N	S	A	K	P	S	K	E	Y	P	E	R	S	O	N	S	G	D

You may search the words from West to East and North to South.
Some clues: For your help

West to East

- You should do this under Sec 12A as soon as the NGO's income exceeds Rs. 1.5 lakh (8 letters)
- Income Tax Department likes using this word - most NGO's don't. (7 letters)
- They may use the NGO assets only after fair payment. (10 letters)
- All NGOs registered under Income TAx Act, should get this done. (5 letters)
- The two ways of getting rid of the donation received in the form of shares in a private company. (8 letters and 7 letters)
- If you have this, the Income Tax Department will be after you. (6 letters)

North to South

- During this person's time there was no Income tax. (5 letters)
- Form 10 is used for this purpose. (12 letters)
- Any payments made to keypersons under these two heads should be reasonable. (8 letters and 4 letters)
- You should not make any direct investments in this. (11 letters)
- Tax deducted from the salaries and fees finally goes to this institution. (10 letters)

(Please find the solutions to tis crossword at the bottom of the Pg 2.)