AccountAble™

153B: Fund-raising and GST Traps for NGOs Oct'18

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On one hand, the world is growing richer every day. On the other, new causes and issues emerge every day. In a world distracted with competing causes and myriad ways to solve them, many NGOs find that they are unable to raise enough funds for their mission. They are constantly looking for new and innovative ways to connect to donors and finance their causes.

However, not all ways of raising funds are charitable. Some are so close to business, that they may land you in the GST net. Which would probably be a disaster — what with the increased compliance and added costs.

In this issue, we look at some of the ways in which you can avoid a near-tax experience, and live to focus on your mission instead.

Mixing Business with Charity

A company gives you a CSR grant of 50 lakh for children's education and asks you to sign a grant agreement. The agreement includes a clause saying that you will display the company's logo prominently at all projects sites, on material distributed as part of project, and during any public events or media releases. What does this mean for you?

The CSR grant will be considered a taxable supply as the company is deriving a business advantage through advertising.

What if the grant is made by the company's CSR foundation? This problem may still arise if the foundation's logo and the company's logo are similar.

B1. CSR Grants

Trap: Normally, work done with a CSR grant or donation doesn't attract GST. However, in some cases, the company may require the NGO to project its brand (see 'Displaying Business Brands' for more). Or the grant agreement may be drafted like a service contract. Typically service contracts use words like 'fees', 'services', 'consideration', etc. The company may also ask the NGO to raise invoices for claiming the payments.

Tip: Check all CSR agreements carefully. Avoid signing any agreements which could attract GST risk. If you must sign such an agreement, do a cost-benefit analysis first. Don't raise any invoices against grants or CSR donations.

B2. Displaying Business Brands

Trap: Displaying names, logos or brands of a corporate donor can become advertising if the display is large or can be seen from a distance. This also applies if the NGO promotes business interests of corporate donors at a public event or in print/ electronic media.

Giving business advantage to a donor in this way can lead to the entire donation or grant being treated as chargeable to GST.

This doesn't apply if you are merely acknowledging a corporate donor's support in small print. This also doesn't apply to displaying logos of donor agencies or philanthropic foundations. It also doesn't apply to corporate foundation logos — unless the logo is very similar to the corporate logo.

Tip: Avoid any clause in grant agreement asking you to promote business products or logos. Make sure display of logo or name is not big enough to be seen as advertising. If you are receiving funds from a corporate foundation, make sure they are not asking you to advertise the company's logo as part of the deal.

B3. Cause-related Marketing

Trap: Sometimes companies market their products through a social campaign in partnership with an NGO. The NGO sometimes gets a small donation for each item that is sold. If the donation is part of the sales price, then it becomes taxable supply. The NGO may be required to pay GST on the donations collected, if its aggregate turnover crosses the limit of Rs. 10/20 lakh*.

Tip: Review the marketing agreement carefully. Check that the buyers have an option to donate, instead of a compulsory payment. Also check that the payment by the company is not against use of your NGO's logo.

B4. Accepting Royalty or License Fees

Trap: Royalty or license fees are paid by publishers or users to copyright holders. These could include artwork, photographs, videos, documentaries, music, a product patent, books, etc. If you accept payment for any intellectual property, then the transaction will be treated as taxable to GST.

Tip: Make sure that aggregate turnover including royalty, etc., remains below the limit of Rs. 10/20 lakh*.

The Art of Charity

A well-known foundation raises funds through auction of paintings contributed by contemporary artists.

Known as Art for Concern, these auctions are held round-the-year in metropolitan cities and large towns. While most of the paintings are donated to the foundation, the patrons ('donors') have to buy these for a price. The net proceeds go to the foundation.

Does the foundation sell the paintings directly? No - it collaborates with an event manager, Secure Giving. Secure Giving, which is registered for GST, organises the events, delivers the painting to the buyers, passes on the proceeds to the foundation, and the GST to the government.

Which leaves everyone happy — the community, the foundation, the artists, the buyers, and the Government!

B5. Selling Donated Material

Trap: If an NGO receives gifts in kind, and sells these to raise funds, then the sales are treated as normal taxable supply. Common examples are paintings, souvenirs, vacations, celebrity dinners, etc. In some cases, the NGO doesn't 'sell' the items for a price, but gives these to the donor against a 'donation'. This will also be treated as a sale for GST. Sometimes, the NGO may organise an auction where these items are sold to highest 'bidder'.

Tip: Avoid accepting such gifts directly. Work with an event manager who will receive the donated items, organise the event, and donate the net proceeds to you — for a fee.

B6. Training Events

Trap: If you conduct fee-based training in your campus or hire it out for training events, then GST would apply. This is subject to your crossing the Rs. 10/20 lakh* limit on aggregate turnover.

Tip: Training programs fully funded by Government (Central, State or Union Territory) are exempt from GST. Similarly, training or coaching in arts, culture or sports is exempt from GST, if provided by an NGO [Notification 12/2017, CT(Rate), dtd. 28-Jun-17]. However, all these are included in aggregate turnover.

B7. Benefit Dinners

Trap: Benefit dinners are used to showcase the work of a charity and are quite popular in metros like Mumbai. The tables at such dinners are 'purchased' by donors, who then invite their family or friends. Sometimes, each seat at a table is 'priced' (usually much more than the cost). Many people don't realise that these transactions are not donations under GST - these are sales.

Tip: Work with an event manager who will donate the net proceeds to you, after charging their fee.

B8. Ticketed Events

Trap: There is no GST on low-priced admission tickets for dance, drama, theatre, award functions, concerts, musical performance, or sports events.

Tip: Make sure the tickets do not cost more than Rs. 500 per person [Notification 2/2018- IT (Rate) dtd. 25-Jan-18].

B9. GST Deduction at Source (GSTDS)

Trap: GST Deduction at Source is a system to detect new GST tax-payers through their customers or clients. It works exactly the same way as Income Tax deduction at source. The customer or client is asked to deduct and deposit 2% GSTDS. This must be done if the contract or payment is Rs. 2,50,000 or more. The supplier can reduce their tax deposit by the amount of GST deducted by the customer. If the supplier is not really liable for GST, they can claim a refund. GSTDS provisions are effective from 1-Oct-2018. These apply to all government departments, municipal bodies, Government NGOs, Boards, etc.

If your NGO is receiving any payment from a government body, then they may deduct GST at source. In such a case, you may be asked to register for GST, if your aggregate turnover and taxable supplies cross Rs. 10/20 lakh*.

Tip: Make sure you accept only grants from government bodies. If you plan to supply any goods or services to a government body, consider doing this through a different entity.

NGOs Collaborating with Government

Many NGOs work closely with government agencies, conducting trainings, constructing toilets, organising health camps, forming Self-Help Groups. The NGOs are usually paid a fixed amount for each activity. Often the government agencies don't give a grant for these — instead they sign a contract. Income Tax is also deducted at 2% under section 194C of Income Tax Act. Total value of the contract is often quite high — running into tens of lakhs.

Beginning 1-Oct-2018, these agencies will also deduct GST of 2% from the payments they make to NGOs (or anyone else). Details of the amount deducted and the name, address, etc., of the NGO will be available from GST records. This will help GST Department to identify NGOs who have not registered for GST.

B10. Accepting Sponsorship Payments

Trap: NGOs often organise events such as marathons, shows, health camps, festivals, etc. Some part of the costs for the event is paid by the sponsors. Sometimes, TV or radio programs may be sponsored. The name of the sponsor is displayed or announced at the venue or during the program. This is essential for sponsored programs.

If the sponsor is a company (including a sec. 8 company) or a partnership firm, then the sponsor has to pay compulsory reverse charge on this. This charge is reported to the GST department and can be tracked. If the NGO's aggregate turnover from zero-rated supplies, exempt supplies and taxable supplies including sponsorship crosses Rs. 10/20 lakh*, the NGO may also be asked to register for GST.

Tip: Avoid sponsorship arrangements with sec. 8 companies, other companies or partnership firms. If you do accept these, make sure your aggregate turnover (including zero-rated and exempt activities) is well below the limit of Rs. 10/20 lakh*. Alternatively, make sure that the sponsorship payments go to the organisers, and not to your NGO.
This does not apply if the sponsor is an individual, a proprietorship firm, a charitable trust or society.

B11. Advertising a Donor's Name

Trap: Advertising a donor's name attracts GST. The GST is paid on the amount donated by the person whose name is advertised. This also applies if the donor nominates another person (e.g. a parent) whose name is to be announced or advertised.

Tip: GST defines advertisement as "any form of presentation for promotion of, or bringing awareness about, any event, idea, immovable property, person, service, goods or actionable claim through newspaper, television, radio or any other means but does not include any presentation made in person". Therefore, a simple mention of the donor's name in front of a gathering of devotees or a small acknowledgement plaque is not treated as advertisement.

* Limit of aggregate turnover for supply of goods is being revised to Rs. 40 / 20 lakh in some states with effect from 1-Apr-2019. Limit of aggregate turnover for services or for mixed supply (goods and services) remains unchanged. NGOs supplying services (or goods and services) may also opt for composition scheme if their aggregate turnover is less than Rs. 50 lakh per year. In such cases, they have to pay GST @ 6% on taxable supplies, without availing Input Tax Credit. This option will be available w.e.f. 1-Apr-2019.

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Comments: AccountAid India, 55-B, Pocket C, Siddharth Extension, New Delhi-110 014; Phone: 011-2634 3128; e-mail: query@accountaid.net.

Released for private circulation only by Ms. Renu Agarwal for AccountAid India, New Delhi (Ph. 26343128) and printed at PRINTWORKS, C-94, Okhla Industrial Area, Phase 1, New Delhi 110 020

Content: Shri Sanjay Agarwal, with inputs from M/s Aditya Agarwal, Ayush Gupta and Umar Farooque

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