

**RECEIPT OF
DONATION/GRANTS BY
CHARITABLE TRUST VS.
FCRA**

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Seminar on Audit & Taxation of
Charitable Organisation

By

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OUTLINE

- ⦿ Introduction
- ⦿ Framework of FCRA
- ⦿ Receipt of donations or grants by Charitable Organisations
- ⦿ Case Study

INTRODUCTION

10th January 2015

NEED FOR FCRA

■ 'Mysterious' NGOs Under MHA Radar

By Yatish Yadav | Published: 25th May 2014 06:00 AM Last Updated: 25th Ma

Over 20000 **NGOs** Flouted **Funding** Norms - The New India...

www.newindianexpress.com/...NGOs...Funding... ▾ The New Indian Express ▾

6 days ago - Latest Intelligence reports have claimed that some **NGOs** receiving **foreign funds** have been used to fuel trouble in parts of the country.

Indian Nonprofits Face Scrutiny for Misuse of **Foreign Aid** ...

content.time.com/time/world/article/0,8599,2036307,00.html ▾

Dec 14, 2010 - A 2006-07 government report on utilization of **foreign funds** by **Indian NGOs** shows that out of the \$2.15 billion in **foreign aid** received, around ...

NEED FOR FCRA

- ◎ *“to regulate the acceptance and utilisation of foreign contribution or foreign hospitality by certain individuals or associations or companies and to prohibit acceptance and utilisation of foreign contribution or foreign hospitality for any activities detrimental to the national interest ...”*
- ◎ Ill-implementation of regulations governing NGOs and Trusts.
- ◎ Vulnerability to money laundering, terror financing, funding to promote caste and religious divide.

FRAMEWORK OF FCRA

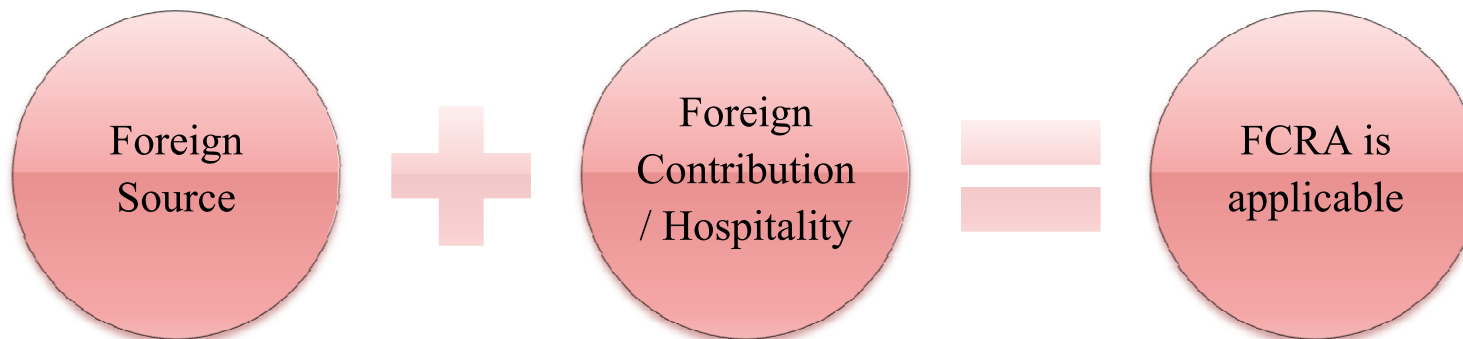


10th January 2015

SCOPE OF THE ACT

⊙ Applies to –

- The whole of India,
- Citizens of India outside India,
- Associate branches or subsidiaries, outside India, of companies or body corporate, registered or incorporated in India.



10th January 2015

FOREIGN SOURCE

- ⊙ Government of any foreign country, and its agency,
- ⊙ Foreign company,
- ⊙ A corporation incorporated in a foreign country,
- ⊙ Citizens of a foreign country,
- ⊙ A society, club or other association of individuals formed or registered outside India
- ⊙ A company incorporated under the Companies Act, more than half of whose nominal share capital is held, singly or jointly, by one or more of the above.

FOREIGN SOURCE

- ⊙ Any international agency, other than UN or its agencies, World Bank, IMF or other notified agencies,
- ⊙ A *foreign* multi-national corporation
- ⊙ A trade union in any foreign country, whether or not registered,
- ⊙ A foreign trust or foundation, or a trust or foundation mainly financed by a foreign country

FOREIGN CONTRIBUTION

- ◎ The donation, delivery or transfer, made by any foreign source, of –
 - Any currency, India or foreign
 - Any security
 - Any article, not being a gift for personal use, if its market value in India on the date of gift is not more than Rs. 25,000.
- ◎ Donation, delivery or transfer indirectly, through one or more persons, is also deemed to be FC.
- ◎ Interest accrued, or any other income derived from foreign contribution or interest thereon, is deemed to be FC.

FOREIGN CONTRIBUTION

- ◎ Foreign Contribution does not include -
 - Gift of articles having market value less than Rs. 25,000,
 - Donations made by citizens of India living outside India (NRIs),
 - Amount received
 - As fee, including fees charged by an educational institution in India from a foreign student, or
 - Towards cost in lieu of goods or services rendered in the ordinary course of business, trade or commerce, in India or outside India, or
 - Any contribution received from an agent of a foreign source towards such fee or cost.

FOREIGN CONTRIBUTION

⊙ Inclusions -

- Infusion of share capital in a Company registered under section 25 of the Companies Act
- Unsecured loans / loans at a subsidised rate obtained from a foreign source

⊙ Exclusions -

- Charges/ fee/ offerings received by temples for service rendered to foreign clients

FOREIGN HOSPITALITY

- ⊙ Any offer,
- ⊙ Not being a purely casual one,
- ⊙ Made in cash or kind by a foreign source,
- ⊙ For providing a person with the costs of travel to a foreign country,
- ⊙ Or with free boarding, lodging, transport or medical treatment.

PROHIBITION TO ACCEPT FC

- ◎ The following persons cannot accept foreign contribution -
 - Election candidate,
 - Correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper,
 - Judge, Government Servant or employee of any Body controlled or owned by the Government,
 - Member of any Legislature,
 - Political party or its office bearer,
 - Organization of political nature specified by the Government

PROHIBITION TO ACCEPT FC

- ◎ The following persons cannot accept foreign contribution -
 - Association/ company, engaged in production/ broadcast of audio/ audio visual news or current affairs programme through any mode of mass communication, or its Correspondent, columnist, cartoonist, editor, or owner
- ◎ Any person resident in India or a citizen of India resident outside India cannot accept foreign contribution on behalf of any person, on whom there is a prohibition for accepting foreign contribution

EXCEPTION TO PROHIBITION

- ◎ The aforesaid persons can accept foreign contribution as –
 - Salary, wages or other remuneration due to him or any persons working under him or in the ordinary course of business transacted in India
 - Payment in the course of international trade or commerce or in the ordinary course of business transacted outside India
 - As agent of the foreign source for transaction made by it with the Central or State Government
 - Gift as a member of Indian delegation
 - From relative
 - By way of scholarship, stipend or similar payments
 - In the ordinary course of business through any official channel

RECEIPT OF DONATION OR GRANT BY CHARITABLE ORGANISATIONS



10th January 2015

ELIGIBILITY TO RECEIVE FC

- ⦿ A person having definite cultural, economic, educational, religious or social programme can receive FC only after obtaining certificate of registration from the Ministry of Home Affairs.
- ⦿ Normally, registration is granted to persons existing for three years or more, with at least Rs. 6 lakhs of spendings on its purposes during the three years.
- ⦿ Registration certificate is valid for 5 years.
- ⦿ An alternate route is to obtain prior permission for receipt of FC from a specific source for a specific purpose.

PROCEDURE FOR REGISTRATION

- ⦿ An Application in Form FC-3 is required to be submitted to the Foreigners Division of Ministry of Home Affairs.
- ⦿ If the application is not in the prescribed form or incomplete, it will be rejected.
- ⦿ If the specified conditions are satisfied, the registration certificate or prior permission is to be granted within 90 days from date of receipt of application
- ⦿ In case the certificate or permission is not granted within 90 days, the same shall be communicated along with reasons to the applicant.

10th January 2015

PROCEDURE FOR REGISTRATION

- ◎ Specified conditions include –
 - The applicant should not be
 - Fictitious or benami,
 - Prosecuted or convicted for conversion from one religion to another, or for creating communal tension or disharmony,
 - Found guilty of misutilisation of funds,
 - Engaged in propogation of sedition,
 - Likely to use FC for personal gains,
 - In contravention of any provisions of FCRA
 - The applicant should have undertaken reasonable activity in the chosen field or should have prepared a reasonable project for the benefit of the society,

PROCEDURE FOR REGISTRATION

- In case of an individual, the individual, or in case of any other person, its directors or office bearers, should not have been convicted under any law or any prosecution for any offence should not be pending against them,
- Acceptance of FC should not be likely to affect prejudicially –
 - The sovereignty and integrity of India,
 - Security, strategic, scientific or economic interest of India,
 - Public Interest,
 - Freedom or fairness of any election,
 - Friendly relation with any foreign state,
 - Harmony between various castes or communities,
- Acceptance of FC should not lead to incitement of an offence or endanger the life or physical safety of any person.

RECEIPT OF FUNDS

- ⦿ FC received should be deposited only in the designated FC bank account.
- ⦿ Association should keep record of all FC clearly indicating the names of donors, their locations and the purpose for which it has been received.
- ⦿ FC can be treated as Corpus donation only if it is supported by written consent of the donor.
- ⦿ Donation received through donation box should be treated as FC if it has been received in foreign currency.

UTILISATION OF FUNDS

- ⊙ FC should be utilized for the purpose it has been received.
- ⊙ Not more than 50% of the FC received should be utilized for administrative expenses, except with the prior approval of the Central Government.
- ⊙ It cannot be invested in speculative business. However, it can be invested in Bank/ Govt approved financial institutions which guarantee a fixed return.
- ⊙ Every asset purchased should be in the name of association
- ⊙ Interest earned on FC should also be utilized towards its activities/ projects.

RESTRICTION ON TRANSFER OF FUNDS

- ⦿ FC cannot be transferred to any person who have not obtained registration or prior permission.
- ⦿ However, upto 10% of the total FC received in a financial year, may be transferred to any person who has not been granted registration or prior permission, only after obtaining the permission of the Central Government.
- ⦿ Such an approval is not required if payment is made to Self Help Groups or individuals for whose benefit the amount is received or if FC received is for providing direct financial assistance as charity.
- ⦿ For extending loans to Self Help Groups, approval of the Government is required.

MAINTENANCE OF ACCOUNTS

- ⦿ Associations are required to maintain a separate set of account or records exclusively for the FC received and utilized.
- ⦿ Any standard or acceptable method of accounting can be used for maintaining books of account for FCRA purposes
- ⦿ All accounting statements, annual return and statement of account from the bank of the designated FC account should be preserved at least for a period of six years.
- ⦿ Associations should maintain separate register of investments and every register of investment must be submitted for audit.

MAINTENANCE OF ACCOUNTS

- ⦿ Interest on FC should be shown as a secondary FC received in the year in which it is earned.
- ⦿ Proper accounts should be maintained to show apportionment of expenditure between local funds and FC.
- ⦿ A foreign security is not a permissible investment under the IT Act and should be liquidated and converted into funds or assets.
- ⦿ Association receiving FC in excess of Rs. One Crore in a financial year are required to place the summary data on receipts and utilization of the FC for the year of receipt as well as for one year thereafter in the public domain.

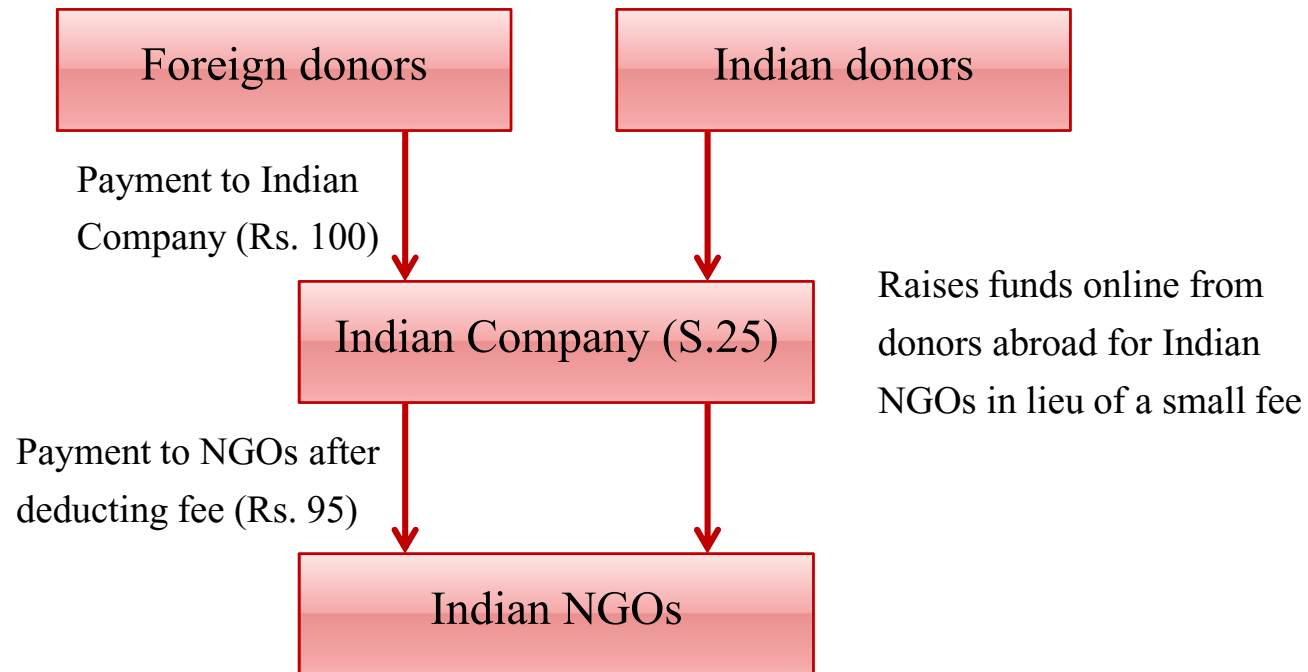
AUDIT AND REPORTING

- ⦿ The association should submit annual report in Form FC-6 accompanied by Audited Statement of Accounts for every financial year within nine months of the end of the financial year
- ⦿ The report should be duly certified by a Chartered Accountant.
- ⦿ Form FC-6 should be accompanied with a copy of duly certified statement of FC account from the bank
- ⦿ Filing of report is a must even if no FC has been received during a financial year.

CASE STUDY

10th January 2015

FOREIGN RECEIPTS FOR CROWD FUNDING



10th January 2015

ISSUES

- ⊙ Indian Company was a newly incorporated company having no track record.
- ⊙ Since funds were to be raised online for various causes, there was no specific source or specific purpose.
- ⊙ Funds were to be received by Indian company first and to be passed on to NGOs after reducing facilitation fee.
- ⊙ Is Indian company liable for compliance of FCRA?

QUESTIONS



10th January 2015

THANK YOU

CA Namrata Dedhia

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