THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
NEW DELHI

MOTTO
Ya esa suptesu jagarti kamam kamam Puruso nirmimanah ।
Tadeva sukram tad brahma tadevamrtamucyate ।
Tasminlokah sritha sarve tadu natyeti Kascan । etad vai tat ।

य एष सुप्तेषु जागर्ति काम काम पुरुषो निर्मितमाय नाम
तदृश शुक्र तद भ्राम तदेवमृतमूचयते।
तस्मिन्लोकः श्रीताः सर्व तदु नात्येऽति कश्चन। एतं वै ततः।

(That person who is awake in those that sleep, shaping desire after desire, that, indeed, is the pure. That is Brähman, that, indeed, is called the immortal. In it all the world’s rest and no one ever goes beyond it. This, verily, is that, kamam kamam: desire after desire, really objects of desire. Even dream objects like objects of waking consciousness are due to the Supreme Person. Even dream consciousness is a proof of the existence of the self.

No one ever goes beyond it: cf. Schubart: ‘On reaching God all progress ends.’)

Source: Kathopanishad

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up by an Act of Parliament)

TWO DAY NATIONAL CONFERENCE ON NPO

On August 23 & 24, 2013
Hosted by: SIRC of ICAI
Venue: P. Brahmayya Memorial Hall,
ICAI Bhawan, Chennai

Organised by:
Committee for Co-Operatives & NPO Sectors (CCONPO), ICAI
ICAI Bhawan, A- 29, Sector-62, Noida, Uttar Pradesh – 201309
Ph.: 0120-3045996, E-mail : congos@icai.in, Website : www.icai.org, www.cconpo.icai.org
About ICAI

The Institute of Chartered Accountants of India (ICAI) is a statutory body established under the Chartered Accountants Act, 1949 (Act No. XXXVIII of 1949) for the regulation of the profession of Chartered Accountants in India. During its 64 years of existence, ICAI has achieved recognition as a premier accounting body not only in the country but also globally, for its contribution in the fields of education, professional development, maintenance of high accounting, auditing and ethical standards. ICAI now is the second largest accounting body in the whole world.

Committee for Co-Operatives & NPO Sectors (CCONPO), ICAI

CA. Anuj Goyal, Chairman, CCONPO
CA. Subodh K. Agrawal, President, ICAI (Ex-officio member)

CA. Tarun J. Ghia, Vice-Chairman, CCONPO
CA. K. Raghu, Vice-President, ICAI (Ex-officio member)

CA. Nihar Niranjan Jambusaria
CA. Shiwaji Bhikaji Zaware
CA. G. Sekar
CA. Shyam Lal Agarwal
CA. Vijay Kumar Garg
CA. Atul Kumar Gupta
CA. Charanjot Singh Nanda

Government Nominees
Shri Bhaskar Chatterjee
Shri Salil Singhal
Shri Sidharth K. Birla
Shri Sunil Kanoria

Co-opted Members
CA. Madhu Sudan Sawdia
CA. Kamlesh J Rathod
CA. Santosh Muchhal
CA. Suresh Kejriwal
CA. Aghor Dudhewala

Secretary to the Committee: Dr. Amit Kumar Agrawal

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I am pleased that Committee for Cooperatives & NPO Sectors of the Institute of Chartered Accountants of India (ICAI) is organizing a National Conference on NPO on August 23 & 24, 2013 in Chennai. I am glad that the same is being hosted by Southern India Regional Council (SIRC) of ICAI.

Over the years, NGOs have strived hard to build a better world by advancing sustainable development, social integration and decent work. NGOs help in upliftment of the poor by fulfilling their basic needs and thereby strengthening communities. They promote food security and enhance opportunities for the underprivileged. They are better tuned to local needs and better positioned to serve as engines of local growth. By pooling resources, they improve access to information, finance & technology and their underlying values of self-help, equality and solidarity. They work for overall development of the common man in challenging economic times.

The ICAI through its Committee for Cooperatives & NPO Sectors has been working towards strengthening Cooperatives & NPO sectors and simultaneously exploring the new professional opportunities for members. Among various endeavors, the committee has sent different representations to authorities such as CBDT, NABARD and various State Governments. The Committee has also been taking initiatives to update the knowledge of the members through various publications and conducting of conferences, seminars, workshops, etc. This conference is another step towards imparting knowledge in the field. CCONPO has started a certificate course on Management, taxation, Laws, Accounting and Auditing concerning Co-operative societies & NPOs for the benefit of the members.

I believe that programmes like the one being organised are a great learning experience for Chartered Accountant fellows. By attending these programmes and hearing the learned subject experts, members can emerge with greater comprehension and knowledge accompanied with invaluable tips and information from practical wisdom and experience of expert concerned.

I wish all the delegates a fruitful, professionally enriching experience from this national conference.

Date: August 7th, 2013
Place: New Delhi

With best regards

CA. Subodh K. Agrawal
President
The Institute of Chartered Accountants of India
Dear Participants,

It is heartening to note that the Committee for Co-operatives and NPO Sector of our Institute is organizing a National Conference on NPO on 23rd & 24th August, 2013 at Chennai. By way of organizing such programmes, the ICAI tries to be instrumental in enriching the professional base of its members.

The government along with other regulatory bodies takes all possible steps to regulate cooperative & NPO sectors by enacting various laws and assuring their compliance by them. The Chartered Accountants can play a vital role in cooperatives & NPO sectors by ensuring the compliances and good governance by concerned institutions. Definitely this leads to the need for our members to maintain and expand their knowledge base on issues relevant to performance of their professional duties. This conference is aimed at not only towards disseminating the knowledge about developments in statutes in these sectors but also providing guidance to the members to explore more professional opportunities in these sectors. Eminent speakers from professional fields have been invited to share their views with the audience which, I think, will be of great help in professional development of not only our Chartered Accountant fellows but also other stakeholders of NPO sectors.

I am impressed with the topics chosen for the conference and the experts invited to share their wisdom amongst the delegates. I am sure that the deliberations in the workshop would be of high standard and provide an opportunity to the delegates to interact with the experts having experience and expertise in Co-operative and NPO Sector.

I would like to congratulate CA. Anuj Goyal, Chairman, Committee for Co-operatives & NPO Sector, CA. Tarun J. Ghia, Vice-Chairman, Committee for Cooperatives & NPO Sectors, CA. S Santhanakrishnan, Central Council Member & Conference Director, CA. V. Murali, Central Council Member & Conference Director, CA. G. Sekar, Central Council Member & Conference Director and other members of the Committee for Cooperatives & NPO Sectors for organizing this National Conference which would surely help our members and other participants to be well equipped and take a lead.

On this occasion, I extend warm greetings and felicitations to the participants and wish the programme all success.

Date: August 8th, 2013
Place: New Delhi

CA. K. Raghu
Vice-President, ICAI
Welcome to all the participants,

On behalf of the Committee for Co-operatives and NPO Sector of the Institute, I take the pleasure to welcome all the participants to the two days National Conference on NPOs at Chennai that is being hosted by Southern India Regional Council of ICAI.

NGOs and social sector enterprises formed under different statutes have existed in India since a long time. The philosophy behind forming an NGO has mostly been the upliftment of the underprivileged / physically challenged / poor etc. Even though the history of social institutions operative outside the confines of market and the state is rather old in India, the number of such institutions and the range of activities they cover have steeply increased during the past three to recent years. We, Chartered Accountants as watch dog of an organization, have got an important role to play in development of the Not-for-Profit sectors in the country.

I am sure that this conference would enhance the understanding of the participants towards the importance of compliance and good governance in NPO and Co-operative Sector, Taxation of Charitable Institutions, FCRA, Accounting and Governance issues of Charitable Institutions, Taxation of Cooperative Societies and Legal Status Options for Foreign Donors Working in India etc.

I would like to express my gratitude to CA. Subodh K. Agrawal, President, ICAI and CA. K. Raghu, Vice President, ICAI for giving this opportunity to the Committee for Co-operatives and NPO Sector for organizing this National Conference. I also thank to CA. S. Santhanakrishnan CCM and conference director, CA. V. Murali, CCM and Conference Director and CA. G. Sekar, CCM and Conference director for their support in organizing of this National Conference and also to my other colleagues in central council for sparing their valuable time and making efforts for organizing the Conference.

I am confident that, this would be a great learning experience for the Participants.

Date August 14th, 2013
Place New Delhi

CA. Anuj Goyal
Chairman Committee for Co-operatives and NPO Sectors
The Institute of Chartered Accountants of India
Dear Participants,

It gives me immense pleasure to welcome all the delegates to the National Conference on NPO being organized by the Committee for Cooperatives & NPO Sectors of ICAI on 23rd and 24th August at Chennai. The 2 day convention aims to focus and offer a clear picture on various functional areas, issues which have grey areas and require discussion and debate.

For a Chartered Accountant, the updation of knowledge is of quintessential importance. Continuing ongoing Professional Education is all about; absorption, assimilation, comprehension and practical application; of the knowledge acquired for the benefit of clients, employers and for the professionals themselves. It is my firm belief that by attending a program like this and listening to the eminent & erudite faculty Members, one can emerge with greater comprehension professional knowledge, which is often loaded with invaluable tips and insights that has at its core practical wisdom, insight and a world of experience not readily found in conventional text books or reference manuals.

The National Conference covers various topics important for professional development of all Members of the Institute, such as, on Taxation of Charitable Institutions, it also, provides an overview of the 97th Constitutional Amendments Act, 2011, Taxation of Cooperative Societies including deduction u/s 80P & the concept of Mutuality, provision of TDS & sec. 268SS & 269T of Income Tax Act, 1961.

Legal status options for foreign donors working in India, Issues relating to FCRA, 2010, Formation of Trust, Society and Companies registered u/s 25 of Co. Act, 1956 and Accounting and Governance aspects of Charitable Institutions. As the issues and deliberations have a practical orientation, the Convention will be enlightening, educative and a fruitful experience for all the participants as they would enjoy a feast of knowledge.

May I now offer my grateful thanks to CA. Subodh K. Agrawal Hon’ble President, ICAI and CA. K. Raghu- Vice-president, ICAI for inaugurating the Conference and sharing their abundance of knowledge & thoughts with us. I also thank to CA. Anuj Goyal, Chairman, Committee for Cooperatives & NPO Sectors for their valuable & unstinting support in organizing this conference. Also, my colleagues in the central council CA. V. Murali, CA. S. Santhana Krishnana, and CA. G. Sekar for sparing their valuable time to join us and thus add value to this Conference with their presence and wise thoughts.

I welcome all of you, dear delegates to this conference with the hope that the conference will turn out to be quiet a learning and memorable experience for all of you.

Date August 19th, 2013
Place New Delhi

CA. Tarun J. Ghia
Vice-Chairman
Committee for Cooperatives & NPO Sectors
The Institute of Chartered Accountants of India
TWO DAY NATIONAL CONFERENCE ON NPO
August 23 & 24, 2013
Organised by: Committee for Co-Operatives & NPO Sectors, ICAI
Hosted by: SIRC of ICAI
Venue: P. Brahmayya Memorial Hall, ICAI Bhawan, Chennai

Day -1 – Friday – 10.00 a.m. to 5.00 p.m.

<table>
<thead>
<tr>
<th>Technical Sessions</th>
<th>Resource Person</th>
<th>Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal Status Options for foreign Donors Working in India</td>
<td>Dr. Manoj Fogla Odisha</td>
<td>10:00 a.m. – 11:30 a.m.</td>
</tr>
<tr>
<td>Taxation of Charitable Institutions</td>
<td>Dr. (CA.) Girish Ahuja New Delhi Session Chairman: CA. V. Murali, CCM, ICAI</td>
<td>11:30 a.m. – 1:00 p.m.</td>
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<tr>
<td>Lunch</td>
<td></td>
<td>1:00 p.m. – 2:00 p.m.</td>
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<tr>
<td>An overview of 97th Constitutional Amendments Act, 2011</td>
<td>Dr. Amit Kumar Agrawal, Secretary, CCONPO, ICAI New Delhi</td>
<td>2:00 p.m. – 3:30 p.m.</td>
</tr>
<tr>
<td>Taxation of Cooperative Societies including Deduction u/s 80P &amp; Concept of Mutuality, Provisions of TDS &amp; Section 269SS &amp; 269 T of Income Tax Act, 1961</td>
<td>CA. G. Sekar Chennai</td>
<td>3:30 p.m. – 5:00 p.m.</td>
</tr>
</tbody>
</table>

Day -2 – Saturday – 10.00 a.m. to 5.00 p.m.

<table>
<thead>
<tr>
<th>Technical Sessions</th>
<th>Resource Person</th>
<th>Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Issues relating to FCRA, 2010</td>
<td>Adv. Aditya Rao New Delhi</td>
<td>10:00 a.m. – 11:30 a.m.</td>
</tr>
<tr>
<td>Formation of Trust, Society and Companies Registered under Section 25 of the Companies Act, 1956 and Interesting Issues on NGO, NPO and Charitable Trusts</td>
<td>Dr.(CA) N. Suresh Bangalore</td>
<td>11:30 a.m. -1:00 p.m.</td>
</tr>
<tr>
<td>Lunch</td>
<td></td>
<td>1:00 pm – 2:00 pm</td>
</tr>
<tr>
<td>Accounting and Governance aspect of Charitable Institutions</td>
<td>CA. M. Kandasami Chennai</td>
<td>2:00 p.m. – 3:30 p.m.</td>
</tr>
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<tr>
<td>Service Tax on NPOs</td>
<td>CA. R.K. Bhalla Delhi</td>
<td>3:30 p.m. – 5:00 p.m.</td>
</tr>
</tbody>
</table>

DELEGATE FEE: Rs.1500/-

Delegate fee by way of Cash or by Cheque / DD drawn in favour of ‘SIRC of ICAI’ payable at Chennai shall be sent to SIRC of ICAI, ICAI Bhawan, No.122, Mahatma Gandhi Road, Nungambakkam, Chennai – 600034. Phone: 044-30210320; Fax: 044-30210355; Email: sirc@icai.in

<table>
<thead>
<tr>
<th>CA. Anuj Goyal</th>
<th>Chairman, CCONPO</th>
</tr>
</thead>
<tbody>
<tr>
<td>CA. G. Sekar</td>
<td>CCM, ICAI</td>
</tr>
<tr>
<td>Conference Director</td>
<td>Conference Director</td>
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<tr>
<td>CA. V Murali</td>
<td>CCM, ICAI</td>
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<td>CA. S. Santhanakrishnan</td>
<td>CCM, ICAI</td>
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<td>Conference Director</td>
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<td>CA. P R Aruloli</td>
<td>Secretary, SIRC</td>
</tr>
<tr>
<td>Conference Co-ordinator</td>
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</tr>
<tr>
<td>CA.D. Prasanna Kumar</td>
<td>Chairman, SIRC</td>
</tr>
</tbody>
</table>

Contents

1. Salient Features of the Constitution (Ninety Seventh Amendment) Act, 2011 — 17
2. Resource material on Law pertaining to NPOs — 19
3. Frequently Asked Questions (FAQs) on FCRA — 93
4. Formation of Trusts, Society and Companies Registered u/s 25 of the Companies Act, 1956 and Interesting Issues on NGOs, NPOs and Charitable Trusts — 115
5. Service Tax on Cooperative Housing Society — 130
7. Accounting and Governance aspect of Charitable Institutions — 141
8. Practical Aspect of Service Tax on NPO/NGO Sector — 157
CA. Anuj Goyal
M.Com; LL.B; FCA; FCS; FICWA;
DISA (ICAI); DIRM (ICAI)
Central Council Member-ICAI

Brief Profile :
• Practicing Chartered Accountant for last 20 years after qualifying as a Chartered Accountant in the year 1993 at an early age of 23.
• Central Council Member of the Institute of Chartered Accountants of India since 2004 and presently, serving as Chairman, Committee on Public Finance, Committee on Management Accounting and Committee for Co-operatives and NPO Sectors, ICAI. Also was the Chairman of Professional Development Committee, Committee on Trade Laws and WTO of the Institute of Chartered Accountants of India. Also served as Chairman of various other Committees of the ICAI since 2004 viz. Expert Advisory Committee, Research Committee, Committee on Insurance and Pension and Committee on Public Finance & Government Accounting. Also served the profession in various other capacities at Central Council, Branch and Regional level of the ICAI since 1993.
• A great academician being a member of all three Professional Bodies of India i.e. ICAI; ICSI & ICWAI. He has also persuaded post qualification courses of ICAI and is qualified as Information System Auditor (DISA-ICA) & Insurance & Risk Management (DIRM-ICA). Presented papers and presentations on various topics of contemporary interest at various Seminars, Conferences and Workshops across the country. Also contributed to the profession as examiner, paper writer & speaker of various topics and also as visiting faculty member of coaching classes for students. Also worked as editor-in-chief & editor of various publications of professional interest.
• Specialised in handling multidiscipline practice in taxation matters at all levels, company law matters, BIFR matters, central statutory audit, branch statutory audit, concurrent audit, revenue audit, information system audit, internal audits, network audits, audits of Government Companies and PSUs, audits of insurance sector etc.

Educational & Professional Qualifications :
• M.Com; LL.B;
• Fellow Member of Institute of Chartered Accountants of India;
• Fellow Member of Institute of Company Secretaries of India;
• Associate Member of Institute of Cost & Works Accountants of India
• Qualified as Information System Auditor (DISA-ICA) & Insurance & Risk Management (DIRM-ICA).
• Merit holder at High School and Intermediate level and topped the University at Graduation and Post Graduation level. Passed the C.A. Intermediate and Final Examinations both groups at very first attempt even before the completion of article training.
PHOTOGRAPH

CA S Santhanakrishnan

Founder of M/s PKF Sridhar & Santhanam, one of India’s leading Professional Service Provider with Global Experience.

Awarded the “Professional Excellence Award” by the Chennai HR Forum

Professional Conspectus


Membership of Board of Directors

- Non-Executive Chairman of Catholic Syrian Bank Ltd, Thrissur (Kerala)
- IDBI Federal Life Insurance Company Limited
- Tata Coffee Ltd.
- Tata Realty and Infrastructure Limited
- Tata Housing Development Company Limited
- Tata Global Beverages Limited
- The Eight O’Clock Coffee Company, USA (foreign company)
- Consolidated Coffee Inc, USA (foreign company)
- XBRL India
- TMI e2e Academy

Professional Memberships

- Member of the Central Council (Governing Body) of the Institute of Chartered Accountants of India (ICAI)
- Accounting Standards
  - Member of the Accounting Standards Board for over 10 years and now Vice Chairman of the Accounting Standards Board
  - Member of National Advisory Committee on Accounting Standards (NACAS) from past 3 years
  - Member of the Core committee on Implementation of IFRS under Ministry of Corporate Affairs (MCA)
  - Member of the Technical Committee of MCA to advice Government on Accounting Standards
- Member of rule making committee for Company Law under MCA
- Member in Committee of Serious Fraud Investigation Office (SFIO) under MCA
- Chairman of Committees under ICAI
  - Corporate Laws and Corporate Governance Committee
  - Information Technology Committee

Contact Details:

PKF Sridhar & Santhanam

T: 044-28112985-88
M: +91 98410 73008
+91 99401 73008
Email: sk@pkfindia.in

Professional Memberships

- Member of Committees under ICAI
  - Auditing & Assurance Standards Board
  - Expert Advisory Committee
  - Internal Audit Standards Board
  - Committee on International Taxation
  - Professional Development Committee
  - Committee on Government Accounting
  - Perspective Planning Committee
  - Committee for Capacity Building of CA Firms & Small & Medium Practitioners
  - Committee on Financial Markets and Investors’ Protection
  - Ind AS (IFRS) Implementation Committee

Other Professional Memberships

- Member of the Accounting Standards Committee of The Confederation of Indian Industry (CII)
- Has been the Chairman of the committee setup by Indian Government for a course for Business Valuation and various other committees including those formed by Reserve Bank of India (RBI)
- Member of FICCI Task Force on Corporate Governance
- Member of the SEBI Group to discuss on IASB’s Exposure Drafts
- Financial Advisor to the Administrator, Lakshadweep Islands Authority
- Advisor to Federation of Indian Airlines
- Member in Advisory Board of Indian Centre for Assessment & Accreditation (ICAA)

Philanthropic Activities

- Coorg Foundation
- Sri Chandrasekhara Trust
- Sands Foundation
- Varanasi Welfare Trust

Scholastics

- Graduate in Science
- Degree in Law
- Fellow Member of the Institute of Chartered Accountants of India (ICAI)
CA. V. Murali

V. Murali is a bachelor of Commerce from the reputed Vivekananda College, Madras University. He is a Fellow Member of the Institute of Chartered Accountants of India and Associate Member of the Institute of Cost & Works Accountants of India.

V. Murali is a Practising Chartered Accountant at Chennai and he is the Senior Partner of M/s. Victor Grace & Co., Chartered Accountants. He has to his credit 30 years of experience in the relevant field.

PRESENT POSITIONS HELD IN THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA (SET UP BY AN ACT OF PARLIAMENT):

V. Murali is an elected Central Council Member of the Institute of Chartered Accountants of India for Four terms in succession for the periods 2004-2007, 2007-2010, 2010-2013 and 2013-2016 and secured sixth consecutive record win in ICAI elections from the Southern Region. He has been nominated as Chairman of the Committee on Education, Training and CPD constituted by SAFA for the year 2013-14. Currently he is the Vice Chairman of the Board of Studies, Executive Committee member and Disciplinary Committee member of ICAI and member of various important Committees constituted by ICAI. He has the distinction of being member of all the three Standing Committees Executive Committee (2008-2009), Disciplinary Committee (2007-2008, 2012-2013 & 2013-14) and Examination Committee (2004-2005) constituted by ICAI. He has the distinction of being Chairman of Board of Studies & Career Counselling, Committee for Members in Industry, Public Relations Committee, Continuing Professional Education Committee, Committee on Banking, Insurance and Pension constituted by ICAI.

NOMINATION OF V.MURALI BY GOVERNMENT & OTHER BODIES:

V. Murali has been appointed at various key positions at Govt. organizations / institutions / Departments. These includes Director on the Board of Neyveli Lignite Corporation Limited, member of the Innovation Council to prepare a roadmap for innovation 2010-2020, Director on the Board of State Bank of Hyderabad, Censor Board Member, Technical expert to the Audit Board of Power Finance Corporation Limited and Rural Electrification Corporation Ltd, Public Representative Director on the Board of MSE Financial Services Limited. He has been nominated as a Member of the Regional Advisory Committee for Small Scale Sector of the Central Excise Commissionerate for the year 2012-2013 and Member of the Regional Advisory Committee for Organized Sector of the Central Excise Commissionerate for the year 2010-2011. The Reserve Bank of India has nominated him as a Member of the Co-Ordination Committee for NBFCs and Unincorporated bodies. He has been nominated as member of the task force of CAPA in the Environmental Accounting and Corporate Social Responsibility Project, member of task force SAFA to perform Advisory Role to facilitate MRAs, member for IIN representing ICAI and attended IIN Conference at London hosted by ICAEW, member of Department of Company Affairs, member of National Society of Accountants for Cooperatives, USA. He has nominated to the ICAI - ICWAI - ICSI Co-ordination Committee. He was the Convener of the Special Technical Group for PFRDA. He is an independent director on the Board of various listed and unlisted companies, associated. V. Murali is the elected Vice-President of the Hindustan Chamber of Commerce for the years 2010-2011, 2011-2012 and 2012-13. He is nominated as the chairman, member of different committees of Chamber of Commerce and Industry.

POSITIONS HELD IN THE FIELD OF EDUCATION:

V. Murali has been nominated as the Chairman of the Board of Studies of the Institute of Chartered Accountants of India for the years 2006-07 and 2011-2012 and as its Vice-Chairman for the years 2008-09, 2010-2011 and 2013-14 and he has spearheaded various student friendly initiatives. He has been nominated to The Education, Education Services, Sectional Committee Msd9 of Bureau of Indian Standards, Government of India. He has nominated to the UNCTAD IAESB Accountancy Education Forum at Palais Des Nations, Geneva and represented ICAI at the Forum. He has been appointed by the University of Madras as Member on the Board of Studies for a period of 3 years. He has appointed as member of Academic Council of many colleges.

BOOKS AUTHORED/ARTICLES PUBLISHED/CONFERENCES ORGANISED:

V. Murali is a motivational writer who covers a wide array of topics such as net working, relationship building, positive thinking, winning communication, life skills, work-life balance, women empowerment etc. He authored many books such as ‘Passion with Compassion’, ‘Empathy not Apathy’, “Conveyancing & Real Estate Transactions”, “Role of Intelligentsia in the Upliftment of Society” etc. He published many articles of professional interest. He organized mega Conferences and Series of ‘Professional Excellence’ Seminars successfully throughout India. He chaired many Technical Sessions and has presented various Technical papers on varied topics.

AWARDS RECEIVED:

V. Murli is a recipient of many awards such as achieving Excellence in the field of education and development of professional skills by The Ishan Institute of Management and Technology, Kalaignar Award for Socially Focused Professional and by various NGOs and voluntary organizations and women empowerment foray.

POSITIONS HELD IN SOCIAL ORGANISATIONS, PROFESSIONAL BODIES AND ASSOCIATIONS:

V. Murli is elected Secretary, President, Vice- president, Treasurer and member of many organizations such as All India Tax Payers Association, CAFI, FFA, YMIA etc.
CA. G Sekar

G Sekar is a Chartered Accountant in practice for the last 27 years.

Founder and Faculty for Direct Taxation in Shree Guru Kripa's Institute of Management, an Institution providing education for all levels and all subjects of the Chartered Accountancy Course and has trained many finance professionals.


• Direct Taxes Committee
• Committee on Public Finance

Member of following Committees (2013-2014)
• Accounting Standards Board
• Accounting Standards for Local Bodies
• Capacity Building of CA Firms & Small and Medium Practitioners
• Co-operatives and NPO Sectors
• Economic, Commercial Laws & WTO
• Coordination with Sister Institutes
• Indirect Taxes
• Information Technology
• International Taxation
• Members in Industry
• Professional Development Committee

Great Motivator for Chartered Accountants in Practice and in Employment, and CA Students, through his effective and convincing communication style.

Roots –

Professional Profile –
4. Member of the Expert Study Group Committee, Central Board of Direct Taxes, New Delhi, to study the Direct Tax Code Bill in 2006.
5. Member of the Direct Tax Law Committee of The Institute of Chartered Accountants of India in 2011–12.
6. Recipient of Special Award from the Income Tax Department in 2011, during their “150 Years of Income Tax in India” Celebrations, for his contribution and service to the Income Tax Department.

7. Speaker on Budget Presentation in Doordarshan and Sun Television. Participated in various Live Public Interaction programmes on Sun Television to create awareness to public on various legal issues on taxation and education, more specifically on challenges and opportunities available for Commerce Students.
8. Well-known Speaker in the “Vazhikaati”, Career Guidance Programme for Commerce Curriculum conducted by Dinamalar Magazine and has addressed more than One Lakhs students in the last 5 years in Chennai, Coimbatore, Tirupur, Salem, Madurai and Puducherry.
10. Speaker in Seminars, Workshops and Programmes conducted by ICAI, its Branches, Study Circles, Chambers of Commerce, Income Tax & C&AG Officers Training Institutes, National Academy of Direct Taxes (Ministry of Finance), Tamil Nadu State Judicial Academy, etc.
11. Faculty Member of The Institute of Chartered Accountants of India and its Branches, and other Professional and Management Institutions, for CA Intermediate / IPCC and CA Final Level, for the subjects Income Tax, Service Tax, VAT, Direct Tax Law, etc.
12. Sharing of Professional Opportunities available to CAs through phone, email, etc.
13. Working with Income Tax Department in various capacities – viz. (a) Training of Assessing Officers to conduct assessment in a professional and value-added manner, and not merely look for adhoc additions to income, (b) Training of Income Tax Officers and IRS Officials at various forums including National Academy of Direct Taxes (Ministry of Finance), (c) Member of Study Group to discuss the Direct Taxes Code to make it easier for Users, etc.
14. Presented Cash Awards to the Rank Holders, State Toppers, District Toppers, and School Toppers in +2 Commerce Student of every District in the State of Tamil Nadu, Kerala, Karnataka, Andhra Pradesh and Puducherry.
15. Contribution towards E-Filing of Income Tax (IT) Returns – (a) Module-by-Module Testing of E-Filing of IT Returns before its introduction in public domain, (b) Providing Help Desk Support to the IT Department to make e-filing successful, (c) Integrating support for IT Law with e-filing / return formats, etc.
16. Member in:
• The Society of Auditors, Chennai
• The Chartered Accountant Study Circle, Chennai
• The Bombay Chartered Accountant Society
• International Fiscal Association

Author of Books –
17. Author of Professional Books – for Finance and Legal Professionals, Corporate Taxpayers, Banks, Officials of Income Tax Department, etc.
   (a) Handbook on Direct Taxes – (Recommended for IRS Trainees at NADT)
   (b) Practical Guide on TDS and TCS - (Approved Book for ITOs)
   (c) Personal Income Tax – A Simplified Approach
   (d) CA’s Handbook on Revised Schedule VI
   (e) Service Tax Reckoner
   (f) TN VAT and CST Ready Reckoner

18. Author of Books for CA Students – Authored about 23 books covering the entire curriculum of CA Course.

Shree Guru Kripa’s Institute of Management is the First and Only Educational Institution in India to accomplish this feat.
CA. D. Prasanna Kumar, born in 1960 from Tirutani in Tamil Nadu. He had started his collegiate education in Bachelor of Zoology and took up the Chartered Accountancy Course and became an Associate Member of the Institute in the year 1985 and became a Fellow Member in the year 1990.

His leadership qualities goes back to his early school days where he was the School Pupil’s Leader and then on he has been occupying several positions in the affairs of the Institute at SICASA, Branch and Regional Level. After becoming a Chartered Accountant, he moved to Visakhapatnam to pursue his career and practicing in Visakhapatnam.

During his student days in the CA Course, he had occupied the position of Secretary and Vice-Chairman of the Southern India Chartered Accountants Students’ Association in the early 80’s and made significant contribution to the students’ fraternity. He occupied all the positions in the Visakhapatnam Branch as Treasurer, Secretary, Vice-Chairman and as Chairman of the Branch during the years 1998-2001 during his Chairmanship the Visakhapatnam Branch received the Best Branch Award for the first time. He later on became a Member of the Southern India Regional Council from the year 2007. In the year 2007-08, he was the Secretary of SIRC and became Vice-Chairman during the year 2012-13 and presently the Chairman of SIRC.

CA. D. Prasanna Kumar is a versatile speaker and was resource person in many conferences and seminars organized by the Institute of Chartered Accountants of India and other professional bodies.

He is a keen follower of sports. CA. D. Prasanna Kumar himself is trained in many sports and a volleyball player. He held numerous positions in the sports field such as – Treasurer, 4th Asian Youth Volleyball Championship – 2003 Manager, Indian Volleyball Team at Doha in Qatar in the year 2003 Manager, AP Women Volleyball Team at Singapore in the year 2004 Treasurer, 13th World Youth Volleyball Championship in the year 2005

He is at present occupying the positions as - Treasurer, Visakhapatnam District Basketball Association Executive Vice-President, Roller Skating Association of Andhra Pradesh Treasurer, Roller Skating Federation of India Trustee, Sivanthi Adityan Sports Foundation.

CA. P R Aruloli,
Secretary, SIRC

OCCUPATION :- PRACTICING CHARTERED ACCOUNTANT ARBITRATOR OF MADRAS BENCH OF BOMBAY STOCK EXCHANGE TECHNICAL ADVISOR OF THE ROTARY FOUNDATION OF ROTARY INTERNATIONAL ASSOCIATE OF BRITISH STANDARD INSTITUTE OF INDIA. TECHNICAL EXPERT OF BUREAU OF INDIAN STANDARD.

QUALIFICATION :- MASTER OF COMMERCE (MADRAS UNIVERSITY) CHARTERED ACCOUNTANCY (ICAI) DIPLOMA IN MANAGEMENT (IGNOU) CERTIFICATE IN PRACTICAL AUDITING OF QMS IN ISO 9000 (IRCA) PG DIPLOMA IN ADVANCE COMPUTER SOFTWARE CERTIFICATE IN HRD IN INDUSTRY CERTIFIED MANAGEMENT ACCOUNTANT.

MEMBERSHIP & FELLOWSHIP :- FELLOW OF THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA FELLOW OF THE INDIAN INSTITUTE OF QUALITY MANAGEMENT. FELLOW OF INDIAN COUNCIL OF ARBITRATION. LIFE MEMBER OF NATIONAL INSTITUTE FOR QUALITY & RELIABILITY. LIFE MEMBER OF QUALITY COUNCIL OF INDIA. MEMBER OF THE ROTARY CLUB OF CHENNAI PHOENIX. CURRENTLY SECRETARY OF SOUTHERN INDIA REGIONAL COUNCIL.
Dr. Girish Ahuja

Dr. GIRISH AHUJA did his graduation and post-graduation from Shri Ram College of Commerce, Delhi and was a position holder. He is a Fellow of the Institute of Chartered Accountants of India and was a rank holder both in the Intermediate and Final Examinations of the Institute. He was awarded a Ph.D. degree by Faculty of Management Studies (FMS), Delhi University. He is a visiting faculty member of the Institute of Chartered Accountants of India, ICSI, ICWA and various management institutes. He had been nominated for six years by the Government to the Central Council of the Institute of Company Secretaries of India. He was member of the Accounting Standard Board of Institute of Chartered Accountants of India for three years. He is a member of the Direct Tax Committee and Special Invitee to International Taxation Committee of ICAI and member of Editorial Advisory Board of Institute of Company Secretary of India. He has a vast and rich experience in the field of finance and taxation.

Dr. Ahuja has addressed more than 2000 seminars organized by the various branches of Institute of Chartered Accountants of India.

He is the Author of over twenty books on Direct Taxes for students and many popular books for our professional friends, the main one’s being the Concise Commentary on Direct Taxes, A Compendium of Issues on Income Tax & Wealth Tax, the Direct Tax Ready Reckoner, A Compendium of Advance Rulings on Income Tax, Guide to Deduction of Tax at Source, Taxation of Capital Gains.

Dr. (CA) Manoj Fogla

Dr. (CA) Manoj Fogla, is a fellow member of the Institute of Chartered Accountants of India since 1990. He holds a Bachelor degree in Laws and also holds a Masters degree in Philosophy. He has completed his Ph.D. from Utkal University with his Doctoral research on ‘Social Accountability Standards for Voluntary Organisations’. He specialises in legal, governance & finance issues related to voluntary organisations. He is consultant to various international funding agencies, voluntary organizations and corporate entities.

He is the author of several best selling professional books in the country including ‘Comprehensive Commentaries on Taxation of Trusts & NGOs’ published by Taxmann Publications. He has also authored the books ‘Commentaries on FCRA 2010’ and ‘Legal and Financial Handbook for Voluntary Organisations’. He is the principal author of the fortnightly legal news letter “Standards & Norms” on legal, governance and financial management issues published by FMSF, India. He is also the principal author of the monthly governance news letter “Governance and Disclosures” published by Credibility Alliance, India.

He is on the Board of Governors of several reputed institutions including ‘Silicon Institute of Technology’, Bhubaneswar, ‘Asian School of Business Management’, Bhubaneswar.

He is Trainer, Advisor & faculty to many national and international Institutes. He is actively engaged in facilitating seminars, workshops, evaluations & investigations in various parts of South Asia.
Dr. Amit Kumar Agrawal, Secretary, Committee for Cooperatives & NPO Sectors, ICAI

Dr. Agrawal is the Secretary, Committee for Cooperatives & NPO Sectors, ICAI. Prior to this he contributed as member, technical assistance team of European Union for the project on IWRM in Rajasthan. He is member of Researchers Alliance for Development, The World Bank. He holds more than fifteen years of experience in various fields such as auditing, accounting, project appraisal, teaching, training, management development programmes, research, project implementation, consultancy, course designing, document development, capacity building, contract management etc.

He has doctorate and masters in management as well as in commerce. He has four books and many short information document and articles in his credit. He has been associated in various assignments; a few of them are briefed below:

Social Audit Manual for NREGA: The report and manual continues to remind us of the challenges and best possible solutions for the fulfillment of good governance in our country. It is unveil by then Hon’ble Finance Minister, GOI, Shri Pranab Mukerjee.

Detailed Project Report for Rain Water Harvesting: The work was sponsored by UNDP to Sustainable Innovation USA and HPTP. The report was focused on possible sustainable solution for drinking water availability.

Potential for Bio fuel refinery in Rajasthan: The study was conducted for Consultway Group Spain to assess the feasibility of refinery.

Modeling for Multi criteria facility location: A tool for decision support in facilities location determination. The study was sponsored by DST, GOI.

Organized Retailing: The report was focused on examine the effects of organized retailing on various sectors in India. This study was sponsored by UGC.

Training Need Assessment for Department of Information Technology, GOR.

Mr. Aditya Prakash Rao joined Amarchand Mangaldas in June 2008 and works with the Public Policy & Governmental Affairs team. At the Firm he advises the clients on corporate affairs strategy and public policy matters in India, primarily pertaining to legal issues in defense sector, nuclear energy, education, information communications technology, media & entertainment law, data protection, apart from general corporate & investment advice in various sectors.

Mr. Rao has been part of the Firm’s advisory groups to government ministries and departments at the Federal level and has drafted legislations for such government agencies. These include Ministry of Information Technology, Ministry of Science and Technology, Ministry of Industry and Commerce, Ministry of Finance, Government of India.

Mr. Rao is a part of the charities advisory group at the Firm and has been intricately involved in imparting advice to high-impact, livelihood generation based, national and international level social welfare organizations. He is also currently serving on the India board of Sesame Workshop and the Wadhwani Foundation.

Select Experience

• Lead contact Lex Mundi Pro-Bono Foundation.
• Lead contact and advisor Ashoka Advocates – Mr. Rao is responsible in assisting variety of Ashoka fellows over the years and has also conducted legal roundtables in various cities for Ashoka fellows as an outreach and advocacy mechanism covering a broad spectrum of issues such as Organizational Structuring, Foreign Contribution Regulation, General Contracting, Intellectual Property, Taxation and the like.
• Rendered structural advisory to Sustainable Innovations – MIT Lemelson Award winner for 2010. Mr. Mukerji led the team which catered to the unique requirements of the project that mandated the drawing up of a structure with the ability to raise equity/debt investments from social investors as well as donations/grants for its operations, with overall compliance of the existing legal strictures applicable to not-for profit space in India.
• Advisor to Grameen Foundation, USA for their ‘Growth Guarantees’ program.
• Assisted numerous domestic/multinational clients in their Corporate Social Responsibility deployment programs in India.
• Advisor to Latitude Global Volunteering for their India operations.
• Advised to Endeavor Global on their compliance and restructuring of entities in India.
• Advisor to the United States - India Business Council on various legal, policy and political issues on doing business in India. Member of the working groups on Finance, Media & Entertainment, Infrastructure and aviation, Information Communications Technology.
Dr. N. Suresh

Dr. N. Suresh is a Graduate in commerce from Bangalore University and a Fellow Member of The Institute of Chartered Accountants of India. He did his PhD in Taxation. He has presented several papers on various Study circles, meetings and Seminars conducted by Professional bodies.

He is the Proprietor of M/s. Suresh Nandini Associates and Shivalingaiah & Co. Chartered Accountants.

He has been awarded “Doctorate in Taxation” on the thesis:
1. Taxation, System and Practices in India
2. NGO’s, NPO’s, Legal System and practices in India

He is regularly contributing articles on Income Tax which are published in leading tax magazines, such as “Taxman”, “Current Tax Reporter”, “Tax Reference” and “Corporate Law Advisor”. So far he has contributed over 300 articles. He has authored few books on Taxation in the past vis-a-vis:
1. Taxation Issues on Charitable Trusts /Institutions, NGO’s, NPO’s.
2. ‘Law Relating to Charitable Trust & Other Institutions’

He is presently authoring two books on Taxation.

He is recognized as the Resource Person for CPE Seminars by the Institute of Chartered Accountants of India.

He is also specialized in K.P. Astrology.

He is a singer in carnatic music as well light music (sugama sangeetha).

His Wife is a Chartered Accountant.

CA. M. Kandasami

CA M. Kandasami is a practising Chartered Accountant heading his firm, Kandasami & Associates, in Chennai, India for the past three decades. He is a Commerce graduate from Loyola College, Chennai with several medals for academic excellence, to his credit.

His field of specialization is governance, financial management and legal compliance aspects of Non Profit Sector Organizations. Mr. Kandasami’s experience in the non profit sector spans a wide spectrum of organizations, ranging from grass roots groups to Government and international agencies, including the United Nations Development Program. His firm is involved in providing audit, FM capacity building and legal and financial advisory support to non profits in India and several Asian and African Countries. Mr. Kandasami coordinates a national network of auditors to provide support to international funding agencies and has also facilitated setting up such networks in other countries. He has contributed to the study on Charities Administration for the Planning Commission, Govt. of India and is a member on the board of the Tamil Nadu Voluntary Resources Centre(TNVRC), a Govt. of Tamilnadu Undertaking.

Mr. Kandasami is a well-known author in the non profit domain. His book, Governance and Financial Management in Non Profit Sector Organisations is in global circulation. He also co-authored the first ever book on Foreign Contribution (Regulation) Act 1976, titled “The Law of Foreign Contribution and Foreign Hospitality”, together with the erstwhile Asst. Director of FCRA Division of the Ministry of Home Affairs, New Delhi. He was also instrumental in designing the basic draft of ‘The Guide to Audit of Trusts under the Income Tax Act, 1961’ published by the Institute of Chartered Accountants of India (ICAI).

Mr. Kandasami is a sought after trainer and resource person at national and international seminars and workshops. He is a regular resource person at seminars on Non profit sector conducted by ICAI. He has served as coopted member of the Corporate and Allied Laws Committee of ICAI and founding member of the newly set up, Non Profit Sector Committee. In addition to ICAI and International Agencies he is also invited by government departments, such as The Income Tax Department’s National Academy of Direct Taxes (NADT) to address Income Tax Officials on the Assessment of Trusts. He is a visiting faculty at social work and management institutions and universities, including the Xavier Institute of Management, Bhubaneswar.

Mr. Kandasami was awarded the Hind Gaurav Award and National Unity Award for professional excellence.
The Constitution (Ninety Seventh Amendment) Act, 2011 enacted by the Parliament of India to amend the Constitution of India, received Presidential Assent on 12th January 2012 with the objective to enhance public faith in Cooperatives and insulate from avoidable political and bureaucratic interference.

In part IV of a new Article 43B inserted, which Says:

The state shall Endeavour to promote Voluntary formation autonomous functioning, democratic control and professional management of the co-operative societies.

The Central Government has asked state government to amend its respective state act in line with the The Constitution (Ninety Seventh Amendment) Act, 2011. The salient features of the Act are -

• Accounts & Audit (Article 243ZM)
  a) Maintenance of accounts of Co-operative Societies.
  b) Auditing of accounts once in each financial year within six months of the close of the financial year to which such accounts relate.
  c) Lay down the minimum qualification and experience of auditors auditing firms which shall be eligible for auditing accounts
  d) Auditor shall be appointed by the general body of the Cooperative Society from a panel approved by the State Government or an authority authorized by State Government.
  e) The audit report of an apex Co-operative Society defined by the state act, which shall be laid before the State Legislature in the prescribed manner which may be provided by the State Act.

• Filing of Return (Article 243ZP)
  a) Every Co-operative Society shall have to file return within six months of close of financial year to the designated authority.
  b) The return should include the following matters –
     i. Annual Report of its activities
     ii. Audited statement of accounts
     iii. Plan for surplus disposal as approved by the general body of the co-operative society

Salient Features of the Constitution (Ninety Seventh Amendment) Act, 2011

By Dr. Amit Kumar Agrawal
Secretary, Committee for Co-Operatives & NPO Sectors, ICAI

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CA. R.K. BHALLA

CA R.K.BHALLA qualified as CA in the year 1979. Since than he is in practice at DELHI under the Direct and Indirect Taxes.

He is a fellow member of the ICAI. He further did LLB in the year 2010.

He is associated with various tax association and is a Life member of All India Federation of Tax Practitioners Mumbai.

At present he is member executive committee sales tax bar association Delhi, Tax Bar Association Delhi. He is also a member of ITAT Association New Delhi and Bar association of Excise and Custom at New Delhi.

He has also addressed many conferences, seminars and workshops organised by professional bodies and study circles of NIRC.

He has contributed articles on Indirect tax. He is a regular speaker in the study circle meetings of NIRC. He has represented the important cases at vat tribunal of various states of the country.

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iv. List of amendments to the bye laws of the co-operative society
v. Declaration regarding holding of general body meeting and conduct of elections when due
vi. Any other information required by the Registrar in pursuance of any of the provisions of the State Act.

- Co-option of members (Article 243ZJ (3))
  a) The State shall make amendments in their respective co-operative acts to co-opt maximum two persons as members of the board in addition to twenty one directors specified in the act.
  b) The co-opted members should have experience in the field of banking, management, finance or specialization in any other field relating to the objects and activities of the co-operative societies.
  c) They should have no right to vote in any elections of the co-operative society in their capacity.
  d) They are not eligible to be elected as office bearers of the Board.

New opportunities for the members of the ICAI
- As per article 243ZJ (3), there is a provision which shall be inserted in the State Cooperative Act, a member of ICAI can be appointed as a co-opted member having experience in the field of banking, management, finance or specialization in any other field relating to the objects and activities of the co-operative societies.
- A per article 243ZP (a) & (b), Every Co-operative Society shall have to file return within six months of close of financial year to the designated authority which shall contain annual report and audited statement of accounts which shall explore new professional opportunities for members of ICAI.

Points for Attention
- As per article 243ZM(2), state shall amend its act about minimum qualification and experience of auditor and auditing firms that shall be eligible for auditing accounts for co-operative societies.
- A per article 243ZM(3), Auditor shall be appointed by the general body of the Cooperative Society
- The audit report of an apex Co-operative Society defined by the state act, which shall be laid before the State Legislature in the prescribed manner which may be provided by the State Act.
CHAPTER 1

OPPORTUNITY TO COMPOUND OFFENCE FOR FOREIGN LIAISON AND BRANCH OFFICES
(INCLUDING DETAILED ANALYSIS OF LAW AS ON DATE)

INTRODUCTION

1.1.1 The Reserve Bank of India (RBI) has issued a circular RBI/2013-14/9 July 01, 2013, Master Circular No.9/2013-14 for all liaison and branch offices of foreign agencies working in India without having formal permission under Foreign Exchange Management Act (FEMA), 1999. See Annexure 1

1.1.2 This circular allows all such agencies to compound these offences and regularizes their existence in India within a period of 12 months i.e. before 1st July 2014.

1.1.3 All such agencies who have not obtained approval under FEMA, 1999 should avail this opportunity. It may be noted that there are many liaison and branch offices of foreign agencies (particularly NGOs) which have not regularised their existence in India. As a matter of fact in the year 2011 RBI had issued a Circular no. RBI/2011-12/112, A.P. (DIR Series) Circular No. 02, dt.15.07.2011 wherein all the LO/BO in existence prior to enactment of FEMA were asked to approach the RBI for regularization of their status under the FEMA within 90 days from the date of issue of the Circular, See Annexure 2.

LEGAL ISSUES FOR FOREIGN NGOs WORKING IN INDIA

1.2.1 It is important to understand that a foreign NGO is legal entity registered outside India, and therefore it cannot be considered as an Indian NGO. After the enactment of Foreign Exchange Management Act, 1999 (hereinafter referred to as FEMA), all foreign NGOs are required to take permission from Reserve Bank of India (RBI) for operating in India. It may be noted that prior to the enactment of FEMA many foreign donor offices were granted ‘No Objection Certificate’ by RBI under the erstwhile Foreign Exchange Regulation Act, 1973 (hereinafter referred to as FERA) as FERA did not prohibit or regulate the offices of foreign donors in India. Therefore, all permission for liaison office granted under FERA became invalid w.e.f. 1st June 2000 (the day of enactment of FEMA 1999).

1.2.2 Foreign NGOs having their branch/liaison offices in India are required to take approval from the RBI under the provisions of FEMA. FEMA was enacted in the year 1999 and it became effective from 1st June, 2000. Prior to that, all the foreign exchange matters were regulated under the Foreign Exchange Regulation Act, 1973.

1.2.3 Somehow under FERA there was no provision for a specific permission to be obtained by foreign NGOs to operate in India. Therefore, many foreign NGOs were having their branch/liaison offices without getting any formal permission from any authority. Prior to the enactment of FEMA, many foreign NGOs sought permission from RBI to set up liaison offices. All such applications made prior to 1st June, 2000, were issued a ‘letter of no objection’ by RBI. Many foreign NGOs having their liaison offices/branch offices in India construed this ‘letter of no objection’ as an open-ended approval, which was not correct. The reality is that RBI was not regulating foreign NGOs prior to 1st June 2000. All foreign NGOs remained virtually unregulated by any specific law or regulation. However, after enactment of FEMA, the law is very categorical and clear about the legal formalities required to be complied by a foreign NGO. They have to seek permission for setting up liaison offices and the permission is generally granted for 3 years only. The liaison offices can be upgraded to branch offices at the discretion of RBI.

DOES FCRA APPLY TO LIAISON OR BRANCH OFFICE IN INDIA

1.3.1 It should be noted that the FCRA (Foreign Contribution Regulation Act, 2010) is an internal security legislation regulated by the Home Ministry unlike the FEMA which is a fiscal legislation regulated by the Finance Ministry. Both the Acts have their specific applicability and are not mutually exclusive. FCRA would generally not apply to liaison and branch offices of foreign agencies unless they receive foreign contribution from sources other than inward remittance from Head quarter.

OPPORTUNITY TO REGULARISE BY COMPOUNDING OF OFFENCE

1.4.1 All the existing LO/BO prior to FEMA, 2000 which have not acted in response to the circular dt. 15/07/2011, their operations in India may be considered without the
required mandate of RBI and therefore they should immediately take necessary steps for regularizing their status.

1.4.2 Such organization should submit their application for regularization in terms of above referred Circular together with corroboration that the relevant circular has not come to their notice or nor the AD (Authorised Dealer category) bank has informed them about the same.

1.4.3 They should also file a Compounding Petition in terms of the Master Circular No. 9/ 2013-14 dt. 01/07/2013.

1.4.4 The application is normally routed through the AD bank however, a Compounding of offence petition should be made to the following authority: To,
The Compounding Authority,
Cell of Effective Implementation of FEMA
Foreign Exchange Department,
Reserve Bank of India, 5th Floor,
Amar Building, Sir P.M. Road, Fort,
Mumbai – 400001

1.4.5 It is advisable to file the application form (discussed hereinafter) along with Compounding of offence petition to the above authority.

GENERAL CONDITION FOR
LIAISON & BRANCH OFFICES

1.5.1 A body corporate incorporated outside India (including a firm or other association of individuals, desirous of opening a Liaison Office (LO) / Branch Office (BO) in India have to obtain permission from the Reserve Bank under provisions of FEMA 1999. The applications from such entities in Form FNC will be considered by Reserve Bank under two routes:

- **Reserve Bank Route** — Where principal business of the foreign entity falls under sectors where 100 per cent Foreign Direct Investment (FDI) is permissible under the automatic route.
- **Government Route** — Where principal business of the foreign entity falls under the sectors where 100 per cent FDI is not permissible under the automatic route. Applications from entities falling under this category and those from Non-Government Organisations/Non-Profit Organisations/Government Bodies/Departments are considered by the Reserve Bank in consultation with the Ministry of Finance, Government of India.

1.5.2 The following additional criteria are also considered by the Reserve Bank while sanctioning Liaison/Branch Offices of foreign entities:

- **Track Record** For Branch Office — A profit making track record during the immediately preceding five financial years in the home country.
  - For Liaison Office — A profit making track record during the immediately preceding three financial years in the home country.
- **Net Worth** (total of paid-up capital and free reserves, less intangible assets as per the latest Audited Balance Sheet or Account Statement certified by a Chartered Accountant in any Registered Accounts Practitioner by whatever name).
  - For Branch Office — not less than USD 100,000 or its equivalent.
  - For Liaison Office — not less than USD 50,000 or its equivalent.

1.5.3 The application for establishing BO/LO in India should be forwarded by the foreign entity through a designated AD Category - I bank to the Chief General Manager-in-Charge, Reserve Bank of India, Foreign Exchange Department, Foreign Exchange Division, Central Office, Fort, Mumbai–400 001, along with the prescribed documents including:

- English version of the Certificate of Incorporation / Registration or Memorandum & Articles of Association attested by Indian Embassy / Notary Public in the Country of Registration.
- Latest Audited Balance Sheet of the applicant entity.

1.5.4 Applicants who do not satisfy the eligibility criteria and are subsidiaries of other companies can submit a Letter of Comfort from the parent company, subject to the condition that the parent company satisfies the eligibility criteria as prescribed above. The designated AD Category-I bank should exercise due diligence in respect of the application background, antecedents of the promoter, nature and location of activity, sources of funds, etc. and also ensure compliance with the KYC norms before forwarding the application together with their comments/recommendations to the Reserve Bank.

1.5.5 The Branch/Liaison offices established with the Reserve Bank's approval will be allotted a Unique Identification Number (UIN) ([www.rbi.org.in/scripts/Fema.aspx](http://www.rbi.org.in/scripts/Fema.aspx)).

1.5.6 The BOs/LOs shall also obtain Permanent Account Number (PAN) from the Income Tax Authorities on setting up the offices in India.
DOCUMENTS TO BE FILED

1.6.1 The following documents are required to be filed through the designated AD Category-I bank to the Chief General Manager-in-Charge, Reserve Bank of India, Foreign Exchange Department, Foreign Investments Division, Central Office, Mumbai. The application should justify the need with comments of the designated AD Category-I bank:

(1) Form FNC.
(2) English version of the Certificate of incorporation/registration or memorandum or articles of association of the Foreign NGO. Either the Indian Embassy or a notary public of that country should attest this document.
(3) Latest audited balance sheet of the foreign NGO.
(4) Details of activities proposed to be supported by the foreign NGO.
(5) Overview of the activities, mission and vision of the foreign NGO.
(6) Power of the attorney in favour of the consultant, if any.

WHO SHOULD SIGN THE FORM FNC?

1.7.1 Form FNC should be signed by the Overseas authorized signatory of the Foreign NGOs and not the Indian representative.

WHO SHOULD SIGN THE POWER OF ATTORNEY?

1.8.1 The power of attorney should be signed by the overseas authorized signatory of the Foreign NGOs and not the Indian representative.

TIME TAKEN FOR PROCESSING THE APPLICATION

1.9.1 No time-limit has been prescribed in FEMA. We were told that the RBI normally takes 2-3 weeks for processing such applications. But in the case of charitable organisation, all applications are referred to the Finance Ministry, Government of India. It can be a time consuming process. It may take 6-12 months to get the first approval for liaison office, but renewal is done at the designated bank level only, which should not take more than 2-3 weeks.

DOCUMENTS TO BE FILED ANNUALLY

1.10.1 Branch Offices/Liaison Offices have to file Annual Activity Certificates (AAC) from Chartered Accountants, at the end of March 31, along with the audited Balance Sheet on or before September 30 of that year. In case the annual accounts of the LO/BO are finalized with reference to a date other than March 31, the AAC along with the audited Balance Sheet may be submitted within six months from the due date of the Balance Sheet to the designated AD Category-I bank and a copy to the Directorate General of Income Tax (International Taxation), New Delhi.

1.10.2 The certificates are to be filed by the following offices as applicable:
(a) In case of a sole BO/LO, by the BO/LO concerned;
(b) In case of multiple BO/LOs, a combined Annual Activity Certificate in respect of all Offices in India by the Nodal Office of the BO/LOs.

1.10.3 The designated AD Category-I bank shall scrutinize the Annual Activity Certificate and ensure that the activities undertaken by the BO/LO are being carried out in accordance with the terms and conditions of the approval given by the Reserve Bank. In the event of any adverse findings being reported by the Auditor or noticed by the designated AD Category-I bank, the same should be reported immediately by the designated AD Category-I bank to the respective Regional Office of the Reserve Bank in respect of LOs and to the Central Office of the Reserve Bank in the case of BOs, along with the copy of the Annual Activity Certificate and their comments thereon.

SETTING UP OF ADDITIONAL LIAISON OFFICE

1.11.1 Requests for undertaking activities in addition to what has been permitted initially by the Reserve Bank may be submitted through the designated AD Category-I bank to the Chief General Manager-in-Charge, Reserve Bank of India, Foreign Exchange Department, Foreign Investment Division, Central Office, Mumbai, justifying the need with comments of the designated AD Category-I bank.

1.11.2 Requests for establishing additional BO/LOs may be submitted through fresh FNC form, duly signed by the authorized signatory of the foreign entity in the home country to the Reserve Bank of India as explained above. However, the documents mentioned in form FNC need not be resubmitted, if there are no changes to the documents already submitted earlier.

* If the number of Offices exceeds 4 (i.e., one BO/LO in each zone viz, East, West, North and South), the applicant has to justify the need for additional office/s.
The applicant may identify one of its Offices in India as the Nodal Office, which will coordinate the activities of all Offices in India.

RENEWAL OF THE LIAISON OFFICE APPROVAL

1.12.1 The designated AD Category-I bank may extend the validity period of LO's for a period of 3 years from the date of expiry of the original approval/extension granted by the Reserve Bank, if the applicant has complied with the following conditions and the application is otherwise in order.
   - The LO should have submitted the Annual Activity Certificates for the previous years and
   - The account of the LO maintained with the designated AD Category-I bank is being operated in accordance with the terms and conditions stipulated in the approval.

1.12.2 Such extension has to be granted, as expeditiously as possible, within a period of one month from the receipt of the request under intimation to the Regional Office concerned of the Reserve Bank and to the Chief General Manager-in-Charge, Foreign Exchange Department, Reserve Bank of India, Central Office, Mumbai-400 001, quoting the reference number of the original approval letter and the UIN.

1.12.3 The application for extension of the validity period of the LOs of banks and entities engaged in insurance business has to be directly submitted to the Department of Banking Operations and Development, Reserve Bank and Insurance Regulatory and Development Authority (IRDA), respectively as stipulated by them, as hitherto. Further, no extension would be considered for LOs of entities which are NBFCs and those engaged in construction and development sectors (excluding infrastructure development companies). Upon expiry of the validity period, these entities have to either close down or be converted into a Joint Venture (JV) / Wholly Owned Subsidiary (WOS), in conformity with the extant Foreign Direct Investment policy.

OTHER CONDITIONS APPLICABLE TO BRANCH/LIAISON OFFICES

1.13.1 (i) Without prior permission of the Reserve Bank, no person being a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran or China can establish in India, a Branch or a Liaison Office or a Project Office or any other place of business.

(ii) Partnership / Proprietary concerns set up abroad are not allowed to establish Branch / Liaison / Project Offices in India.

(iii) Entities from Nepal are allowed to establish only Liaison Offices in India.

(iv) Branch / Project Offices of a foreign entity are permitted to acquire immovable property by way of purchase for their own use to carry out permitted/incidental activities. However, entities from Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran, Bhutan or China are not allowed to acquire immovable property in India for a Branch / Project Office without prior RBI approval.

All Branch / Project Offices, including Liaison Offices, have general permission to carry out permitted/incidental activities from lease property subject to lease period not exceeding five years.

(v) Branch / Liaison / Project Offices are allowed to open non-interest bearing INR current accounts in India. Such Offices are required to approach their Authorised Dealers for opening the accounts.

(vi) Transfer of assets of Liaison/Branch Office to subsidiaries or other Liaison/Branch Offices is allowed with specific approval of the Central Office of the Reserve Bank.

(vii) Branch Offices are permitted to remit outside India profit of the branch net of applicable Indian taxes, on production of the following documents to the satisfaction of the Authorised Dealer through whom the remittance is effected:
   a. A Certified copy of the audited Balance Sheet and Profit and Loss account for the relevant year
   b. A Chartered Accountant's certificate certifying
      i. the manner of arriving at the remittable profit
      ii. that the entire remittable profit has been earned by undertaking the permitted activities
      iii. that the profit does not include any profit on revaluation of the assets of the branch.

(viii) Authorised Dealers can allow term deposit account for a period not exceeding 6 months in favor of a branch/office of a person resident outside India. Provided the bank is satisfied that the term deposit is out of temporary surplus funds and the branch / office furnishes an undertaking that the maturity proceeds of the term deposit will be utilized for their business in India within six months of maturity. However, such facility may not be extended to shipping / airline companies.
CLOSURE OF BRANCH/LIAISON OFFICES

1.14.1 At the time of winding up of Branch/Liaison offices the company has to approach the designated AD Category-I bank with the following documents:

a) Copy of the Reserve Bank's permission/approval from the sectoral regulator(s) for establishing the BO/LO.

b) Auditor’s certificate - i) indicating the manner in which the remittable amount has been arrived at and supported by a statement of assets and liabilities of the applicant, and indicating the manner of disposal of assets; ii) confirming that all liabilities in India including arrears of gratuity and other benefits to employees, etc., of the Office have been either fully met or adequately provided for; and iii) confirming that no income accruing from sources outside India (including proceeds of exports) has remained un-repatriated to India.

c) No objection / Tax Clearance Certificate from Income-Tax authority for the remittance/s.

d) Confirmation from the applicant/parent company that no legal proceedings in any Court in India are pending and there is no legal impediment to the remittance.

e) A report from the Registrar of Companies regarding compliance with the provisions of the Companies Act, 1956, in case of winding up of the Office in India.

f) Any other document/s specified by the Reserve Bank while granting approval.

1.14.2 The designated AD Category - I banks has to ensure that the BO / LOs had filed their respective Annual Activity Certificates with the Reserve Bank for the previous years, in respect of the existing Branch/Liaison Offices. Confirmation about the same can be obtained from the Central Office of the Reserve Bank in the case of BOs and from the Regional Office concerned in the case of LOs.

1.14.3 Closure of such BO/LO has to be reported to the designated AD Category - I bank to the Reserve Bank (the Regional Office concerned for LOs and Central Office for BOs), along with a declaration stating that all the necessary documents submitted by the BO/LO have been scrutinized and found to be in order. If the documents are not found in order or cases are not covered under delegated powers, the AD Category-I bank may forward the application to the Reserve Bank, with their observations, for necessary action. All the documents relating to the BO/LO operations may be retained by the AD Category - I bank for verification by the internal auditors of the AD/Inspecting officers of the Reserve Bank.

REGISTRATION WITH THE RoC, NEW DELHI FOR ALL LIAISON OFFICES

1.15.1 It may also be noted that after receiving an approval from RBI for setting up of liaison office, the foreign NGO is also required to register itself with the Registrar of Companies (RoC), New Delhi. The RoC, New Delhi keeps a register of branches and liaison offices of foreign entities. A foreign NGO is required to record its name in that register. However, such law applies only to those foreign NGOs which are registered as companies in their country.

CAN A LIAISON OFFICE SIGN MOUs WITH INDIAN PARTNERS

1.16.1 This is a legally debatable issue and therefore divergent views are available. There are some foreign NGOs which sign MoUs in India through their Liaison offices. On the other hand, there are some other foreign NGOs who send the documents to the head quarters for the purposes of signing.

1.16.2 In our opinion, this issue should not be confused with the liaison office. The issue is whether a representative of a foreign NGO can enter into a valid legal MuU by signing the document in India. In our opinion an authorised representative can enter into a valid MoU on behalf of its parent body provided he/she is properly authorised to do so. The authorisation to sign MoUs should be given to an individual other than the liaison office. As a liaison office is not a separate legal entity, all valid legal documents, in any case, will be signed on behalf of the parent body. Further, signing of a document is not an activity, per se. The place of signing cannot change the activities embedded in the MoU. Therefore, more importantly it has to be ensured that the liaison office does not engage in any kind of prohibited activity. The most point is that the character of a liaison office is of 'representative' in nature and therefore, it has to confine to that only. Signing of MoU can be done in representative capacity without infringing the rules of FEMA, in our opinion.

CAN FUNDS BE TRANSFERRED TO FCRA PARTNERS

1.17.1 A liaison office cannot receive funds on behalf of the partners and therefore it cannot transfer any funds to its partner NGOs having FCRA registration. Liaison office can receive funds only to the extent of its administrative expenses. Further, all the administrative expenses should be made out of inward remittances only. However, if RBI specifically allows grant making then a liaison office may undertake grant making subject to FCRA laws.
CAN LIAISON OFFICE HOLD WORKSHOPS AND CONFERENCES WITH INTERNATIONAL PARTICIPANTS

1.18.1 In our opinion liaison office cannot hold conferences or workshop with international or even local participants, going by the rules of FEMA. However, the FCRA department in its FAQ requires that all liaison offices should obtain prior permission from the FCRA Department for receiving remittances from its Head Office abroad for conducting conferences or carrying out other activities/programmes, etc. in India.

1.18.2 Therefore such activities will be possible only if permitted by RBI under FEMA.

ROLE OF LIAISON OFFICE IN TRAINING, EVALUATION, WORKSHOP, CONSULTANCY, ETC.

1.19.1 If the training, evaluation, workshop, consultancy etc. are conducted by third parties, then the liaison office can facilitate all such activities. All payments should be made directly to such third parties by the head office. The liaison office can only play a catalytic role in representative capacity. In this regard, it is important to note that the involvement of liaison office will be determined in terms of money spent from its account. Therefore, care should be taken to avoid monetary transactions.

DOES LIAISON OFFICE OF FOREIGN NGO NEED 12A REGISTRATION

1.20.1 The liaison office is not expected to have any income or activity in India. Therefore, 12A registration is not necessary. 12A registration is required by only those organisations which are generating taxable income in India including grants from other entities whether from India or abroad.

INCOME TAX REPORTING REQUIREMENT FOR LIAISON OFFICES

1.21.1 The Finance Act, 2011 has made a very significant amendment, by virtue of which all liaison offices of foreign NGOs working in India will have to report to the Assessing Officer within 60 days from the end of the financial year. The rules and forms in this regard will be notified later. It may be noted that liaison offices, currently, are not required to file any return/document, unless they have income in India. The proposed Section 285 is as under:

“Every person being a non-resident having a liaison office in India set up in accordance with the guidelines issued by the Reserve Bank of India under the Foreign Exchange Management Act, 1999, shall in respect of its activities in a financial year, prepare and deliver or cause to be delivered to the Assessing Officer having jurisdiction, within sixty days from the end of such financial year, a statement in such form and containing such particulars as may be prescribed.”

This provision became effective from 01.06.2011.

DOES BRANCH OFFICE OF FOREIGN NGO NEED 12A REGISTRATION

1.22.1 A branch office can have activities resulting in taxable income in India. However, it may apply for Income Tax exemptions on par with other Indian NGOs. Section 11 of the Income Tax Act does not require the NGO to be established or registered in India. Therefore, even a foreign NGO would be entitled to apply for registration under section 12A and 10(23C). Foreign NGOs can also avail exemptions on their income, if any, earned in India. Such exemptions shall be subject to having activities in India.

1.22.2 It may be noted that foreign NGOs will need exemptions under section 12A and 10(23C) only if they are collecting grant/donations from sources other than inward remittances from head quarters or they are having any income which is generated in India.

1.22.3 It may further be noted that foreign NGOs shall not be entitled for income tax exemptions if they are not having any considerable activity inside India. In other words, if the income is generated in India for the purposes of repatriation outside India, then such foreign NGOs shall not be entitled for income tax exemptions.

CASE LAWS IN FAVOUR OF FOREIGN NGOs GETTING EXEMPTIONS

1.23.1 In Educational Institute of American Hotel and Motel Association v. CIT [1998] 219 ITR 183 (AAR), the issue of a foreign organisation came before the court of the authority for advance ruling. The issue was whether, the applicant would be entitled...
CHAPTER 2

RECOGNITION AND DISCLOSURE OF VARIOUS GRANTS
(Analysis of Accounting Standards and Legal Issues pertaining to various types of grants)

INTRODUCTION

2.1.1 Charitable organisations receive various types of grants which may require different accounting and legal treatment. A grant may be conditioned in nature or it may be for multiple years or it could be permanent in nature (corpus grant). Each type of grant may be required to be accounted and disclosed separately. Various types of grant can be categorised as under:

1. Grants in the nature of voluntary contribution or unrestricted grants.
2. Grant for recurring expenditure
3. Grant to organize specific event/programs
4. Grant to purchase assets
5. Grant to give further grants to other organisations
6. Grant towards corpus etc.

2.1.2 From an accounting perspective, the issue is subject to the various accounting standards and guidelines issue by the Institute of Chartered Accountants of India (ICAI) and International Accounting Standards Board (IASB). In this issue, we will try to understand the concept and procedure of recognising grants as income and the accounting disclosures thereof. In this issue the income tax and legal issues will not be touched in detail for which the issue no. 2, Vol. V, May 2012 of Standards & Norms may be referred.

UNDERSTANDING THE CONCEPT OF INCOME

2.2.1 The concept of income including its determination is same for all entities whether charitable or otherwise. The concept of income is not governed by the requirements of the Income-tax Act. Further, the concept of income is based on economic reality.
rather than the requirements of fiscal laws which, sometimes, have considerations other than economic reality.

2.2.2 We refer to the definition of income and the recognition criteria in this regard as contained in the Framework for the Preparation and Presentation of Financial Statements issued by the Institute of Chartered Accountants of India. The Framework defines income as follows:

"69(a) Income is increase in economic benefits during the accounting period in the form of inflows or enhancements of assets or decreases of liabilities that result in increases in equity, other than those relating to contributions from equity participants."

2.2.3 The Framework further explains income as follows:

"73. The definition of income encompasses both revenue and gains. Revenue arises in the course of the ordinary activities of an enterprise and is referred to by a variety of different names including sales, fees, interest, dividends, royalties and rent."

2.2.4 As per the Framework, the income is recognised as follows:

"91. Income is recognised in the statement of profit and loss when an increase in future economic benefits related to an increase in an asset or a decrease of a liability has arisen that can be measured reliably. This means, in effect, that recognition of income occurs simultaneously with the recognition of increases in assets or decreases in liabilities (for example, the net increase in assets arising on a sale of goods or services or the decrease in liabilities arising from the waiver of a debt payable).

92. The procedures normally adopted in practice for recognising income, for example, the requirement that revenue should be earned, are applications of the recognition criteria in this Framework. Such procedures are generally directed at restricting the recognition as income to those items that can be measured reliably and have a sufficient degree of certainty."

CONCEPT OF LIABILITY

2.3.1 As per the ICAI Framework, the liabilities are recognised as follows:

"90. A liability is recognised in the balance sheet when it is probable that an outflow of resources embodying economic benefits will result from the settlement of a present obligation and the amount at which the settlement will take place can be measured reliably. In practice, obligations under contracts that are equally proportionately unperformed (for example, liabilities for inventory ordered but not yet received) are generally not recognised as liabilities in the financial statements. However, such obligations may meet the definition of liabilities and, provided the recognition criteria are met in the particular circumstances, may qualify for recognition. In such circumstances, recognition of liabilities entails recognition of related assets or expenses.)"

2.3.2 It can be seen that as per the ICAI definition, obligations under contracts are also considered as liability. Therefore, all restricted project grants which are bound by specific and measurable obligation should be considered as a liability rather than as income.

ANALYSIS OF REVENUE & INCOME BASED ON ICAI GUIDELINES

2.4.1 On the basis of the above, the principles and understanding emerging from existing accounting standards and guidelines of ICAI are as follows:

(i) The term ‘revenue’ is generally used to convey the idea of ‘gross income’ or the ‘gross receipts’. However, what is available for appropriation is often termed as ‘Net Income’. This principle should be valid for both business and charity.

(ii) Every donation or grant is an income as defined above since it results in enhancement of assets. However, in practice, certain donations and grants are not recognised as income in the Income and Expenditure Account. For example, grants of the nature of promoters’ contribution as per Accounting Standard (AS) 12 issued by the ICAI are recognised as capital grants and recognised in equity and not recognised in the Income and Expenditure Account. However, the corresponding International Accounting Standard, namely, IAS 20, recognises all grants as income irrespective of whether they are of the nature of promoters’ contribution. The position of ICAI is slightly different from the IASB. It is understood that ICAI is revising AS 12 to converge with IAS 20.

(iii) By definition, non-monetary grants, e.g., gold and buildings, are enhancements of assets and, therefore, considered as income irrespective of whether they are to be used as such by the donee. The Accounting Standard (AS) 12 requires such grants to be measured at rupee one although the corresponding International Accounting Standard (IAS) 20 also permits their measurement at fair value. It is understood that ICAI is revising AS 12 to converge with IAS 20.

(iv) By definition capital receipts are also income.

(v) With regard to the recognition of income in the Income and Expenditure account,
It may be mentioned that a grant although considered as an income by definition may still be recognised at different periods of time in the Income and Expenditure Account. For example, Accounting Standard 12 recognises that grants related to specific fixed assets should be considered as deferred income and reflected in the balance sheet. In the Income and Expenditure Account, only that portion of the deferred income is recognised which corresponds to the depreciation on the fixed asset for the period acquired out of the grant. Similarly, AS 12 recognises that the revenue grants should be recognised only to the extent of expenditure incurred. In other words, while the grants may by definition be considered to be of the nature of income, their recognition in the Income and Expenditure Account depends upon the extent to which the grants are used.

APPLICABILITY OF INCOME TAX NORMS VERSUS ACCOUNTING NORMS

2.5.1 For the purposes of Income Tax Act, we need to understand the concept of income, whether it is exempt or not. All entities registered under section 12A of the Income Tax Act are eligible for tax exemptions (subject to conditions) on the income which otherwise would have been taxed. In other words, an exempted entity would not need tax exemptions for gross income which would be eligible for deduction under general provisions of the Act.

2.5.2 For example, the expenditure incurred to earn income should be deducted in order to arrive at the income available for exemption under section 11(1). Under this background, all NGOs should compute income which comes under the purview of income tax under section 5(24). In other words, whatever falls within the definition of income should be treated as income on a receipt basis for income tax purposes. For example, an organisation may use a grant over 3 years but the entire amount should be treated as income in the year of receipt. However, under ICAI guidelines, such grant may be recognised as income, over 3 years on pro-rata basis (to the extent utilised each year).

2.5.3 In this context, the most question would be whether restricted grants which are in the nature of legal obligation shall be treated as income or not. It is not relevant whether they are capital or revenue in nature. The AS 12 issued by ICAI gives an impression that all restricted grants should be treated as income, which is actually not correct. The AS 12 applies only in case where the grant can be categorised as income and it does not apply to legal obligation which come under the definition of "liability" as per ICAI.

2.5.4 However, the fundamental issue to understand here is that AS 12 refers only to grant received in absolute capacity, where the recipient (organisation) itself is the beneficiary. AS 12 does not refer to the legal obligations which are received for others or for specific purposes of public utility. A grant received as a trustee is different and distinct from the context in which government grants are referred to in AS 12. The grant received as trustee with specific contractual obligations is a liability because of the existence of definite predetermined outflow of resources.

2.6.3 The definition of a liability by ICAI is reiterated as under:

"A liability is recognised in the balance sheet when it is probable that an outflow of resources embodying economic benefits will result from the settlement of a present obligation and the amount at which the settlement will take place can be measured reliably."

CAN LEGAL OBLIGATION BE TREATED AS INCOME

2.6.1 Any agreement or a contract creates legal obligation. In a restricted contract, income can be reliably measured only at the time of the settlement of the obligation. Therefore, if a fund or asset is subject to an ongoing obligation or restriction or performance, then it shall remain a legal obligation till such contractual issues are settled. This issue becomes confusing because ICAI under AS 12 recommends that the government grants received by an organisation should also be treated as income. The ICAI further recommends that the grant can be recognised to the extent utilised.

2.6.2 A Government grant or subsidy will not be treated as a legal obligation unless there is a possibility of future outflow of funds. Here one may argue that a government grant or subsidy to an organisation also may be subject to certain conditions. However, a government grant received by an organisation in absolute capacity may not entail outflow or reduction of the networth. On the contrary when a restricted grant is received for a public cause and where the organisation is only a trustee or facilitator, there is certainty of outflow in future. Therefore, even with conditions the government grants (where organisation is the beneficiary) go on to increase the networth. In this context the Supreme Court of India has laid down very clear principles on whether legal obligations can be treated as a part of gross income or not. The Supreme Court has categorically stated that legal obligations cannot be treated as a part of income. It may also be noted that the Apex Court held that grant received for specific charitable purposes were legal obligations even for commercial organisations. For instance, if a commercial organisation collects 0.01% of the invoice value for specific charitable purposes, then such amount should directly be treated as a liability in the balance sheet. In other words, the issue of being a charity or an exempt organisation is not relevant. A legal analysis on the issue is provided in Annexure 3.
SHOWING RESTRICTED GRANTS AS LIABILITIES IN THE BALANCE SHEET

2.7.1 A restricted grant should generally be shown as liability in the balance sheet. An income can only be recognised if there is any surplus at the end of the contract period. However, in some cases we need to understand that a restriction does not necessarily create a legal obligation which may result in outflow of resources. Normally a restricted grant agreement, for a specific project/purpose, does create a legal obligation and such grant agreement does enhance the networth till the settlement of such contracts. Therefore, the treatment of showing restricted grants as liability, in principle, is correct subject to the assumption that they are valid legal obligations. For example a corpus grant also comes with a restriction but it is not treated as legal obligation because it goes on to increase the networth.

RECOGNISING RECURRING GRANTS AS INCOME TO THE EXTENT UTILISED DURING THE YEAR

2.8.1 When the expenditure out of a long term grant is at the discretion of the organisation, then such grant or such portion of the grant should not be treated as a legal obligation. We need to understand that there is no difference in the application of the principles of recognition (of income) to business entities and NPOs. For example, the timing of the recognition of a grant as an income in the financial statements of an organisation does not depend upon the purpose for which the organisation is run or the purpose for which the grant is applied. A grant is recognised as income in the financial statements, under accrual basis of accounting, when it becomes reasonably certain that the grant will be received and that the organisation will be able to meet the conditions attached to it, and under cash basis of accounting, when the grant is actually received. Thus, a business entity and an NPO would both follow the aforesaid criteria for recognition of grant as income depending upon the basis of accounting (i.e., cash or accrual basis) followed by the respective organisation rather than the purpose for which the organisation is run or the purpose for which the grant is applied. Similarly, principles for recognition of other incomes, expenses, assets and liabilities would be the same for business entities and NPOs. In other words, it is advisable to recognise a long term grant as income, to the extent utilised, each year.

2.8.2 In this context, the issue whether income can be recognised on principles of retrospective measurement, that is to the extent expended during the year. In so far as the measurement principles are concerned, the same principles are relevant to NPOs as those to business entities. For example, depreciation of an asset represents primarily the extent to which the asset is used during an accounting period by an organisation. Thus, whether an asset, such as a photocopying machine, is used by an NPO or by a business entity, the measure of charge by way of depreciation depends primarily upon the use of the asset rather than the purpose for which the organisation is run. Accordingly, the measurement principles for other expenses, income, assets and liabilities are the same for business entities and NPOs.

2.8.3 The accounting standards or the framework of accounting issued by ICAI suggests recognition of income to the extent of application made. The probable logic of such a treatment is that to the extent of the application the restriction was lifted during the year. Therefore, even though it was in the nature of income at the time of receipt but it is recognised at different periods of time in the income and expenditure account.

CAPITAL GRANT FOR PURCHASE OF ASSETS

2.9.1 The rationale should also apply to capital grants for purchase of assets. Such grants should be treated as deferred income and income should be recognised to the extent of depreciation on the asset, during that accounting period.

2.9.2 However, as discussed earlier the issue is not about restriction. The issue is about whether the amount is a legal obligation or not. Recognising an income to the extent applied means that, inherently, the amount is an income but under principles of measurement a particular portion has been recognised as income or has accrued during the year. Such analogy is not consistent with the treatment needed for legal obligations and also from income tax purposes.

2.9.3 As discussed above, an asset created out of legal obligation should be shown at its fair value, being a part of the balance sheet of that particular legal obligation under the principles of fund accounting. Any diminution or depreciation in the value of the assets should be directly charged or reduced from such legal obligation. An organisation being the legal owner of such assets may also claim depreciation though the issue of depreciation has many facets from income tax angle which is not addressed as a part of this opinion.

CAPITAL ASSETS RECEIVED AS A GRANT

2.10.1 An asset created out of capital grant and a capital asset received as grant in kind are two different issues. When an asset is purchased out of a capital grant, it should be treated like any other asset. The capital grant as discussed above can be treated as deferred income and can be recognised to the extent of the depreciation.
2.10.2 For income tax purposes, such asset can be shown as application of funds for charitable purposes. Then the value of the assets can be again reflected in the balance sheet by creation of asset fund to that extent. One may prepare two sets of financial statements, one for income tax purposes and the other could be statutory-audited statements. In the income and expenditure account prepared for income tax purposes capital expenditure may be shown as application/expenditure. But the statutory audited statement may not treat such capital expenditure as a part of expenditure and only depreciation may be treated as the expenditure for the year. However, in both the set of audited statements legal obligation would not for a part of the income and expenditure account.

2.10.3 Lastly, any capital assets received in kind may be shown at nominal value of rupees one. As of now the ICAI has not recommended showing such assets at fair value in terms with IAS 20.

SUMMARY

2.11.1 We may reiterate the issues as under:

(a) distinguish between legal obligations and long term grants (income) at the time of receipt or accrual. A long term grant which is not in the nature of legal obligation, may be, recognised to the extent of the application made during the year, if with reasonable certainty it could be established that such grant has been received for multiple years. The principles of measurement may apply.

(b) all legal obligations shall continue to remain legal obligations and only the surplus or deficit on settlement of legal obligation should go to the income and expenditure account.

(c) for income tax purposes, long term grants (income) should be treated as income in the year of receipt and the organisation can carry forward the income for the next five years under the section 11(2) of the Income Tax Act.

(d) the accounting of legal obligations shall have no implications for income tax purposes as only the surplus or deficit on settlement of legal obligation can be treated as income or deficit.

(e) When a grant is received towards purchase of capital asset for the organisation, then it should not be treated as a legal obligation. The entire amount should be treated as income. However, for the purposes of revenue recognition, the asset value should be treated as a deferred revenue expenditure and income to the extent of depreciation should be recognized each year. For income tax purposes the entire amount will become income in the year of receipt.

(f) Where a capital asset is received as grant, then such asset should be shown at a nominal value of rupee one in the balance sheet.

CHAPTER 3

SERVICE TAX ON NPOs
AFTER FINANCE ACT, 2013

INTRODUCTION

3.1.1 The Finance Act 2012 had brought radical changes in Service Tax Laws which were further amended by the Finance Act 2013. Now all services shall be treated as taxable except those services which are included in the negative list of services (Refer Annexure-4) or are specifically exempted and notified (Refer Annexure-5) and shall also include certain activities that have been specified as declared services (Refer Annexure-6). The earlier law provided a list of taxable services and all other services were exempted whereas, under the amended law all services have become taxable other than services included in negative list or covered under exemption.

3.1.2 As per the existing law, all NGOs are subject to Service Tax wherever applicable. However, the Finance Act 2012 has, exempted certain category of NGOs totally from the purview of service tax. In other words, such NGOs need not pay service tax even for providing taxable services without any financial limit. Unfortunately, very few types of NGOs have been included under this totally exempted category. All such related matters are discussed in this issue.

NGOs WHICH ARE EXEMPTED

3.2.1 The exemption has been given to only those NGOs which are registered under section 12AA of the Income Tax Act, 1961 and carrying on one or more of the following charitable activities:

(1) NGO engaged in public health by way of:
   (a) care or counselling of (i) terminally ill persons or persons with severe physical or mental disability, (ii) persons afflicted with HIV or AIDS, or (iii) persons addicted to a dependence-forming substance such as narcotics drugs or alcohol or
(b) public awareness of preventive health, family planning or prevention of HIV infection;

(2) NGO engaged in advancement of religion;

(3) NGO engaged in advancement of educational programmes or skill development relating to—
   a) abandoned, orphaned or homeless children;
   b) physically or mentally abused and traumatized persons;
   c) prisoners; or
   d) persons over the age of 65 years residing in a rural area;

(4) NGO engaged in preservation of environment including watershed, forests and wildlife;

In the light of the above definition, Service Tax shall be applicable —
   a) to NGOs which are not registered u/s. 12AA of the Income Tax Act, 1961. For example NGOs registered u/s. 10(23C) etc. This seems to be a drafting error as the intent could not have been to deprive NGOs registered u/s. 10(23C) etc. from the benefits which are available to NGOs which are registered u/s. 12AA.
   b) to NGOs which are engaged in relief to poor, preventive health, informal education programmes, etc.
   c) to NGOs which are engaged in ‘advancement of any other purpose of public utility’.

3.2.2 To sum up:

- The Service Tax Act has made all services taxable except those services which are specifically exempted. Under the new law, almost all services rendered by NGOs on commercial basis or on consultancy contract shall become taxable.
- However, some NGOs (not all) registered under Section 12AA of Income Tax Act, 1961 are totally exempted from Service Tax.
- The NGOs engaged in ‘advancement of any other object of general public utility’ were exempt up to a certain limit of taxable services in addition to the blanket exemption of ₹10 Lacs. However vide Notification No.33/2012-ST dt. 20/06/2012 the special exemption given to this category of NGOs has also been withdrawn, meaning thereby there is no special exemption for the NGOs engaged in ‘advancement of any other object of general public utility’ though they can avail the basic exemption of ₹10 Lacs.
- The Service Tax laws have taken a narrow definition of the term ‘charitable purpose’ which is different from the definition of charitable purpose under the Income Tax Act. There is an urgent need to align and use the same definition of the term ‘charitable purpose’ both under the Income Tax Act and the Service Tax laws.

SERVICES COVERED IN THE NEGATIVE LIST

3.3.1 The services which are included in the Negative list are exempt from applicability of Service Tax. Therefore NGOs (which are not covered under exempt category as discussed herein above) have to find out whether the services rendered by them falls under the Negative list or the services rendered by NGOs are outside the Negative list. If the services rendered is outside the Negative list, then these services shall be subject to Service Tax Act.

3.3.2 Some of the services covered in Negative list includes:
   a) Services by way of —
      i) Pre-school education and education up to higher secondary school or equivalent;
      ii) Education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;
      iii) Education as a part of an approved vocational education course.

Hence it appears that non-formal education is not covered under the exempt category of Service Tax and therefore any collection from non-formal program shall be subject to service tax.

b) Services by way of renting of residential dwelling for use as residence.

Hence if the NGO is renting out properties for non-residential purpose then this rental income shall become service subject to Service Tax.

BASIC EXEMPTION AVAILABLE FOR TAXABLE SERVICES

3.4.1 If the service rendered by a non-exempt NGO does not fall under negative list then also there is no liability of service tax up to the value of ₹10 lakhs. This means even if a non-exempt NGO provides taxable service for an amount upto ₹10 lakhs in a year, there is no implication of service tax.
WHAT IS SERVICE?

3.5.1 In the new service tax system, all services, other than services specified in the negative list, provided or agreed to be provided in the taxable territory by a person to another would be taxed under section 66B. The term “Service” has been defined in clause (44) of the new section 65B of the Service Tax Act and it means—

- any activity
- for consideration
- carried out by a person for another
- and includes a declared service.

3.5.2 As per the above definition, an activity for consideration carried out by a person for another person can be included as service and it may also include a declared service. In other words, any service provided for a fee or when something is received in return shall be considered as a service. All services except those provided in the negative list shall be considered as taxable services.

WHICH ACTIVITIES WILL NOT BE INCLUDED UNDER SERVICE?

3.6.1 The definition under Section 66B further provides that “Service” does not include—

- any activity that constitutes only a transfer in title of (i) goods or (ii) immovable property by way of sale, gift or in any other manner
- a transaction only in (iii) money or (iv) actionable claim
- any service provided by an employee to an employer in the course of the employment.
- fees payable to a court or a tribunal set up under a law for the time being in force.

WHAT IS CONSIDERATION?

3.7.1 The word “consideration” has not defined in the Act. However, the master Circular issued on 16.03.2012 clarifies that:

- 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.
- 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.
- Donation to a charitable organization is not a 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.

WILL PROJECT GRANT BE TREATED AS A SERVICE?

3.8.1 Project grants and restricted funds shall not be treated as service. However, if the grant agreement has any clause where any benefit or business value is going back to the donor, then it shall be treated as a taxable service. Some example of such benefit could be as under:

(i) If the donor puts a clause that the implementing organization has to display its logo or name at the places of activity, then it could be considered as a taxable service.

(ii) If the implementing organization is conducting some research, survey or activity in which the donor is interested and the implementing organization is under obligation to provide certain specified output to the donor, then the service can be considered as taxable service. For example, if the donor keeps a condition that the implementing organization shall provide activity report or utilization statements, then it will not be treated as taxable service. However, if the donor keeps a condition that the implementing organization shall provide specific data or specific research report as an outcome of the activity, then it will be treated as a taxable service.

WILL CSR GRANT BE CONSIDERED AS TAXABLE SERVICE?

3.9.1 In the light of the definition of the term ‘consideration’ where it is provided that “Donation to a charitable organization is not a 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”, it seems that CSR grants could be treated as taxable services if the donor company is getting any business advantage out of such donation or keeps a condition regarding display of its logo or name during the implementation process. Generally all grants including CSR grants should not be considered as service.
WHAT DOES THE WORD 'ACTIVITY' SIGNIFY?

3.10.1 "Activity" has not been defined in the Act. In terms of the common understanding of the word, activity would include an act done, a work done, a deed done, an operation carried out, execution of an act, provision of a facility etc. It is a term with very wide connotation. Activity could be active or passive and would also include forbearance to act. Agreeing to the obligation to refrain from an act or to tolerate an act or a situation has also been specified as a declared service under section 66E of the Act. In other words, even a promise of not doing something for a consideration can be considered as a service. For example, if an activist NGO enters into a contract for not agitating against any particular organization or any particular issue, then such services can be treated as taxable service.

WHAT IS NON-MONETARY CONSIDERATION?

3.11.1 Non-monetary consideration could be in the form of following:
- Supply of goods and services in return for provision of service
- Refraining or forbearing to do an act in return for provision of service
- Tolerating an act or a situation in return for provision of a service
- Doing or agreeing to do an act in return for provision of service

APPLICABILITY OF NEW REVERSE CHARGE MECHANISM TO NGOs

3.12.1 Under the Service Tax Act, the recipient of the services has to pay the service tax on certain category of services. These services includes:
   a) Rent - a cab service
   b) Manpower power supply service
   c) Works Contract service

3.12.2 This reverse charge mechanism shall be applicable only if the service receiver is a business concern & registered as a body corporate. Hence all the NGOs registered as a trust and society are not covered under the new reverse charge mechanism but section 25 Companies may be covered under this new reverse charge mechanism if it also carries on business.

FAQ’s

3.13.1 Whether all NGOs registered u/s 12AA are exempt from service tax?
Ans: No all NGOs registered u/s 12AA are not exempt from Service Tax. Only NGOs registered u/s 12AA of Income Tax Act, 1961 and engaged in one or more of the specified charitable activities are exempt from Service Tax. Refer Point No. 3.2.1.

3.13.2 Whether the NGOs registered under 10(23) are liable for Service Tax?
Ans: NGOs registered u/s 10(23) are not covered under the exempt category and therefore they are liable for Service Tax, if the service provided by them is not covered under negative list.

3.13.3 Whether grant received by NGOs after deduction of TDS either u/s 194C or 194J shall be subject to Service Tax?
Ans: If the tax is deducted u/s. 194C or 194J while remitting the grant, then the grant may be considered in the nature of services and if the NGO does not fall under the exempt category and the nature of work done by NGO is also not included in negative list, then the grant amount on which tax is deducted at source may be considered in the nature of services subject to Service Tax. However, there are cases where it has been held that if by mistake a grant contract is drafted as a consultancy contract, it would not convert the transaction into a commercial transaction. In the case Heart Care Management v. Director of Income-tax (T) [2012] 22 Taxmann.com 105 (Delhi - Trib) it was held that only because donations deducted TDS, it will not convert a donation into a commercial receipt on the basis of presumptive inferences. As long as the assessee has credited the amount as donation and issued donation receipt, in our view, the same cannot be held to be commercial receipt.

3.13.4 In certain NGOs internal billings are raised as rent for use of office space or for conducting various trainings and these incomes are separately shown as income in the consolidated Audited reports. Whether these internal charges shall be subject to service tax?
Ans: Normally rental income booked through internal bills are not legal income and therefore any income arising out of such internal billing should not be subject to Service Tax. However, if the consolidated financial audited report considers these rental incomes as independent income without disclosure, then this rental income may be considered by the Service Tax Department as services rendered by the organization subject to Service Tax and therefore, NGO may have to defend its case by providing all the documents. Hence it is advisable not to include notional income while presentation of financial statements.
3.13.5 What is the scheme of applicability of Service Tax to NGO?

Aim:

NGO COVERED UNDER EXEMPT CATEGORY

YES

SERVICE TAX NOT APPLICABLE

NO

SERVICES COVERED UNDER NEGATIVE LIST

YES

Total Taxable services exceeds Rs.10.00 lac

NO

SERVICE TAX NOT APPLICABLE

CHAPTER 4

CHOOSING BETWEEN A TRUST, SOCIETY OR A COMPANY

INTRODUCTION

4.1.01 Under the laws applicable to Indian NGOs, there are three forms of registration for creating a legally valid NGO, which are as under:

- Registration as society under the Societies Registration Act, 1860.
- Registration as a company not for profit under the Companies Act, 1956.
- Registration as a trust under the Indian Registration Act, 1908.

4.1.02 The Societies are registered under a state statute at district and state level. Each state in India has enacted an Independent Societies Registration Act, within the overall provisions of Societies Registration Act, 1860.

4.1.03 Registration as a not for profit company under the Companies Act, 1956 is the only Central Statute for registering a charitable organization in India.

4.1.04 There is no statute for registration of a public trust in India. Infact only trust deed is registered under the Indian Registration Act, 1908.

4.1.05 Recently Govt. of India has issued a draft bill titled “Multi States Society Registration Bill, 2012”. The Central Government through Ministry of Corporate Affairs has released the proposed Multi State Societies Registration Bill, 2012 (hereinafter called MSSR Bill, 2012). This bill is proposed to regulate the various types of NGOs in India through a Central Statute. The idea is to enhance transparency and accountability in the voluntary sector. However, the proposed bill raises many questions and concerns which needs to be addressed immediately before it becomes a law. The proposed bill has many arbitrary and disconcerting features. If it becomes a law in its current shape, it may create unwarranted regulations and hardships for various existing and proposed societies.
CHOOSING A PARTICULAR FORM OF REGISTRATION

4.2.01 There is very little to choose between the three modes of registration available in India, though each one of them comes with its distinct characteristics, advantages and disadvantages. The comparative advantages or disadvantages are not alarming enough to recommend any particular form of registration. Registration as a company would be a more professional and organized way of working, entailing more paper work and compliances. On the other hand, registration as a trust would be the simplest way with minimal paper work and procedural hassles. Registration as a society will come in between, probably that is why it is the most popular form of registration. See comparative table for three forms of registration for NGOs in India given hereunder.

REGISTRATION FROM CONTROL POINT OF VIEW

4.3.01 The control of an organisation depends directly on the number of members or the voting power.

4.3.02 In the case of a society, minimum 7th members are required to register. There is a two-tier structure comprising the general body and the governing body. It is a fairly open structure with all the members having equal voting rights.

4.3.03 A company also has a structure similar to a society but it has certain distinct advantages. For instance, a company can be formed with only two persons and the voting rights are not based on the basis of the number of persons. The voting rights are based on the basis of the number of shares held. The Company Form of registration can be used for planning control mechanisms, by exploiting the rule of unequal voting powers. Even one individual may have the control by holding more than 50% shares.

4.3.04 A trust can also be formed with minimum of 2 persons. It does not have a two-tier structure like the company or society. Therefore, a trust is a relatively closed structure.

4.3.05 In the company or society, the general members have the power to remove a Director or a board member but in the case of a trust it is not possible. However, a trust deed can also be drafted with a two-tier structure like a society.

4.3.06 Above all, the drafting of the memorandum and Articles of Association, bye-laws or trust deed is most crucial in determining the control and governance aspects of a charitable entity.

REGISTRATION FROM ACTIVITIES POINT OF VIEW

4.4.01 There is more or less no difference between these three forms of registration as far as the activities or the areas of operation are concerned, because activities/area of operation and other bye-laws are based on the constitution of the registered entity and the laws of the State generally do not interfere.

COMPARATIVE INITIAL AND RECURRING COST

4.5.01 The costs of registration are minimal for all the three forms of registration. The company form of registration involves a slightly longer process, therefore, the cost will be marginally higher. The statutory fees and costs are negligible in all the three forms of registration.

4.5.02 Regular annual returns are required to be filed in the case of a Society as well as a Company, but the cost involved again should not be an issue for consideration.

4.5.03 The Societies are regulated by the State Government, therefore, the fee structure and regulations vary from State-to-State. Therefore, the geographical location and the State laws can also influence the mode of registration.
## Comparative Table for Forms of Registration for NGOs in India

<table>
<thead>
<tr>
<th>Description</th>
<th>Society</th>
<th>Trust</th>
<th>Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>Act under which it is registered</td>
<td>The Societies Registration Act, 1860</td>
<td>The Registration Act, 1956</td>
<td>The Companies Act, 1936</td>
</tr>
<tr>
<td>Ease of Formation</td>
<td>Very simple, it may take 1-2 months</td>
<td>Very simple, it may take a week</td>
<td>Relatively difficult, it may take 2-3 months</td>
</tr>
<tr>
<td>Authority with whom to be registered</td>
<td>Registrar of Societies of the concerned State</td>
<td>Sub-registrar of Registration or District level</td>
<td>Registrar of Companies of the concerned State</td>
</tr>
<tr>
<td>Approval of Name</td>
<td>Separate application not required. Home is generally granted if available</td>
<td>Not required</td>
<td>Separate application is required to be made. There are strict guidelines for approval of name.</td>
</tr>
<tr>
<td>Minimum No. of subscribers/trustees required</td>
<td>7 (Seven)</td>
<td>3 (Two)</td>
<td>2 (Two)</td>
</tr>
<tr>
<td>Cost of Registration</td>
<td>Less than Rs. 10,000</td>
<td>Less than Rs. 10,000</td>
<td>Less than Rs. 25,000</td>
</tr>
<tr>
<td>Governing Structure</td>
<td>Two-tier structure (a) General body (b) Board of Directors</td>
<td>Single-tier structure the trustees are the ultimate authority</td>
<td>Two-tier structure (a) General body (b) Board of Directors</td>
</tr>
<tr>
<td>Voting Rights</td>
<td>All members have equal rights</td>
<td>All trustees have equal rights</td>
<td>The voting rights may vary on the basis of the number of shareholders. This provision can be used for control purposes.</td>
</tr>
<tr>
<td>Types of activities allowed</td>
<td>Not much of a difference between these 3 forms. Any kind of charitable and public utility activity can be undertaken.</td>
<td>Same</td>
<td>Same</td>
</tr>
<tr>
<td>Annual Documents to be filed</td>
<td>The Act requires a list of managing body to be filed every year. Different States have different requirement for filing additional documents every year. Normally the annual audit report and the list of governing body member should be filed every year.</td>
<td>No documents are required to be filed.</td>
<td>Annual return and audited accounts are required to be filed every year.</td>
</tr>
<tr>
<td>General and Board meetings</td>
<td>General and Board meetings are required to be held down. Adequate rules specific provisions have been laid down. At least</td>
<td>No provisions are laid down.</td>
<td>Specific provisions have been laid down. At least</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Requirements</th>
<th>Society</th>
<th>Trust</th>
<th>Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transfer of Membership</td>
<td>Membership is not transferable.</td>
<td>Membership is not transferable.</td>
<td>Membership can be transferred. Restrictions on transfers can also be placed.</td>
</tr>
<tr>
<td>Payment to functionaries</td>
<td>Permitted as the general body may decide.</td>
<td>Provision in the trust deed should be there for any such payment.</td>
<td>Permitted as the general body may decide.</td>
</tr>
<tr>
<td>Recurring expenditure</td>
<td>The statutory compulsories are required are minimal. Consequently recurring expenses are also negligible.</td>
<td>No statutory recurring expenditure.</td>
<td>Annual returns and Balance Sheet are filed along with annual fees. Again the quantum of expenditure is not significant.</td>
</tr>
<tr>
<td>Area of operation</td>
<td>Can operate throughout India even if registered in one particular State. Non-profit registration is required for operating in another State.</td>
<td>Can operate throughout India.</td>
<td>Can operate throughout India.</td>
</tr>
<tr>
<td>Income Tax Registration</td>
<td>Compulsory within 12 months of registration.</td>
<td>Same</td>
<td>Same</td>
</tr>
<tr>
<td>FCRA Registration or Filer Permission</td>
<td>Compulsory for receiving foreign funds.</td>
<td>Same</td>
<td>Same</td>
</tr>
<tr>
<td>Labour and other relevant laws</td>
<td>To be complied as per applicability.</td>
<td>Same</td>
<td>Same</td>
</tr>
<tr>
<td>Foreigner as a member/trustee</td>
<td>Possible</td>
<td>Same</td>
<td>Same</td>
</tr>
<tr>
<td>Threat in having a foreigner on board</td>
<td>Difficulties may be faced in getting FCRA registration. No other threat perceived.</td>
<td>Same</td>
<td>Same</td>
</tr>
</tbody>
</table>
Annexure 1

RBI MASTER CIRCULAR ON COMPOUNDING OF CONTRAVENTIONS UNDER FEMA, 1999

RBI/2013-14/9

Master Circular No. 9 /2013-14

To,
All Authorized Dealer Category - I banks and Authorised Banks

Madam / Sir,

Master Circular on Compounding of Contraventions under FEMA, 1999.

The compounding of contraventions under Foreign Exchange Management Act (FEMA), 1999 is a voluntary process by which an applicant can seek compounding of an admitted contravention of any provision of FEMA, 1999 under Section 13(1) of the FEMA, 1999.

2. This Master Circular consolidates the existing instructions on the subject of "Compounding of Contraventions under FEMA, 1999" at one piece. The list of underlying circulars / notifications, consolidated in this Master Circular, is furnished in the Appendix.

3. This Master Circular is being issued with a sunset clause of one year. This circular will stand withdrawn on July 1, 2014 and be replaced by an updated Master Circular on the subject.

Yours faithfully,

(Rudra Narayan Kar)
Chief General Manager-in-Charge

1. General

1.1 In terms of Section 13(1), Chapter IV of FEMA 1999, if any person contravenes any provision of FEMA, 1999, or any rule, regulation, notification, direction or order issued in exercise of the powers under this Act, or contravenes any condition subject to which an authorization is issued by the Reserve Bank, he shall, upon adjudication, be liable to a penalty up to thrice the sum involved in such contravention where the amount is quantifiable or up to Rupees Two lakhs, where the amount is not quantifiable and where the contravention is a continuing one, further penalty which may extend to Rupees Five thousand for every day after the first day during which the contravention continues. The provisions of Section 15 of FEMA, 1999 permit compounding of contraventions and empower the Compounding Authority to compound any contravention as defined under Section 13 of the Act on an application made by the person committing such contravention. In terms of rule 4 of the Foreign Exchange (Compounding Proceedings) Rules, 2000, the powers to compound the contraventions have been prescribed for compounding authorities with regard to the sum involved in such contravention and no contravention shall be compounded unless the amount involved in the contravention is quantifiable.

1.2 The Government of India has, in consultation with the Reserve Bank placed the responsibility of administering compounding of contraventions with the Reserve Bank, except contraventions under Section 3(a) of FEMA, 1999. Accordingly, Foreign Exchange (Compounding Proceedings) Rules, 2000 have been framed by the Government of India empowering the Reserve Bank to compound contraventions under FEMA, 1999 with a view to provide comfort to individuals and corporate community by minimizing transaction costs, while taking severe view of willful, malafide and fraudulent transactions.

2. Compounding Powers

2.1 The compounding powers of the Reserve Bank and the Directorate of Enforcement (DoE), respectively are as under:

(a) Reserve Bank has been empowered to compound the contraventions of all the Sections of FEMA, 1999, except clause (a) of Section 3 of the Act, ibid.

(b) Directorate of Enforcement would exercise powers of compounding under clause (a) of Section 3 of FEMA, 1999 (dealing essentially with Hawala transactions).

2.2 For effective implementation of compounding process under FEMA, 1999, the Government of India has framed the procedure for compounding of contraventions. Once a contravention has been compounded by the Compounding Authority, no proceeding or further proceeding will be initiated or continued, as the case may be, against the contraverter.

3. Delegation of Powers

3.1 As a measure of customer service and in order to facilitate the operational convenience, compounding powers were delegated to the Regional Offices of the Reserve Bank of India mentioned below to compound the contraventions of FEMA involving (I) delay in
reporting of inward remittance, (ii) delay in filing of form FC-QPR after allotment of shares and (iii) delay in issue of shares beyond 180 days (viz. paragraphs 9(1)(a), 9(1)(b) and (c), respectively, of the Schedule I to the Foreign Exchange Management Transfer or issue of Security by a Person Resident Outside India Regulations, 2000, notified vide Notification No. FEMA 20/2000-RB dated 3rd May, 2000 and as amended from time to time:

a) Paragraphs 9(1)(A) and 9(1)(B) of Schedule I to FEMA 20/2000-RB dated May 3, 2000 - Bhopal, Bhubaneswar, Chandigarh, Guwahati, Jaipur, Jammu, Kanpur, Kochi, Patna and Panaji for amount of contravention below Rupees One hundred lakh only (Rs. 1,00,00,000 /-).

b) Paragraphs 9(1)(A), 9(1)(B) and (c) of Schedule I to FEMA 20/2000-RB dated May 3, 2000 - Ahmedabad, Bangalore, Chennai, Hyderabad, Kolkata, Mumbai and New Delhi for amount of contravention without any limit.

4. Process of Compounding

4.1 An application for compounding of a contravention under FEMA, 1999 may be submitted to the Compounding Authority (CA) on being advised of a contravention under FEMA, 1999, either through a memorandum or an order or on becoming aware of the contravention. The format of the application is appended to the Foreign Exchange (Compounding Proceedings) Rules, 2000 (Annex-I).

4.2 Along with the application in the prescribed format, the applicant may also furnish the details as per the enclosed Annexes (Annex-I) relating to Foreign Direct Investment, External Commercial Borrowings, Overseas Direct Investment and Branch Office / Liaison Office, as applicable, a copy of the Memorandum of Association and latest audited balance sheet along with an undertaking that they are not under investigation of any agency such as DOF, CBI, etc., in order to complete the compounding process within the time frame.

4.3 All applications for compounding whether on the advice of the Regional Office concerned or suo-moto, relating to the contraventions mentioned at paragraph 3.1 (a) and (b) above and up to the amount of contravention stated therein, may be submitted by the companies/individuals falling under the jurisdiction of the respective Regional Offices directly to the Regional Office concerned, together with the prescribed fee of Rs.5,000/- by way of a demand draft drawn in favour of “Reserve Bank of India” and payable at the concerned Regional Office. Applications for compounding of all other contraventions together with the prescribed fee of Rs.5,000/- by way of a demand draft drawn in favour of “Reserve Bank of India” and payable at Mumbai may be submitted to The Compounding Authority, [Cell for Effective Implementation of FEMA (CEPA), Foreign Exchange Department, 5th Floor, Amar Building, Sir FM, Road, Fort, Mumbai - 400001.

4.4 On receipt of the application for compounding, the proceedings would be concluded and an order issued by the CA within 180 days from the date of the receipt of the application for compounding. The time limit for this purpose would be reckoned from the date of receipt of the completed application for compounding by the Reserve Bank.

4.5 The CA may call for any additional information, record or any other document relevant to the compounding proceedings. Such additional information/documents are required to be submitted within the period as may be specified by the CA and the application may be rejected if such information/documents are not submitted within the prescribed time.

4.6 The application will be examined in terms of sub-rule (1) of rule (4) of the Foreign Exchange (Compounding Proceedings) Rules, 2000 to assess whether the contravention is compoundable and the amount of contravention is accordingly quantified.

4.7 The nature of contravention is ascertained keeping in view, inter alia, the following indicative points:

a. whether the contravention is technical and / or minor in nature and needs only an administrative cautionary advice;
b. whether the contravention is serious in nature and warrants compounding of the contravention; and

c. whether the contravention, prima facie, involves money-laundering, national and security concerns involving serious infringement of the regulatory framework.

However, the Reserve Bank reserves the right to classify the contraventions as stated above and neither the contravener nor any other have any right to classify any contravention as technical suo moto.

4.8 It is clarified that whenever a contravention is identified by the Reserve Bank or brought to its notice by the entity involved in contravention by way of a reference other than through the prescribed application for compounding, the Bank will continue to decide (i) whether a contravention is technical and/or minor in nature and, as such, can be dealt with by way of an administrative cautionary advice; (ii) whether it is material and, hence, is required to be compounded for which the necessary compounding procedure has to be followed or (iii) whether the issues involved are sensitive / serious in nature and, therefore, need to be referred to the Directorate of Enforcement (DOE).

However, once a compounding application is filed by the concerned entity suo moto, admitting the contravention, the same will not be considered as ‘technical’ or ‘minor’ in nature and the compounding process shall be initiated in terms of sections 15 (1) of Foreign Exchange Management Act, 1999 read with Rule 9 of Foreign Exchange (Compounding Proceedings) Rules, 2000.

4.9 The disposal of the compounding application is made by issue of a Compounding Order specifying the provisions of FEMA, 1999 or any rule, regulation, notification, direction or order issued in exercise of the powers under FEMA, 1999, in respect of which contravention has taken place.

4.10 Where there is sufficient cause for further investigation, the Reserve Bank may refer the matter to the Directorate of Enforcement for further investigation and necessary action
under FEMA, 1999, as to the Anti-Money Laundering Authority instituted under the Prevention of Money Laundering Act (PMLA), 2002 or to any other agenda, as deemed fit. Such applications will be disposed of by returning the application to the applicant.

5. Scope and Manner of Compounding

5.1 The CA will exercise jurisdiction in respect of the contraventions admitted to have been committed in relation to any of the provisions of the FEMA, 1999, or any rule, regulation, notification, direction or order issued in exercise of the powers under FEMA, 1999.

5.2 The application for compounding will be disposed of on merits, upon consideration of the records and submissions and at the absolute discretion of the CA. The following factors, which are only indicative, may be taken into consideration for the purpose of passing the Compounding Order and for arriving at the quantum of sum on payment of which contravention shall be compounded:

(i) the amount of gain of unfair advantage, wherever quantifiable, made as a result of the contravention;
(ii) the amount of loss caused to any authority /agency /exchequer as a result of the contravention;
(iii) economic benefits accruing to the contravener from delayed compliance or non-compliance;
(iv) the repetitive nature of the contravention, the track record and /or history of non-compliance of the contravener;
(v) contravener’s conduct in undertaking the transaction and disclosure of full facts in the application and submissions made during the personal hearing; and
(vi) any other factor considered relevant and appropriate.

6. Issue of the Compounding Order

6.1 An opportunity for personal hearing is given to the applicant for further submission of documents in person in support of the application within a specified period. The contravener or its authorized representative can choose not to appear in person or make any submissions before the CA for personal hearing. The CA will proceed with the processing of the compounding application on the basis of information and documents available in the application for compounding.

6.1.1 It is clarified that appearing for a personal hearing before the compounding authority is optional and the applicant can choose not to appear for it. The applicant may enclose full information relating to the case as prescribed in AP (Dir series) Circular Nos. 56 and 57 dated June 28, 2010 and December 13, 2011 respectively, with the application or thereafter and may exercise his discretion with regard to appearing for hearing. Further, if the applicant opts for appearing for the personal hearing, the Reserve Bank would encourage the applicant to appear directly for it rather than being represented/ accompanied by legal experts/consultants, as compounding is only for admitted contraventions. (as amended vide Press release no. 2012-2013/1213 dated January 18, 2013)

6.2 The Compounding Authority will pass a compounding order on the basis of the averments made in the application as well as other documents and submissions made in this context by the contravener during the personal hearings, if any.

6.3 Where the compounding of any contravention is made after making of a complaint under sub-section (3) of section 16 of FEMA, 1999 as the case may be, one copy of the compounding order made under sub-rule (2) of Rule 8 of Foreign Exchange (Compounding Proceedings) Rules, 2000 will be provided to the applicant (the contravener) and also to the Adjudicating Authority.

7. Post-compounding procedure

7.1 The sum for which the contravention is compounded as specified in the order of compounding under sub-rule (2) of Rule 8 of Foreign Exchange (Compounding Proceedings) Rules, 2000 is payable by way of a demand draft in favour of the “Reserve Bank of India” within fifteen days from the date of the order of compounding of such contravention. The demand draft has to be deposited in the manner as directed in the compounding order.

7.2 On realization of the demand draft for the sum for which contravention is compounded, a certificate in this regard shall be issued by the Reserve Bank subject to the specified conditions, if any, in the order.

7.3 The provisions of the Rules do not confer any right on the contravener, after a compounding order is passed, to seek to withdraw the order or to hold the compounding order as void or request a review of the order passed by the CA.

7.4 In case of failure to pay the sum compounded within the time specified in the compounding order, it shall be deemed in terms of Rule 10 of the Foreign Exchange (Compounding Proceedings) Rules, 2000, that the contravener had never made an application for compounding of any contravention under those Rules.

7.5 In respect of the contraventions of FEMA, 1999 (as defined in section 13 of the FEMA, 1999), which are not compounded by the Compounding Authority, other relevant provisions of FEMA, 1999, including reference to the Directorate of Enforcement shall apply.

8. Pre-requisites for compounding process

8.1 In respect of a contravention committed by any person within a period of three years from the date on which a similar contravention committed by him was compounded under the Compounding Rules, such contraventions would not be compounded. Such contravention would be dealt with under relevant provisions of the FEMA, 1999 for contravention. Any second or subsequent contravention committed after the expiry of a period of three years from the date on which the contravention was previously compounded shall be deemed to be a first contravention.
Annex I

Foreign Exchange (Compounding Proceedings) Rules, 2000

Notification No. G.S.R. 383(E) dated 3rd May 2000

As amended vide:
G.S.R. 443(E) dated November 2, 2002 G.S.R. 609 (E) dated September 13, 2004 and
G.S.R. 613 (E) dated August 27, 2008

In exercise of the powers conferred by section 46 read with sub-section (1) of section 15 of the Foreign Exchange Management Act, 1999 (42 of 1999) the Central Government hereby makes the following rules relating to compounding contraventions under chapter IV of the said Act, namely:

1. Short title and commencement —
   (1) These rules may be called the Foreign Exchange (Compounding Proceedings) Rules 2000.
   (2) They shall come into force on the 1st day of June, 2000.

2. Definitions - In these rules, unless the context otherwise requires -
   (a) ‘Act’ means the Foreign Exchange Management Act, 1999 (42 of 1999);
   (b) ‘authorised officer’ means an officer authorised under sub-rule (1) of rule 3;
   (c) ‘applicand’ means a person who makes an application under section 15(1) of the Act to the compounding authority;
   (d) ‘Compounding Order’ means an order issued under sub-section (1) of Section 15 of the Act;
   (e) ‘form’ means a form appended to these rules;
   (f) ‘section’ means a section of the Act;
   (g) all other words and expressions used in these rules and not defined but defined in the Act, shall have the meaning respectively assigned to them in the Act.

3. (1) ‘Compounding Authority’ means the persons authorised by the Central Government under sub-section (1) of section 15 of the Act, namely:
   (a) an officer of the Enforcement Directorate not below the rank of Deputy Director or Deputy Legal Adviser (DLA);
   (b) An officer of the Reserve Bank of India not below the rank of the Assistant General Manager;

4. Power of Reserve Bank to compound contravention -
   [(1) If any person contravenes any provisions of Foreign Exchange Management Act, 1999 (42 of 1999) except clause (a) of Section 3 of the Act,]

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8.2 Contraventions relating to any transaction where proper approvals or permission from the Government or statutory authority concerned, as the case may be, have not been obtained, such contraventions would not be compounded unless the required approvals are obtained from the authorities concerned.

8.3 Cases of contravention, such as those having a money laundering angle, national security concern and/or involving serious infringements of the regulatory framework or where the contravener fails to pay the sum for which contravention was compounded within the specified period in terms of the compounding order, shall be referred to the Directorate of Enforcement for further investigation and necessary action under FERA, 1999 or to the authority instituted for Implementation of the Prevention of Money Laundering Act 2002 (PMLA) or to any other agencies, for necessary action, as deemed fit.

8.4 The Reserve Bank generally advises the persons concerned of their choice and option to make an application for compounding as and when such contraventions come to its notice. The facts constituting such contraventions will be brought to the notice of the Directorate of Enforcement in case no application for compounding is made within the time indicated by the Reserve Bank.

Authorized Dealers may take necessary steps to ensure that checks and balances are incorporated in systems relating to dealing with expatriates of foreign exchange transactions to Reserve Bank so that contraventions of provisions of FERA, 1999 due to the acts of omission and commission of the Authorized Dealers do not occur. In terms of Section 11(3) of FERA, 1999, the Reserve Bank may impose on the authorized person a penalty for contravening any direction given by the Reserve Bank under this Act or failing to file any return as directed by the Reserve Bank. (as amended vide AP DIR Circular No.76 dated January 17, 2013)
(a) In case where the sum involved in such contravention is ten lakhs rupees or below, by the Assistant General Manager of the Reserve Bank of India;
(b) in case where the sum involved in such contravention is more than rupees ten lakhs but less than rupees forty lakhs, by the Deputy General Manager of Reserve Bank of India;
(c) In case where the sum involved in the contravention is rupees forty lakhs or more but less than rupees hundred lakhs by the General Manager of Reserve Bank of India;
(d) in case the sum involved in such contravention is rupees one hundred lakhs or more, by the Chief General Manager of the Reserve Bank of India;
Provided further that no contravention shall be compounded unless the amount involved in such contravention is quantifiable.

(2) Nothing contained in sub-section (1) shall apply to a contravention committed by any person within a period of three years from the date on which a similar contravention committed by him was compounded under these rules.
Explanation: For the purposes of this rule, any second or subsequent contravention committed after the expiry of a period of three years from the date on which the contravention was previously compounded shall be deemed to be a first contravention.

(3) Every officer specified under sub-rule (1) of rule 4 of the Reserve Bank of India shall exercise the powers to compound any contravention subject to the direction, control and supervision of the Governor of the Reserve Bank of India.

(4) Every application for compounding any contravention under this rule shall be made in Form to the Reserve Bank of India, Exchange Control Department, Central Office, Mumbai along with a fee of Rs.5000/- by Demand Draft in favour of compounding authority.

5. The Power of Enforcement Directorate to compound contraventions -

(a) in case where the sum involved in such contravention is five lakhs rupees or below, by the Deputy Director of the Directorate of Enforcement;
(b) In case where the sum involved in such contravention is more than rupees five lakhs but less than rupees ten lakhs, by the Additional Director of the Directorate of Enforcement;
(c) In case where the sum involved in the contravention is rupees ten lakhs or more but less than fifty lakhs rupees by the Special Director of the Directorate of Enforcement;

(d) in case where the sum involved in the contravention is rupees fifty lakhs or more but less than one crore rupees by Special Director with Deputy Legal Adviser of the Directorate of Enforcement;
(e) in case the sum involved in such contravention is one crore rupees or more, by the Director of Enforcement with Special Director of the Enforcement Directorate.
Provided further that no contravention shall be compounded unless the amount involved in such contravention is quantifiable.

(2) Nothing contained in sub-section (1) shall apply to a contravention committed by any person within a period of three years from the date on which a similar contravention committed by him was compounded under these rules.
Explanation: For the purposes of this rule, any second or subsequent contravention committed after the expiry of a period of three years from the date on which the contravention was previously compounded shall be deemed to be a first contravention.

(3) Every officer of the Directorate of Enforcement specified under sub-rule (1) of this rule shall exercise the powers to compound any contravention subject to the direction, control and supervision of the Director of Enforcement.

(4) Every application for compounding any contravention under this rule shall be made in Form to the Director, Directorate of Enforcement, New Delhi, along with a fee of Rs.5000 by DD in favour of the Compounding Authority.

6. Where any contravention is compounded before the adjudication of any contravention under section 16, no inquiry shall be held for adjudication of such contravention in relation to such contravention against the person in relation to whom the contravention is so compounded.

7. Where the compounding of any contravention is made after making of a complaint under sub-section (3) of section 16, such compounding shall be brought by the authority specified in rule 4 or rule 5 in writing, to the notice of the Adjudicating Authority and on such notice of the compounding of the contravention being given, the person in relation to whom the contravention is so compounded shall be discharged.

8. Procedure for Compounding -

(1) The Compounding Authority may call for any information, record or any other documents relevant to the compounding proceedings.
(2) The Compounding Authority shall pass an order of compounding after affording an opportunity of being heard to all the concerned as expeditiously as possible as and not later than 180 days from the date of application.
9. Payment of amount compounded -

The sum for which the contravention is compounded as specified in the order of compounding under sub-rule (2) of rule 8, shall be paid by demand draft in favour of the Compounding Authority within fifteen days from the date of order of compounding of such contravention.

10. In case a person fails to pay the sum compounded in accordance with the rule 9 within the time specified in that rule, he shall be deemed to have never made an application for compounding of any contravention under these rules and the provisions of the Act for contravention shall apply to him.

11. No contravention shall be compounded if an appeal has been filed under section 17 or section 19 of the Act.

12. Contents of the order of the Compounding Authority -

(1) Every order shall specify the provisions of the Act or of the rules, directions, requisitions or orders made there under in respect of which contravention has taken place along with details of the alleged contravention.

(2) Every such order shall be dated and signed by the Compounding Authority under his seal.

13. Copy of the order - One copy of the order made under rule 8(2) shall be supplied to the applicant and the Adjudicating Authority as the case may be.

---

Format of Application

Form (See Rule 4 or 5)

(To be filled in duplicate and shall be accompanied by certified copy of the Memorandum issued)

1. Name of the applicant (in BLOCK LETTERS)

2. Full address of the applicant (including Phone and Fax Number and email id)

3. Whether the applicant is resident in India or resident outside India [Please refer to Section 2(v) of the Act]

4. Name of the Adjudicating Authority before whom the case is pending

5. Nature of the contravention [according to sub-section (1) of Section 13]

6. Brief facts of the case

7. Details of fee for application of compounding

8. Any other information relevant to the case

I/We declare that the particulars given above are true and correct to the best of my/our knowledge and belief that I/We am/are willing to accept any direction/order of the Compounding Authority in connection with compounding of my/our case.

Dated:

(Signature of the Applicant)

Name
Annex-II: FDI

Details to be furnished along with application for compounding of contravention relating to Foreign Direct Investment in India:

- Name of the applicant
- Date of Incorporation
- Nature of activities undertaken
- Brief particulars about the foreign investor
- Details of foreign inward remittances received by Applicant Company from date of incorporation till date

**TABLE A**

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Name of Remitter</th>
<th>Total Amount (INR)</th>
<th>Date of Receipt</th>
<th>Reported to RBI on*</th>
<th>Delay if any</th>
</tr>
</thead>
<tbody>
<tr>
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<tr>
<td>Total</td>
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* date of reporting to RBI and not AD

**TABLE B**

<table>
<thead>
<tr>
<th>Name of Investor</th>
<th>Date of allotment of shares</th>
<th>Number of shares allotted</th>
<th>Amount for which shares allotted</th>
<th>Date of reporting to RBI*</th>
<th>Delay if any</th>
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<tr>
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<td>Total</td>
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</table>

**TABLE C**

In case there is excess share application money

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Name of Remitter</th>
<th>Total Amount (INR)</th>
<th>Date of Receipt</th>
<th>Excess share application money</th>
<th>Date of refund of share application money</th>
<th>Amount in forex</th>
<th>RBI approval letter and date</th>
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<tbody>
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**TABLE D**

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<tr>
<th>Authorised Capital</th>
<th>Date</th>
<th>Authorised Capital</th>
<th>With effect from</th>
<th>Date of Board meeting</th>
<th>Date of filing with ROC</th>
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A = B + C Please give supporting documents Table A: Copies of FIRC with date stamp of receipt at RBI Table B: Copies of PCGPR with date stamp of receipt at RBI Table C - letter seeking refund/allotment of shares: approval letter from RBI A2 form

- Copies of Balance Sheet during the period of receipt of share application money and allotment of shares
- Nature of contravention and reasons for the contravention
- A declaration that they are not under investigation of any agency such as DoE, CBI, etc.
### Annex II- ECB

Details to be furnished along with application for compounding of contravention relating to External Commercial Borrowing:

- **Name of the applicant**
- **Date of Incorporation**
- **Nature of activities undertaken**
- **Brief particulars about the foreign lender**
- **Is the applicant an eligible borrower?**
- **Is the lender eligible under the terms of the agreement?**
- **Is the lender an equity holder?**
- **What is the level of its holding at the time of the event?**

**Details of ECB**

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<tbody>
<tr>
<td><strong>Details of Loan Agreement</strong></td>
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<tr>
<td><strong>Amount in Foreign Currency</strong></td>
<td></td>
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<tr>
<td><strong>Indian Rupee</strong></td>
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<tr>
<td><strong>Rate of Interest</strong></td>
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<td><strong>Period of Loan</strong></td>
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<tr>
<td><strong>Repayment particulars</strong></td>
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<tr>
<td><strong>Details of draw down</strong></td>
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<tr>
<td><strong>Amount in Foreign Currency</strong></td>
<td></td>
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<tr>
<td><strong>Amount in Indian Rupee</strong></td>
<td></td>
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<tr>
<td><strong>Details of ECB Number</strong></td>
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<tr>
<td><strong>Application and receipt</strong></td>
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<tr>
<td><strong>Details of ECB 2 returns submitted</strong></td>
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<tr>
<td><strong>Period of return</strong></td>
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<tr>
<td><strong>Date of submission</strong></td>
<td></td>
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<tr>
<td><strong>Details of Utilization of ECB in Foreign Currency and Indian Rupee</strong></td>
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<tr>
<td><strong>Nature of contravention and reasons for the contravention</strong></td>
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<tr>
<td><strong>All supporting documents may be submitted</strong></td>
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<td><strong>A declaration that they are not under investigation of any agency such as DoE, CBI, etc.</strong></td>
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### Annex II- ODI

Details to be furnished along with application for compounding of contravention relating to Overseas Investment:

- **Name of the applicant**
- **Date of Incorporation**
- **Nature of activities undertaken**
- **Name of Overseas entity**
- **Date of incorporation of overseas entity**
- **Nature of activities undertaken by overseas entity**
- **Nature of entity- WOS/IV**
- **Details of remittance sent- Date of remittance, Amount in FCY and in INR**
- **Details of other financial commitment**
- **Details of UN number applied and received**
- **Date of receipt of share certificate**
- **Approval of other regulators if required**
- **Details of APIs submitted for the period ended date of submission**
- **Nature of contravention and reasons for the contravention**
- **All supporting documents may be submitted**
- **A declaration that they are not under investigation of any agency such as DoE, CBI, etc.**
Annex II- Branch Office / Liaison Office

Details to be furnished along with application for compounding of contravention relating to Branch/Liaison Office in India

- Name of the applicant
- Date of incorporation
- Date of approval for opening of Liaison Office/Branch Office
- Validity period of the approval
- Nature of activities undertaken
- Income and expenditure of the LO/BO
- Dates of submission of Annual activity Certificates
- Nature of contravention and reasons for the contravention
- All supporting documents may be submitted
- A declaration that they are not under investigation of any agency such as DoE, CBI, etc.

Appendix


<table>
<thead>
<tr>
<th>Rules SI No.</th>
<th>Rules No.</th>
<th>Date</th>
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<tbody>
<tr>
<td>1</td>
<td>Foreign Exchange (Compounding Proceedings) Rules, 2000</td>
<td>May 3, 2000</td>
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<tr>
<td>2</td>
<td>Foreign Exchange (Compounding Proceedings) Rules, 2002 (Amendment)</td>
<td>November 2, 2002</td>
</tr>
<tr>
<td>3</td>
<td>Foreign Exchange (Compounding Proceedings) Rules, 2004 (Amendment)</td>
<td>September 13, 2004</td>
</tr>
<tr>
<td>4</td>
<td>Foreign Exchange (Compounding Proceedings) Rules, 2004 (Amendment)</td>
<td>August 27, 2008</td>
</tr>
</tbody>
</table>

RBI CIRCULAR FOR REGULARISATION OF REGISTRATION OF LO/BO

RBI/2011-12/112
A.P. (DIR Series) Circular No. 02

July 15, 2011

To:

All Authorised Dealer Category - I banks

Madam / Sir,

Regularization of Liaison / Branch Offices of foreign entities established during the pre-FEFA period

1. Attention of Authorised Dealer Category – I (AD Category-I) banks is invited to Notification No. FEMA 32/2000-RB dated May 3, 2000, vide. Foreign Exchange Management Act (Establishment in India of Branch or Office or other Place of Business) Regulations, 2000, as amended from time to time, read with A.P. (DIR Series) Circular Nos. 23 and 24 dated December 30, 2009, in terms of which a person resident outside India requires the prior approval of the Reserve Bank of India for establishing a Liaison Office (LO) / Branch Office (BO) in India. Further, attention of the AD Category - I banks is invited to A.P. (DIR Series) Circular No. 23 dated December 30, 2009, in terms of which applications from foreign Non-Government Organizations (NGOs) / Non-Profit Organizations (NPOs) / Government bodies / Departments for establishing BO / LOs in India are considered by the Reserve Bank in consultation with the Government of India, Ministry of Finance.

2. It has come to the notice of the Reserve Bank that certain BOs / LOs established by the foreign NGOs, NPOs, news agencies and other foreign entities are continuing to function in India, without the approval of the Reserve Bank, under the Foreign Exchange Management Act (FEMA), 1999. Under the provisions of FEMA, 1999, (i) i.e., the request of such entities to open an office in India is considered by the Reserve Bank in consultation with the Government of India, wherever required.

3. Accordingly, the foreign entities who have established LO or BO in India and continuing to function without obtaining permission from the Reserve Bank of India should approach the Reserve Bank within a period of 90 days from the date of issue of this circular for regularization of establishment of such offices in India, in terms of the extant FEMA provisions.

4. The foreign entities who may have established LO or BO with the permission from the Government of India may also approach the Reserve Bank along with a copy of the said approval for allotment of a Unique Identification Number (UIN) by the Reserve Bank of India.

5. All such applications/requests should be submitted to the Chief General Manager-In-Charge, Reserve Bank of India, Foreign Exchange Department, Foreign Investment Division, Central Office, Fort, Mumbai – 400 001 in form FNC and should be routed through the AD Category - I bank where the account of such LO/BO is maintained.

6. AD Category - I banks may bring the contents of this circular to the notice of their constituents/customers concerned and forward such application/request to the Reserve Bank, after complying with the instructions contained in A.P. (DIR Series) Circular Nos. 23 and 24 dated December 30, 2009. Further, they may also ensure that their constituents operating LO/BO in India have valid approval from the Reserve Bank for the same and that a copy of such approval is kept on record.

7. The directions contained in this circular have been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions/approvals, if any, required under any other law.

Yours faithfully,

(Meena Hemchandna)
Chief General Manager-In-Charge
Annexure 3

ANALYSIS OF LEGAL OBLIGATIONS & RESTRICTED GRANTS

WHETHER PROJECT GRANTS ARE LEGAL OBLIGATIONS OR VOLUNTARY CONTRIBUTION

1.01 It has been held in various courts that project grants should not be treated as voluntary contribution and therefore, cannot be treated as income. In a recent case, the Delhi High Court reaffirmed that any grant with specific direction from the donor cannot be treated as income, DIT v. Society for Development Alternatives [2012] 18 Taxmann.com 364 (Delhi). In this case, the assessee had received grants for specific purposes/projects from the Government, non-government, foreign institutions etc. These grants were to be spent as per the terms and conditions of the project grant. The amount, which remained unspent at the end of the year got spilled over to the next year and was treated as unspent grant. It was held that the unspent grant being a legal obligation/liability cannot be treated as voluntary contribution subject to the provision of utilisation and application as per the Income Tax Act.

1.02 There is lot of confusion about the treatment of specific contribution or project grant as to whether such contribution should be considered as income for the purposes of section 11. Section 12(1) provides that voluntary contributions should be treated as income for the purposes of section 11(1). However, a specific or restricted contribution is not a voluntary contribution if it comes attached with a condition. Project grants are considered as specific or restricted contribution because the amount has to be utilized as per the conditions of the project/grant agreement. Therefore, the grant is not freely available to the organization to be utilized for charitable purposes. It is bound by the contractual obligations of the project/grant agreement. Such grants are tied with specific purposes and are not available at the discretion of the recipient; therefore, should not be considered as income for the purposes of section 11(1) and should be transferred to a separate account of the donor from where it should be spent for its pre-determined purposes. Any surplus remaining should revert back to the donor or should be treated as income after obtaining approval from the donor.

1.03 That various other cases holding project grants as legal obligation are as under:

- In the case Society for Integrated Development in Urban and Rural Areas (SIDUR) v. CIT [2004] 90 ITR 493 (Hyd.), it was held that project grants did form a part of the income of the assessee nor they form a part of the corpus. Voluntary contributions covered under section 12 are those contributions freely available to the assessee without any stipulation, which the assessee can utilize towards its objectives according to its own discretion and judgment. Tie-up grants for a specified purpose would only mean that the assessee which was a voluntary organization, had agreed to act as a trustee of a special fund granted by donor with the result that it need not be pooled or integrated with the assessee’s normal income or corpus.

- In the case of Nizam Agricultural Society v. ITO [1999] 71 ITD 1.52 (Hyd.), the grants received from foreign donor were for specific purposes. The grants which were for specific purposes did not belong to the assessee society; the court further observed that the assessee should have actually credited the grant in the personal account of the donor and any amount spent against that grant should have been debited to that separate account of the donor. That income and outgoing need not be reflected in the income and expenditure account of the assessee. At the end of the project, the balance, if any, available to the credit of the donor, could be treated as income of the assessee, if the donor did not insist on the repayment of the balance amount.

- In the case of Shree Bhuleswar Charitable Trust v. CIT [1984] 149 ITR 470 (Mum.), the issue of whether specific grants were income or not was also discussed. It was observed that if the motive and intention of the donor play an important role in the utilization of the donation, then it cannot be considered as voluntary in nature. The word “voluntary” in its very inception connotes the absence of any obligation on the part of the donor.

- In the case of CIT v. Shri Bhuleswar Charitable Trust [1984] 145 ITR 29 (Mum.), their Lordships were pleased to take into consideration the significance of the expression “income derived from voluntary sources” and observed that the word “derived” connotes obtaining or receiving or taking or receiving from a source. When something is stated to be derived from something else, the latter is a source, while the former is that which flows from that source. A voluntary contribution understood that way is not by itself income. It is that from which income flows. By implication, therefore, voluntary contributions may be regarded as non-income without anything more indicated in section 12(1) of the Act.

1.04 The meaning of the word “voluntary” becomes very important in order to determine whether an obligation is attached to a grant or not. In a different context in the case of Hukum Singh v. CIT [1981] 5 Taxman 94 (All), it was held that the term “voluntary” in section 27(4A) has been used to indicate an action free of any constraint. This ruling of Allahabad High Court is also relevant in the sense that the term “Voluntary” requires an action or proposed action which has to be free from any constraint or conditions.

1.05 The specific project grants are bound by actionable contracts where both the parties have to act specifically as per the project contract. Therefore, it should not be termed as voluntary in the light of the statutory provisions and the cases cited above.
SUPREME COURT ON LEGAL OBLIGATIONS

1.06 A grant may come with or without legal obligation. If the provisions of the income-tax Act are applied (with or without the exemption U/s 11), then all legal obligations are not covered under the purview of the income-tax Act. Now the issue is whether the specific or restricted grants can be considered as income or not. In the case CIT v. Biji Cotton Mills (P) Ltd., [1979] 116 ITR 60 Supreme Court debated the issue of certain charity/legal obligation being collected as a part of a commercial invoice. In this particular case, the term ‘Dharmada’ has been used which means ‘towards charity’. The court held that any money received from the customers towards charity was under a legal obligation to be spent for a specific purpose, therefore, it could not be treated as a trading receipt. The court further observed that “It was true that without payment of the ‘Dharmada’ amount, the customer might not be able to purchase the goods from the respondent but that did not make the payment of ‘Dharmada’ involuntary as much as it was out of his own volition that he purchased yarn or cotton from the respondent. The ‘Dharmada’ amount was, therefore, not a part of the price, but a payment for the specific purpose of being spent on charitable purposes.”

1.07 Similar view were expressed by the Supreme Court in the case CIT v. Tollygunge Club Ltd., [1977] 107 ITR 776. Here the Supreme Court considered the question substantially similar to the one referred above. In this case the assessee was a social and sports club, one of whose activities consisted of conducting horse races with amateur riders. It charged for admission into the enclosure of the club at the time of the races from the race goers. The assessee passed resolution at a general meeting for levying surcharge for local charities in addition to admission fees. The receipts from the surcharge were not credited to the profit and loss account but they were carried directly to a separate account styled “charity account”. It was held that such income cannot be treated as income of the assessee.

1.08 In the case of Commissioner of Income-tax v. Amritsar Transport Co. (P) Ltd., [1993] 68 TAXMAN 56 (SC) again the Hon’ble Supreme Court held that so far as inclusion of amounts collected as Dharmada which were kept in a separate account and were utilized for charitable purposes was concerned, there could be no dispute that they were not liable to be included in the income of the assessee.

CASE LAWS WHERE PROJECT GRANTS ARE HELD AS VOLUNTARY CONTRIBUTION

1.09 In The Little Tradition v. Deputy Director of Income-tax (Exemption), Trust Circle-IV [2009] 119 FTD 127 (Delhi), it was held that a project grant for specific activities shall be treated as voluntary contribution. The Tribunal was of the opinion that the donor was not expecting anything in return and the grant was also not towards the corpus. Therefore, even if it was for specific purposes, it should be treated as voluntary contribution. The tribunal relied on two High Court cases, The National Institute Of Immunology vs Municipal Corporation of Delhi, AIR 2002 Delhi 192, 96 (2002) I DLT 41 and Commissioner of Income-tax, Bombay City-IV v. Gems & Jewellery Export Promotion Council, [1983] 143 ITR 579. The Delhi Tribunal in The Little Tradition supra held that such project grants are subject to 85% application of funds and should be considered as voluntary contributions chargeable to tax as income of the assessee within the meaning of section 2(24)(iia) of the Act.

1.10 The above cases are provided for reference purposes. However, in the light of various Supreme Court and High Court decisions discussed (supra) and keeping in view the legal obligation aspect of project grants, in our opinion they should not be treated as voluntary contribution if they come with specific directions. It may be noted that under explanation (1) to Section 13(7), it is stated that for the purposes of section 11 and 12 Trust includes any other legal obligation.
THE NEGATIVE LIST OF SERVICES WHICH ARE EXEMPTED

The negative list shall comprise of the following services, namely:

(a) services by Government or a local authority excluding the following services to the extent they are not covered elsewhere—

(i) services by the Department of Posts by way of speed post, express parcel post, life Insurance, and agency services provided to a person other than Government;

(ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;

(iii) transport of goods or passengers;

(iv) support services, other than services covered under clauses (i) to (iii) above, provided to business entities;

(b) services by the Reserve Bank of India;

(c) services by a foreign diplomatic mission located in India;

(d) services relating to agriculture or agricultural produce by way of—

(i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or seed testing;

(ii) supply of farm labour;

(iii) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;

(iv) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;

(v) loading, unloading, packing, storage or warehousing of agricultural produce;

(vi) agricultural extension services;

(vii) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce;

(e) trading of goods;

(f) any process amounting to manufacture or production of goods;

(g) selling of space or time slots for advertisements other than advertisements broadcast by radio or television;

(h) service by way of access to a road or a bridge on payment of toll charges;

(i) betting, gambling or lottery;

(j) admission to entertainment events or access to amusement facilities;

(k) transmission or distribution of electricity by an electricity transmission or distribution utility;

(l) services by way of—

(i) pre-school education and education up to higher secondary school or equivalent;

(ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;

(iii) education as a part of an approved vocational education course;

(m) services by way of renting of residential dwelling for use as residence;

(n) services by way of—

(i) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount;

(ii) inter se sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers;

(o) service of transportation of passengers, with or without accompanied belongings, by—

(i) a stage carriage;

(ii) railways in a class other than—

(A) first class;

(B) air conditioned coach;

(iii) metro, monorail or tramway;

(iv) inland waterways;

(v) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and

(vi) metered cab, radio taxi or auto rickshaw.
EXEMPTIONS UNDER MEGA NOTIFICATION

[TO BE PUBLISHED IN THE GAZETTE OF INDIA,
EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (1)]
Government of India Ministry of Finance Department of Revenue

NOTIFICATION NO. 12/2012-SERVICE TAX

New Delhi, the 17th March 2012

Exemptions from Service tax — Mega Notifications — Notification No. 12/2012-S.T. superseded

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification number 12/2012-Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (1) vide number G.S.R. 210(E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely,——

1. Services provided to the United Nations or a specified international organisation
2. Health care services by a clinical establishment, an authorised medical practitioner or para-medical
3. Services by a veterinary clinic in relation to health care of animals or birds
4. Services by an entity registered under section 12AA of the Income tax Act, 1961 (43 of 1961) by way of charitable activities
5. Services by a person by way of —
   (a) renting of premises of a religious place meant for general public or
   (b) conduct of any religious ceremony
6. Services provided by—
   (a) an arbitral tribunal to—
      (i) any person other than a business entity; or
      (ii) a business entity with a turnover up to rupees ten lakh in the preceding financial year;
(b) an individual as an advocate or a partnership firm of advocates by way of legal services to—
   (i) an advocate or partnership firm of advocates providing legal services;
   (ii) any person other than a business entity or
   (iii) a business entity with a turnover up to ten million in the preceding financial year;
   (iv) a person represented on an arbitral tribunal to an arbitral tribunal;

7. Services by way of technical testing or analysis of newly developed drugs, including vaccines and herbal remedies, on human participants by a clinical research organisation approved to conduct clinical trials by the Drug Controller General of India;

8. Services by way of training or coaching in recreational activities relating to arts, culture or sports;

9. Services provided to an educational institution in respect of education exempted from service tax, by way of—
   (a) auxiliary educational services; or
   (b) renting of immovable property;

10. Services provided to a recognised sports body by—
   (a) an individual as a player, referee, umpire, coach or team manager for participation in a sporting event organised by a recognised sports body;
   (b) another recognised sports body;

11. Services by way of sponsorship of sporting events organised—
   (a) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, state or zone;
   (b) by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat;
   (c) by Central Civil Services Cultural and Sports Board;
   (d) as part of national games, by Indian Olympic Association; or
   (e) under Panchayat YuvaKreeedaAurKshetraAbhiyajan (PYKKA) Scheme;

12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repairs, maintenance, renovation, or alteration of—
   (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

13. Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repairs, maintenance, renovation, or alteration of—
   (a) a road, bridge, tunnel, or terminal for road transportation for use by general public;
   (b) a civil structure or any other original works pertaining to a scheme under JawaharLal Nehru National Urban Renewal Mission or RajivGandhiGrameenVidyalaya;
   (c) a building owned by an entity registered under section 12AA of the Income tax Act, 1961 (43 of 1961) and meant predominantly for religious use by general public;
   (d) a pollution control or effluent treatment plant, except located as a part of a factory; or a structure meant for funeral, burial or cremation of deceased;

14. Services by way of construction, erection, commissioning, or installation of original works pertaining to—
   (a) an airport, port or railways, including monorail or metro;
   (b) a single residential unit otherwise than as a part of a residential complex;
   (c) low-cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the "Scheme of Affordable Housing in Partnership" framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;
   (d) post-harvest storage infrastructure for agricultural produce including a cold storages for such purposes;
   (e) mechanised food grain handling system, machinery or equipment for units processing agricultural produce; or food stuff excluding alcoholic beverages;

15. Services provided by way of temporary transfer or permitting the use or enjoyment of a copyright—
   (a) covered under clause (a) of sub-section (1) of section 13 of the Copyright Act,
1957 (14 of 1957), relating to original literary, dramatic, musical or artistic work or
(b) cinematograph films for exhibition in cinema halls or cinema theatres;*

16. Services by a performing artist in folk or classical art forms of (i) music, or (ii) dance, or
(iii) theatre, excluding services provided by such artist as a brand ambassador;

17. Services by way of collecting or providing news by an independent journalist, Press
Trust of India or United News of India;

18. Services by way of renting of a hotel, inn, guest house, club, campsite or other commercial
places meant for residential or lodging purposes, having declared tariff of a unit of accommodation
below rupees one thousand per day or equivalent;

19. Services provided in relation to serving of food or beverages by a restaurant, eating
joint or a mess, other than those having the facility of air-conditioning or central air
heating in any part of the establishment, at any time during the year;

20. Services by way of transportation by rail or a vessel from one place in India to another of
the following goods –
(a) petroleum and petroleum products falling under Chapter heading 2710 and 2711 of
the First Schedule to the Central Excise Tariff Act, 1986 (5 of 1986);
(b) relief materials meant for victims of natural or man-made disasters, calamities,
accidents or mishap;
(c) defence or military equipments;
(d) postal mail or mail bags;
(e) aforesaid effects;
(f) newspaper or magazines registered with the Registrar of Newspapers;
(g) railway equipments or materials;
(h) agricultural produce;
(i) foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible
oil, excluding alcoholic beverages;
(j) chemical fertilizer and alcohols;

21. Services provided by a goods transport agency, by way of transport in a goods carriage of:
(a) agricultural produce;
(b) goods, where gross amount charged for the transportation of goods on a
consignment transported in a single carriage does not exceed one thousand five
hundred rupees;
(c) goods, where gross amount charged for transportation of all such goods for a
single consignee does not exceed rupees seven hundred fifty;

(d) foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible
oil, excluding alcoholic beverages;
(e) chemical fertilizer and alcohols;
(f) newspaper or magazines registered with the Registrar of Newspapers;
(g) relief materials meant for victims of natural or man-made disasters, calamities,
accidents or mishap;
(h) defence or military equipments;*

22. Services by way of giving on hire –
(a) to a state transport undertaking, a motor vehicle meant to carry more than twelve
passengers;
(b) to a goods transport agency, a means of transportation of goods;

23. Transport of passengers, with or without accompanied belongings, by –
(a) air, embarking from or terminating in an airport located in the state of Arunachal
Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura
or at Bagdogra located in West Bengal;
(b) a contract carriage for the transportation of passengers, excluding tourism,
conducted tour, charter or hire;
(c) ropeway, cable car or aerial tramway;

24. Services by way of vehicle parking to general public excluding leasing of space to an
entity for providing such parking facility;

25. Services provided to Government, a local authority or a governmental authority by way of
(a) carrying out any activity in relation to any function ordinarily entrusted to a
municipality in relation to water supply, public health, sanitation conservancy, solid
waste management or slum improvement and upgradation;
(b) repair or maintenance of a vessel or an airport;

26. Services of general insurance business provided under following schemes –
(a) Mub Insurance Scheme;
(b) Cental Insurance under Swarnajayanti Gram SwarozgarYojna (earlier known as
Integrated Rural Development Programme);
(c) Scheme for Insurance of Tribals;
(d) Janata Personal Accident Policy and Gramin Accident Policy;
(e) Group Personal Accident Policy for Self-Employed Women;
(f) Agricultural Pumpsset and Failed Wall Insurance;
(g) premia collected on export credit insurance;
(h) Weather Based Crop Insurance Scheme or the Modified National Agricultural Insurance Scheme, approved by the Government of India and implemented by the Ministry of Agriculture;

(i) Jan Arogya Bima Policy;

(j) National Agricultural Insurance Scheme (Raashiya Krishi Bima Yojana);

(k) Pilot Scheme on Seed Crop Insurance;

(l) Universal Health Insurance Scheme;

(m) Rashtriya Swasthya Bima Yojana or

(o) Coconut Palm Insurance Scheme;

"26A. Services of life insurance business provided under following schemes -

(a) Janashree Bima Yojana (JBY); or

(b) Aam Aadmi Bima Yojana (AABY)."

27. Services provided by an incubator up to a total turnover of fifty lakh rupees in a financial year subject to the following conditions, namely: -

(a) the total turnover had not exceeded fifty lakh rupees during the preceding financial year; and

(b) a period of three years has not been elapsed from the date of entering into an agreement as an incubator;

28. Services by an unincorporated body or a non-profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution -

(a) as a trade union;

(b) for the provision of carrying out any activity which is exempt from the levy of service tax; or

(c) up to an amount of five thousand rupees per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex;

29. Services by the following persons in respective capacities -

(a) sub-broker or an authorised person to a stock broker;

(b) authorised person to a member of a commodity exchange;

(c) mutual fund agent to a mutual fund or asset management company;

(d) distributor to a mutual fund or asset management company;

(e) selling or marketing agent of lottery tickets to a distributor or a selling agent;

(f) selling agent or a distributor of SIM cards or recharge coupon vouchers;

(g) business facilitator or a business correspondent to a banking company or an insurance company, in a rural area; or

(h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;

30. Carrying out an intermediate production process as job work in relation to -

(a) agriculture, printing or textile processing;

(b) cut and polished diamonds and gemstones, or plain and studded jewellery of gold and other precious metals, falling under Chapter 71 of the Central Excise Tariff Act, 1985 (5 of 1986);

(c) any goods on which an appropriate duty is payable by the principal manufacturer;

(d) processes of electroplating, zinc plating, anodizing, heat treatment, powder coating, painting including spray painting or auto black, during the course of manufacture of parts of cycles or sewing machines up to an aggregate value of taxable service of the specified processes of one hundred and fifty lakh rupees in a financial year subject to the condition that such aggregate value had not exceeded one hundred and fifty lakh rupees during the preceding financial year;

31. Services by an organiser to any person in respect of a business exhibition held outside India;

32. Services by way of making telephone calls from -

(a) departmentally run public telephone;

(b) guaranteed public telephone operating only for local calls;

(c) free telephone at airport and hospital where no bills are being issued;

33. Services by way of slaughterhouse or butchery operations;

34. Services received from a provider of service located in a non-taxable territory by -

(a) Government, a local authority, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession;

(b) an entity registered under section 122A of the Income Tax Act, 1961 (43 of 1961) for the purposes of providing charitable activities; or

(c) a person located in a non-taxable territory;

35. Services of public libraries by way of lending of books, publications or any other knowledge - enhancing content or material;

36. Services by Employees' State Insurance Corporation to persons governed under the Employees' Insurance Act, 1948 (34 of 1948);

37. Services by way of transfer of a going concern, as a whole or an independent part thereof;
38. Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets;

39. Services by a governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution.

2. Definitions.— For the purpose of this notification, unless the context otherwise requires,—
   (a) "Advocate" has the meaning assigned to it in clause (a) of sub-section (1) of section 2 of the Advocates Act, 1961 (25 of 1961);
   (b) "appropriate duty" means duty payable on manufacture or production under a Central Act or a State Act, but shall not include "Nil" rate of duty or duty wholly exempted;
   (c) "arbitral tribunal" means the meaning assigned to it in clause (c) of section 2 of the Arbitration and Conciliation Act, 1996 (26 of 1996);
   (d) "authorised medical practitioner" means a medical practitioner registered with any of the councils of the recognised system of medicines established or recognized by law in India and includes a medical professional having the requisite qualification to practice in any recognised system of medicines in India as per any law for the time being in force;
   (e) "authorised person" means any person who is appointed as such either by a stockbroker (including trading member) or by a member of a commodity exchange and who provides access to trading platform of a stock exchange or a commodity exchange as an agent of such stockbroker or member of a commodity exchange;
   (f) "auxiliary educational services" means any services relating to imparting any skill, knowledge, education or development of course content or any other knowledge — enhancement activity, whether for the students or the faculty, or any other service which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person, including services relating to admission to such institution, conduct of examination, catering for the students under any mid-day meals scheme sponsored by Government, or transportation of students, faculty or staff of such institution;
   (g) "banking company" has the meaning assigned to it in clause (a) of section 45A of the Reserve Bank of India Act, 1934 (2 of 1934);
   (h) "brand ambassador" means a person engaged for promotion or marketing of a brand of goods, service, property or actionable claim, event or endorsement of name, including a trade name, logo or house mark of any person;
   (i) "business facilitator or business correspondent" means an intermediary appointed under the business facilitator model or the business correspondent model by a banking company or an insurance company under the guidelines issued by Reserve Bank of India;
   (j) "clinical establishment" means a hospital, nursing home, clinic, sanatorium or any other institution by whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognized system of medicines in India, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases;
   (k) "charitable activities" means activities relating to—
      (i) public health by way of—
         (a) care or counseling of (i) terminally ill persons or persons with severe physical or mental disability, (ii) persons afflicted with HIV or AIDS, or (iii) persons addicted to a dependence-inducing substance such as narcotics drugs or alcohol or
         (b) public awareness of preventive health, family planning or prevention of HIV infection;
      (ii) advancement of religion or spirituality;
      (iii) advancement of educational programmes or skill development relating to—
         (a) abandoned, orphaned or homeless children;
         (b) physically or mentally abused and traumatized persons;
         (c) prisoners or
         (d) persons over the age of 65 years residing in a rural area;
      (iv) preservation of environment including watershed, forests & wildlife;
      (v) enhancement of any other object of general public utility or to a value
         (a) eighteen lakh and seventy-five thousand rupees for the year 2012-13 subject to the condition that total value of such activities had not exceeded twenty five lakhs rupees during 2011-12;
         (b) twenty five lakhs rupees in any other financial year subject to the condition that total value of such activities had not exceeded twenty five lakhs rupees during the preceding financial year;
   (l) "commodity exchange" means an association as defined in section 2(j) and recognized under section 6 of the Forward Contracts (Regulation) Act, 1952 (74 of 1952);
   (m) "contract carriage" has the meaning assigned to it in clause (7) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);
   (n) "declared tariff" includes charges for all amenities provided in the unit of
accommodation (given on rent for stay) like furniture, air-conditioner, refrigerators or any other amenities, but without excluding any discount offered on the published charges for such unit;

(c) “distributor or selling agent” has the meaning assigned to them in clause (c) of the rule 2 of the Lottery (Regulation) Rules, 2010 notified by the Government of India in the Ministry of Home Affairs, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 270(E), dated the 1st April, 2010 and shall include distributor or selling agent authorised by the lottery-organising State;

(p) “general insurance business” has the meaning assigned to it in clause (g) of section 3 of General Insurance Business (Nationalisation) Act, 1972 (37 of 1972);

(q) “General public” means the body of people at large sufficiently defined by some common quality of public or impersonal nature;

(r) “goods carriage” has the meaning assigned to it in clause (14) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);

(s) “governmental authority” means a board, or an authority or any other body established with 90% or more participation by way of equity or control by Government and set up by an Act of the Parliament or a State Legislature to carry out any function entrusted to a municipality under article 243M of the Constitution;

(t) “health care services” means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicine in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma;

(u) “incubated” means an entrepreneur located within the premises of a Technology Business Incubator (TBI) or Science and Technology Entrepreneurship Park (STEP) recognised by the National Science and Technology Entrepreneurship Development Board (NSTEDB) of the Department of Science and Technology, Government of India and who has entered into an agreement with the TBI or the STEP to enable himself to develop and produce hi-tech and innovative products;

(v) “insurance company” means a company carrying on life insurance business or general insurance business;

(w) “legal service” means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representative services before any court, tribunal or authority;

(x) “life insurance business” has the meaning assigned to it in clause (11) of section 2 of the Insurance Act, 1938 (4 of 1938);

(y) “original work” means has the meaning assigned to it in Rule 2A of the Service Tax (Determination of Value) Rules, 2006;

(z) “principal manufacturer” means any person who gets goods manufactured or processed on his account from another person;

(aa) “recognised sports body” means - (i) the Indian Olympic Association, (ii) Sports Authority of India, (iii) a national sports federation recognised by the Ministry of Sports and Youth Affairs of the Central Government and its Affiliate federations, (iv) national sports promotion organisations recognised by the Ministry of Sports and Youth Affairs of the Central Government, (v) the International Olympic Committee or a federation recognised by the International Olympic Association or (vi) a federation or a body which regulates a sport at international level and its affiliated federations or bodies regulating a sport in India;

(bb) “religious place” means a place which is primarily meant for conduct of prayers or worship pertaining to a religion, meditation, or spirituality;

(cc) “residential complex” means any complex comprising of a building or buildings, having more than one single residential unit;

(dd) “rural area” means the area comprised in a village as defined in land revenue records, excluding - the area under any municipal committee, municipal corporation, town area committee, cantonment board or notified area committee, or any area that may be notified as an urban area by the Central Government or a State Government;

(ee) “single residential unit” means a self-contained residential unit which is designed for use, wholly or principally, for residential purposes for one family;

(ff) “specified international organization” means an international organization declared by the Central Government in pursuance of section 3 of the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), to which the provisions of the Schedule to the said Act apply;

(gg) “state transport undertaking” has the meaning assigned to it in clause (42) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);

(hh) “sub-broker” has the meaning assigned to it in sub-clause (gg) of clause 2 of the Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992;

(ii) “trade union” has the meaning assigned to it in clause (h) of section 2 of the Trade Unions Act, 1926 (16 of 1926).

3. This notification shall come into force on the 1st day of July, 2012.

(Notification No. 25/2012-S.T., dated 20-6-2012)
Q.1 What is foreign contribution?

Ans. As defined in Section 2(1)(h) of FCRA, 2010, "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 is not more than such sum* as may be specified from time to time by the Central Government by rules made by it in this behalf;

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

(iii) of any security as defined in clause (h) of section 2 of the securities Contracts (Regulation) Act, 1956 and includes any foreign security as defined in clause (o) of Section 2 of the Foreign ExchangeManagement Act, 1999.

Explanation 1 – A donation, delivery or transfer or 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 with the meaning of this clause.

Explanation 2 – The interest accrued on the foreign contribution deposited in any bank referred to in sub-section (1) of Section 17 or any other income derived from the foreign contribution or interest thereon shall also be deemed to be foreign contribution within the meaning of this clause.

Explanation 3 – Any amount received, by a 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 or a foreign source towards such fee or cost shall be excluded from the definition of foreign contribution within the meaning of this clause.

* In terms of FCRA, 2010 "person" includes ? (i) an individual; (ii) a Hindu undivided family; (iii) an association; and (iv) a company registered under section 25 of the Companies Act, 1956.

**The sum, as stated at (i) above, has been specified as Rs. 25,000/- vide the Foreign Contribution (Regulation) Amendment Rules, 2012

[G.S.R. 292 (E) dated 12th April, 2012].

Q.2 Whether earnings from foreign client(s) by a person in lieu of goods sold or services rendered by it is treated as foreign contribution?
Q.3 Section 2(c)(i) of repealed FCRA, 1976 inter alia defined foreign contribution as the donation, delivery or transfer made by any foreign source of any article, not given to a person as a gift for personal use, if the market value, in India, of such article exceeds one thousand rupees. What limit has been prescribed in FCRA, 2010 in respect of such articles?

Ans. The limit has been specified as Rs. 25000/- through insertion of the following Rule 6A in FCRR, 2011 vide the Foreign Contribution (Regulation) Amendment Rules, 2012 [G.S.R. 292 (E) dated 12th April, 2012]:

“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).”

Q.4 What is a foreign source?

Ans. Foreign source, as defined in Section 2(1)(j) of FCRA, 2010 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 specialized 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 or individuals formed or registered outside India;

(x) a citizen of a foreign country;”

List of agencies of the United Nations, World Bank and some other International agencies/multilateral organisations, which are not treated as ‘foreign source’, are available on the website http://mha.nic.in/fcra/intro/FCRA-exemptedAgenciesUN.pdf

Q.5 Who can receive foreign contribution?

Ans. A ‘person’, as defined in Section 2(1)(m) with the exclusion of those mentioned in Section 3 of FCRA, 2010, having a definite cultural, economic, educational, religious or social programme can receive foreign contribution after it obtains the prior permission of the Central Government, or gets itself registered with the Central Government. Illustrative but not exhaustive lists of activities which are permissible and may be carried out by associations of different nature are available on the website — http://mha.nic.in/fcra/intro/permitted_programs.htm

Q.6 Who cannot receive foreign contribution?

Ans. As defined in Section 3(1) of FCRA, 2010, foreign contribution cannot be accepted by any:

(a) a candidate for election;

(b) correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper;

(c) Judge, government servant or employee of any Corporation or any other body controlled or owned by the Government;

(d) member of any legislature;

(e) political party or office bearer thereof;

(f) organization of a political nature as may be specified under sub-section (1) of section 5 by the Central Government.

(g) association or company engaged in the production or broadcast of audio news or audio visual news or current affairs programmes through any electronic mode, or any other electronic form as defined in clause (r) of sub-section (i) of Section 2 of the Information Technology Act, 2000 or any other mode of mass communication;

(h) correspondent or columnist, cartoonist, editor, owner of the association or company referred to in clause (g).

Explanation – In clause (c) and section 6, the expression “corporation” means a corporation owned or controlled by the Government and includes a Government company as defined in section 617 of the Companies Act, 1956.
original investment, linked to marked forces, including investment in mutual funds or in shares;

(b) participation in any scheme that promises high returns like investment in chits or land or similar assets not directly linked to the declared aims and objectives of the organization or association.

(2) A debt-based secure investment shall not be treated as speculative investment.

(3) Every association shall maintain a separate register of investments.

(4) Every register of investments maintained under sub-rule (3) shall be submitted for audit.

In view of the above, secure investments and fixed deposits in any bank or Government approved financial institution which ensures a fixed return will not be treated as speculative investment.

Q.18 Can capital assets purchased with the help of foreign contributions be acquired in the name of the office bearers of the association?

Ans. No. Every asset purchased with foreign contribution should be acquired and possessed in the name of the association since an association has a separate legal entity distinct from its members.

Q.19 Can an association invest the foreign contribution received by it in profitable ventures and proceeds can be utilized for welfare activities?

Ans. No. The association should utilize such funds for the welfare purpose or activities for which it is received. The utilization should be in line with the objectives of the association. However, foreign contributions can be utilized for self-sustaining activities, not meant for commercial purposes.

Q.20 Can foreign contribution be received in and utilised from multiple Bank Accounts?

Ans. No fund other than foreign contribution can be deposited in the exclusive single FC account of a Bank, as mentioned in the order for registration or prior permission granted by MHA, to be separately maintained by the associations. However, one or more accounts in one or more banks may be opened for utilising the foreign contribution after it has been received provided that no funds other than that foreign contribution shall be received or deposited in such account or accounts and in all such cases, intimation on plain paper shall have to be furnished to MHA within 15 days of the opening of the account.

Q.21 Whether inter-account funds transfer shall be allowed within the multiple accounts that an Association is now permitted to open for the purpose of utilizing the foreign contributions and the level of diligence required on the part of the Banks in this regard?

Ans. Transfer of funds is allowed from the designated FC account of an Association to the multiple account or accounts opened for its utilization. However, no funds other than the amount received in the designated FC account shall be received or deposited in such multiple account or accounts. Inter-account transfer of funds between the multiple accounts is not permissible. As such, the banks should apply full diligence to keep track of the transfers.

Q.22 Can foreign contribution be mixed with local receipts?
Ans. No. Foreign contribution cannot be deposited or utilised from the bank account being used for domestic funds.

Ans. There is no bar on receiving such foreign contribution in installments. However, the aggregate amount should not exceed the specified amount for which prior permission has been granted. The association shall have to submit the mandatory return in Form FC & a form for receipt and utilisation of the foreign contribution on a yearly basis. Till the amount of foreign contribution is fully utilised, even if no transaction takes place during a year, NIL return should be submitted.

Q 29 Whether an association should open an exclusive FC A/B before submission of an application for registration or prior permission?

Ans. Yes. Since the FC A/B through which foreign contribution is proposed to be received and utilised is to be mentioned in the application seeking registration or prior permission, as the case may be, the association should open such an exclusive FC A/B with a bank. This A/B number would be mentioned in the letter granting registration or prior permission to the association.

Q 30 Whether Banks should allow an association which is applying for registration or prior permission under FCRA 2010 to open an exclusive FC A/B with INR?

Ans. Yes. However, the Banks should not allow any foreign inward remittance in that A/B till such time the association is granted registration or prior permission, as the case may be.

Q 31 Whether Banks should credit any foreign contribution received by an association to its account even if the association does not have registration or prior permission from MHA and subsequent reporting can be made by Banks to MHA?

Ans. Rule 16 C of FCRR 2011 states that every bank shall send a report to the Central Govt. within 30 days of receipt of foreign contribution by any person who is required to obtain a certificate or registration or prior permission under the Act. But who was not granted such certificate or prior permission on the date of receipt of such remittance. Further, Rule 16 D prescribes that the banks shall send a report to the Central Govt. within 30 days from the date of such last transaction in respect of receipt of any foreign contribution in excess of Rs 3 Crore or equivalent thereof in a single transaction or in transactions within a duration of 30 days by any person, whether registered or not under the Act.

In view of the above, it follows that banks may credit any foreign contribution received by an association without registration or prior permission. However, while the banks can prevent such a situation in cases where a cheque is presented by the recipient of foreign contribution for deposit in its savings/current account, it may not always be possible when the foreign remittance is through wire transfer. Therefore, in all such cases, besides sending a report to MHA as per Rule 16, the bank should not allow any withdrawal or transfer or utilisation of the FC amount till such time the association produces documentary evidence from MHA permitting it to do so.

Q 32 Should the Banks report transactions pertaining to foreign contributions which are returned back to the remitter by the beneficiary association for want of registration or prior permission?
from MHA

Ans. It is not necessary for the bank to report such foreign contribution that is returned to the

Q 0 If an application for registration or prior permission is submitted online by an association does it need to submit that application in physical form also?

Ans. Yes. When an application is filed online a printout of the same is to be taken after submission and thereafter it should be submitted duly signed by the Chief Functionary of the Association along with the requisite documents to the Ministry of Home Affairs. The prescribed forms for submission of application for grant of Registration and Prior Permission are FC 3 and FC 4 respectively. The forms are available at MHA website http://mnhome.nic.in/ita/forms/FC_3.pdf and http://mnhome.nic.in/ita/forms/FC_4.pdf respectively.

Q 1 What are the documents to be enclosed with the application?

Ans. Following documents should be enclosed with the application for grant of Registration:

i. Hard copy of the online application duly signed by the Chief Functionary of the association

ii. Certified copy of registration certificate or Trust deed etc. as the case may be

iii. Activity Report indicating details of activities during the last three years

iv. Copies of audited statement of accounts for the past three years Assets and Liabilities Receipt and Payment Income and Expenditure etc.

v. Fee of Rs 1000/- means of demand draft or banker’s cheque in favour of the Director of Home Affairs

vi. Following documents should be enclosed with the application for grant of Prior Permission:

i. Hard copy of the online application duly signed by the Chief Functionary of the association

ii. Certified copy of registration certificate or Trust deed etc. as the case may be

iii. Commitment letter from foreign donor specifying the amount of foreign contribution and the purpose for which it is proposed to be given

iv. Copy of the project report for which foreign contribution is solicited. Being offered and is proposed to be utilized

v. If functioning as editor printer or publisher of a publication registered under the Press and Registration of Books Act 1867, a certificate from the Registrar of Newspapers for India that the publication is not a newspaper in terms of section 1 of the said Act

vi. Following documents should be enclosed with the application for grant of Prior Permission:

i. Hard copy of the online application duly signed by the Chief Functionary of the association

ii. Certified copy of registration certificate or Trust deed etc. as the case may be

iii. Commitment letter from foreign donor specifying the amount of foreign contribution and the purpose for which it is proposed to be given

iv. Copy of the project report for which foreign contribution is solicited. Being offered and is proposed to be utilised

v. If functioning as editor printer or publisher of a publication registered under the Press and Registration of Books Act 1867, a certificate from the Registrar of Newspapers
for India that the publication is not a newspaper in terms of section 1 of the said Act.

 Fee of Rs. 300 by means of demand draft or banker's cheque in favour of the Reserve Bank of India.

Q 49 What is the procedure for filing Annual Returns?

Ans: An association permitted to accept foreign contribution is required under law to maintain separate set of accounts and records exclusively for the foreign contribution received and submit an annual return duly certified by a Chartered Accountant giving details of the receipt and purpose wise utilisation of the foreign contribution. The return is to be filed for every financial year (1st April to 31st March) within a period of nine months from the closure of the year, i.e., by 31st December each year. Submission of a Nil Return is even if there is no receipt. Utilization of foreign contribution during the year is mandatory. The return is to be submitted in prescribed Form FC-3 duly accompanied with the balance sheet and statement of receipt and payment which is certified by a Chartered Accountant.

The form is available on MHA website (http://maha.nic.in/forms.pdf). For further details, please refer to Sections 17 and 19 of FCRA 2010 and Rule 17 of FCRR 2011.

Note: It may be noted that the annual return for the financial year 2010-2011 was to be filed by the 31st December 2011 in Form FC-3美好 per FCRA 1976.

Q 50 For how many years an association which has been granted prior permission to receive foreign contribution should file the mandatory annual return? Ans: Prior permission is granted to an association to receive a specific amount of foreign contribution from a specific donor for a specific purpose. After receipt of approval from the Government, the association should submit the mandatory return in FC-3 form for receipt and utilisation of the foreign contribution on a yearly basis. If the amount of foreign contribution is fully utilised, even if no transaction takes place during a year, a Nil return should be submitted.

Q 51 What are the offences and penalties under FCRA 2010?

Ans: Section 11 of the FCRA 2010 prescribes that no person shall accept foreign contribution unless such person obtains a certificate of registration or prior permission of the Central Government. Therefore, acceptance of foreign contribution without obtaining registration or prior permission from the Central Government constitutes an offence under the Act and is punishable.

The provisions of FCRA 2010 regarding offences and penalties are Section 33: Making of false statement, declaration or delivering false account:

Any person, subject to this Act, who knowingly,—

(a) gives false intimation under sub-section (c) of section 9 or section 18; or

(b) seeks prior permission or registration by means of fraud, false representation or concealment of material fact, shall, on conviction by a court, be liable to imprisonment for a term which may extend to three years or with fine or with both.

Section 34: Penalty for article or currency or security obtained in contravention of Section 10: If any person, on whom any prohibitory order has been served under section 10, pays, delivers, transfers or otherwise deals with, in any manner whatsoever, any article or
Q.52 Which are the offences that can be compounded and what would be the penalties therefor?

Ans: In terms of Gazette Notification S.O. 1976 (E) dated 26.08.2011, http://mha.nic.in/fcra/forms/ComOffNoti-260811.pdf the categories of offences that can be compounded under section 41 of FCRA, 2010 and the quantum of penalty for compounding, as indicated against each of the offences, are:

<table>
<thead>
<tr>
<th>Nature of offence</th>
<th>Quantum of penalty</th>
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<tbody>
<tr>
<td>(i) Acceptance of cheque or draft towards foreign contribution by a 'person' without registration or prior permission of the Central Government even in cases where the cheque or draft has not been deposited in a Bank by the 'person'.</td>
<td>Rs. 10,000/- or 2 per cent of the foreign contribution involved, whichever is higher.</td>
</tr>
<tr>
<td>(ii) Acceptance of cheque or draft by a 'person' towards foreign contribution without registration or prior permission of the Central Government and depositing the same in a Bank notwithstanding non-utilisation of the amount of the foreign contribution.</td>
<td>Rs. 25,000/- or 3 per cent of the foreign contribution involved, whichever is higher.</td>
</tr>
<tr>
<td>(iii) Acceptance of foreign contribution by a 'person' without registration or prior permission of the Central Government and utilisation of the same notwithstanding any inquiry which revealed that the contribution received was not diverted towards any purpose other than the objectives or purpose for which the same was received, utilisation of the contribution was as per the objectives of receipt of the same and records of receipt and utilisation have been kept properly.</td>
<td>Rs. 1,00,000/- or 5 per cent of the foreign contribution involved, whichever is higher.</td>
</tr>
<tr>
<td>(iv) Acceptance of foreign contribution in kind by a 'person' without registration or prior permission of the Central Government notwithstanding that nothing adverse was reported after inquiry.</td>
<td>Rs. 10,000/- or 2 per cent of the foreign contribution involved, whichever is higher.</td>
</tr>
</tbody>
</table>

Q.53 How to apply for compounding of an offence under FCRA, 2010?

Ans: An application for the compounding of an offence under section 41 is to be made to the Secretary, Ministry of Home Affairs, New Delhi on a plain paper along with a fee of Rs.1000/- (One Thousand only) in the form of a demand draft or a banker’s cheque in favour of the “Pay and Accounts Officer, Ministry of Home Affairs”, payable at New Delhi.

Q.54 What happens after an offence is compounded?

Ans: After payment of the penalty imposed and compounding of the offence, the person may be granted registration or prior permission, as the case may be, subject to its fulfilling all parameters.

Q.55 What if the person is unwilling or unable to pay the penalty imposed?

Ans: In the event of failure to pay the penalty, for whatever reason, necessary action for prosecution of the person shall be initiated.
Q.64 When should an Association which has been granted registration under FCRA, 1976 should apply for renewal of registration?
Ans. In terms of Rule 12 (2) of FCRR, 2011, an Association registered under FCRA should apply in Form FC-5 for renewal of its registration six months before the date of expiry of the certificate of registration. Since registration granted to Associations under the repealed FCRA, 1976 shall be valid up to 30th April, 2016, such Associations should apply for renewal of their registration on or before 1st November, 2015. An Association granted registration under FCRA, 2010, i.e., after 1st May, 2011, shall have to apply for renewal of registration six months before the date of expiry of the validity of its certificate of registration. Associations implementing an ongoing multi-year project should apply for renewal twelve months before the date of expiry of the certificate of registration.

Q.65 What is foreign hospitality?
Ans. Foreign Hospitality means 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 any foreign country or territory or with free board, lodging, transport or medical treatment.

Q.66 Who cannot accept foreign hospitality without prior approval of the Ministry of Home Affairs?
Ans. Section 6 of FCRA, 2010 prescribes that "No member of a Legislature or office bearer of a political party or Judge or Government servant or employee of any corporation or any other body owned or controlled by the Government shall, while visiting any country or territory outside India, accept, except with the prior permission of the Central Government any foreign hospitality. Provided that it shall not be necessary to obtain any such permission for an emergent medical aide needed on account of sudden illness contracted during a visit outside India, but, where such foreign hospitality has been received, the person receiving such hospitality shall give, within one month from the date of receipt of such hospitality an intimation to the Central Government as to the receipt of such hospitality, and the source from which, and the manner in which, such hospitality was received by him."

Q.67 Whether approval of the Ministry of Home Affairs is required in cases where the proposed foreign visit is being undertaken by a person in his/her personal capacity and the entire expenditure thereon is being met by the person concerned?
Ans. No. Any person belonging to any of the categories specified in Section 6 of FCRA, 2010 would require such approval only if the person concerned is seeking foreign hospitality from a foreign source.

Q.68 How one can seek permission of the Government for receiving foreign hospitality?
Ans. Application form (Form FC-2) for this purpose is available on MHA's web-site – http://mha.nic.in/fcra/forms/fc-2.pdf. In terms of Rule 7 of FCRR, 2011:

(i) Every application for acceptance of foreign hospitality shall be accompanied by an
invitation letter from the host or the host country, as the case may be, and administrative clearance of the Ministry or department concerned in case of visits sponsored by a Ministry
FORMATION OF TRUSTS, SOCIETY AND COMPANIES REGD UNDER SEC 25 OF THE COMPANIES ACT, 1956 AND INTERESTING ISSUES ON NGOS, NPOS AND CHARITABLE TRUSTS

- Dr. N. Suresh, B.Com, F.C.A, PhD
  Mobile: 98455 45265
  Email: nsuresh.ca@yahoo.com

CHARITY

- Historical Significance of Charity
- Meaning and concept of Charity
Charitable Purpose - Sec 2(15)

- Charitable Purpose - Limbs
  i. Relief of the poor
  ii. Education
  iii. Medical Relief
  iv. Advancement of any other general public utility
  v. Preservation of environment and preservation of monuments or places or objects of artistic or historic interest includible within the ambit of “charitable purpose” under Section 2(15)

Governing Enactments

- Income Tax Act, 1961
- Societies Registration Act, 1880
- Companies Act, 1956
- Charitable and Religious Trust Act, 1920
- Charitable Endowment Act, 1890
- Indian Trust Act, 1882
- Charitable and Religious (Development) Act

Governing Principles in selection of Forms

- Legal requirement
- Initial cost
- Recurring cost
- Compliances required
- Corporate feeling
- Governing principles
- Number of persons required to constitute
- The trends

DIFFERENT TYPES OF FORMS

- Trust
- Society
- Sec 25 Company
REGISTRATION AS A PUBLIC CHARITABLE TRUST

1. How to create a trust
   - Intention on the part of the author of the Trust to create a trust,
   - The trust properties are the subject of the trust.
   - The purpose or object of the trust and
   - Beneficiary under the trust
   - Divestiture of property:

FORMATION OF A TRUST

- What is Trust
- Governing principles of Trust
- 4 Requirements for valid Trust
- How to create a Trust
- Who can form a Trust

FORMING SOCIETY FOR CHARITABLE PURPOSES

1. How to form Society?
   - Societies formed by Memorandum of Association
   - Registration and Fees
   - Annual List of Managing Body to be filed
   - Property of society how vested

2. Scope of Registration
Advantages of constituting a Society
- Control and Management
- The Management of the Society
- Community based charities
- Control and supervision

REGISTRATION OF UNDER INCOME TAX ACT, 1961 - TRUST, SOCIETY AND SEC 25 COMPANY
- Scheme of registration
- What is the scope and importance of Registration?
- What are the documents to be furnished for making an application for registration of trust?
- Delay in filing an application can be condoned?

HOW TO FORM A SECTION 25 COMPANY
Procedure for incorporation of a company
- Obtaining Digital Signature Certificate (DSC)
- Obtaining Director Identification Number (DIN)
- Availability of Name
- Guidelines for selecting name
- Application for licence
- Documents to be filed with Registrar of Companies

Income from Property held for Charitable or Religious Purposes
- What is “Exempt”?
- Limbs of Sec 11-
  a. Income derived from the property held under Trust
  b. Wholly for charitable or religious purposes
  c. to the extent such income is applied
  d. to such purposes in India
  e. income so accumulated or set apart
Agricultural property held by the Trust, the income derived thereon whether constitutes income from property held under trust or agricultural income?

- CIT vs Panchuiti Akhara Nirmal (1991) 192 ITR 186 (All)
- Muthukumar Swamy Tambaram vs Agri ITO (1978) 113 ITR (Madras)
- CIT vs Nabhinandan Digamber Jain (2002) 257 ITR 91 (MP)

"SUCH PURPOSES IN INDIA"

Beth Trust is a National Sports club Reg u/s 12 A. The dominant object is to generate talented sports persons in India. For the F.Y 07-08, it has sponsored many sports persons to visit different countries to learn the technique and practice. In the course of the assessment the A.O. held the amount incurred out side India is not an application for purposes in India. Discuss.

(HEH Nizam 17 ITR 323 AP)

INTER CHARITY DONATIONS

- Inter Charity is application?
- Whether from accumulated income inter charity can be made?
- Whether Inter Charity donation to be made out of income of the trust of the relevant year?
- Mere book entries enough to constitute donations?
- Whether Inter Charity can be made towards Corpus Donation?
Breach of Trust

- Breach of Trust - Meaning and Concept
- Circumstances that causes for breach of Trust

Rectification of Trust Deed

- Whether objects can be rectified?
- Procedure for seeking rectification
- The effect of Court Order

Surplus is a bar to claim exemption?

- CIT vs Andhra Pradesh Road Transport Corporation (1986) 159 ITR 1 (SC)
- Addl. CIT vs Surat Arts Silks Cloth Mfg. Assoc. (1980) 121 ITR 1 (SC)
- ITO vs Dharamshila Cancer Foundation & Research Centre (2010) 128 ITD 1 (Del ‘H’-Trib) : (2010) 134 TTJ (Del ‘H’-Trib) 573

Other Interesting Issues

1. Whether duplicate certificate can be issued?
   ADIVASI KHETI VIKAS YOJANA V. CHIEF COMMISSIONER OF INCOME TAX (2000) 107 Taxman (GUJ) 0445.
3. How long Income can be accumulated under section 11(1)(a)?
   This has been clarified by the Board in its Circular No. 8/2002, dated 27-8-2002 (Expl.) [F.A. 2002].
4. Payment of taxes as application

5. Any shortfall arising for not considering as application can be condoned?
   Delhi High Court in case of a Director of Income Tax (Exemptions) v National Association of Software & Services Companies (2012) 345 ITR 362(Del)
6. Repayment of Debt is an application of income?
   Supreme Court in S. RM. CT.M. Tiruppani Trust v CIT (1998) 230 ITR 636,
   CBDT clarified in its circular no 100 dated 2-4-1973, that repayment of debt is an application of income.

7. Is it necessary to give opportunity of hearing before passing an order?
   In such case the principles of audi alteram partem that is hearing from the other side is necessary
   A.K. Kailapak and Others V Union of India and Others, the aims of rules of natural justice to secure justice
   or to put it negatively to prevent miscarriage of justice.
8. Distinction need be drawn between requirement of registration and tax exemption

9. Cash credits.
   Act.DI (Exemption) v Keshav Social and Charitable Foundation (2005) 278 ITR 152 (Del)
10. Inter charity is application?
   CIT v Saraladevi Sarabhai Trust (1988) 172 ITR 698 (Guj),
   CIT v Hindustan Charity Trust (1983) 139 ITR (Cal)
11. Membership fee/subscription is not a voluntary contribution.
   In CIT vs. Madhya Pradesh Anaj Tilhan Vyapari Mahasangh (1988) 171 ITR 677 (MP),
   Shri Kot Hindu Stree Mandal v. CIT (1994) 209 ITR 396

12. Grants received
   In CIT v. Gem and Jewellery Export Promotion Council (1983) 143 ITR 579 (Bomb)

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**Set off and carry forward of losses of earlier years**

Deficit can be carried forward & set off subsequent year.

Held Yes:
- a. CIT vs. The Institute of Banking Personnel Selection (IBPS) (2003)
  264 ITR 110 (Bomb)
  ITR 368 (Mad)
- c. Dy, CIT Vs Indian Electrical Electronics Mfrs association(2009) 31
  SOT 346(Mum-Trib).
- d. CIT vs Shri Prat Svetambar Murti Pujak Jain Mandal (1995) 211 ITR
  293 (GUJ)
- e. CIT vs Maharana Mewar Charitable Foundation (1987) 164 ITR

Held no: Pushpavathi Singhania Research Institute Vs Dy Director of
IT(Exe)(2009) 29 SOT 316(Del-Trib)

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**Meaning of the term ‘Deficit’**

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<thead>
<tr>
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<th>A</th>
<th>B</th>
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<tbody>
<tr>
<td>If income</td>
<td>= 10,00,000</td>
<td>If income</td>
</tr>
<tr>
<td>Expenses</td>
<td>= 9,00,000</td>
<td>Expenses</td>
</tr>
<tr>
<td>85% of income</td>
<td>= 8,50,000</td>
<td>Difference</td>
</tr>
<tr>
<td>Difference</td>
<td>= 50,000</td>
<td></td>
</tr>
</tbody>
</table>

Whether 50,000 is the deficit? Whether 100,000 is the deficit?

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- Thank You
Service tax on Cooperative Housing Society

(By CA Pathik Shah)

With effect from 1st July, 2012, the nature of services provided by Cooperative Housing Societies / resident welfare associations (hereinafter referred as “society”), their taxability, exemption available to services are discussed in this article.

Applicability of service tax to society

Before 1st May, 2006, The Hon’ble Calcutta High court in case of Saturday Club Ltd. v. Asstt. Commissioner [2005] 1 STT 64 has held that members of club and club are same person. They are not different person. Therefore the amount received by club from the members will not be liable for service tax as no taxable service has been rendered. A taxable service is said to be rendered when there are two persons, one service provider and another service receiver. The member and club are same person and therefore no taxable services have been rendered.

Hence, subsequently, an Explanation was added below section 65 on 1-5-2006 by which taxable service included any taxable service provided or to be provided by unincorporated association or a body of persons to a member thereof for any consideration.

However, even after insertion of said explanation, it was held in Ranchi Club Ltd v. CCE & ST, Ranchi, 36 STT 194 (Jharkhand), services provided by club to its members cannot be charged to service tax, as levy of service tax requires presence of two persons, which was not the case if of club and its members, who are governed by the principle of mutuality.

Hence, in finance act, 2012, explanation has been inserted vide clause (a) of Explanation 3 to section 65B(44) provides that members of unincorporated association or a body of persons and members will be considered as distinct persons.

Accordingly, definition of service is very wide to cover services provided by society. If services provided by a society to its members would be taxable provided other conditions relating to taxability of service are satisfied.

Services by Society – ‘not a declared service’

Clauses (a) to (i) of section 66E declare certain services as a taxable service. None of the clauses relates to services provided by society. The definition of service given in section 65B(44) is very wide to cover services provided by society. Therefore, all services provided by society are taxable service.

Provision in negative list

Clauses (a) to (q) of section 66D specifies certain services as non taxable service. None of the clauses in section 66D related to specifically to services provided by society.

Provision relating to exemption from taxability of specified services

As per entry no. 28 of mega exemption notification no 25/2012-ST, following exemption has been provided for society:

Service by an unincorporated body or a non- profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution -

(a) as a trade union;
(b) for the provision of carrying out any activity which is exempt from the levy of service tax; or
(c) up to an amount of five thousand rupees per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex;

Based on above, following conditions must be satisfied cumulatively:

a) The service must be provided by an unincorporated body or a non-profit entity registered under any law for the time being in force to own members.

b) The amount must be received by way of reimbursement charges or as share of contribution

c) (i) The service may be provided by body /entity for provision of carrying out any activity which is exempt from the levy of service tax  OR

(ii) The amount collected as reimbursement or share of contribution must be exceed Rs. 5,000 per month per member in a housing society or residential complex.

Each of above condition is explained here below.

a) Services must be provided to own members

As per explanation 2(a) of section 65B(44), unincorporated association or a body of persons and its members shall be treated as distinct person. This explanation nullifies the concept of mutuality. Thus, any cooperative housing society, registered with Registrar of Societies will be considered as separate person from the flat owners who are members of the society.

b) Amount received by way of reimbursement charges or as share of contribution

The amount must be received by these societies as reimbursement of expenses or share of contribution. The collection from the members would be made to meet the expenses required for functioning of society. Amount of contribution to be paid by the members may be fixed.

Reimbursement charge means charge levied on the members to recover the cost incurred in providing services by society. Share of contribution includes indirect charge recovered by contribution to special reserves funds, such as sinking funds and the like, repair fund, Share Transfer Premium, Vehicle parking charges, non occupancy charges, etc.

c) Services carried out are exempt

If members have contributed to society to receive specific service from third person and such services provided by third person must be exempt from payment of service tax. In such case, the amount received by these societies will be exempt from service tax.

(ii) Exemption up to Rs. 5000 per month per member received by residential housing society

The society provides services of cleaning of common area, payment of municipal taxes, supply of water, electricity in common area etc. and for such services society receives contribution from members. As per this clause, the amount received up to Rs. 5000 per member per month is exempt and any amount exceeding Rs. 5000 will be taxable. For example, A society has 30 members and 20 members pay Rs. 5000 per month and 10 members pay Rs. 7500 per month. The amount received from 10 members is in excess of Rs.
5000. The tax will be payable on an amount in excess of Rs. 5000 per month per member in respect of such 10 members.

Further, this clause does not specify any cap on amount received by the housing society or complex in the previous financial year or in the current financial year.

Threshold exemption
If total receipts of society during year does not exceed Rs. 10 lacs, in such case benefit of small scale service provider as per notification no. 33/2012-ST, dated 20th June, 2012 would be available. The definition of ‘aggregate value’ there under specifically excludes amounts raised towards wholly exempted services. Further, in computing the aggregate value of Rs. 10 lacs, the gross amount charged will be included in the aggregate value of taxable services without considering abatement.

Taxability in case of cooperative housing society
- If housing or residential society receives any amount of maintenance charges from commercial unit would be taxable without any exemption of Rs. 5,000 for per member per month.
- If housing or residential society receives maintenance charges of more than Rs 5,000 per member then such maintenance charges would be liable for service tax.
- Amount received on space given to erect hoarding and install cell towers would be liable for service tax.

However, amount received on space given to exhibit advertisement in societies hoarding would be exempt from service tax under negative list of services.

Taxability in case of commercial complex or commercial housing society
Exemption as per entry no. 28 of mega exemption notification no 25/2012-ST dated 20th June, 2012 of amount received up to Rs. 5,000 per member per month would be available only in case of cooperative housing society. Such exemption would not be available for commercial complex or commercial housing society.

Valuation of services
As per Rule 5(1) of service tax (determination of value) Rules, 2006, there is deeming fiction created to consider all the expenditure or costs incurred by the service provider in the course of providing taxable services as consideration. All the expenditure or costs so incurred by the service provider and borne by the recipient will have to be included in arriving at the value for charging service tax on said service.

However, sub rule 2 of Rule 5 carves out an exception to the general rule contained in sub-rule (1). It provides that the expenditure or costs that a service provider incurs, as a pure agent of the client, shall be excluded from the value if such service provider fulfils conditions mentioned here below with respect to such expenditure or costs:
- i. the service provider acts as a pure agent of the recipient of service when he makes payment to third party for the goods or services procured;
- ii. the recipient of service receives and uses the goods or services so procured by the service provider in his capacity as pure agent of the recipient of service;
- iii. the recipient of service is liable to make payment to the third party;
- iv. the recipient of service authorizes the service provider to make payment on his behalf;
- v. the recipient of service knows that the goods and services for which payment has been made by the service provider shall be provided by the third party;
- vi. the payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service;
- vii. the service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and
- viii. the goods or services procured by the service provider from the third party as a pure agent of the recipient.

Accordingly based on the above, amounts paid for municipal taxes by society to authorities and reimbursed to society at actual from the resident, it can be excluded from service tax levy. This is subject to maintaining proper documentary evidence stating incurring such expenses on behalf of resident. With respect to such municipal taxes, society would charge separately such taxes to members exactly as amount payable by each member. So there would not be any conflicts arise with service tax department with respect to inclusion of such charges for tax levy. However, if the society collects amount on lump sum basis and the same is included in maintenance charges, in such case such amount would be taxed.

Cenvat credit
As per Service Tax credit Rules, 2002, every service provider (output service provider) shall be eligible to avail credit of the service tax paid by him to other service providers, in respect of the services (input service) provided by them to him.

Accordingly, CENVAT credit is offered to cooperative societies in respect to service tax, which comprises all payments made by the society on which the society has paid the service tax, for instance, telephone bills, security charges, etc. For e.g. Service tax credit in respect of Telephone connection can be availed only if such telephone connection is installed in the premises where output service is provided. The following credits could be availed by society:
- Central excise duty / Additional duty of customs on office equipment and computers
- Modernization or renovation or repairs of the premises of provider of output service or an office relating to such premises
- Management, maintenance and repair
- Cleaning service
- Security service
- Convention center service
- Telecommunication
- Other services used by a provider of taxable service for providing service
Place of provision of service
As per Rule 3 of Place of Provision of Service Rules provides that the place of provision of service shall be the location of service recipient except where the place of provision of service is specified in rules 4 to 12 of POPs Rules. The services provided by societies are not specified in any of the rules 4 to 12 of Rules, hence, the place of provision of service will be the location of service recipient.

Point of taxation
As per Rule 3 of Point of taxation rule, 2011, the point of taxation shall be:

- Date on which invoice is issued as per Rule 4A as per Service Tax Rules, 1994
- If invoice not issued within 30 days as per Rule 4A of Service Tax Rules, 1994 then the date on which service completed
- If payment received before issue of invoice as per Rule 4A of Service Tax Rules, 1994 then date on which payment received.
- Payment received as advance then date of receipt of such advance

In case of society, raise bill on monthly or quarterly basis to members. The date of raising the bill will be considered as point of taxation.

Reverse charge for a co-operative housing society
As per notification no. 30/2012-ST dated 20th June, 2012, service tax would be payable by society as recipient of service:

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Nature of service</th>
<th>Service provider liability</th>
<th>Co-operative housing society liability</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Goods transport agency service</td>
<td>NIL</td>
<td>100% (see note 1)</td>
</tr>
<tr>
<td>2</td>
<td>Legal services to business entity</td>
<td>Exempt (see note 2)</td>
<td>NIL</td>
</tr>
<tr>
<td>3</td>
<td>Renting of motor vehicle, by non-corporate to corporate business entity</td>
<td>100% (see note 2)</td>
<td>NIL</td>
</tr>
<tr>
<td>4</td>
<td>Supply of manpower or security services by non-corporate to corporate business entity</td>
<td>100% (see note 2)</td>
<td>NIL</td>
</tr>
<tr>
<td>5</td>
<td>Works contract (e.g. repairs etc.) by non-corporate to corporate business entity</td>
<td>100% (see note 2)</td>
<td>NIL</td>
</tr>
</tbody>
</table>

Note:
1. In the case mentioned in sr. no. 1 above co-operative housing societies would be liable if it pays the freight.
2. In other cases co-operative housing society is not liable to pay service tax as a recipient of service since it is possible to argue that it is not a “business entity”. “Business entity” means any person ordinarily carrying out any activity relating to industry, commerce or any other business or profession.

Payment of service tax
The due date is 5th / 6th (this is where the service tax payment is made online) of month succeeding the month in which the services are deemed to be provided. For month of March, the service tax payment has to be made within 31st of March itself.

As per circular no. 165/16/2012-ST dated 20.11.2012 has clarified that service tax is required to be paid under the old code. Accordingly, Society would need to make payment of service tax under the following codes:

<table>
<thead>
<tr>
<th>Nature of service</th>
<th>Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Club or association</td>
<td>00440322</td>
</tr>
</tbody>
</table>

Bundled services
The provisions relating to bundled services are contained in section 66F. 'Bundled service' means a bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services. If various elements of a bundled service are naturally bundled in the ordinary course of business, it shall be treated as provision of a single service which gives such bundle its essential character. If various elements of a bundled service are not naturally bundled in the ordinary course of business, it shall be treated as provision of a service which attracts the highest amount of service tax. Where a service is capable of differential treatment for any purpose based on its description, the most specific description shall be preferred over a more general description.

Clarification from CBEC on tax implication of redevelopment agreements between builders and society
As per “Guidance note on Service tax” of CBEC issued on 20th June, 2012, has stated as follows with respect to tax implication of redevelopment agreements between builders and society (text of guidance note has been reproduce here below):

"6.2.2 What would be the service tax liability in the following model - land is owned by a society, comprising members of the society with each member entitled to his share by way of an apartment. Society / individual flat owners give ‘No Objection Certificate’ (NOC) or permission to the builder/developer, for re-construction. The builder/developer makes new flats with same or different carpet area for original owners of flats and additionally may also be involved in one or more of the following: (i) construct some additional flats for sale to others; (ii) arrange for rental
accommodation or rent payments for society members/original owners for stay during the period of reconstruction; (iii) pay an additional amount to the original owners of flats in the society.

Under this model, the builder/developer receives consideration for the construction service provided by him, from two categories of service receivers. First category is the society/members of the society, who transfer development rights over the land (including the permission for additional number of flats), to the builder/developer. The second category of service receivers consist of buyers of flats other than the society/members. Generally, they pay by cash.

Re-construction undertaken by a building society by directly engaging a builder/developer will be chargeable to service tax as works contract service for all the flats built now.”

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**PROVISIONS RELATING TO CORPORATE SOCIAL REPORTING IN COMPANIES (AMENDMENT) ACT, 2012**

135. (1) Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

(2) The Board’s report under sub-section (3) of section 134 shall disclose the composition of the Corporate Social Responsibility Committee.

(3) The Corporate Social Responsibility Committee shall,—

(a) formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII;

(b) recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and

(c) Monitor the Corporate Social Responsibility Policy of the company from time to time.

(4) The Board of every company referred to in sub-section (1) shall,—

(a) after taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose contents of such Policy in its report and also place it on the company’s website, if any, in such manner as may be prescribed; and

(b) Ensure that the activities as are included in Corporate Social Responsibility Policy of the company are undertaken by the company.

(5) The Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy:

Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities:

Provided further that if the company fails to spend such amount, the Board shall, in its report made under clause (a) of sub-section (3) of section 134, specify the reasons for not spending the amount.

Explanation.—for the purposes of this section “average net profit” shall be calculated in accordance with the provisions of section 198.
Excerpt of Sec. 134 (3): There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include—

(a) the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year

Contravenes the provisions of section 134

Excerpt of Sec. 134 (8):

(8) If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

Calculation of profits

Excerpt of Sec. 198 (1) In computing the net profits of a company in any financial year for the purpose of section 197,—

(a) credit shall be given for the sums specified in sub-section (2), and credit shall not be given for those specified in sub-section (3); and

(b) the sums specified in sub-section (4) shall be deducted, and those specified in sub-section (5) shall not be deducted.

(2) In making the computation aforesaid, credit shall be given for the bounties and subsidies received from any Government, or any public authority constituted or authorized in this behalf, by any Government, unless and except in so far as the Central Government otherwise directs.

(3) In making the computation aforesaid, credit shall not be given for the following sums, namely:—

(a) profits, by way of premium on shares or debentures of the company, which are issued or sold by the company;

(b) profits on sales by the company of forfeited shares;

(c) profits of a capital nature including profits from the sale of the undertaking or any of the undertakings of the company or of any part thereof;

(d) profits from the sale of any immovable property or fixed assets of a capital nature comprised in the undertaking or any of the undertakings of the company, unless the business of the company consists, whether wholly or partly, of buying and selling any such property or assets;

Provided that where the amount for which any fixed asset is sold exceeds the written-down value thereof, credit shall be given for so much of the excess as is not higher than the difference between the original cost of that fixed asset and its written-down value;

(e) any change in carrying amount of an asset or of a liability recognised in equity reserves including surplus in profit and loss account on measurement of the asset or the liability at fair value

(4) In making the computation aforesaid, the following sums shall be deducted, namely:—

(a) all the usual working charges;

(b) directors’ remuneration;

(c) bonus or commission paid or payable to any member of the company’s staff, or to any engineer, technician or person engaged by the company, whether on a whole-time or on a part-time basis;

(d) any tax notified by the Central Government as being in the nature of a tax on excess or abnormal profits;

(e) any tax on business profits imposed for special reasons or in special circumstances and notified by the Central Government in this behalf;

(f) interest on debentures issued by the company;

(g) interest on mortgages executed by the company and on loans and advances secured by a charge on its fixed or floating assets;

(h) interest on unsecured loans and advances;

(i) expenses on repairs, whether to immovable or to movable property, provided the repairs are not of a capital nature;

(j) outgoings inclusive of contributions made under section 181;

(k) depreciation to the extent specified in section 123;

(l) the excess of expenditure over income, which had arisen in computing the net profits in accordance with this section in any year which begins at or after the commencement of this Act, in so far as such excess has not been deducted in any subsequent year preceding the year in respect of which the net profits have to be ascertained;

(m) any compensation or damages to be paid in virtue of any legal liability including a liability arising from a breach of contract;

(n) any sum paid by way of insurance against the risk of meeting any liability such as is referred to in clause (m);

(o) debts considered bad and written off or adjusted during the year of account.

(5) In making the computation aforesaid, the following sums shall not be deducted, namely:—

(a) income-tax and super-tax payable by the company under the Income-tax Act, 1961, or any other tax on the income of the company not falling under clauses (d) and (e) of sub-section (4);

(b) any compensation, damages or payments made voluntarily, that is to say, otherwise than in virtue of a liability such as is referred to in clause (m) of sub-section (4);

(c) loss of a capital nature including loss on sale of the undertaking or any of the undertakings of the company or of any part thereof not including any excess of the written-
Accounting and Governance aspect of Charitable Institutions

Presented at the National NPO Conference
At SIRC of ICAI

by
M.Kandasami FCA, DISA
Chennai

Role & Size of NPO sector then

Corporate Sector

Government Sector

Voluntary Sector
Role & Size of NPO sector now

Corporate Sector  Government Sector  Non Profit Sector

State Governance
- In democracy, it means using political and economic power to carry out constitutional duties
- At the end of the Cold war, donor agencies prescribed conditionalities for funding of economic and political reforms in the recipient countries
- Hence, World Bank, IMF and UNESCO define “Governance” from their own (donor) perspectives
- Are your investments monitored on a monthly basis?

Concept of Governance
- In Political Science – It refers to “State Governance”
- In Economics and Finance – It refers to “Corporate Governance”
- In either case, Governance is “a process of decision making and ensuring the implementation of such decisions”

Backdrop for “Corporate Governance”
- Separation of ownership & Control (Managers)
- Rights of owners versus Control by Managers
- Delegation of ownership rights to a Board
- Arbitration between different stakeholders
- With special focus on protecting the rights of non-controlling stakeholders
Backdrop for “Non Profit Governance”

- NGOs do different things than Govt. & Corporates
- High level of separation (beneficiary Vs Fiduciary)
- Wide gap (Beneficiaries Vs Boards/Management
- Beneficiaries do not appoint the Fiduciary (Board)

Backdrop for “Non Profit Governance”

- Stakeholder dimensions in an Non Profit Entity
- Accountability to the stakeholders by an NPO
- Transparency requirements for fulfilling accountability responsibilities by an NPO

Good Governance in a For Profit

- Monitoring and Supervision of the Management
- Accountability –Management to the Board, Board to the Members and Stakeholders
- Ethical dimension and behaviour within the organisation

Good Governance in a For Profit (continued)

- Enterprise approach, not mere control attitude
- Productivity as focus, not mere compliance
- Enterprise Governance is an emerging paradigm
Does NPO Governance comparable with Corporate Governance

Good Governance in a Not For Profit
- Developing Vision and Mission
- Accompaniment to Management
- Policy making and Monitoring
- Legal Obligation and compliances
- Sound Financial Management

Good Governance in NPOs depends on ......
- Origins, history and background of the NPO
- International NPOs have their own history from the mid nineteenth century
- Indian NPOs history starts from the Social Reformers’ interventions in 19th Century

Good Governance in NPOs depends on ...... (continued)
- 20th Century beginning with Mahatma Gandhi’s principles and values for voluntarism
- By the turn of 21st Century, NPO Sector has become a vast and complex sector
- Life cycle of NPO – Starting stage, Developed Stage, Expanding Stage etc.
Key Result Areas

- Develop and revisit Vision and Mission
- Facilitate Strategic Long Term Planning
- Balancing Programmatic, HR and Finance

Key Result Areas

- Facilitate Structures and Systems
- Put in place short term and action plans
- Put in place mechanisms for implementation
Key Result Areas

- Accompaniment to the Management
- Develop Board and Non-Board Committees
- Provide them clear SoW and ToRs
- Mandate for Committees for Planning, Budgeting, Portfolio Mgt. etc
- Involving Management for decision making

Key Result Areas

- Policies for Board structure and Composition
- Selection process for Board Members
- Human Resource Policies
- Gender policy and related ones
- Financial Management Policies (Accounting system – cash or accrual, depreciation funding)

Legal Compliance by NPOs

- NPOs are primarily governed by 3 laws – The Societies Registration Act, the Trusts Acts and the Companies Act.
- The legal frameworks are limited in their scope to promote good governance practices
- In the next few slides, we will see the details of compliance aspects

Societies Registration Act

- Maintenance of Members Register
- Conducting Meetings (Governing Body and General Body)
- Filing Returns with the Registrar of Societies
- Updating MoA and AoA from time to time

Key Result Areas
Key Result Areas

**Income Tax (Organisational & donor exemptions)**
- 12A / 80G / 35AC / 35 (1)(ii) - Latest Issues / Perpetual as against renewal of rebates.
- TDS related issues – Need for PAN – Form No. 16 / 16A
- Latest developments (e.g. E-filing process for Form ITR – 7 and 10B)
- Assessment Process – Proceedings and ND Certificates

Key Result Areas

**Foreign Contribution (Regulation) Act 2010**
- Need for Renewal as FCRA Registration is not permanent
- E-filing process for FC 6 and relevant documentation
- Change of 50% or more members - Prior Permission
- Administrative Expenditure not to exceed 50%
- Display in Public Domain if receipts exceed Rs. 1 Crore

Key Result Areas

**Other laws**
- Service Tax, if applicable (Collecting, paying and filing returns)
- Provident Fund (deduction, payment and filing returns)
- Gratuity Schemes (Selecting and following systematically)
- Professional tax (as applicable from State to State)

Key Result Areas

**Role of Finance Advisory Committees**
- Is there an FACs in place in the NPO?
- Does it have competent members in the FAC?
- Are they proactive showing visible results
Key Result Areas

Role of other Committees
- Is there an Audit Committee in place in the NPO?
- What is the composition of the Audit Committee?
- Is the Audit Committee functional and proactive?

Key Result Areas

Accounting and Accounting Staff
- How good is your software? Are you ready with soft copy to IT?
- How good are your accountants? Is fire fighting a routine?
- Are they given training and orientation? How many trainings?

Key Result Areas

Fund Accounting
- In kind contribution
- Programme Expenditure
- Chart of Accounts
- Structure and classification
- Anonymous Donations

Key Result Areas

MIS and Monitoring budgets
- Do you have a Management Information System (MIS)
- Is budget variance or control report part of your MIS?
- Are your investments monitored on a monthly basis?
Key Result Areas

Transparency

- Discussion of Budgets in Units and Communities
- Sharing of Financial Reports and status in the Communities
- Discussion of sensitive aspects openly in the official bodies

Sustainability

- Good governance ensures that there are adequate resources to help the organisation achieve its mission.
- Financial Sustainability leads to Organisational and Mission Sustainability.

PRACTICAL ASPECT OF SERVICE TAX ON NPO/NGO SECTOR

A presentation by CA R.K.BHALLA

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Highlight of Presentation

- Introduction
- What is ‘service’
- What does the word activity signifies
- Budget-2013, service tax hit on NPOs
- Services that may be provided by NPOs
- NGOs which are exempt
- Annexures
  - Annexure I-Negative List of Services
  - Annexure II-Mega Exemption Notification
  - Annexure III-Declared Services
What is ‘Service’

Earlier the term 'service' was not defined but w.e.f. 01.07.2012, the term service has been defined under Section 65B (44) of the Finance Act, 1994, which reads as 'service' means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include:

- any activity that constitutes only a transfer in title of (i) goods or (ii) immovable property by way of sale, gift or in any other manner
- a transaction only in (iii) money or (iv) actionable claim
- any service provided by an employee to an employer in the course of the employment.
- fees payable to a court or a tribunal set up under a law for the time being in force

On a plain reading of the definition of the term 'service', all activities which are carried on for a consideration will get covered by this definition.

What does the word activity signifies

‘Activity’ has not been defined in the Act. As per the Business Dictionary, activity in general is measurable amount of work performed to convert inputs into outputs. In terms of the common understanding of the word, activity would include an act done, a work done, a deed done, an operation carried out, execution of an act, provision of a facility etc. It is a term with very wide connotation. Activity could be active or passive and would also include forbearance to act. Agreeing to the obligation to refrain from an act or to tolerate an act or a situation has also been specified as a declared service under section 66E of the Act. In other words, even a promise of not doing something for a consideration can be considered as a service. For example, if an activist NGO enters into a contract for not agitating against any particular organisation or any particular issue, then such services can be treated as taxable service.
Budget 2013 – Service Tax Hit on NPOs

Last year, all the services rendered by NPOs (except those in the negative list) were subjected to service tax with a threshold exemption limit of Rs. 25 lacs. In other words, taxable services were exempted up to Rs. 25 lacs. This year, budget has reduced the threshold exemption limit upto Rs. 10 lacs. This is a major setback to NPOs providing consultancy and other commercial services. This amended has come into effect from 1st April, 2013.

NGOs which are exempt

The exemption has been given to only those NGOs which are registered under section 12AA of the Income Tax Act, 1961 and carrying on one or more of the following charitable activities:

(i) NGO engaged in public health by way of –
(a) care or counseling of (i) terminally ill persons or persons with severe physical or mental disability, (ii) persons afflicted with HIV or AIDS, or (iii) persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or
(b) public awareness of preventive health, family planning or prevention of HIV infection;

(ii) NGO engaged in advancement of religion;

(iii) NGO engaged in advancement of educational programmes or skill development relating to—
(a) abandoned, orphaned or homeless children; (b) physically or mentally abused and traumatized persons; (c) prisoners; or (d) persons over the age of 65 years residing in a rural area;

Contd....

Services that may be provided by NPO

- Educational Institution
- Charitable Organization
- Religious activities
- Medical Establishment

NGOs which are exempt

(4) NGO engaged in preservation of environment including watershed, forests and wildlife; or

(5) NGO engaged in advancement of any other object of general public utility up to a value of twenty five lakh rupees in a financial year subject to the condition that total value of such activities had not exceeded twenty five lakh rupees during the preceding financial year.

In the light of the above definition, Service Tax shall be applicable -

a) to NGOs which are not registered u/s 12AA of the Income Tax Act, 1961, for example NGOs registered u/s 10(25C) etc. This seems to be a drafting error as the intent could not have been to deprive NGOs registered u/s. 10(25C) etc. from the benefits which are available to NGOs which are registered u/s. 12AA.

b) to NGOs which are engaged in relief to poor, preventive health, informal education programmes, etc.

c) In case of NGOs engaged in “advancement of any other purpose of public utility” the taxable services are exempted up to 25 lakh.

Contd...
NGOs which are exempt

Sum Up
- The Service Tax Act has made all services taxable except those services which are specifically exempted. Under the new law, almost all services rendered by NGOs on commercial basis or on consultancy contract shall become taxable.
- However some NGOs (not all) registered under Section 12AA of Income Tax Act, 1961 are totally exempted from Service Tax, while NGOs engaged in "advancement of any other object of general public utility", the taxable services are exempted up to 25 lakhs. Further certain NGOs such as the one engaged in 'relief to poor', 'preventive health', 'informal education' programmes will not enjoy any exemptions. In other words they will have to pay service tax if their taxable services exceed 10 lakhs.
- The Service Tax laws have taken a narrow definition of the term 'charitable purpose' which is different from the definition of charitable purpose under the Income Tax Act. There is an urgent need to align and use the same definition of the term 'charitable purposes' both under the Income Tax Act and the Service Tax laws.

Annexure-I
The Negative List of Services
The negative list as per Section 66D shall comprise of the following services, namely:
(a) services by Government or a local authority excluding the following services to the extent they are not covered elsewhere—
(i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;
(ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
(iii) transport of goods or passengers; or
(iv) support services, other than services covered under clauses (i) to (iii) above, provided to business entities;
(b) services by the Reserve Bank of India;
(c) services by a foreign diplomatic mission located in India;
Contd...

The Negative List of Services
(d) services relating to agriculture by way of—
(i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or seed testing;
(ii) supply of farm labour;
(iii) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;
(iv) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;
(v) loading, unloading, packing, storage or warehousing of agricultural produce;
(vi) agricultural extension services;
(vii) services by any Agricultural Produce Marketing Committee or Board or services provided by commission agent for sale or purchase of agri produce;
Contd...

The Negative List of Services
(e) trading of goods;
(f) any process amounting to manufacture or production of goods;
(g) selling of space or time slots for advertisements other than advertisements broadcast by radio or television;
(h) service by way of access to a road or a bridge on payment of toll charges;
(i) betting, gambling or lottery;
(j) admission to entertainment events or access to amusement facilities;
(k) transmission or distribution of electricity by an electricity transmission or distribution utility;
(l) services by way of—
(i) pre-school education and education up to higher secondary school or equivalent;
(ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;
(iii) education as a part of an approved vocational education course;
Contd...
The Negative List of Services

(m) services by way of renting of residential dwelling for use as residence;

(n) services by way of—

(i) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount; (ii) inter se sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers;

(o) service of transportation of passengers, with or without accompanied belongings, by—

(i) a stage carriage;

(ii) railways in a class other than—

(A) first class; or

(B) an air-conditioned coach;

(iii) metro, monorail or tramway; (iv) inland waterways; (v) public transport, other than predominantly for tourism purpose, in a vessel of less than fifteen tonne net; and

(vi) metered cabs, radio taxis or auto rickshaws; Contd...

Annexure-II

Exemptions under Mega Notification


1. Services provided to the United Nations or a specified international organisation;

2. Health care services by a clinical establishment, an authorised medical practitioner or a para-medic;

3. Services by a veterinary clinic in relation to health care of animals or birds;


5. Services by a person by way of—

(a) renting of precincts of a religious place meant for general public; or

(b) conduct of any religious ceremony;

6. Services provided by—

(a) an arbitral tribunal to (i) any person other than a business entity; or

(ii) a business entity with a turnover up to rupees ten lakh in the preceding financial year;

(b) an individual as an advocate or a partnership firm of advocates by way of legal services to— (i) an advocate or partnership firm of advocates providing legal services; (ii) any person other than a business entity; or (iii) a business entity with a turnover up to rupees ten lakh in the preceding financial year;

(c) a person represented on an arbitral tribunal to an arbitral tribunal;

7. Services by way of technical testing or analysis of newly developed drugs, including vaccines and herbal medicines, on human participants by a clinical research organisation approved to conduct clinical trials by the Drug Controller General of India;

8. Services by way of training or coaching in recreational activities relating to arts, culture or sports;

9. Services provided 'to' an educational institution in respect of education exempted from service tax, by way of,— [to or by' replaced by 'to' with Not. No. 3/13]

(a) auxiliary educational services; or (b) renting of immovable property; Contd....
10. Services provided to a recognised sports body by-
   (a) an individual as a player, referee, umpire, coach or manager for
       participation in a tournament or championship organized by a recognized
       sports body;
   (b) another recognised sports body;
11. Services by way of sponsorship of tournaments or championships
    organised-
   (a) by a national sports federation, or its affiliated federations, where the
       participating teams or individuals represent any district, state or zone;
   (b) by Association of Indian Universities, Inter-University Sports Board,
       School Games Federation of India, All India Sports Council for the Deaf,
       Paralympic Committee of India, Special Olympics Bharat;
   (c) by Central Civil Services Cultural and Sports Board;
   (d) as part of national games, by Indian Olympic Association; or
   (e) under Panchayat Yuva Kreedon Aur Khel Abhiyan (PYKKA) Scheme;

Contd...

12. Services provided to the Government, a local authority or a governmental
    authority by way of construction, erection, commissioning, installation,
    completion, fitting out, repair, maintenance, renovation, or alteration of-
   (a) a civil structure or any other original works meant predominantly for a
       non-industrial or non-commercial use;
   (b) a historical monument, archaeological site or remains of national
       importance, archaeological excavation, or antiquity specified under
       Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24
       of 1958);
   (c) a structure meant predominantly for use as (i) an educational, (ii) a
       clinical, or (iii) an art or cultural establishment;
   (d) canal, dam or other irrigation works;
   (e) pipeline, conduit or plant for (i) drinking water supply (ii) water
       treatment (iii) sewerage treatment or disposal; or
   (f) a residential complex predominantly meant for self-use or the use of
       their employees or other persons specified in the Explanation 1 to clause
       44 of section 65 B of the said Finance Act;

Contd...

13. Services provided by way of construction, erection, commissioning,
    installation, completion, fitting out, repair, maintenance, renovation, or
    alteration of-
   (a) a road, bridge, tunnel, or terminal for road transportation for use by general
       public;
   (b) a civil structure or any other original works pertaining to a scheme under
       Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awas Yojana;
   (c) a building owned by an entity registered under section 12 AA of the Income-
       tax Act, 1961 and meant predominantly for religious use by general public;
   (d) a pollution control or effluent treatment plant, except located as a part of a
       factory; or a structure meant for funeral, burial or cremation of deceased;
14. Services by way of erection or construction of original works pertaining to-
   (a) an airport, port or railways, including monorail or metro;
   (b) a single residential unit otherwise than as a part of a residential complex;
   (c) low-cost houses up to a carpet area of 60 square metres per house in a
       housing project approved by competent authority empowered under the
       Contd...

'Scheme of Affordable Housing in Partnership' framed by the Ministry of
Housing and Urban Poverty Alleviation, Government of India;
(d) post-harvest storage infrastructure for agricultural produce including a
    cold storages for such purposes; or
(e) mechanised food grain handling system, machinery or equipment for
    units processing agricultural produce as food stuff excluding alcoholic
    beverages;
15. Services provided by way of temporary transfer or permitting the use or
    enjoyment of a copyright,-
   (a) covered under clause (a) of sub-section (1) of section 13 of the Copyright
       Act, 1957 (14 of 1957), relating to original literary, dramatic, musical or artistic
       works; or
   (b) of cinematograph films for exhibition in a cinema hall or cinema theatre;
       [entry substituted by Not. No. 3/13]
16. Services by a performing artist in folk or classical art forms of (i) music, or
    (ii) dance, or (iii) theatre, excluding services provided by such artist as a
    brand ambassador;

Contd...
Exemptions under Mega Notification

17. Services by way of collecting or providing news by an independent journalist, Press Trust of India or United News of India;

18. Services by way of renting of a hotel, inn, guest house, club, campsite or other commercial places meant for residential or lodging purposes, having declared tariff of a room below rupees one thousand per day or equivalent;

19. Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having the facility of air conditioning or central air-heating in any part of the establishment, at any time during the year; [entry substituted by Not. No. 3/13]

20. Services by way of transportation by rail or a vessel from one port in India to another of the following goods - [entry ‘a, d, e’ omitted by Not. No. 3/13]

(a) petroleum and petroleum products falling under Chapter heading 2710 and 2711 of the First Schedule to the Central Excise Tariff Act, 1985; (5 of 1986);’

Contd...

Exemptions under Mega Notification

(b) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap;

(c) defence or military equipments;

(d) postal mail or mail bags

(e) household effects;

(f) newspaper or magazines registered with Registrar of Newspapers;

(g) railway equipments or materials;

(h) agricultural produce;

(i) foodstuff including flour, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages; or

(j) chemical fertilizer and oilcakes;

‘21. Services provided by a goods transport agency, by way of transport in a goods carriage of - [entry substituted by Not. No. 3/13]

(a) agricultural produce;

(b) goods, where gross amount charged for the transportation of goods on a consignment transported in a single carriage does not exceed one thousand five hundred rupees;’

Contd...

Exemptions under Mega Notification

(c) goods, where gross amount charged for transportation of all such goods for a single consignee does not exceed rupees seven hundred fifty;

(d) foodstuff including flour, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages;

(e) chemical fertilizer and oilcakes;

(f) newspaper or magazines registered with the Registrar of Newspapers;

(g) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or

(h) defence or military equipments;

22. Services by way of giving on hire -

(a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or (b) to a goods transport agency, a means of transportation of goods;

23. Transport of passengers, with or without accompanied belongings by -

(a) air, embarking from or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal;

Contd...

Exemptions under Mega Notification

(b) a contract carriage for the transportation of passengers, excluding tourism, conducted tour, charter or hire; or (c) ropeway, cable car or aerial tramway;

‘24. Services by way of motor vehicle parking to general public excluding leasing of space to an entity for providing such parking facility; [entry omitted by Not. No. 3/13]

25. Services provided to Government, a local authority or a governmental authority by way of - [‘a vessel or an aircraft’ substituted by ‘a vessel’ Not. No. 3/13]

(a) carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation; or (b) repair or maintenance of a vessel;

26. Services of general insurance business provided under following schemes -

(a) Hit Insurance Scheme; (b) Cattle Insurance under Swarnajayanti Gram Swarozgar Yojna (earlier known as Integrated Rural Development Programme); (c) Scheme for Insurance of Tribals; (d) Janata Personal Accident Policy and Gramin Accident Policy; (e) Group Personal Accident Policy for Self-Employed Women;’

Contd...
Exemptions under Mega Notification

(f) Agricultural Pumps and Failed Well Insurance; (g) premia collected on export credit insurance; (h) Weather Based Crop Insurance Scheme or the Modified National Agricultural Insurance Scheme, approved by the Government of India and implemented by the Ministry of Agriculture;
(i) Jan Arogya Bima Policy; (j) National Agricultural Insurance Scheme (Rashtriya Krishi Bima Yojana); (k) Pilot Scheme on Seed Crop Insurance;
(l) Central Sector Scheme on Cattle Insurance; (m) Universal Health Insurance Scheme; (n) Rashtriya Swasthya Bima Yojana; or (o) Coconut Palm Insurance Scheme;

26A. Services of life insurance business provided under following schemes -
[entry inserted by Not. No. 49/12, dated 24.12.12]
(a) Janashree Bima Yojana (JBY); or
(b) Aam Aadmi Bima Yojana (AABY);

27. Services provided by an incubatee up to a total business turnover of fifty lakh rupees in a financial year subject to the following conditions, namely:-

Contd...

Exemptions under Mega Notification

(a) the total business turnover not exceeded fifty lakh rupees during the preceding financial year; and
(b) a period of three years has not lapsed from the date of entering into an agreement as an incubatee;

28. Service by an unincorporated body or an entity registered as a society to own members by way of reimbursement of charges or share of contribution -
(a) as a trade union;
(b) for the provision of exempt services by the entity to third persons; or
(c) up to an amount of five thousand rupees per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex;

29. Services by the following persons in respective capacities -
(a) sub-broker or an authorised person to a stock broker;
(b) authorised person to a member of a commodity exchange;

Contd...

Exemptions under Mega Notification

(c) mutual fund agent to a mutual fund or asset management company;
(d) distributor to a mutual fund or asset management company;
(e) selling or marketing agent of lottery tickets to a distributor or a selling agent;
(f) selling agent or a distributor of SIM cards or recharge coupon vouchers;
(g) business facilitator or a business correspondent to a banking company or an insurance company, in a rural area; or
(h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;

30. Carrying out an intermediate production process as job work in relation to -
(a) agriculture, printing or textile processing;
(b) cut and polished diamonds and gemstones; or plain and studded jewellery of gold and other precious metals, falling under Chapter 71 of the Central Excise Tariff Act, 1985 (5 of 1986);
(c) any goods on which appropriate duty is payable by the principal manufacturer; or

Contd...

Exemptions under Mega Notification

(d) processes of electroplating, zinc plating, anodizing, heat treatment, powder coating, painting including spray painting or auto black, during the course of manufacture of parts of cycles or sewing machines up to an aggregate value of taxable service of the specified processes of one hundred and fifty lakh rupees in a financial year subject to the condition that such aggregate value had not exceeded one hundred and fifty lakh rupees during the preceding financial year;

31. Services by an organiser to any person in respect of a business exhibition held outside India;

32. Services by way of making telephone calls from -
(a) departmentally run public telephones;
(b) guaranteed public telephones operating only for local calls; or
(c) free telephone at airport and hospitals where no bills are being issued;

33. Services by way of slaughtering of "bovine" animals; ["bovine" omitted by Not. No. 44/12, dated 07.08.12]

Contd...
Exemptions under Mega Notification

34. Services received from a provider of service located in a non-taxable territory by:
   (a) Government, a local authority, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession; (b) an entity registered under section 12AA of the Income tax Act, 1961 (43 of 1961) for the purposes of providing charitable activities; or (c) a person located in a non-taxable territory;
35. Services of public libraries by way of lending of books, publications or any other knowledge-enhancing content or material;
36. Services by Employees' State Insurance Corporation to persons governed under the Employees' Insurance Act, 1948 (34 of 1948);
37. Services by way of transfer of a going concern, as a whole or an independent part thereof;
38. Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets;
39. Services by a governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution.

Annexure-III

Declared Services

In the definition of 'service' contained in clause (44) of section 65B of the Act it has been stated that service includes a declared service. The phrase 'declared service' is also defined in the said section as an activity carried out by a person for another for consideration and specified in section 66E of the Act. The following nine activities have been specified in section 66E:

1. renting of immovable property;
2. construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of certificate of completion by a competent authority;
3. temporary transfer or permitting the use or enjoyment of any intellectual property right;
4. development, design, programming, customization, adaptation, updation, enhancement, implementation of information technology software;

Contd...
FOREIGN CONTRIBUTION REGULATION ISSUES

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INTRODUCTION
PURPOSE AND END FOCUS OF THIS PRESENTATION

- Explicating and demystifying the FCRA, its application and procedures
- Identification and demarcation of the proper organizational approach to FCRA
- Timelines and intricacies involved
- Key changes in the 2010 Act
- Way forward with the new Rules in effect as of May 2011

CONTENTS

1. Introduction
2. Importance for not-for-profit entities
3. Foreign Source & Contribution defined
4. Application process
5. Subsequent requirements and penalties
6. Pertinent observations
7. Q & A

IMPORTANCE OF FCRA

- Most not-for-profit entities cannot raise foreign capital or undertake foreign donation directly for operations
- Recent increase of international focus on social sector services in India
- Many Indian organizations taking part in global initiatives and integrating for several programs abroad
- The new Act and Rules clarify the registration and approval processes, strengthening some procedures while relaxing certain other substantive requirements
PERTINENT OBSERVATIONS: SCOPE

- Recipients of foreign contributions must have a definite cultural, economic, educational, religious or social programme.

- Political organizations barred under the FCRA include groups that have political objectives in their founding documents; trade unions or voluntary associations with political goals or activities; student groups or other affiliated wings of political parties; and groups who habitually use political means of action such as ‘bandh’, ‘hartal’ or ‘rail roko’.

- Prior permission under FCRA is required by a Liaison Office receiving remittances from its Head Office abroad for conducting conferences or carrying out other activities/programmes, etc. in India.

PERTINENT OBSERVATIONS: LIKELIHOOD OF APPROVAL

- Income Tax exemption approval prior to FCRA application is beneficial and reduces timelines by providing greater credibility to the organization.

- Applications tend to not be treated favourably if any of the office bearers/trustees is a foreign national, unless:
  - The foreigner is married to an Indian citizen; has been living and working in India for at least 5 years; has voluntarily made his specialized knowledge available in India in the past; is an officer due to an inter-governmental agreement; or is an ex-officio member as a representative of an international agency (such as the UN) exempted from the definition of foreign source.

- “Sufficient activity” in the last three years must be shown.

PERTINENT OBSERVATIONS CONTD...

- Designation of separate bank account for FCRA purposes is mandated
  - All receipts of Foreign Contributions must be channeled through a single bank account.
  - Changes in the designated bank account must be accompanied by a Change in Name/Address form submitted to the MHA along with reasons for the change and a certificate from the bank certifying that the new account will be used solely for FCRA.
  - Other bank accounts may be opened to utilize Foreign Contributions, provided that the MHA is notified within 15 days.
  - Banks are required to submit separate, authorized reports regarding transactions involving financial contributions to and from such accounts.

FCRA, 2010 MODIFICATIONS

- Clarifications on lingering issues
  - Fee for goods/service contracts
  - Interest accrued
  - Sub-transfer of foreign contribution: subsidiary/multinational corporation

- Fund utilization
  - Donor specific
  - No speculative business
  - Cap on administrative expenses

- Forms and processing
FOREIGN SOURCE

- ‘Foreign source’ includes the government of any foreign country or territory or its agency; an international agency; a foreign company; a multinational corporation; a foreign association or trade union; and a citizen of a foreign country.

- The United Nations, World Bank, IMF and other international agencies designated by the Government are exempted from the definition.

- Non-Resident Indians making contributions from their personal savings through normal banking channels are likewise excluded from the definition.

FOREIGN CONTRIBUTIONS

- ‘Foreign contribution’ means the donation, delivery or transfer—directly or indirectly—by a foreign source of any:
  - article, not given to a person as a gift for personal use, if the market value, in India, of such article exceeds one thousand rupees
  - currency, whether Indian Rupees or foreign
  - foreign security

- Interest or income derived from any of the above is included in the definition and is governed by FCRA regulations.

- The definition does not include payment for goods and services rendered in the course of ordinary business, trade or commerce.

PROCESS OF APPLICATION CONTD...

- FCRA application consists of two kinds:
  - Permanent registration
    - Blanket permission for inward remittance(s) during the registration validity
    - Ex post facto reporting requirements
  - Prior permission
    - Permission required for every inward remittance
    - Permission applicable even if the remittance is from the same donor and/or for the same project.
**PROCESS OF APPLICATION CONTD...**

- Regular registration:
  - Form FC 3 filed online and accompanied by a hard copy along with required forms and Rs 2000 fee within 30 days.
  - Failure to submit hard copy within 30 days results in application being terminated; organisation must wait 6 months before re-filing.
  - Detailed supporting documentation: proof of registration and founding documents, audited financial records, activities undertaken, any changes in the composition of the organization, past FCRA record and violations, and bank account.
  - Application includes a recommendation from a District, State or Central Government authority certifying its address, past activities and governing body’s compliance.

**PROCESS OF APPLICATION CONTD...**

- Government approval or denial should happen within 90 days of application, otherwise explanation for the delay is required.
- Registration is valid for 5 years.

**PROCESS OF APPLICATION CONTD...**

- Renewal of Registration:
  - Filed with Form FC 5.
  - Fee of Rs 500.
  - Must be completed within 6 months of the date of expiry.
  - Application form must include record of utilisation of funds; reasons for seeking renewal of registration, and certification that the organisation has not been blacklisted or violated any provisions of the Act or Rules.

**PROCESS OF APPLICATION CONTD...**

- Prior approval:
  - Form FC 4 filed online and accompanied by a hard copy along with required forms and Rs 1000 fee within 30 days.
  - Failure to submit hard copy within 30 days results in application being terminated; organisation must wait 6 months before re-filing.
  - Detailed supporting documentation: proof of registration and founding documents, audited financial records, activities undertaken, any changes in the composition of the organization, past FCRA record and violations, bank account, letter of intent and approval of the project from donor, and project details and plans.
  - Requires a recommendation from a District, State or Central Government authority certifying its address, past activities and governing body’s compliance.
**PROCESS OF APPLICATION CONTD..**

- Government approval or denial should happen within 90 days of application, otherwise explanation for the delay is required
- Permission is valid for the length of the designated project

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**SUBSEQUENT REQUIREMENTS: ANNUAL REPORTING**

- The association must send intimation/report of receipt of each foreign contribution within nine months of closing of the financial year.
- The report must entail the source and the manner in which the foreign contribution was utilized as provided under Rule 17.
- The specific requirements in this regard are as follows:
  - **Form FC 6: Currency**
    - Required within 9 months of the end of a given fiscal year
    - Accompanied by income / expenditure statement, receipt / payment account, balance sheet, and authorized bank account statement for the designated FCRA account
    - Must include receipts and transfers in and out of the designated bank account

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**SUBSEQUENT REQUIREMENTS: OTHER REPORTING**

- **Gifts from relatives in excess of Rs. 1 Lakh must be reported by filing form FC 1 within 30 days of the gift**
- Organizations receiving foreign contributions in excess of Rs. 1 Crore in a fiscal year must report the same in the public domain, i.e. online, by listing records of the receipt and utilization of the funds
  - These will also be listed by the MHA on its website
- Organizations must maintain a separate set of accounts and records exclusively for foreign contributions
- Organizations must maintain a separate register of investments, which must be audited and open to inspection by the Government at any time
CHANGE REPORT PROCESS

- The association should intimate the government in event of the following changes:
- Change of bank or Bank account of the association
- Change in the name of the association and/or its address.
- Change in membership causing replacement of more than 50% of the governing council/executive committee members of the association.
- In case the association brings out any publication (registered under PRB Act, 1867) or acts as correspondent, columnist, editor, printer, publisher of a registered newspaper at a later stage thereby attracting the provisions of the Section 4(1) (b) of the Act.
- Failure to comply with these requirements will make the association liable for action under Section 6(1) and/or Section 23(1) of the Act.

SUBSEQUENT REQUIREMENTS: UTILIZATION OF FUNDS

- Speculation —
  - Speculative activities using FCRA funds is prohibited
  - These activities include investments that involve market-dependent risks and activities that promise high returns, such as investments in chits or land, where those activities are not related to the organization's purposes or goals.
  - Debt-based secure investments are excluded from this definition

SUBSEQUENT REQUIREMENTS: SUB-GRANTS

- Transfer of FCRA funds to another entity requires filing of Form FC 10

- Recipient organization must also be registered or have prior approval to receive Foreign Contributions under the FCRA

- If the recipient lacks registration and approval, organization may still transfer up to 10% of foreign contributions received, but only with prior approval of the Central Government and the District Magistrate of the jurisdiction concerned

- All transfers must be reflected in the annual FC 6 reports of both the transferor and the recipient
**PENALTIES**

- Certification may be suspended for up to 180 days or cancelled by the MHA for cause
  - Grounds for suspension / violation include false reporting, violations of the terms and conditions of the contribution, Act or Rules; public interest; or 2 years of inactivity
  - Organisations with suspended certification may apply to utilise up to 25% of their unspent FCRA funds
- Central Government may search and seize accounts/records based on suspicion of violations of FCRA
- Monies obtained illegally may be seized and re-distributed according to Government procedures, and the organization may be blacklisted

**Fines and imprisonment may be levied against individuals (including directors of companies) who furnish false information on FCRA applications or reports, accept funds in contravention of FCRA provisions, or assists an organisation in violating the FCRA**
1. To suggest suitable reforms in the statutes regarding Co-operatives and NPOs.

2. To promote uniform accounting framework for Co-operatives and NPOs.

3. To formulate guidelines for state-wise auditors empanelment to interact with the concerned authorities.

4. To promote good governance, best practices and prudent financial management in the Co-operatives and NPO sectors, mutually aided Co-operative Societies (MACS), Self help groups/clusters and federations.

5. To promote social audit concept in the NPO and Co-operative Sectors and conduct awareness programmes for the benefit of the stakeholders.

6. To provide technical and governance inputs through training, workshops, resource materials, publications to the management personnel and members of Governance of Co-operatives and NPO Sectors.

7. To constitute an award/recognition for corporate social responsibility initiative by any NPO/Co-operatives/Corporates.

8. To support the initiatives of the State and Central government and corporations in this sector.

9. To develop necessary technical guides and publications for the benefit of Co-operative banks, Co-thrifts and credit societies and other Co-operatives as a national movement.

10. To develop a knowledge portal providing information regarding subsidies and other support received by the NPOs from the State and the Central Government and to promote various government initiatives to implement social welfare schemes of the NPO Sector and facilitate sharing of knowledge regarding Governance, legal compliance and best practices in financial management.

11. To help the government in monitoring financial discipline in the NPO sector by prescribing transparent guidelines and procedures including documentation and evidence of actual work done and to advise the government on limitations to be imposed on administrative and other expenditures of the NPOs specially those incurred out of government grants.

12. To suggest recommendation on issues related to the Foreign Contributions Regulation Act, 2010, Rules, regulations and guidelines framed thereunder and any other laws affecting this sector with a view to ensure smooth flow of funds on one hand and national security and national interest on the other.

13. To conduct Certificate Courses on Regulatory and Accounting aspects of NPO Sectors.