

AUDIT & FILING OF RETURN

Audit by Chartered Accountant

Every organisation which receives foreign contributions is required to furnish a certificate from a chartered accountant. The proforma of the certificate to be given by the chartered accountant is provided in Form FC-3. Along with this certificate, audited balance sheet and the statement of receipt and payment account should also be submitted. On the basis of the relevant books and vouchers, the chartered accountant is required to certify the following :

- (i) the brought forward balance of the foreign contribution at the beginning of the year.
- (ii) the foreign contribution received during the year.
- (iii) the unutilised balance of foreign contribution at the end of the year
- (iv) certify that the association has maintained the account of foreign contribution and records relating thereto in the manner specified in section 13 of the Foreign Contribution (Regulation) Act, 1976, read with sub-rule(1) of rule 8 of the Foreign Contribution (Regulation) Rules, 1976.
- (v) the information furnished in the certificate and in the enclosed balance sheet and statement of receipt and payment are correct.

Filing of Annual Returns

Every organisation which receives foreign contributions shall file an annual return in Form FC-3 under rule 8(2) within 120 days of the closure of the year. The following should be submitted in duplicate duly signed by the chief functionary and certified by the chartered accountant :

- i) Form FC-3,
- ii) Balance Sheet and statement of Receipt and Payment exclusively for foreign contribution received and utilised during the year.

The FC-3 form was amended in the year 2001. In the new form, in addition to the total contribution received during the year and the interest earned on foreign contributions, details of the purposes for which such fund were received and utilised is also required to be given. The Form specifies 55 different kinds of purposes for which foreign contribution might have been received. Details regarding Corpus Fund, purchase of land, constructions etc. are also required to be given. The details such as name, address, purpose, amount etc. are required to be given of all institutional donors and individual donors above Rs. one lakh. Details of country wise receipt of foreign funds is also required to be specified in FC-3.

- # It may further be noted that Balance Sheet and Statement of Receipt and Payment Account, are also required to be submitted along with the annual return in Form FC-3. For the purposes of FCRA, the receipt and payment account and the balance sheet should be separately prepared, it is not necessary to submit the general receipt and payment account and the general balance sheet to the FCRA department. Both the statement should reflect the movement and treatment of foreign contribution only. Preparation of a FCRA balance sheet may create some confusion, for instance, if an organisation has invested Rs. 10lakhs in creation of some asset out of which only 6 lakhs has been spent out of foreign contribution and the remaining 4 lakhs has been met out of domestic contributions and loans. Under such circumstances, the FCRA balance sheet should only reflect Rs. 6,00,000 and not the entire cost of the asset. The entire cost can be shown in the consolidated balance sheet of

the organisation. The consolidated balance sheet is not required to be submitted along with Form FC-3.

- # The main purpose behind preparation of FCRA balance sheet seems to regulate the acquisition and disposal of capital assets created out of foreign contribution.

Filing of Nil Return

If an organisation having FCRA Registration does not receive any foreign contribution, even then it should file nil returns. It is mandatory to file for FC-3 every year as long as the organisation wants to validly retain its registration. The Ministry of Home Affairs (FCRA division) in its press note dated 09.01.1998 has specifically clarified that even if no foreign contribution is received, filing of nil return is mandatory. In the same press note it has been clarified that non-submission of return in time or furnishing of false submission would constitute violation of the provision of the Act and attract penal consequences. Press note, dt.09.01.1998 issued by The Ministry of Home Affairs has been annexed in Annex. 10.1

Declaration and authentication

The FC-3 form is required to be signed by the Chief Functionary of the organisation and a certificate is also required to be given by a Chartered Accountant giving a brief summary of the FCRA funds movement and the opening & closing balances of FCRA Funds.

The Term “Chief Functionary” has not been defined in the FCRA Act or Rules. Normally the head of the organisation should be construed as the Chief Functionary. The organisation may also designate any office bearer as the Chief Functionary through a General Body/Governing Body resolution, for the purposes of filing the FCRA returns, Forms etc.

Delay in Filing FC-3

FCRA is silent about consequences for delay in filing FC-3. It can be constructed that an NGO would stand the risk of losing the FCRA registration if it does not file returns properly but whenever an NGO is not able to file FC-3 by 31st of July, it should write a letter to the FCRA office explaining the circumstances causing the delay. Normally FCRA authorities condone such delay in filing of returns.

Audit by Central Government

The Central government has a right to appoint a “Group A” gazetted officer to audit the accounts of an association or organisation. The relevant sections in this regard is reproduced as under –

“ Section 15 - A : Audit of account : Where any organisation or association fails to furnish any returns under this Act within the time specified therefore or the returns so furnished are not in accordance with law or if, after inspection of such returns, the Central Government has any reasonable cause to believe that any provision of this Act has been, or is being contravened, that Government may, by general or special order authorise such gazetted officer, holding a group A post, as it may think fit, to audit any books of account kept or maintained by such organisation or association, as the case may be, and thereupon every such officer shall have the right to enter in or upon any premises at any reasonable hour, before sunset and after sunrise, for the purpose of auditing the said books of account :

Provided that any information obtained from such audit shall be kept confidential and shall not be disclosed except for the purposes of this Act.”

The relevant circumstances - This provision was not there in the original Act, it was inserted vide Section 8 of FCR (Amendment) Act, 1985 with effect from 20-10.1984. The Central Government has the power to initiate such audit under the following circumstances :

- i) if the organisation or the association fails to file any returns within the time limit specified.
- ii) the returns submitted by the organisation are not in accordance with the law.
- iii) if during the inspection/scrutiny of the returns submitted the Central Government comes across any evidence or information which provides reasonable cause to believe that any provisions of the Act has been violated.

11.6-2 Power is discretionary - The powers conferred to the Central Government under Section 15A are discretionary in nature and therefore, it is important that are exercised in a just and transparent manner. Any capricious or arbitrary order under this section without any authentic reason would defeat the purpose of the Section.

Time schedule for audit - Further under section 14 the audit of any books of account has to be carried during reasonable hours. The authorised officer shall not have authority to enter into the premises during odd hours i.e. after sunset and before sunrise. The provisions of section 14 are reproduced below :

“Section - 14 : Inspection of accounts or records : If the Central Government has, for any reason, to be recorded in writing, any ground to suspect that any provision of this Act has been, or is being, contravened by –

- a) any political party, or
- b) any person, or
- c) any organisation, or
- d) any association,

it may, by general or special order, authorise such gazetted officer, holding a (Group A post) as it may think fit (hereinafter referred to as the authorised officer), to inspect any account or record maintained by such political party, person, organisation or association, as the case may be, and thereupon every such authorised officer shall have the right to enter in or upon any premises at any reasonable hour, before sunset and after sunrise, for the purpose of inspecting the said account or record :

Provided that no gazetted officer shall be authorised to inspect the account or record maintained by a political party, unless he has been holding a in connection with the affairs of the Union, or a State, for not less than ten years.

Seizure of Documents - During the cause of inspection of books of accounts, if the authorised officer has reasons to believe that violation of FCRA has been done, than he has the authority to seize such accounts and records and issue a seizure memo in the presence of two independent witnesses. Whenever records and accounts are seized, they are required to be produced before the

court within six months. After seizure if no proceedings is brought within six months of the seizure, then the authorised officer shall return such accounts and records to the organisation from which it was seized. It is the responsibility of the authorised officer to ensure that all the information obtained during such audit are kept secret and confidential and are not disclosed to anybody except for the purposes of this Act.

Overall Summary

To sum up the discussions :

(i) Form FC-3 is required to be filed by 31st of July every year. Along with Form FC-3 certified Balance Sheet and statement of Receipts & Payment accounts exclusively pertaining to foreign contributions received and utilised during the year is required to be enclosed.

(ii) A certificate as per the proforma provided in Form FC-3 also required to be given by a Chartered Accountant.

(iii) The Central Government has the power to initiates audit under the following circumstances:

- (a) if the organisation or the association or the association fails to file any returns within the time limit specified.
- (b) the returns submitted by the organisation are not in accordance with the law.
- (c) if during the inspection/scrutiny of the returns submitted, the Central Government comes across any evidence or information which provides reasonable cause to believe that any provisions of the Act has been violated.

(iv) During the course of audit and inspection of books of accounts, the authorised officer also has the power to seize the accounts and records in the presence of two independent witnesses.

(v) Whenever accounts are seized, they have to be produced before the court within six months. If not the accounts and records are to be returned to the organisation from which it was seized.

(vii) If an organisation having FCRA Registration does not receive any foreign contribution, even then it should file nil returns. It is mandatory to file for FC-3 every year as long as the organisation wants to validly retain its registration.

(viii) The FC-3 form is required to be signed by the Chief Functionary of the organisation and a certificate is also required to be given by a Chartered Accountants giving a brief summary of the FCRA funds movement and the opening and closing balances of FCRA Funds.

(ix) FCRA is silent regarding the consequences for delay in filing FC-3. Therefore, it can be constructed that an NGO would stand the risk of losing the FCRA registration if it does not file returns properly but whenever an NGO is not able to file FC-3 by 31st of July, it should write a letter to the FCRA office to the FCRA office explaining the circumstances causing the delay.