

BANK ACCOUNT, INVESTMENT & FIXED ASSETS

Opening of Bank Account

As per Section 6(1)(b), every organisation, which has either registered itself with the Central Government in accordance with the FCRA rules or has obtained prior permission, shall receive foreign contribution only through one such bank account as specified in its application for registration for prior permission.

Form FC-8 and Form FC-1A which deals with the application for registration and prior permission respectively, require the mention of separate bank account number and the branch of the bank.

Change of Bank Account

Further, Form FC-8 requires an undertaking from the chief functionary of the organisation. The relevant text of the undertaking is as follows, "not to change the bank or branch of the bank without prior permission of the Central Government. The reasons for change of bank or branch of bank shall have to be relevant and justifiable". In the light of aforesaid, it seems that there can be only one bank account of the association for receipt of foreign contributions and there should not be any change in the bank or branch of the bank without prior permission of the Central Government.

If an organisation has various projects at different places, it may feel the necessity of opening project area bank account at different places for utilisation of funds. The Act is not very clear in this regard, in the undertaking specified to be given by the chief functionary in Form FC-8 uses the phrase "relevant and justifiable". The intent of the statute seems to be in favour of allowing opening/change of bank accounts if the reasons are relevant and justifiable. In this regard one has to remember that even if the reasons are relevant and justifiable, changes cannot be made without the prior permission of the Central Government. Relevant and justifiable reasons for the change in bank account could be for the following:

- Change of office from one place to another
- Lack of requisite/efficient services provided by the bank, etc.

Procedure for change of Bank Account

When a change of bank account becomes a necessity by virtue of relevant and justifiable reasons the following procedure may be followed :

- (i) A new bank account which is proposed to be designated bank account should be opened by depositing the minimum amount required for opening of the account.
- (ii) The proposed account, since it is subject to approval, should not be opened with foreign funds.
- (iii) An application to the FCRA authorities should be made by citing the relevant and justifiable reasons for such change along with complete details of the old account as well as the new account should be provided in the application.

(iv) After receiving the permission from FCRA authorities, the entire balance from the old designated account should be transferred to the new account.

(v) It is not necessary to close the old account. Therefore, the organisation may use the old account as a domestic account. But it is desirable to close the old account, to ensure that even by mistake the foreign funds are not credited to the old account.

The FCRA department has given a correction form for the change in bank account, which is given in Annex. 6.1

Change in signatory of bank account

Change in signatories of bank accounts is a routine procedural issue and therefore need not be informed to the FCRA authorities. The undertaking given by the Chief functionary in the form FC-8 for informing the changes in the bank account is only about change of the bank or branch of the bank. Any procedural changes in the same bank account do not require an approval of the FCRA authorities.

Change in account number due to computerisation

Many designated FC bank account number have been changed due to computerisation. In such cases, it is advisable to inform the FCRA authorities about such changes. The new account number should be used for all subsequent reporting and correspondence purposes.

Separate Bank Account for Separate Donors

It has been seen that some donors insist of maintenance of separate bank account specifically for their grant and utilisation thereof. But under FCRA, all foreign contribution should be received in one designated bank account only. Therefore, under no circumstances, separate bank account should be opened for receiving funds from various donors. After the receipt of funds in the designated bank account, the organisation may open different sub-account as discussed below.

Having more than one account for project purposes

In our opinion, opening of project accounts at different places for utilisation of funds seems to be relevant and justifiable. An NGO may open bank account(s) for different projects, which are linked to main foreign contribution bank account. All foreign contribution should be received in the designated bank and subsequently funds can be transferred to various project account.

Opening of an imprest or project area account should not be confused with having more than one account for FCRA purposes. Under FCRA at any given point of time, there can be only one designated bank account for receipt of foreign funds. The other project accounts should be sub-accounts or link-up accounts where the receipt can only be made through the main account. Detail of such subsidiary bank accounts should be provided with the Form FC-3 return every year.

Inter-project account transactions

At times, funds from one project are used for another project, which requires transfer of funds from one project account to the other. The issue is whether such inter-project loan can be received

in a FCRA project account? In our opinion, since the transaction does not entail receipt of any fresh foreign contribution, such transactions do not violate any provision of FCRA. But it should be ensured that such transactions are made within the FC projects of the organisation. In case, there is a loan or advance received from some other organisation then if it is a FC receipt it should be received in the designated bank account only.

Interest Earned is part of foreign contribution

As already discussed an organisation under FCRA can only have one designated bank account for receipt and utilisation of foreign funds. There is no mention made in the Act or the Rules regarding the treatment of interest earned from the designated bank account. In the absence of any clear cut provisions, the normal practice is to consider interest earned on FCRA funds as foreign contribution only. Thus any interest earned should be disclosed in FC-3 and also the FCRA receipt and payment account.

The amended Form FC-3 (w.e.f. 26.07.2001), also requires reporting of interest earned on FCRA funds. Thus, the intent of FCRA authorities is clearly in favour of considering interest as a part of foreign contribution.

There are few arguments, which contend against the inclusion of interest as part of foreign contribution. Few instances of such contention are as under:

(i) It has been debated that earning out of foreign contributions inside India should not be considered as foreign income. It is like a child born to a foreign couple residing in India, the child would become an Indian citizen. Similarly, income earned from foreign funds should also be treated as Indian money even though it is generated out of foreign funds.

(ii) The Act or the Rules are silent with regard to the inclusion of interest into foreign contribution. Only Form FC-3, clearly specifies that interest should be included atleast for the purposes of reporting. Now the question is whether a form can create a statutory law/obligation. In the light of several cases held in various High Courts and Supreme Court, it has been observed that the provisions of a form can only be directory in nature and not mandatory unless, they serve a purpose of facilitating an existing provision of the Act. Therefore, it can be argued that the requirement under Form FC-3, of disclosing interest is only for reporting purposes and interest earned can still be considered as domestic income. The above discussion elaborates the intricacies involved in considering interest as foreign contribution and therefore, this controversy can be resolved conclusively only through an amendment in Foreign Contribution Act. For the time being, the safer way would be to consider interest as a part of foreign contribution.

Creation of fixed deposits

As far as the creation of fixed deposits of FCRA funds is concerned, there does not seem to be any bar on it. All the funds are required to be received in the designated bank account but any temporary surplus funds may be placed in fixed deposits with the bank, pending utilisation for the objects for which they were received. Care should be taken that the investment are in compliance with the section 11(5) of the Income Tax Act.

In this context, it may further be noted that, since, the interest earned is considered as FC receipts such interest earning should be deposited in the designated bank account.

Creation of Fixed Assets

Any asset created out of foreign funds should be recorded in the FC books of account only. And FC asset will continue to remain an FC asset irrespective of time factor or closure of the project. At times it may so happen that a portion of the asset is funded from domestic sources.

For instance, a building constructed on a land purchased from domestic sources. In such cases, the cost of the land should be reflected in the domestic books of account and the cost of the building should be shown in the FC books of account. Only the consolidated, statement will show the total cost of land and building together.

Sale of fixed assets

If an asset purchased out of FCRA funds is sold, then the amount received on sales of such asset should be shown as foreign receipts. There might be circumstances where assets are created out of both FCRA as well as domestic funds. In such cases, apportionment of the sale receipts should be made on a suitable and reasonable basis out of the sale consideration receipt and the amount, pertaining to foreign contribution portion of the asset should be considered as foreign contribution receipt.

The funds generated from a FC asset being a FC receipt should be deposited in the designated bank account.

Overall Summary

To sum up the discussions :

- (i) A organisation can change bank account, if the reasons are relevant and justifiable. But, it has to obtain prior permission for such change from the Central Government.
- (ii) Minor changes in bank account such as change in signatory may not be reported to FCRA authority.
- (iii) Change in bank accounts due to computerization should be reported but no prior approval is required.
- (iv) Separate bank accounts for receiving funds from different donors should not be maintained.
- (v) FCRA is not very clear about having additional bank account for project purposes. But since FCRA provides that all foreign contribution should be received in one bank account only, for technical purposes, subsidiary project accounts may be opened. Such accounts should be used as link-up account to the main account and no domestic contribution should be mixed into that account.
- (vi) Where bank account for project purposes are opened, details of such account should be provided in Form FC-3 return every year.
- (vii) Interest earned from foreign funds and investments should also be considered as foreign contribution, though there is no specific provision under FCRA in this regard.
- (viii) FCRA funds can be invested in fixed deposits and other investments. But, care should be taken regarding compliance under section 11(5) of the Income Tax Act.

(ix) FCRA funds cannot be transferred to another organisation not possessing FCRA registration. In other words, the second or subsequent recipient is also required to have FCRA registration.

(x) If a asset is created from domestic as well as foreign funds then only the foreign component should be reflected in FC books of account

(xi) Sale proceed from FC asset should be deposited in the designated bank account.

Annexure 1

Correction Form

I - Association details

Registration Number under FC(R) Act, 1976 :

Name :

Address :

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Pin Code :

Association Nature :

Religious Cultural Economic Educational Social

Religion (if having a religious nature) :

Hindu Sikh Muslim Christian Buddhist Others

* Mark the relevant box.

II - Bank Details

Name of Bank :

Address :

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Account No. :

(CHIEF FUNCTIONARY)

To,
**The Secretary to the Government of India,
Ministry of Home Affairs, (Foreigners Division),**

**Lok Nayak Bhawan, Khan Market,
New Delhi - 110003**