

## OTHER ASPECTS OF FCRA

### Second and Subsequent Recipient

Under Section 2(1)(c) of FCRA, "foreign contribution" means the donation, delivery or transfer made by any foreign source of any currency whether Indian or Foreign.

The above definition of foreign funds was enlarged by FCR (Amendment) Act 1985 wherein an Explanation was inserted which is as follows :

**Explanation :** A donation, delivery or transfer of 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 within the meaning of this clause ;

The effect of this explanation has brought the subsequent receipt of foreign funds within the scope of foreign contribution. Therefore if an organisation receives funds which are foreign funds received by another organisation, they still will be considered as foreign funds even if they are received locally in Indian currency. Thus, organisations have been debarred from making contribution to organisation not registered under FCRA. It is mandatory for the second or subsequent recipients to possess FCRA registration or prior permission.

### Revolving Funds

As already discussed, the second or subsequent recipient is also required to possess FCRA registration or prior permission. Therefore on strict interpretation of FCRA laws, it is not possible to give revolving funds as loans to community based organisations not possessing FCRA registration. The intent of statute does not seem to be in favour of preventing deserving village based organisations from availing funds meant for them. The amendment made in FC-3 vide GSR 557 (E) dated 36th July, 2001 has specifically included Micro Finance Projects and SHG as purpose of utilisation of foreign funds. In our opinion and in the light of the amended FC-3, funds disbursed for revolving funds and micro finance activities should be shown as utilisation in FC-3 and also as expenditure in the Income and Expenditure Account. When loans are recovered the money should be re-deposited in the FCRA bank account and should be considered as foreign contribution received and when the loans are given out again the same should be considered as utilisation and expenditure in the year of the disbursement. For control purposes, separate records of the disbursements or receipt of the revolving funds should be made.

For large organisation having project in various parts of India it may be difficult to redeposit in the designated bank account. But under the prevailing provisions of FCRA, it is advisable to receipt all such recoveries in the designated bank account only.

### Transfer to general fund

It has been seen that, many NGOs transfer the surplus of income over expenditure to the general fund in the domestic books of account. A general fund being an unrestricted fund at the discretion of the organisation is at times confused to be a domestic fund. But, all funds created from foreign contribution should be reflected in FC books of account only. As a result, an

organisation can have two general funds, one, created from foreign funds and other from domestic funds. The same is true for the corpus and other funds also.

### **Activities of NGOs in other countries**

One of the senior NGOs leaders once remarked that “Foreign funds are like toothpaste coming out of the tube, once it is out, it is virtually impossible to put it back”. To do activities in other countries an NGO may have to transfer funds in foreign currency to another country. Such transfer, would be subject to Foreign Exchange Management Act. Further, it may be noted that even if an NGO is entitled to transfer funds to another country under Foreign Exchange Management Act, the NGO may be under a threat of losing exemption under section 11 of Income Tax Act, 1961, because under section 11(1)(c), NGOs are not allowed to spend money outside India, unless, it helps in promoting international welfare in which India is interested. In the light of the above difficulties, NGO should be careful in initiating activities outside India.

### **Treatment of small donations and grants**

Many charitable organisation receive voluntary grants and donations in small amount from various domestic and international sources. Normally small contribution do not come with any specific instructions regarding the manner in which they should be utilised. In that sense, they are discretionary and general in nature. Many organisation have practice of treating such small donations as corpus donations. But under Income Tax Laws, irrespective of the amount involved a corpus donation should always be supported by the written consent of the donor. Further, it is not advisable to treat small donations as corpus donations. Small grants or donations should be treated on par with other income of the organisation and accordingly should be utilised for the purposes of the organisation.

### **Mingling of small domestic contribution with foreign contribution**

The organisation should distinguish between domestic and foreign contribution. Only foreign contribution should be received in the designated bank account. Possibility of mingling of domestic donation with foreign contribution is there because even funds from overseas in foreign currency may be domestic donation. For example, donation received from an NRI in foreign currency is not a foreign contribution if the NRI holds a valid Indian passport. On the other hand donation received from foreigner in India in Indian rupees is a foreign contribution.

So an organisation should take great care and caution in segregating the foreign contributions and domestic contribution. Accordingly only foreign contribution should be received in the designated bank account and reflected in the FC books of account.

### **Treatment of undisclosed/anonymous donations**

Many organisation, at times, receive funds through direct credit in their bank account from various overseas sources where the donor's identity may not be available. In such a case the organisation should ask its bank to trace the source of donation i.e. identity of donor, origin of country. The details if obtained from the bank should be reported in the Form FC-3 else the organisation should report in Form FC-3 all such anonymous donations on the basis of bank advices.

### **Overall Summary**

To sum up the discussions :

(i) 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.

(ii) In the case of disbursements of funds for revolving funds and micro finance activities the amount paid should be shown as utilisation of funds and when the money is received back, it should be shown as foreign contribution income.

(iii) NGO can have activities in other countries but to transfer funds in foreign currency to other countries, they have to comply with the provisions of Foreign Exchange Management Act. Further, under section 11(1)(c) of Income Tax Act, NGOs are debarred from working outside India unless the activities promote international welfare in which India is interested.

(iv) Under Income Tax Laws, irrespective of the amount involved a corpus donation should always be supported by the written consent of the donor and it is not advisable to treat small donations as corpus donations.

(v) An organisation should take great care and caution in segregating the foreign contributions & domestic contribution and avoid mingling of small domestic contribution with foreign contribution.

(vi) In the case of undisclosed/anonymous donations the organisation should ask its bank to trace the source of donation. The details so obtained must be reported in Form FC-3.