

Standards & NORMS

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INTERNATIONAL ACTIVITIES OF NGOs OUTSIDE INDIA

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OVERVIEW FROM A LAYMAN'S PERSPECTIVE

1.1 Under the provisions of Income Tax Act, 1961, income applied on activities outside India is not eligible for exemption unless the following conditions are satisfied : (a) The charitable organisation happens to be a trust created before 01-04-1952 or it is engaged in promotion of international welfare in which India is interested. (b) Central Board of Direct Taxes (CBDT) has by general or special order granted the exemption.

1.1.1 NGOs registered under section 10(23C) may have some activities outside

India but to claim exemptions they should primarily be working in India only. Therefore, one needs to distinguish between an NGO registered under section 12A and section 10(23C).

1.1.2 It may be noted that if an organisation incurs expenditure outside India in contravention of section 11(1)(c), then the entire exemption will not be lost. Income to the extent not applied in India will not be eligible for exemption.

1.1.3 If there is a clause in the trust deed which provides for activities outside India, it would not disentitle the organisation from

claiming exemption. The provisions of section 11(1)(c) are attracted only if actual expenditure is incurred outside India.

1.1.4 FCRA funds under no circumstances can be transferred out of India, therefore, activities outside India (if any) has to be done from domestic income only.

ACTIVITIES OUTSIDE INDIA NOT EXEMPTED

1.2 Under the section 11(1)(c) of Income Tax Act, any income applied on activities outside India is not eligible for exemption.

1.2.1 A charitable organisation cannot have activity outside India unless it happens to be a trust created before 01-04-1952 or it is engaged in promotion of international welfare in which India is interested. In other words, NGOs registered after 01.04.1952 are not allowed to have any international activity unless such activity is specifically exempted by CBDT.

1.2.2 However, CBDT in certain circumstances may direct by a general or special order permitting certain activities, which tends to promote international welfare in which India is interested.

SECTION 10(23C) NGOS CAN HAVE SOME ACTIVITIES OUTSIDE INDIA

1.3 In India NGOs can be registered both under section 10(23C)(vi) and section 12A. NGOs of national importance are granted registration under section 10(23C). NGOs registered under section 10(23C) can

One needs to distinguish between an NGO registered under section 12A and section 10(23C), the former cannot have any activity outside India but the latter can have some activity outside India.

have some activities outside India. The Supreme Court gave a landmark judgement in *American Hotel & Lodging Association Educational Institute vs. CBDT (2006) 206 CTR (Del) 601 : (2007) 289 ITR 46 (Del)*. In this case the assessee NGO was a branch office of an American NGO. It was not doing any charitable activity in India and all its income in India was repatriated to USA.

1.3.1 The Supreme Court was of the opinion that exemptions under section 10(23C) was not available if all the activities were outside India though 10(23C) did not specifically make it mandatory for the activities to be done in India. In other words Supreme Court opined that NGOs registered under section 10(23C) may have some activities outside India but to claim exemptions they should primarily be working in India, only.

1.3.2 Therefore, one needs to distinguish between an NGO registered under section 12A and section 10(23C), the former cannot have any activity outside India but the latter can have some activity outside India because the section 10(23C) is silent about the location of activities and the Supreme Court opined that such NGOs should primarily be working in India.

WILL ACTIVITIES OUTSIDE INDIA RESULT IN FORFEITURE OF ENTIRE INCOME

1.4 It may be noted that if an NGO, registered under section 12A incurs expenditure outside India in contravention of section 11(1)(c) then the entire exemption will not be lost. Income to the extent not applied in India will not be eligible for exemption. The provisions of section 11(1)(c) do not attract forfeiture over the entire income unlike the provisions of section 13(1). In other words, if an NGO is willing to pay taxes to the extent of its activities outside India then to that extent it can have such activities. But such activities may not be possible out of FC funds as discussed later.

WILL A CLAUSE OF ACTIVITIES OUTSIDE INDIA IN THE TRUST DEED INVITE FORFEITURE

1.5 If there is a clause in the trust deed which provides for activities outside India, it would not disentitle the organisation from claiming exemption. The provisions of section 11(1)(c) are attracted only if actual expenditure is incurred outside India. Section 11(1)(c) cannot be invoked only on the ground that the trust deed provides for activities outside India.

1.5.1 In *CIT v. State Bank of India* [1988] 169 ITR 298 (Bom.), one of the issues was whether a trust for charitable purposes in India and abroad can claim exemption for its income where the trustees have discretion to apply the income either in India or abroad? The trust deed provided, at the discretion of the trustees, to give 45 per cent of the income to the University of Athens. It was held that the trust was eligible for exemption even though it provided for

In other words, if an NGO is willing to pay taxes to the extent of its activities outside India then to that extent it can have such activities.

application of income abroad. However, the portion of income actually applied abroad or accumulated for application abroad was not exempt.

1.5.2 Similarly, in *CWT v. Trustees of the Nizam's Religious Endowment Trust* [1977] 108 ITR 229 (AP), it was held that the charitable or religious expenditure incurred in India will not be affected by a provision for activities outside India or even actual expenditures abroad. Exemptions towards activities in India remains intact and in the case of a clause in the trust deed empowering the trust to have activities outside India there is no impact. And in the case of trust having activities outside India, the exemptions will be denied to the extent of the income applied outside India.

TRANSFER OF FCRA FUNDS TO OTHER COUNTRIES

1.6 In the light of the discussions made in this chapter it becomes important to discuss whether FCRA funds could be transferred to other countries. In this context it should be noted that the transfer of funds to other countries should be distinguished into 2 categories.

- (i) Transfer of funds by an NGO to its own overseas branch or project.
- (ii) Transfer of funds to NGOs of other countries.

1.6.1 Generally Indian NGOs are not permitted to have activities or branches outside india, unless they are registered under section 10(23C) as discussed above. Therefore, having branches and transferring FCRA funds is not permissible in general.

1.6.2 Regarding transfer of FCRA funds to NGOs in other countries, under the prevailing FCRA laws it does not seem to be permissible. FCRA provides that no funds can be transferred to NGOs which are not registered under FCRA. An NGO registered in another country is certainly not subject to FCRA provisions and therefore, will not have FC registrations. The FCRA Act has not envisaged the possibility of transferring funds to NGOs in other countries and therefore, without any exception it bars the transfer of FC funds to NGOs which are not registered under FCRA.

NGOs cannot transfer FCRA funds to other countries, nor can they have any direct activities outside India from FCRA funds.

1.6.3 Therefore, in our opinion, NGOs can not transfer FCRA funds to other countries, nor can they have any direct activities outside India from FCRA funds. The only exception would be the NGOs registered under section 10(23C)(vi), which can have limited activities outside India subject to the provisions of FEMA. Even such NGOs cannot transfer FCRA funds to other NGOs or entities outside India. Therefore, FCRA funds under no circumstances can be transferred out of India, activities outside India (if any) has to be done from domestic income only.

Reference Book : **Taxation of Trust and NGOs with FCRA** by **Manoj Fogla**, published by TAXMANN Publications.

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