

18th January, 2008

Shri P. Chidambaram
Hon'ble Union Finance Minister
Government of India
North Block, New Delhi

Dear Sir,

On behalf of Voluntary Action Network India (VANI) a network of 2200 voluntary organisations engaged in diverse fields of social and economic development of a charitable nature, we the undersigned make the following submissions:

1. That the Government and the society at large has recognised the valuable services being rendered by the voluntary organisations in the field of education, health, poverty alleviation, conservation of environment, assistance to physically and mentally challenged persons and other marginalised and weaker sections of the population across the country and especially in remote regions inhabited by tribals.
2. That in recognition of this position, the Government of India has formulated a comprehensive **National Policy for the Voluntary Sector** in which government and voluntary sector partnership is accorded a priority in social and economic development in implementation of various schemes and programmes.
3. That VANI has carried out an intensive consultation with its partners and associate voluntary organisations in understanding the practical problems faced by them in their day to day operation in the matter of compliances with Income Tax Laws and rules made there under, and based on the views expressed in these consultations, following issues pertaining to the administration of the Income Tax Laws are placed here under with suggestions for changes:

In the following pages are the key issues which we would like the Ministry of Finance to consider while drafting the Budget for year 2008:

I. APPLICATION IN INDIA

- **Section 11(1)**

Observation:

As per this section, exemption to NGO's is available only for that part of income which is applied for charitable purposes within India. Income applied outside India is allowed as a deduction where it is applied for objects in which India is interested.

There is no clarity on 'objects in which India is interested'. As a result, any money spent outside India faces risk of being disallowed as legitimate application

In the current era of enhanced image of India as a global player, a large Indian diaspora, and Indian charities registering their presence in many other countries, this restriction fails to provide necessary scope for expansion of work of Indian charities.

Recommendation:

1. This restriction should be removed. Indian charities should be allowed to apply money outside India as well.
2. **Removal of this restriction will also enable Indian Charities to raise funds in countries with large Diaspora, that have restrictions which require the application of funds raised to be partly applied in that country.**
3. 'Objects in which India is interested' should be specified.

¹ Any income referred to in sub-section (2) which

(a) is applied to purposes other than charitable or religious purposes as aforesaid or ceases to be accumulated or set apart for application thereto, or

²⁶[(b) ceases to remain invested or deposited in any of the forms or modes specified in sub-section (5), or]

II. ACCUMULATED FUNDS

- **Section 11(2)¹**

Observation:

Funds accumulated u/s 11(2) cannot be paid or credited to any trust or Institution registered u/s 12AA or 10(23C). This restriction is causing considerable hardship to Indian grant-making agencies, as they are unable to build up reserves to make sustain their grant-making programs. It is thus contrary to Government's National Policy² of encouraging Indian philanthropy.

Recommendation:

1. This restriction should be removed or relaxed for those NGOs who create a fund for own objects and to facilitate financial management by Indian grant-making agencies. This recommendation is in line with para 6.1 of the National Policy on the Voluntary Sector 2007 (footnote 2).

(c) is not utilised²⁷ for the purpose for which it is so accumulated or set apart during the period referred to in clause (a) of that sub-section or in the year immediately following the expiry thereof,

²⁸[(d) is credited or paid to any trust or institution registered under [section 12AA](#) or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of [section 10](#),]

shall be deemed to be the income of such person of the previous year in which it is so applied or ceases to be so accumulated or set apart or ceases to remain so invested or deposited or ²⁹[credited or paid or], as the case may be, of the previous year immediately following the expiry of the period aforesaid

² "6.1 The Indian society has a well-established tradition of philanthropy. While a regime of tax concessions facilitates donations to charitable organizations, there is considerable untapped potential to channelise private wealth for public service. The Government will support and encourage existing, as well new, independent philanthropic institutions and private foundations to provide financial assistance to deserving VOs. It will also promote a dialogue among public and private grant makers so that they may take advantage of the best practices in grant making and fund-raising strategies."

III. SUBSTANTIAL CONTRIBUTOR

- **Section 13(3)³**

Observation:

As per this section, any person who has made a total contribution (up to the end of the relevant previous year) of an amount exceeding Rs.50,000 will be included in the category of interested person and any transaction with such person requires disclosure in form 10B.

For Example: If a company gives a donation to an NGO exceeding Rs.50,000, it will be included in the category of interested persons and any product of such company used by NGO will need to be reported in Report 10B.

Second problem is related to maintaining track of donations by repeat donors.

For Example: If a donor gives a donation of Rs.10,000 every year to an NGO, it will be treated as a substantial contributor in the 5th year. This creates two compliance related problems:

Firstly, an NGO which raises funds from public needs to maintain cumulative record of all donors for an indefinite period. This would require enormous amounts of investment in software and data-punching.

Secondly, once such a donor has reached the threshold level, the NGO needs systems to make sure that all transactions are screened to make sure that any transactions with the particular person are flagged and reported in form 10B.

Recommendations:

1. This section should be applicable only where a person's donations exceed the prescribed limit in the relevant previous year. The phrase "up to the end of the relevant previous year" should be replaced with "within the relevant previous year".
2. Limit of Rs.50,000 should be enhanced, may, up to Rs.5,00,000, in view of the enhanced economic prosperity in the country and devaluation of currency. The last revision that took place was on 1-4-1995, when this limit was revised from Rs.25,000 to 50,000.

³ any person who has made a substantial contribution to the trust or institution, ⁹²[that is to say, any person whose total contribution up to the end of the relevant previous year exceeds ⁹³[fifty] thousand rupees];

IV. DEDUCTION TO BE MADE IN COMPUTING TOTAL INCOME IN RESPECT OF CERTAIN DONATIONS:

- **Section 80 G and Section 12A**

Observation:

Under Section 80G of the Income Tax Act, 1961, donations for charitable purpose by Individuals are allowed as deduction while computing the Total Income of the person subject to the fulfillment of conditions.

Deduction under section 80 G is available to any taxpayer (may be individual, company, firm, any other person) if donation is made in Cash/Cheque/Demand Draft. However, donations in form of shares and share-options are not eligible for deduction.

Recommendation:

1. Provisions should be further simplified as presently Non Profit Organisations have to get separate registration under Section 12 A and Section 80G of the Income Tax, 1961. Since both the exemptions are required by a charitable organisation and the same authority is granting the exemptions with same details required at the time of registration it should be considered to allow the registration for both Section 12 A and 80 G at the same time i.e one time registration. This recommendation is in line with para 4.6 of the National Policy on the Voluntary Sector 2007 (see footnote 4).
2. The approval under section 80G should be in perpetuity without any time restriction and should be made more compliance oriented rather than time oriented.
3. Scope of charitable deduction under section 80G should be enlarged. Listed equity shares, bonus / right shares received on those shares, as well as employee stock options, should be allowed as deduction. This recommendation is in line with para 4.6 of the National Policy on the Voluntary Sector 2007⁴.

⁴ "4.6 Public donation is an important source of funds for the voluntary sector and one that can and must increase substantially. Tax incentives play a positive role in this process. Stocks and shares have become a significant form of wealth in the country today. In order to encourage transfer of shares and stock options to VOs, the Government will consider suitable tax rebates for this form of donation. The Government will also simplify and streamline the system for granting income tax exemption status to charitable projects under the Income Tax Act. At the same time, the Government will consider tightening administrative and penal procedures to ensure that these incentives are not misused by paper charities for private financial gain."

4. Further, listed equity shares should also be considered as investment made u/s 11(5), provided the listed equity shares are those received by NGO's as donation, **including bonus received / Rights exercised.**

V. DONATIONS

- **Section 115BBC⁵**

⁵ 1) Where the total income of an assessee, being a person in receipt of income on behalf of any university or other educational institution referred to in sub-clause (iiia) or sub-clause (vi) or any hospital or other institution referred to in sub-clause (iiiae) or sub-clause (via) or any fund or institution referred to in sub-clause (iv) or any trust or institution referred to in sub-clause (v) of clause (23C) of [section 10](#) or any trust or institution referred to in [section 11](#), includes any income by way of any anonymous donation, the income-tax payable shall be the aggregate of

- (i) the amount of income-tax calculated on the income by way of any anonymous donation, at the rate of thirty per cent; and
- (ii) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (i).

(2) The provisions of sub-section (1) shall not apply to any anonymous donation received by

- (a) any trust or institution created or established wholly for religious purposes;
- (b) any trust or institution created or established wholly for religious and charitable purposes other than any anonymous donation made with a specific direction that such donation is for any university or other educational institution or any hospital or other medical institution run by such trust or institution.

(3) For the purposes of this section, anonymous donation means any voluntary contribution referred to in sub-clause (iia) of clause (24) of [section 2](#), where a person receiving such contribution does not maintain a record of the identity indicating the name and address of the person making such contribution and such other particulars as may be prescribed.]

Observation:

With the inception of Finance Act, 2006, the anonymous donation received by any organization for charitable purpose other than religious cause shall be taxable at Maximum Marginal Rate u/s 115BBC.

Recommendations:

1. The donations received by banking transaction (cheques/credit cards) should also be allowed as deduction, **as the Income Tax authorities can get details of the donor from the donor's banker.**
2. The anonymous donations should not be made taxable as there are a lot of individuals and organisations who would like to remain anonymous while giving for charity work.
3. Also lot of charitable organisations collect donations through charity boxes at public places where it is not possible to trace every individual donors which would also affect the spirit of voluntarism and raising sources.

VI. TDS PROVISION

• Section 193 – 194 J

Observation:

Most of NGOs are providing various type of services on which TDS provision are applicable like providing of Professional & Technical services, Income from rent and interest from fixed deposit etc. because it unnecessarily clogs up the system and affects cash flow of NGO's.

Recommendations:

1. TDS should not be deducted from any payments made to NGOs which are registered u/s 12A of Income Tax Act, 1961.
2. This will also reduce unnecessary paperwork related by deductor, deductee and the Tax Department.

VII. TAX AUDIT U/S 44AB

Recommendations:

1. Charities carrying on ancillary business/profession and having gross turnover/receipt of more than Rs. 40,00,000 / 10,00,000 should be specifically exempted from tax audit u/s 44AB, as these are already audited u/s 12A(b) of the Income Tax Act, 1961.

VIII. SERVICE TAX

Observation:

Currently, NGOs are required to pay and collect service tax on services listed as taxable.

Recommendations:

1. Exempt NGOs which are registered u/s 12A of income Tax Act, 1961 from collecting and paying service tax.

Yours sincerely,

(Paresh Tewary)
Chief Executive Officer

Anup Khosla, Chief Financial Officer, Helpage India

Charu Malhotra, Financial Adviser, AccountAid

**Farida Vahedi, Secretary for External Affairs
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**Satya Singh Chauhan, Accountant, Peoples Institute for
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➤ **Copy for kind information and necessary action:**

1. Shri Montek Singh Ahluwalia, Deputy Chairman, Planning Commission, Govt. of India
2. Shri M. V. Rajasekharan, Minister of State for Planning, Govt. of India
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