

What is Mixing of FCRA & Local Funds

Q U E R Y

Recently SRRF Dialogue received a query from one of its member, who is associated with an NGO, which produces books for underprivileged students. These books are produced and published with non-FCRA funds, however they receive foreign donations / grants to distribute these books to students. Grant / Contribution represents reimbursement of costs incurred in production of these books at a fixed rate, say, Rs 10/- per book. Question arises how the utilization against grant would be disclosed considering no immediate payments would be involved.

A very pertinent issue has been raised in this query, which many NGOs face while dealing with FCRA funds, particularly those who incur the costs in local funds but are reimbursed by the agencies through FCRA funds. At SRRF it was felt that there are several misconceptions on this topic and there was an urgent need to bring clarity on the same.

Apart from the issue raised in the query above, there are similar situations which NGOs face often. For example, several grass-root based NGOs operate campuses, in which their guests come and stay since there are no proper accommodation facilities in and around these remote areas. These guests are also provided with food and other essential services. Generally these NGOs charge the guests some nominal rent as well as cost for the food, etc. provided¹. If the guests represent a foreign funding agency, any contribution by the agency would be classified as Foreign

Contribution and would need to be deposited in the FCRA Bank account.

While the NGO would disclose such contributions in its FCRA annual return as Foreign Contribution received, however, problem is that since expenses for such services have already been paid out of local account, how utilisation against these funds would be disclosed. It is no body's case that an NGO should not recover the costs that it has incurred whether from local funds or FCRA funds.

Earlier most NGOs in such a situation would simply write a cheque for its local account out of FCRA account, against proper documentation. This would ensure that the NGO would get paid for the services provided by it while it could also correctly disclose this expenditure as utilisation in FCRA annual return.

Scenario after posting of FAQs at MHA website

However after posting of FAQs on FCRA website, some FCRA practitioners have stated that such a practice tantamount

¹ It may be clarified that generally contributions from such funds do not constitute any significant part of the total funds received by an NGO

to mixing of local and FCRA funds. Before this advisory further delves on the issue, let us examine what does the FAQ states. Accordingly the question as well as the answer from the FAQ is reproduced below.

Q.22 Can foreign contribution be mixed with local receipts?

Ans: No. Foreign contribution cannot be deposited or utilised from the bank account being used for domestic funds.

Neither under the FCRA Act 2010 nor under FCRA Rules 2011 there is any mention of 'FCRA receiving entity' not receiving payment for services it has provided. Thus the above question put in the FAQ on MHA website is being considered as the sole authority for not allowing such transfers. Even this question, when examined closely does not prohibit payment of FCRA funds to the agency which has received it. It states that 'Foreign Contribution cannot be deposited or utilized from the bank account used for domestic funds'. This means that when the Foreign Contribution is initially received, it must be deposited in the FCRA Designated Bank account, and when the payment is made to the NGO out of FCRA account for services provided, that is when the utilisation of FCRA funds takes place. This is from the FCRA account only. Thus at no point from the time funds are deposited in FCRA account and utilized by making payment there is mixing of funds with local accounts. Some practitioners feel that by depositing the funds from FCRA account to a local fund account in the same agency is mixing of funds. This is not a correct interpretation as it presumes

that the fund transfer is without providing adequate service. As stated above, the NGO providing the service must maintain adequate documentation to show the costs of the service provided and that it is a fair cost. For example, in case of NGOs who provide accommodation, etc. in their campuses generally have a policy of rates chargeable for services being provided. They also provide sufficient documentation that the rates being charged are reasonable and based on costs incurred.

On similar grounds, it can be argued that when an organisation pays itself for the cost of books it distributes, it is utilisation and not transfer of foreign contribution to local bank account.

Alternative

Other alternative which an NGO could consider is that treat funds received in such manner as FCRA donations². Then such amounts become part of untied FCRA funds, which the NGO can use anywhere, however utilisation must be out of FCRA designated bank account only. This could come handy where in some FCRA projects, there is a temporary shortfall of funds. These funds could be utilized and subsequently on receipt of FCRA project funds could be refunded. In such a scenario, since there is no transfer of FCRA funds to local accounts, there is no possibility of anyone interpreting the transaction as mixing of local and FCRA funds. However, if the donor is not willing to give permission to treat the amount as donation than only alternative is as above.

² Of course, after taking necessary permission from the donor