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PRACTICAL ISSUES ARISING FROM IMPLEMENTATION OF FCRA 2010

MAJOR ISSUES ARISING

- ✘ Opening of more than one bank account
- ✘ Renewal of Registration
- ✘ Transfer of Funds to Registered Organisations
- ✘ Issues requiring clarifications
 - Organisations falling under S. 3 - can they not receive any FCRA funds ?
 - Auditor's signature on FC-3 – is it mandatory ?
 - FC-3 preparation – should it be based on closing funds as per bank account or unutilised funds as per balance sheet. Can an agency pay itself FCRA funds for services performed.
 - Eligibility Criteria for registration – Is it must ?

OPENING OF MORE THAN ONE BANK ACCOUNT (S. 17, R9 (1E) & (2E))

- ✘ Funds can be rec'd only in single FCRA designated bank account
- ✘ For utilisation purpose one or more bank accounts in one or more banks may be opened
- ✘ No funds other than FC would be deposited in such accounts
- ✘ Intimation of such opening be given on a plain piece of paper within 15 days.
- ✘ Annual Return (FC-6) to reflect FC rec'd and include details in respect of the funds trfd. to other bank a/cs (R 17(2)).
- ✘ Bank statements of FCRA designated bank account certified by a Bank official to accompany FC-6.

RENEWAL OF REGISTRATION

- ✘ Application to be moved 6 months prior to expiry
- ✘ In case of NPOs implementing multi-year project to apply 12 months in advance.
- ✘ Delay may be condoned but not later than 4 months after the registration expires. (R. 12 (8))
- ✘ If renewal not applied than registration ceases after the expiry period and new application has to be moved as if its a new registration under Rule 9.
- ✘ Sole reason for this huge investment of effort on the part of the Dept. asking more than 36000 organisations to apply for renewal appears to be to weed out organisations not filing returns (*a very large number*), NGOs blacklisted or proceeded against. Is it worth the costs, could a more efficient way be found.

TRANSFER OF FUNDS TO REG. ORGS

- ✘ Rule 24(2) requires that before transferring funds to other registered / prior permitted orgs. Application needs to be made using Form FC-10.
- ✘ Dept. issued clarification vide letters to various bodies specifying that the same not needed provided orgs. are not being proceeded against.
- ✘ How do transferors decide if transferee orgs. are being proceeded against ?
- ✘ When does proceeding starts, when the Dept. issues notice or takes action or initiates proceedings in the court of law. This needs to be established by the Dept.
- ✘ Sector could facilitate the same by referring to some list maintained at Dept.'s website – practical problems would need to taken care of.
- ✘ Defeats the very purpose of registration / prior permission.

ISSUES ON WHICH FURTHER CLARITY NEEDED

- ✘ Rule 4 does not allow speculative activities, however there is no clarity how persons who are already invested in such schemes should comply.
- ✘ Can FC be used to set-up marketing infrastructure, etc. for raising local donations/resources? This is not clear, particularly after provision on Admin. Exps. brought out under S. 8 (2) of FCRA 2010.
- ✘ FC rec'd towards Corpus. Can this be shown as utilisation or will it remain in the books as money rec'd and remaining unutilised?
- ✘ Would subscriptions rec'd from foreign delegates towards international conference be treated as FC ?
- ✘ Foreign funds rec'd towards sale of publications, could this be regarded as FC ?

ISSUES ON WHICH FURTHER CLARITY NEEDED

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- ✘ As per explanation provided Interest earned or 'return' on investments is to be treated as FC. However does this mean any income arising out of any venture undertaken from FC funds would be treated as FC (e.g. surplus on training prog.) – seems too elastic.
- ✘ Is it right to treat interest as Foreign Contribution ?