

To,

Sh. Arun Jaitley
Hon'ble Finance Minister
Government of India
New Delhi

Subject: Representation of VANI towards Strengthening and enabling changes in the current taxation regime for voluntary development Organizations:

Dear Sir,

On behalf of members of VANI, we would like to thank you for opportunity given to us to submit our representation for consideration on Income Tax and Goods & Services Tax.

Being an apex body of Voluntary Development Organizations, VANI represents 12,000 voluntary organizations from all over India. These organizations are engaged in developmental initiatives, like, health, education, water & sanitation, old age care, child and women development. We along with our members pride ourselves in contributing the growth and development of India.

VANI has longstanding relationship with government in not only representing Voluntary Sector but also providing necessary input and support as and when required.

Sir, we deeply appreciate efforts of your ministry to streamline and rationalizing taxation system in India. VANI has conducted series of consultations with voluntary organizations on the issue of taxation regime applicable to voluntary development organizations in India. We have consulted finance officers, Chartered Accountants, Sector leaders and experts from grass roots to national level.

Sir, humbly we would like to submit following suggestions for your consideration. The first section addresses the issue of overall fiscal and taxation issue related to the voluntary development sector, the second section we have forwarded some suggestions on the GST.

Income Tax related:

The Section 2(15):

The definition of Charitable Purpose under section 2(15) of the Income Tax Act, is the only and very important aspect for the voluntary development organizations. In fact, this could be an important step in defining and differentiating organizations engaged in developmental activities from other not-for-profit entities in the country. The economic growth and related development

has seen sudden influx of entities in the ambient of NPO in the country. Many times we refer to the categorization under Section 2(15) to define the nature and scope of developmental organizations while dealing with related laws like FCRA and registration laws.

Under the current provisions of Income Tax Act “Charitable purpose” includes relief of the poor, medical relief, preservation of environment (including watershed, forest and wildlife) and preservation of monuments or places of or objects of artistic or historic interest, Yoga and the advancement of any other object of general public utility:

Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce, or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity;

Provided further that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is twenty percent or more in the previous year.

Ramification of the above on the voluntary development organizations:

1. As you are aware that thousands of genuine voluntary development organizations are working hand in hand with government under various developmental projects. Such organizations fall under the advancement of any other object of general public utility. Those addressing issues like:

- Women Empowerment and Participation
- Drinking water and sanitation,
- Livelihood and income generation,
- Housing for rural and urban poor,
- Empowering Panchayats and Municipalities,
- Youth leadership,
- Tribal and Dalit issues,
- Self-help groups
- Working with Children
- Working with Aged population
- Basic and adult education

- Disaster Mitigation,
- And many others.

2. Voluntary Organizations also play a very important role in India for providing advice and support to various government departments, through their research and advocacy activities. Such organizations also fall under the above stated “6th limb” of section 2(15).

3. During the last few years the voluntary sector in India is passing through very critical phase wherein we are trying to generate resources domestically and reduce the dependency on the foreign aid. Unfortunately, the current treatment of sector 2(15) puts many such initiatives under taxable category, as illustrated below:

- Collaboration and partnership has been an important aspect of voluntary sector in India. Since most of the government projects are available through tendering system such financial aid from government for development work are also placed under business like activity. The process of tendering and open bidding system attracts tax deduction. Unfortunately, even if these projects are in line with the main objective of the organization and fall under charitable purpose they are considered as trade, business and commercial activity. For example, an organization working with panchayats, in collaboration with government will be liable for taxation.

Second key feature relates to treatment of voluntary organizations in tax regimes. Much of that treatment derives from the definition of ‘charitable purpose’ in Section 2(15) of the Income Tax Act. In spite of the promises by the government that genuine organizations will not suffer, hundreds of voluntary organizations receiving funds from the government have been sent tax notices.

The source of the problem is that only five purposes have been listed in Section 2(15), which provide safeguard to voluntary organizations. In the process, hundreds of other purposes for which voluntary organizations contribute to national development goals attract tax notices. Thus, the non-profit nature of voluntary organizations remains in jeopardy.

There are two simple ways to address this situation in the short run. First, link the definition of charitable purposes to the national development priorities and plans as relevant charitable purposes. Second, activities incidental to the core purpose of the voluntary organization alone should be treated as non-profit, irrespective of the source and manner of receipts of revenues. This will enable voluntary organizations to access funds from various government agencies and domestic private sector, even if they have invited proposals through a tender or bidding process.

Clarification on tenderizations, consultancy and contributions

As per the instructions of the Finance Ministry the open tenders decide almost all engagements and partnerships of voluntary organizations with the government. Unfortunately, these

processes are seen as the business activities even if they are in line with the charitable purpose of the organization. Even the projects of the World Bank, its affiliates or projects funded by the World Bank through government agencies are implemented through consultancy contracts with the NGOs, due to the internal policies of the World Bank.

These contracts are basically grants and budget based. However due to the nomenclature being consultancy and the TDS it is subject to, the Income Tax Department tends to look at these as commercial ventures.

Consequent to this adverse view of the Income Tax Department, the NGOs face considerable problems in registration under Section 12AA, recognition under Section 80G and assessment proceedings. Registrations under Section 80G and 12AA have been rejected on this basis. Tax demands are sought to be raised too.

A relevant circular needs to be issued to the assessing officers clarifying this matter appropriately.

Tax deduction at Source

Where tax demands are unlikely to arise, TDS results in needless paperwork and locking up of funds. Tax is deducted at source on interest and other receipts. Exemption orders are dismissed on irrelevant grounds without a proper hearing. Refunds are not issued with assessment orders.

As long as registration under 12AA continues, tax should not be deducted at source. Suitable changes must be made in Section 197/197A.

Section 12 AA (3)

Under Section 12 AA (3) a trust's registration can be cancelled by the CIT if the activities are not genuine or are not as per the objects of the trust. The CIT has to pass a written order of cancellation.

a) The CITs issue notices under section 12 AA (3) and after hearing the matter the proceedings are dropped but no written order to that effect is given. Therefore both the orders of cancellation and the orders dropping proceedings are to be in writing and served on the assessee.

b) Any order under this section should be passed within a definite time limit to avoid un-certainty.

Section 11 (2)

Under section 11 (2) where there is a delay in filing form 10, condonation by the CIT is possible subject to fulfillment of conditions.

The CIT should pass a speaking order within a definite time limit on whether the condonation is accepted or rejected.

Some futuristic changes in the Taxation regime:

Sir, we would also like bring to your attention a number of regulatory issues related to Finance Ministry which is severely restricting the space and capacity of voluntary organizations to contribute to national development plans. This should be viewed in light of the National Policy on Voluntary Sector of Government of India since 2007. This policy invited the voluntary sector in India to contribute more actively to national development. It also promised to make the regulatory system more transparent and accountable, thereby enabling healthy development of the voluntary sector in India.

Two key features of this regulatory environment are incorporation and non-profit status. The Government had promised to bring in a modern legislation, in line with enlightened global practices, to enable flexible and easy incorporation of voluntary organizations. That promise has not been delivered, and voluntary organizations continue to be governed by colonial era laws, rules and procedures.

As your ministry moves towards refocusing reforms in tax regime, we would like to bring to your attention several ways in which greater domestic resources can be attracted towards the work of voluntary organizations in the country. These include incentivizing individual giving, creating incentives for domestic foundations, enabling CSR funds to be made available to voluntary organizations, creating enabling provisions for Indian voluntary sector to contribute to international development plans of the government and private sector, and improving the transparency and accountability of this sector's contributions to national development.

During the last few years the fiscal and financial environment in the country has changed substantially, which requires alignment with operating environment for the Indian voluntary development organizations. Today, majority of voluntary development organizations are either working with government or trying to generate financial resources from within country. Most of their activities, projects and focus area are in line with the national development targets identified by Indian government through various national schemes or the planning commission. The dream of addressing national issues with national resources is slowly taking shape and numerous voluntary development organizations are working in this direction. In order to make this transition smooth, we would like to suggest some amendments in the forthcoming financial bill.

- Under the companies Act, the Indian government has rightly so, added a proviso to motivate Indian companies to spend on corporate social responsibility. Many companies do want to work with Indian voluntary organizations in realizing the dream of holistic growth of the country. But we all fear that such financial collaborations will attract taxation, if solicited through open tendering processes.

- Various studies have shown that India has the high potential of individual philanthropy and giving. Indian voluntary development organization solicits financial support from such individual organizations through selling of greeting cards, or momentous, but these also attract taxation.

The way forward:

Option 1: Bring sec. 2(15) closer to actual activities of the sector:

The definition of Charitable Purpose be made more specific and in tune with current nature of activities undertaken by the voluntary sector, while retaining the bar on commercial activities. However, providing services or goods at significantly lower prices will not attract the disqualification. The proposed revised section 2(15) is given below:

“Charitable purpose” includes —

(a) the prevention or relief of poverty;

(b) the advancement of education;

(c) the advancement of health or the saving of lives, including the prevention or relief of sickness, disease or human suffering;

(d) the prevention and mitigation of disasters;

(e) the advancement of citizenship or community development, including rural or urban regeneration, empowerment of Panchayats and Municipalities, and the promotion of civic responsibility, volunteering, the voluntary sector or the effectiveness or efficiency of charitable or religious organizations;

(f) the advancement of the arts, culture, heritage or science;

(g) the preservation of monuments or places of or objects of artistic or historic interest,

(h) the advancement of amateur sport meaning thereby sports or games which promote health by involving physical or mental skill or exertion;

(i) the advancement of human rights, rights of the disadvantaged or marginalized persons;

(j) the advancement of conflict-resolution or reconciliation or the promotion of religious, communal, gender, tribal, caste harmony or equality and diversity;

(k) the advancement of environmental protection or improvement (including watershed, forest and wildlife);

(m) the relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage, including relief given by the provision of accommodation or care to such persons;

(n) the advancement of animal welfare;

(m) the promotion of the efficiency of the armed forces of India, or of the efficiency of the police, fire and rescue services, or ambulance services;

(o) the advancement of any other object of general public benefit;

Provided that the advancement of any other object of general public benefit shall not be a charitable purpose, if it involves carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce, or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity;

Provided however that, for the purpose of this clause, any amounts collected by a trust from purchasers or users of such services or goods shall not constitute trading, commercial or business receipts if such services or goods are provided at prices substantially below the market rates for comparable services or goods;

Provided further that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is twenty-five lakh rupees or less in the previous year.

Provided further that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is 20 % or less in the previous year.

If amending the definition of "Charitable Purpose" is not the appropriate way at this stage, shall we humbly request to take corrective measures. The current amended provisions have changed the definition of charitable purpose, as a result any the voluntary organization will lose its charitable status even if its object clause permit certain incidental business activities. In other words without doing any business activity also the exemptions will be lost. Secondly, by virtue of the current amended provisions the entire income of a charitable organization shall be subjected to tax even if a very small negligible activity is towards incidental business activities. In the interest of natural justice, all the voluntary organization should be permitted incidental

business activities. And no voluntary organization should be permitted to do unrelated commercial activities.

Option 2: The voluntary sector appreciates the changes suggested in section 2 (15) “provided further that the first proviso shall not apply if the aggregate value of the receipt from the activities referred to therein is twenty five lakh rupees or less in the previous year”. We would further urge to at least treat NPO as a small business category (as done in section 47) where the presumptive taxation limit could be raised to 50% and Rs. 10 Crore.

Option 3: A new proviso may be added to section 11(4A). The suggested proviso is as under:

“Provided that the business or any commercial activity should be integrally related to the charitable or religious activity of the organization and any income of a trust or an institution, being profits and gains of business shall not be considered as incidental to the attainment of the objectives of the trust only because the entire income is applied for charitable purposes or religious purposes,.”

Two things can encourage such scope of channelizing private wealth of the nation for public service, arising out of an unprecedented GDP growth.

(i) If there is a high inheritance tax that can only be avoided by giving endowments, high net-worth individuals would be stimulated to donate. Philanthropy in US is partly motivated by such laws.

(ii) Shares are important source of wealth in the nation today. I request the government to introduce and increase tax concessions so that corporate entities are encouraged to donate in form of shares and other assets and allow charitable organizations to hold these assets to enhance their endowment through appropriate tax code. Similar recommendation is mentioned in the Planning Commission’s document on National Policy on Voluntary Sector-2007, in section 4.6

D) Further sir the definition of various financial terms like- what is an income? How is depreciation accounted? Cash basis of accounting and similar other matters, are not at par with the accounting practices in vogue and discriminates NPOs from other assesses. There is a need to relook at the question of “Business Income” where the business is in the nature of promoting a development activity

Goods & Service Tax Related

Sl. No.	Interpretation of Provisions of the CGST Act	Concern	Suggestion/Recommendation
1	When a NPO sells goods and services to anyone outside its state, the NPO must register for	For simple operating requirement (such as distribution of	Extend the existing threshold limit to Inter-state supplies too so that NPOs and other small

	<p>GST. In such circumstances, aggregate turnover with the threshold of Rs. 10/ 20 lakh for exemption does not apply.</p> <p>An individual / institution dealing only in exempted goods and Services Or where the aggregate turnover is below Rs 20 lakh(Rs. 10 Lakh in hill states) in the financial year, but not engaged in inter-state supplies, is not required to register under GST .</p>	<p>publications, purchases of small supplies, recoveries from produce supplied to communities across state boundaries etc.) of not for profit organisations the implications are far and complex – even a transaction of INR 1 would be liable to GST and will require them to register under GST – this will have cascading effect in terms of need to adhere to the compliance requirement of report and return filing etc under GST.</p>	<p>organization (whose aggregate turnover is less than Rs. 10 / 20 lakhs) interest is protected and encouraged to expand their operations / develop businesses outside their States.</p>
2	<p>The definition of aggregate turnover under revised GST Draft Law is under section 2(6) which states that the aggregate turnover shall include all taxable supplies, exempt supplies, exports of goods and/or services and inter-State supplies of a person having the same PAN. The turnover is to be computed on all India basis and it shall exclude taxes, charged under the CGST Act, SGST Act and the IGST Act. Further an explanation has been provided which states that payments made under reverse charge mechanism shall not be included in computation of aggregate turnover.</p>	<p>The definition visibly states that while computing aggregate turnover the assessee shall have to include exempted turnover also. That said will grants and donations received by not for profit organisations be included to calculate aggregate turnover</p>	<p>The grants and donations received by NPOs that are applied for “Charitable Purpose” is exempted under enlisted category of services and hence outside the purview of GST.</p> <p>We recommend to officially notify this for clarification and practice while computation of ‘Aggregate Turnover’.</p>
3	<p>Charitable Activities as defined under GST : as per notification No. 25/2012-ST.</p>	<p>The activities included under “Charitable Purpose” in GST Act (as per notification) does not</p>	<p>We recommend that the definition of Charitable activities for exemptions notified (seem to be ones</p>

<p>Charitable activities" means activities relating to -</p> <p>(i) public health by way of -</p> <p>(a) care or counseling of (i) terminally ill persons or persons with severe physical or mental disability, (ii) persons afflicted with HIV or AIDS, or (iii) persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or</p> <p>(b) public awareness of preventive health, family planning or prevention of HIV infection;</p> <p>(ii) advancement of religion or spirituality;</p> <p>(iii) advancement of educational programmes or skill development relating to,-</p> <p>(a) abandoned, orphaned or homeless children;</p> <p>(b) physically or mentally abused and traumatized persons;</p> <p>(c) prisoners; or</p> <p>(d) persons over the age of 65 years residing in a rural area;</p> <p>(iv) preservation of environment including watershed, forests and wildlife; or</p> <p>(v) advancement of any other object of general public utility up to a value of,-</p> <p>(a) eighteen lakh and seventy five thousand rupees</p>	<p>cover all the activities as recognized under Sec 2(15) of Income Tax Act. The activities covered under 2(15) as "Charitable Purpose" meaningfully qualifies for exemption under GST Act too.</p>	<p>which are listed from Service Tax Act) be same as defined for the purpose of Income Tax Act U/s 2(15). This will bring out uniformity in the definition of charitable activities.</p> <p>The defined " Charitable Purpose"U/s 2(15)includes the following;</p> <ul style="list-style-type: none"> >relief of the poor, >education, >yoga, >medical relief, >preservation of environment (including watersheds, forests and wildlife) and > preservation of monuments or places or objects of artistic or historic interest, and >the advancement of any other object of general public utility
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	<p>for the year 2012-13 subject to the condition that total value of such activities had not exceeded twenty five lakhs rupees during 2011-12;</p> <p>(b) twenty five lakh rupees in any other financial year subject to the condition that total value of such activities had not exceeded twenty five lakhs rupees during the preceding financial year;</p>		
4	<p>Section 9(4): In case of any taxable supply to registered individual / institution from unregistered individual / institution, GST on the same shall be paid by recipient. It is provided that Rs 5000/- per day exemption is allowed in respect of small miscellaneous transactions made from unregistered person / institution.</p> <p>This exemption is provided only for Intra-state supplies.</p>	<p>Per day exemption of Rs. 5000/- is very low and requires review for enhancement considering the current marketcost for specialized professional and expert services.</p> <p>The provision is extended only for Intra-state supplies.</p>	<p>We recommend increasing this limit to a reasonable amount considering the current indicative cost for specialized services.</p> <p>Extend this provision both for Inter-state and Intra-state supplies to encourage individuals and institutions to procure goods and services to the threshold limit seamlessly.</p>

Sir, we would again like to thank you for providing this valuable opportunity to give suggestions on Taxation Regime for Voluntary Sector.

Thanking you

Sincerely

Harsh Jaitli
Chief Executive