

TAX ISSUE WHICH REQUIRE RATIONALISATION AND SIMPLIFICATION

- (i) **Section 11(1) Activities outside India :** 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.

Moreover, the current provisions as per the recent ruling of Supreme Court in *American Hotel & Lodging Association Educational Institute vs. CBDT (2006) 206 CTR (Del) 601 : (2007) 289 ITR 46 (Del)* that exemptions under section 10(23C) lost if some activities are outside India. Even for other NGOs the law does not prohibit activities outside India out of past reserves.

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.

- (ii) **Section 13(3) interested persons :** 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.

- (iii) **Section 80 G and Section 12A :** 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). 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 2007.

- (iv) **Section 193 – 194 J :** 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.

Foot Note : “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.”