

15th April 2008

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

Sir,

In the Finance Bill 2008, a change of definition of "charitable purpose" has been proposed:

"Charitable purpose includes relief of the poor, education, medical relief and 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 the 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, on retention of the income from such activity."

According to the explanatory memorandum:

With a view to limiting the scope of the phrase, 'advancement of any other object of general public utility', it is proposed to amend section 2(15) so as to provide that, 'advancement of any other object of general public utility', shall not be a charitable purpose if it involves the carrying on of:

- a. any activity in the nature of trade, commerce or business or,
- b. any activity of rendering of any services in relation to any trade commerce or business,

for a fee or cess or any other consideration, irrespective of the nature of use or application of the income from such activity or the retention of such income, by the concerned entity.

This amendment also will take effect from the 1st day of April 2009.

There are certain issues of concern which we would like you to address before effecting the proposed amendment:

1. In your budget speech while amending section 2(15) of Income Tax act, 1961, you have given the assurance that “*Genuine Charitable Organizations will not in any way be affected by this amendment*”. However we would like to underline the fact that the voluntary sector being complex with various approaches is not only limited to only the first three limbs of the definition of charitable purpose as provided in section 2(15) of Income Tax act, i.e.
 - i. Relief to poor
 - ii. Education
 - iii. Medical relief

As a result, many genuine charitable organizations are registered under the 4th limb which is “advancement of any other object of general utility”. Some of the objects are outlined below:

- promotion of music, art and culture
- promotion of research on agriculture, food production etc.
- promotion of social security
- promotion of livelihoods e.g. amongst refugees, displaced persons, rehabilitated drug addicts.
- promotion of better environment
- promotion of voluntarism and voluntary sector.
- campaign for rights of children
- campaign for protecting the girl child
- campaign against social evils
- campaign for women’s rights
- work related to human rights

These organizations, many times resort to various business/ income generation activities in order to generate funding for their work. In many cases, such business like activity may be an essential requirement for empowering the beneficiaries, and provide them with a sense of dignity. By imposing tax on these organizations, the government would significantly paralyze these civil society initiatives.

2. The voluntary sector in India has quite a long heritage of doing philanthropic work for the poor and down trodden section of the society. These NGOs have composite objects, having different type of activities, including relief to poor as also objects of general public utility. As such, these NGOs are given their exemption under the forth limb. The proposed amendment will therefore put even

such NGOs at risk, if they undertake any business activity which would impact their long term sustainability.

3. A plain reading of the proposed amendment gives the impression that those organizations which are covered under the fourth limb of the definition would lose their exemption status once they undertake any activity in the nature of trade, commerce or business, no matter how small. This seems to be very harsh and against the Government policy.
4. As per the “National Policy on the Voluntary Sector”, clause 4.1, it is stated that.... *“all laws, policies, rules and regulations relating to VOs categorically safeguard their autonomy, while simultaneously ensuring their accountability.”* However, we feel that the autonomy of the voluntary organizations will be compromised by going ahead with the amendment.
5. Further, it also seems to run counter to the National policy statement in clause 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. ... 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.”*
6. As you know, the voluntary organizations are dependent on contributions / grants for undertaking their activities and resources are very important to continue the good work being done by these organizations. The proposed amendment would impact raising of resources from various donors as well as general public since their tax exemption status is directly linked with their registration under section 80 G, where 50% deduction is given to the donors for donating fund to such organizations.
7. VANI since 1988 has been working to promote the Voluntary Sector. On this subject it organized a work group meeting on April, 7th. A great deal of inputs and views were shared across the table in understanding the nature as well as interpretation of this amendment. It was felt that the amendment in the definition of charitable purposes in the proposed Budget, 2008 would impact the Voluntary Sector in ways more than one. The deliberations of

this work group were widely emailed across India before finalization of this Memorandum.

Keeping the above in view, we would request you to kindly reconsider the above proposed amendment to encourage the civil society organizations engaged in genuine charitable work.

With best wishes,

Very truly yours,

*Paresh Tewary, Chief Executive Officer, **VANI***

*Anup Khosla, Chief Financial Officer, **HelpAge India***

*Anil Goel, Chief Finance Officer, **CAF-Charities Aid Foundation***

*Gita Kaviarana, Head Institutional Development, **Centre for Science and Environment***

*Karti Gupta, Accounts Officer, **Toxics Link***

*Mathew Jose, Deputy Director, Finance, **DEEPALAYA***

*Rati Misra, Regional Representative (South Asia), **The Resource Alliance***

*Sanjay Agarwal, FCA, **Sanjay Aditya & Associates***

*Sanjoy Dasgupta, Chief Administrative Officer, **People's Institute for Development and Training***

*Sanjay Patra, Executive Director, **Financial Management Service Foundation***

*Sharat Trehan, DGM(Accounts & Finance), **Centre for Science and Environment***

*Sudeep Bimbrahw, Head of Finance, **Plan India***

*Sumani, Executive Finance, **Indo-Global Social Service Society (IGSSS)***