



Legal Compliances Handbook

For Non-Government Organizations (NGOs) in India

Preface

The word NGO (Non-Government Organization) in India refers to a body that remains detached from the Government and profit framework of usual businesses. These bodies work towards the broad advancement of the society and operate as small units which fill the gaps at places where the government cannot reach directly and efficiently.

The term NGO is used as an umbrella to cover all legal entities that seek philanthropic and charitable funds and utilize them towards the advancement of the society without the motive to originate profit from it or use the profit from the business of the NGO and utilise the same in the implementation of its objects. Such organizations have a definite cultural, educational, religious, or social program.

NGO's are not "owned" by anyone and cannot distribute profits through the form of dividends as such. Whatever profits they may earn from economic activities are reinvested or spent on the activities as per their objects. The typical sources of revenue for non-governmental organizations are donations, funding grants from unilateral and multi-lateral agencies, membership fees, miscellaneous sources and interest and dividends on investments.

The Following forms of associations may act as an NGO:

- a) A trust of two or more persons as Trustees therein. The Trust may be registered under the Indian Trusts Act, 1982.
- b) A company registered u/s 8 of Companies Act, 2013. Usually clubs, associations of professionals get registered under this provision of the Companies Act.
- c) A society of persons registered under the provisions of the Societies Registration Act, 1860 with the Registrar of the Societies, with aims and objects and a structure as laid down in the said Act.
- d) A statutory body consisting membership of persons constituted by or under a statute, having a structure as laid down in the statute by which it is constituted.
- e) A charitable trust constituted under the Charitable Endowments Act, 1920.
- f) Any other organization akin to a society.

Thus, an NGO in India can either be registered as a trust, society or as a company under Sec 8. In this document, we have included major laws applicable to NGOs and the related compliances required to be carried out by NGOs.

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1. REGISTRATION OF NGO

As has already been discussed, In India, an NGO can register itself as a legal entity in three ways:

1. Trust:

Trusts are formed when the settler of the property transfers any property and offers its benefits for the well-being of recipients or for the practice of public purposes. The main aim of the person who registers a trust in India is to make use of the assets of the trust to attain welfare of the public at large and promote a charitable cause and is called a Public Charitable trust. Such trust does not possess a fixed beneficiary, but the public at large, generally established with the common trait. A trust is irrevocable without the intervention of the court.

2. Society:

A society possesses the Memorandum of Association and Rules and Regulation or bylaws. The Society registration fees and processes need to be registered with the Registrar of Society or Commissioner of Trusts appointed by the State Government. A Society has a chance to alter its MOA and increase or decrease its objectives and working from time to time. A society must inform the Registrar annually about the changes in the society. A society can be terminated as per the termination clause in the Bylaws and after termination, the Society will be merged with a Society of a similar object.

3. Company registered u/s 8 of Companies Act:

MOA and AOA form the legal document of a Section 8 Company. Section 8 company registration needs to be filed under the Central Government through the Registrar of Companies with required approvals. The process is like the formation of a Public Limited Co. or Private Limited Co. A Section 8 company is required to do the annual compliances like other companies.

2. COMPLIANCES UNDER INCOME TAX ACT, 1961

Many NGOs feel that they are immune to all form of taxation, as they exist as a, not for profit entity, this, however, is only a myth. The following section talks about important compliances that an NGO is required to do under Income Tax Act.

2.1 PERMANENT ACCOUNT NUMBER

Permanent Account Number (PAN) is a ten-digit alphanumeric number, issued in the form of a laminated card, by the Income Tax Department ['Department'], to any "person" who applies for it. PAN enables the department to link all transactions of the "person" with the department. These transactions include tax payments, TDS/TCS credits, returns of income, specified transactions, correspondence, and so on. PAN, thus, acts as an identifier for the "person" with the tax department. PAN was introduced to facilitate linking of various documents, including payment of taxes, assessment, tax demand, tax arrears etc. relating to an assessee, to facilitate easy retrieval of information and to facilitate matching of information relating to investment, raising of loans and other business activities of taxpayers collected through various sources, both internal as well as external, for detecting and combating tax evasion and widening of tax base.

It is mandatory to quote PAN on return of income, all correspondence with any income tax authority. From 1st January 2005 it has become mandatory to quote PAN on challans for any payments due to Income Tax Department.

The legal authority for allotment and use of the new series of PAN is derived from Section 139A of the Income-tax Act, 1961. This section lays down the framework for PAN, e.g, who is required to apply for PAN, who will allot PAN, transactions where PAN is required to be quoted, use of PAN in TDS certificates and TDS returns, that one person can have only one PAN and the manner of applying for PAN. The manner of applying for PAN is laid down in Rule 114 of the Income-tax Rules, 1962. This rule, amended in 2011, also specifies the copies of documents required to be submitted along with the PAN application (in form 49A or 49AA, as the case may be) as proof of identity and address of the PAN applicant. Penalty of Rs.10,000/- is imposed u/s 272B for failure to comply with the provisions of section 139A.

2.2 EXEMPTION UNDER INCOME TAX ACT

Income of a charitable trust established in accordance with the provisions of Income Tax Act, being for charitable purposes shall be exempt from tax, subject to conditions laid down. Charitable purpose has been defined to include relief of 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,

Further, the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of an activity in the nature of trade, commerce and business, for a cess or fee or any other consideration, irrespective of the nature of use as application, or retention, of the income from such activity. However, this provision shall not apply if such an activity is undertaken in the normal course of carrying out any other object of general public utility and the aggregate receipts from such activity is up to 20% of the total receipts of the trust in a previous year.

Conditions for claiming Exemption from Income Tax

- i) The organization has made an application in Form No. 10A for registration to the jurisdictional Principal Commissioner or Commissioner of Income Tax and is so registered under Income Tax Act.
- ii) The property from which income is earned should be held in trust for a charitable or religious purpose of NGO.
- iii) 85% of its income including voluntary contributions [but excluding Corpus Donation, as it is not to be included in total income] is actually spent in India for charitable or religious purposes or if the 85% of the income is not applied for such purposes but is accumulated or set apart for the reason mentioned in section 11(2).
- iv) Where the total income of the trust before exemption u/s 11 and 12 exceeds the maximum amount which is not chargeable to income-tax in any previous year, the accounts of the trust for that year are audited by a chartered accountant and the audit report in Form No. 10B is filed along with the return of income.
- v) Where the income actually spent on the objects of the trust during a previous year is less than 85% of the total income due to the reasons mentioned below, the deficiency can be made good at the option of the organization to be exercised in writing before the expiry of the time allowed for furnishing the return of income under section 139(1):

- (i) where the deficiency is due to the reason that whole or part of the income which has accrued has not been received during the relevant previous year, such deficiency may be made good during the previous year in which such income has been actually received, or the next year.
- (ii) where the deficiency is due to any other reason, the same is to be made good in the year immediately following the year in which the deficiency has occurred.

Note: In case where the option is exercised, but the income so promised is not utilized in the year as referred to in clause (i) or in the succeeding previous year as referred to in clause (ii), then such promised income is to be treated as the income of the previous year immediately following the previous year in which the income was received or the income of the previous year next following the previous year in which the deficiency occurred, as the case may be.

Accumulation or setting-apart of the Income for Specific Purpose [Section 11(2)]

Where 85% of the income of organization as referred above is not applied to charitable or religious purposes in India during the previous year but is accumulated or set apart, either in whole or in part, for application to charitable or religious purposes in India, such income so accumulated or set apart will not attract tax liability, provided that the following conditions are complied with –

- i) The trustee gives notice to the Assessing Officer in the prescribed Form No. 10 specifying the purpose and the period (which should not exceed 5 years) for which the income is to be accumulated. Such notice is to be given before the expiry of the time allowed under section 139(1), for furnishing the return of income. It shall be noted that specification of a purpose is necessary for accumulated of income.
- ii) The money so accumulated or set apart is invested or deposited in the forms or modes specified in section 11(5). Rule 17C of the Income Tax Rules specifies different forms and modes of investment or deposits.
- iii) In computing the aforesaid period of five years, the period during which the income could not be applied for the purposes for which it is so accumulated or set apart, due to an order or injunction of any Court, shall be excluded.

- iv) If in any year the accumulated income is applied to purposes other than charitable or religious purposes or ceases to be accumulated or set apart for application to such purposes, it will be subjected to tax as the income of that year.
- v) If in any year the accumulated income ceases to remain invested or deposited in the manner given in section 11(5), it will be liable to tax as income of that year.
- vi) If the accumulated amount or any part thereof is not utilized for the specified purposes during the period of accumulation or during the year immediately following the expiry thereof, the amount which has not been so utilized will be liable to tax as income of the previous year immediately following the expiry of the accumulation period.
- vii) Where any amount, out of income accumulated or set apart, is credited or paid to any trust or institution registered under section 12AB or to any specific fund, institution, trust, university, educational institution, hospital or other medical institution as mentioned under section 10(23C), such amount shall not be treated as application of income for charitable or religious purposes, either during the period of accumulation or thereafter. In such a case, payment or credit to such trust or institution shall be deemed to be the income of the assessee of the previous year in which such payment or credit is made.
- viii) If, due to circumstances beyond the control of the organization, accumulated income cannot be utilized for the purpose or purposes for which it was accumulated or set apart, the Assessing Officer may allow the organization to utilize the amount for any other charitable or religious purpose as is in conformity with the objects of the organization, if an application to this effect is made by the trustee.

2.3 APPROVAL U/S 12AB

Any NGO can claim exemption of its income from tax only if such an NGO has made an application for registration in Form 10A to the Commissioner of Income Tax. The provisions of the Indian Income Tax Laws related to registration of NGOs have been recently modified by the Finance Act 2020 that have been discussed henceforth.

Time Limit for Making an application

An application for registration of NGO shall be made to the jurisdictional Principal Commissioner of Income Tax in the following time limits:

Nature of Application	Time-Limit for making the Application
Where an NGO was already registered under erstwhile Sec 12A/ 12AA	3 months from date on which new provisions comes into force i.e. by 31-08-2020
NGO was already registered u/s 12AB & period of such approval is due to expire	6 months prior to the expiry of period of registration
NGO provisionally registered u/s 12AB	6 months prior to the expiry of provisional approval or within 6 months of commencement of activities, whichever is earlier
NGOs that were availing specific exemptions u/s 10 & now wish to avail exemption u/s 11	6 months prior to the commencement of the AY from which such registration is sought to be made operative
Where a registered NGO has modified its objectives	Within 30 days from the date of the said modifications
Application for new registrations	1 month prior to the commencement of the PY relevant to AY from which such registration is sought

Process of Registration

On receipt of an application from an NGO that was already registered under erstwhile section 12A/ 12AA, the Commissioner of Income Tax, shall pass an order in writing registering the NGO for a period of 5 years. Such an order shall be passed by the Commissioner before the expiry of the period of 3 months from the end of the month in which application was received.

For NGOs already registered u/s 12AB, whether provisionally or else, and where the registration is due for renewal, the Commissioner of Income Tax shall call for such documents or information and make such inquiries as he may deem fit in order to satisfy himself about-

- i) The genuineness of activities of the NGO; and
- ii) The compliance of requirements of any other law as are necessary for achieving its objectives.

On satisfaction, the Commissioner shall pass an order in writing registering the NGO for a period of 5 years. However, if the commissioner is not so satisfied, he shall pass an order in writing, rejecting such application or cancelling a provisional registration, after affording a reasonable opportunity of being heard. An order granting or rejecting the registration to an NGO shall be passed by the Commissioner within 6 months from the end of the month in which application was received.

For newly established NGOs, the commissioner shall pass an order in writing provisionally registering the trust or institution for a period of three years from the assessment year from which the registration is sought. Further, such an order shall be passed before the expiry of 1 month from the end of the month in which application was received.

Note: If the Commissioner of Income Tax fails to pass an order, granting the registration or rejecting the application, within the time prescribed, it shall be deemed that the registration sought for has been granted.

Cancellation of Registration

A registration granted under the Income Tax Act can be revoked or cancelled by the authority granting registration, in case he is satisfied that the-

- i) Activities of the NGO are not genuine; or
- ii) Activities of the NGO are not being carried out in accordance with the objects of NGO.
- iii) Property or Income of NGO is being utilised for private purposes.

For cancelling the registration of such NGO, the Commissioner shall pass a speaking order i.e. an order in writing. However, such an order shall be passed only after providing a reasonable opportunity of being heard to the NGO.

2.4 NON-AVAILABILITY OF EXEMPTION IN SPECIFIC CIRCUMSTANCES

Section 13 of the Income Tax Act, 1961 specifies the circumstances where exemptions under Section 11 and 12 would not be available for an NGO. Section 11 deals with the exemption of income derived from property held in trust or other legal obligations, relating to religious or charitable purposes. Section 12 deals with the exemption of income derived by such a trust from voluntary contributions not being corpus donations.

Income not for the Benefit of Public – Section 13(1)(a)

Income tax exemption will not be available for any part of the income of NGO for private religious purposes which are not available for the benefit of the public. The basis of exemption under Section 11 is that the public is benefited. Hence, whatever may be the theme of Charitable activity of the NGO, if the public isn't benefited, tax exemptions shall not be applicable.

Income from Trust for the benefit of a particular religion or caste

Income of an NGO created for charitable purposes and applied for the benefit of any particular religious community or caste shall not be eligible for exemption from applicable income tax.

Any Income of NGO that benefits Certain Person

Tax exemption will not be available to any NGO if, under the terms or rules governing the NGO, any part of the income is made available to or if any part of income or property of such NGO is used or applied for the benefit of any person mentioned below [Section 13(3)]:

- i) The author of the trust or the founder of the institution.
- ii) Any person who has made a significant contribution amounting to ₹ 50,000 by the end of the relevant previous year.
- iii) Where such author, founder or person is a member of the Hindu Undivided Family.
- iv) Any trustee of the trust or manager (by whatever name called) of the institution.
- v) Any person related to such author, founder, person, member, trustee or manager as aforesaid.
- vi) Any concern in which any of the person mentioned in the above clauses has a substantial interest.

Therefore, if any person mentioned above is benefited with income from the NGO, an exemption under Section 11 would be denied and Section 13(1)(c) would be applicable. However, the exemption under Section 11 would be permitted if NGO is running an educational or a medical institution or a hospital.

The income or the property of the NGO shall be deemed to have been used or applied for the benefit of a person mentioned u/s 13(3) in following cases:

- i) Granting of loans without interest or any element of security.
- ii) Usage of a property without any consideration for payment.
- iii) Excessive payment made to the persons mentioned in Section 13(3), despite the cost of the service being lower.
- iv) If the services of the trust are availed by the persons referred to in Section 13(3), but the remuneration is not being met.
- v) Purchase of property from the persons referred to in Section 13(3), where the consideration paid for the same is excessive and above the normal rates.
- vi) Sale of a property to any person referred to in Section 13(3) for a rate much lower than the standard or normal rate.
- vii) If any income or property of the trust or institution is diverted during the previous year in favour of any person referred to in Section 13(3), where the value of the same exceeds ₹ 1,000.
- viii) Investment of a substantial interest held by any person referred to above. Point to be noted here, Section 13(4) provides that where the aggregate of the funds invested in the said concern does not exceed 5% of the capital of that concern, the exemption under Section 11 will be denied only in relation to such income arising out of the said investment.

2.5 DEEMED INCOME

Any voluntary contribution received by an NGO wholly for charitable or religious purposes [not being corpus donations] shall be deemed to be the income derived from property held under trust wholly for charitable or religious purposes and will qualify for exemption to the extent such income is utilized for the purposes of the trust or set apart for future application as referred to in section 11 and also subject to the fulfilment of conditions laid down in section 12A.

Further, the value of any medical or educational services made available by any charitable or religious NGO running a hospital, medical institution or an educational institution as referred to in section 13(3), shall be deemed to be income chargeable to income-tax if such services are rendered to the following persons:

- a) the author of the trust or the founder of the institution.
- b) any person who has made a total contribution exceeding ₹ 50,000.
- c) where such author, founder or person is an HUF, a member of the HUF.
- d) any trustee of the trust or manager of the institution.
- e) any relative of such author, founder, person, member, trustee or manager as aforesaid.

2.6 DONATIONS

Section 80G of the Income Tax Act allows taxpayers to claim deductions for various contributions made as donations to the specified relief funds and charitable NGOs. Not all charitable donations are eligible for deduction under Section 80G. Only donations made to the prescribed funds can qualify as a deduction. The Government of India introduced Section 80G deduction to encourage people to donate. The Government, by providing income tax relief, intends to motivate people to make more donations to worthy causes.

Under Section 80G, the amount donated by any person is allowed to be claimed as a deduction at the time of filing the assessee's [donor's] income tax return. Deduction under Section 80G can be claimed by individuals, partnership firms, HUF, Companies and other types of taxpayers, irrespective of the type of income earned. NGOs registered under Section 80G are provided with a registration number by the Income Tax Department and donors making donations to such NGOs should ensure their receipt contains this number. This registration number needs to be valid on the date of a particular donation.

Donations paid towards eligible trusts and charities which qualify for tax deductions are subject to certain conditions. Donations under Section 80G can be broadly classified into four categories. The categories are mentioned below:

➤ **Donations with 100% Deduction [Without any qualifying limit]:**

Donations made under this category can obtain a 100% tax deduction and are not subject to the requirement to achieve any qualification criterion. Donations to the National Defence Fund, Prime Minister's National Relief Fund, The National Foundation for

Communal Harmony, National/State Blood Transfusion Council, etc. qualify for such deductions.

➤ **Donations with 50% Deduction [Without any qualifying limit]:**

Donations made towards trusts like Prime Minister's Drought Relief Fund, National Children's Fund, Indira Gandhi Memorial Fund, etc. qualify for 50% tax deduction on the donated amount.

➤ **Donations with 100% Deduction [Available up to 10% of Adjusted Total Income]:**

Donations made to local authorities or government to promote family planning and donations to Indian Olympic Association qualify for deductions under this category. In such cases, only 10% of the donor's Adjusted Gross Total Income is eligible for deductions.

➤ **Donations with 50% Deduction [Available up to 10% of Adjusted Total Income]:**

Donations made to any local authority or the government which would then use it for any charitable purpose qualify for deductions under this category. In such cases, only 10% of the donor's Adjusted Gross Total Income are eligible for deductions.

Procedure for Registration u/s 80G

Rule 11AA of the Income Tax Rules 1962 provides procedure for seeking approval under section 80G. Detailed procedure for seeking approval is as follows:

- a) The application for approval of any institution shall be made in form no. 10G which shall be furnished electronically.
- b) The Principal Commissioner or Commissioner may call for such further documents or information from applicant or cause such inquiries to be made as he may deem necessary in order to satisfy himself about the genuineness of the activities of the applicant.
- c) Where the Principal Commissioner or Commissioner is satisfied that all the conditions laid down for registration [Section 80G(5)] are fulfilled by the applicant, he shall record such satisfaction in writing and grant approval under section 80G.

- d) Where the Principal Commissioner or Commissioner is satisfied that one or more of the conditions laid down in section 80G are not fulfilled, he shall record the reasons in writing and reject the application for approval after giving the applicant an opportunity of being heard.

Note: The order granting approval under section 80G or rejecting the application shall be passed within the period of six months from the end of the month in which such application was received.

Various Time Limits

Time Limits for making application for approval, time limit for passing order & period of validity of approval has been provided in the table hereunder:

Nature of Application	Time Limit for making Application	Time Limit for Passing Order	Period of Validity of Approval
Already approved before 01-06-2020	3 months from 01-06-2020 i.e. by 31-08-2020	3 months from the end of the month in which application was received	5 years from the AY from which approval was earlier granted
Already Approved but period of approval due to expire	6 months prior to the expiry of such period	6 months from the end of the month in which application was received	5 years from the AY immediately following the FY in which application made
Provisional Approval already given	Earlier of 6 months prior to expiry of Provisional Registration Or Within 6 months of commencement of activities	6 months from the end of the month in which application was received	5 years from the AY immediately following the FY in which application made
Any other approval i.e. seeking provisional approval	1 month prior to commencement of PY relevant to AY from which approval is sought	1 month from the end of the month in which application was received	3 years from the first of the AY for which such NGO was provisionally approved

Statement of Donations Received

The approved NGOs u/s 80G have to prepare a statement showing the donations received for a particular period and submit the same to the prescribed income tax authorities. Further, the NGO has to furnish a certificate to the donor specifying the amount of donation received, the date of receipt of such donations etc. The donor shall be able to avail deduction on the basis of such certificate.

Further, section 44AA of the Income Tax Act does not specify any books of accounts to be maintained by an NGO, however, section 80G (5) (iv) requires maintenance of regular accounts of receipts and expenditures.

Cash Donations

Section 80G states that deduction for donations received in cash of an amount exceeding ₹2,000/- shall not be allowed to the donors. Therefore, NGOs shall ensure that donations exceeding ₹ 2,000 shall not be received in cash.

2.7 AUDIT OF ACCOUNTS

Section 12A provides that where the total income of an NGO, without giving effect to the exemptions provided by Section 11 and 12, exceeds maximum amount which is not chargeable to tax in a financial year i.e. ₹ 2,50,000/- , then the accounts of the NGO shall be audited by a Chartered Accountant and an Audit Report shall be furnished along with the return of income. Further, the Audit Report shall be furnished in Form 10B.

2.8 FILING OF RETURN OF INCOME

An NGO is mandatorily required to file a return of income under Section 139(4A) if its income without giving effect to the provisions of Sections 11 and 12 exceeds the maximum amount not chargeable to income-tax i.e. its income exceeds ₹ 2,50,000/-. As has already been stated, the report of the auditor in Form 10B has to be filed along with the return.

The due date for filing return in case the accounts of the trust are audited is 31st October of the AY and 31st July of the AY in all other cases. However, the due date for filing, in case of an NGO required to furnish transfer pricing report u/s. 92E, shall be 30th November of the AY.

It may also be noted here that where an NGO does not file the return of income as required by section 139(4A) or files the return after due date, it loses its exemption. A trust is also entitled to revise the returns of income tax filed by it, within the time prescribed under section 139(5), if it discovers that there has been an error or mistake in the original return. The revised return can be filed within one year from the end of the relevant assessment year.

2.9 RATE OF TAX

Income derived from property held under an NGO wholly for charitable or religious purpose (including voluntary contributions received from donors), to the extent it is not exempt under Sections 11 and 12, is liable to tax at the normal rates applicable to an individual taxpayer, except for anonymous donations. Where, however, there is any default of the nature specified under Section 13(1)(c) or 13(1)(d), Section 164 lays down that its income would be liable to tax at the maximum marginal rate, i.e., the rate of income-tax (including surcharge) applicable to the highest slab of income for the relevant assessment year i.e. 35.88% for AY 2021-22.

2.10 ANONYMOUS DONATION

Meaning

Anonymous Donation means any voluntary contribution, where a person receiving such contribution does not maintain a record of the identity indicating the name and address of the person making such contribution and such other particulars as may be prescribed.

Special Rate of Tax

Anonymous Donations received in excess of higher of the following:

- 5% of the Total Donations received; or
- ₹ 1 Lakh

shall be taxed at the rate of 30%.

It is pertinent to note that normal rate of tax shall be applicable on the balance amount of income.

2.11 INCOME TAX ASSESSMENT

Income Tax Assessment is the process carried out by the Income Tax department after the filing of income tax return by an assessee. In an income tax assessment, the Income Tax department would verify the return filed for correctness with respect to the amount of taxable income declared and tax paid. There are various types of income tax assessments which are carried out by Income Tax department which have been explained below:

Scrutiny Assessment

Scrutiny assessment under section 143(3) is a detailed examination of an income tax return filed by a taxpayer. In a scrutiny assessment, a tax officer would perform various tests and processes to confirm the correctness and genuineness of various claims, deductions, etc., made by the taxpayer in the income tax return. The objective of a scrutiny assessment is to ensure that the taxpayer has not understated the income or has not computed excessive loss or has not underpaid the tax in any manner.

Income Tax Notice u/s 143(2)

To initiate a scrutiny assessment, the jurisdictional Income Tax officer must first issue an income tax notice u/s 143(2). In the income tax notice u/s 143(2), the tax officer would request the taxpayer to produce information and documents which the tax officer ascertains to be important for determining the taxable income and tax payable.

Income tax notice under section 143(2) should be served within a period of six months from the end of the financial year in which the return is filed. The taxpayer or his/her authorized representative can appear before the Assessing Officer and will place his arguments, supporting evidence, etc., on various matters/issues as required by the Assessing Officer.

Scrutiny Assessment Hearing

While conducting a scrutiny assessment, the concerned tax officer will provide opportunity for the assessment to be heard and to produce documents or evidence to support the information filed in a tax return. In case of failure to produce information or non-cooperation by the taxpayer, the tax officer is empowered to complete the best judgement assessment under section 144.

In case of co-operation of the taxpayer and submission of information, after hearing/verifying such evidence and taking into account all the information produced by the taxpayer, the Assessing Officer would pass an order.

Time Limit for Scrutiny Assessment

As per Section 153, the time limit for making scrutiny assessment under section 143(3) is 12 months from the end of the assessment year in which the income was first assessable.

2.12 TAX DEDUCTED AT SOURCE [TDS]

The concept of TDS was introduced with an aim to collect tax at the very source of income. As per this concept, a person (deductor) who is liable to make payment of specified nature to any other person (deductee) shall deduct tax at source and remit the same into the account of the Central Government. The deductee from whose income, tax has been deducted at source would be entitled to get credit of the amount so deducted on the basis of Form 26AS [Tax Credit Statement] or TDS certificate issued by the deductor.

Taxes shall be deducted at the rates specified in the relevant provisions of the Act or the First Schedule to the Finance Act. However, in case of payment to non-resident persons, the withholding tax rates specified under the Double Taxation Avoidance Agreements shall also be considered.

Payments such as salary, lotteries, interests from banks, payment of commissions, rent payment, payments to freelancers, etc. fall under the ambit of TDS. When making payments under these segments, a percentage of the overall payment is withheld by the source.

TDS on Salary

TDS on payment of salary is deducted by the employer on the basis of estimated income for the year and tax being calculated at the slab rates applicable upon the employee. At the start of the financial year, the employer shall require its employees to file an undertaking specifying the probable amount of exemptions and deductions that they shall avail during the year. Based on such undertaking, the employer is responsible for deducting taxes every month in equal instalments. Needless to state that the employees should be very careful when mentioning their overall income as heavy penalties may be imposed in case of tax avoidance.

The slab rates applicable to individuals for the tax financial year 2020-21 are as follows:

Slab	Net Income Range	Income Tax Rate
I	Up to ₹ 2,50,000	Nil
II	Above 2,50,000 up to 5,00,000	5%
III	Above 5,00,000 up to 10,00,000	20%
IV	Above 10,00,000	30%

The amount of income stated in the first slab in the above table [also known as basic exemption limit as no tax is applicable on income stated in this slab] shall be extended to income up to ₹ 3,00,000/- and ₹ 5,00,000/- in case of Senior Citizens [resident individuals exceeding the age of 60 years] and Super Senior Citizens [resident individuals exceeding the age of 80 years], respectively.

In addition to the slab rates of tax stated in the previous para, a surcharge shall also be charged on the tax payable of certain specified employees earning high income. Rates of surcharge are as follows:

Net Income Range	Rate of Surcharge
Above 50 Lakh & up to 1 crore	10%
Above 1 crore & up to 2 crore	15%
Above 2 crore & up to 5 crore	25%
Above 5 crore	37%

Health and Education Cess shall be charged on the income tax (Tax + Surcharge) of all employees at the rate of 4%.

Note: A resident individual is entitled for rebate under section 87A, if his net taxable income does not exceed ₹ 5,00,000. The amount of rebate shall be 100% of income-tax or ₹ 12,500, whichever is less. Therefore, no tax shall be payable by an employee whose net income does not exceed ₹ 5 Lakh.

New Optional Tax Scheme:

Finance Act 2020 has introduced section 115BAC providing the Individual taxpayers and HUF, an option to pay tax at reduced rates. This new system shall be optional for the taxpayer. The salaried employees have the relaxation to choose any of the options whichever is beneficial for them for each year on or before the date of filing their return of income. It is pertinent to note that the employers must obtain a specific undertaking from their employees regarding the system of taxation they want to be taxed at, at the beginning of the year so that appropriate TDS can be deducted accordingly.

The newly introduced optional tax slabs are as follows:

Net Income Range	Income Tax Rate
0 – 2.5 Lakhs	Nil
Above 2.5 Lakhs – 5 Lakhs	5%

Above 5 Lakhs – 7.5 Lakhs	10%
Above 7.5 Lakhs – 10 Lakhs	15%
Above 10 Lakhs – 12.5 Lakhs	20%
Above 12.5 Lakhs – 15 Lakhs	25%
Above 15 Lakhs	30%

However, in order to exercise this option, the eligible taxpayers are required to forego certain deductions and/or exemptions which are stated as follows:

Section	Short-Title
10(5)	LTC
10(13A)	HRA
10(14)	Other Allowances
10(17)	For MPs & MLAs
10(32)	Clubbed Income
10AA	SEZ
16	Standard Deduction
24(b)	Interest on Self Occupied Property
32(1)(iia)	Additional Depreciation
32AD	Investment in P&M in backward areas
33AB	Tea, Coffee & Rubber Development

Section	Short-Title
35(2AA)(1)(ii) or (iia) or (iii) or 35(2AA)	Expenditure on Scientific Research
33ABA	Site Restoration Fund
35AD	Specified Business important for economy
35CCC	Agricultural Extension Project
57(iia)	Family Pension
Chapter VIA	All deduction except 80CCD(2) and 80JJAA

TDS on payments other than salaries

Section	Nature of Payment	Threshold	TDS Rate (%)	
			Ind/HUF	Others
192A	Premature withdrawal from EPF	50,000	10%	10%
193	Interest on Securities	10,000	10%	10%
194	Dividend	2,500	10%	10%
194A	Interest from Banks, Co-operative societies & Post Offices	40,000 [50,000 for Sr. Citizens]	10%	10%
194A	Interest from others	5,000	10%	10%
194B	Winning from Lotteries	10,000	30%	30%
194BB	Winning from Horse Race	10,000	30%	30%
194C	Payments to Contractors: For Single Transaction For Multiple Txn & Transporter with > 10 carriages	30,000 1,00,000	1% 1%	2% 2%
194D	Insurance Commission	15,000	5%	5%
194DA	Life Insurance Policy	1,00,000	5%	5%
194E	Non-Resident Sportsmen & Sports Association	Nil	20%	20%
194EE	Deposit under NSS	2,500	10%	10%
194F	Repurchase of units by MF or UTI	Nil	20%	20%
194G	Commission on Lottery Tickets	15,000	5%	5%
194H	Commission/ Brokerage	15,000	5%	5%
194I	Rent: Plant & Machinery Land or Building	2,40,000 2,40,000	2% 10%	2% 10%
194IA	Transfer of Immovable Property	50,00,000	1%	1%
194IB	Rent by Individual/HUF	50,000 p.m.	5%	5%
194IC	Monetary Consideration under Jt. Dvpt. Agreement	Nil	10%	10%
194J	Fees for Technical Services Professional Fees & others Payments to Call Centre Operators	30,000 30,000 30,000	2% 10% 2%	2% 10% 2%
194K	Payments i.r.o. Units of MF, administrator etc.	5,000	10%	10%
194LA	Compensation on Transfer of immovable property <i>Note: W.E.F. 01-04-2017, no deduction of tax shall be made on any payment which is exempt from levy of income-tax under Right to Fair Compensation Act, 2013.</i>	2,50,000	10%	10%
194M	Commission/Brokerage/Contractual Fees by Individual/HUF not liable to tax audit	50,00,000	5%	5%
194N	Cash withdrawals from account with Bank, PO etc.	1,00,00,000	2%	2%
194O	E-Commerce operator payment to e-commerce participant w.e.f. 01-10-2020	5,00,000 [Ind/HUF]	1%	1%

Deposit of TDS

Section 192 to 195 gives various items of payments on which tax is to be deducted by the payer. The tax deducted by the payer is to be paid to the credit of the Government as follows:

- i) Tax deducted during the month of April to February should be paid to the credit of the Government on or before 7 days from the end of the month in which the deduction is made.
- ii) Tax deducted during the month of March should be paid to the credit of the Government on or before 30th day of April.

As per section 201, if any person who is liable to deduct tax at source does not deduct it or after so deducting fails to pay, the whole or any part of the tax to the credit of the Government, then, such person, shall be liable to pay simple interest as given below:

- i) Interest shall be levied at 1% for every month or part of a month on the amount of such tax from the date on which such tax was deductible to the date on which such tax was deducted. [1% p.m. for delay in Deduction]
- ii) Interest shall be levied at 1.5% for every month or part of a month on the amount of such tax from the date on which such tax was deducted to the date on which such tax was actually remitted to the credit of the Government. [1.50% p.m. for delay in Deposit]

Filing of TDS Return

The due date for filing of TDS Return for different quarters of Financial Year are as follows:

Quarter ending on	Due Date for Filing TDS Returns
30th June	31 st July of the financial year
30th September	31 st October of the financial year
31st December	31 st January of the financial year
31st March	31 st May of the financial year immediately following the financial year in which deduction is made.

Note: As per section 201(1A), interest for delay in deduction or payment of TDS should be paid before filing the TDS return.

Consequences for Non-Filing of TDS Return

A person who fails to file the TDS return or does not file the TDS return by the due dates prescribed in this regard has to pay late filing fees as provided under section 234E of ₹ 200 for every day during which the failure continues. The amount of late fees shall not exceed the amount of TDS. The late filing fees shall be deposited before filing the TDS return. Apart from late filing fees, the deductor shall also be liable to pay penalty under section 271H. Such penalty shall be charged by the Assessing Officer amount of which may vary from ₹ 10,000/- [Minimum] to ₹ 1,00,000/- [Maximum].

Note: Penalty under section 271H may also be levied if the deductor/collector files an incorrect TDS/TCS return.

Issuance of TDS Certificates

As per Section 203 of the Income Tax Act, the deductor has to furnish a certificate of TDS deducted from their income to the deductees/ payees. This certificate has to be downloaded from Income Tax/ TRACES portal by following certain simple steps. Time limit for issuance of TDS Certificates are as follows:

- i) **For Form 16A (Non-Salary):** A quarterly TDS Certificates should be issued within 15 days from the due date of filing of TDS Return.
- ii) **For Form 16 (Salary):** An Annual TDS Certificates should be issued by 15th Day of June of the financial year immediately following the financial year in which the income was paid and tax deducted.

As per section 272A, in case of non-issuance of TDS certificates, employer shall be liable for a penalty at the rate of ₹ 100 per certificate for every day during which failure continues, if delay is without reasonable cause. Total penalty under section 272A, 200(3), 203 and 206 shall not exceed the amount of tax deductible at source.

3. FOREIGN CONTRIBUTIONS (REGULATION) ACT, 2010

3.1 INTRODUCTION

The Foreign Contribution (Regulation) Act, 2010 (42 of 2010) dated 26th September, 2010 was notified in the Gazette of India – Extraordinary – Part II – Section I dated the 27th September, 2010. However, the Act has come into force with effect from the 1st May, 2011 vide Gazette Notification vide G.S.R. 349 (E) dated the 29th April, 2011. The prime objective of the Act is to regulate the acceptance and utilization of Foreign Contribution [FC] and foreign hospitality by persons and associations working in the important areas of national life. The focus of the Act is to ensure that the foreign contribution and foreign hospitality is not utilized to affect or influence electoral politics, public servants, judges and other people working in the important areas of national life like journalists, printers and publishers of newspapers, etc. The Act also seeks to regulate flow of foreign funds to voluntary organizations with the objective of preventing any possible diversion of such funds towards activities detrimental to the national interest and to ensure that individuals and organizations may function in a manner consistent with the values of the sovereign democratic republic.

Organizations seeking foreign contributions for definite cultural, social, economic, educational or religious programs may either obtain registration or seek prior permission to receive foreign contribution from Ministry of Home Affairs by making application in the prescribed format and furnishing details of the activities and audited accounts. The registration is granted only to such association which has proven track record of functioning in the chosen field of work during last three years and after registration, such organization is free to receive foreign contribution from any foreign source for its stated objectives.

Registration is granted only after thorough scrutiny and vetting of the activities and antecedents of the organization and office bearers thereof. However, such organizations which are newly established and do not have proven track record of functioning may also receive foreign contribution for specific activities, for a specific purpose and from a specific source after seeking project based Prior Permission [PP] from the Ministry of Home Affairs.

In order to bring in transparency in the administration of the Foreign Contribution (Regulation) Act, 2010 and the Rules framed there under, improve the functioning, disseminate the information and enhance user friendliness of the various procedures, the Ministry of Home Affairs' web-site on FCRA (<http://mha.nic.in/fcra.htm>) is uploaded with all the related information for guidance of all concerned.

3.2 MEANING OF FOREIGN CONTRIBUTIONS

Section 2(1)(h) defines Foreign Contribution as donation, delivery or transfer made by any foreign source –

- a) of any article
- b) of any currency, whether Indian or foreign.
- c) of any security as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and includes any foreign security as defined in clause (o) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999).

Deemed Receipt

A donation, delivery or transfer or any article, currency or foreign security by any person who has received it from any foreign source, either directly or through one or more persons.

Exceptions

Following shall not be regarded as Foreign Contribution even though the same is received from a foreign source:

- i) An article given to a person as a gift for his personal use and the market value of such article in India, on the date of such gift is not exceeding ₹ 1,00,000/-
- ii) Any amount received from any foreign source in India, by way of
 - Fee (including fees charged by an educational institution in India from foreign student);
 - towards cost in lieu of goods or services rendered by such person in the ordinary course of his business, trade or commerce whether within India or outside India;
 - any contribution received from an agent or a foreign source towards such fee or cost.

3.3 REGISTRATION

Eligibility Criteria

- i) An organization should be registered either under the Societies Registration Act, 1860 or the Indian Trusts Act, 1882 or under Section 8 of the Companies Act 2013;
- ii) An organization should normally be in existence for at least **3 years** and has undertaken reasonable activity in its chosen field for the benefit of the society for which the foreign contribution is proposed to be utilized.
- iii) An organization should have spent at least ₹ 10,00,000/- over the last 3 years on its aims and objects, excluding administrative expenditure.
- iv) Statements of Income & Expenditure, duly audited by CA, for last 3 years are to be submitted to substantiate that it meets the financial parameter.

Prior Permission

As has already been stated, organizations that are newly established and do not have proven track record of functioning may also receive foreign contribution for specific activities, for a specific purpose and from a specific source after seeking project based Prior Permission [PP] from the Ministry of Home Affairs. For this purpose, the organization should meet the following criteria:

- i) Should be registered either under the Societies Registration Act, 1860 or the Indian Trusts Act, 1882 or under Section 8 (erstwhile Section 25) of the Companies Act, 2013;
- ii) Submit a specific commitment letter from the donor indicating the amount of foreign contribution and the purpose for which it is proposed to be given.

For Indian recipient organizations and foreign donor organizations having common members, FCRA Prior Permission shall be granted to the Indian recipient organizations subject to it satisfying the following conditions:

- i) The Chief Functionary of the recipient Indian organization should not be a part of the donor organization.
- ii) At least 51% of the office-bearers/ members of the Governing body of the Indian recipient organization should not be members/employees of the foreign donor organization.

- iii) In case of foreign donor organization being a single person/individual that person should not be the Chief Functionary of the recipient Indian organization.
- iv) In case of a single foreign donor, at least 51% office bearers/members of the governing body of the recipient organization should not be the family members and close relatives of the donor.

General Conditions for grant of Registration and Prior Permission [PP]

The person making an application for registration or grant of prior permission

- i) is not fictitious or benami;
- ii) has not been prosecuted or convicted for indulging in activities aimed at conversion through inducement or force, either directly or indirectly, from one religious faith to another;
- iii) has not been prosecuted or convicted for creating communal tension or disharmony in any specified district or any other part of the country;
- iv) has not been found guilty of diversion or mis-utilisation of its funds;
- v) is not engaged or likely to engage in propagation of sedition or advocate violent methods to achieve its ends;
- vi) is not likely to use the foreign contribution for personal gains or divert it for undesirable purposes;
- vii) has not contravened any of the provisions of this Act;
- viii) has not been prohibited from accepting foreign contribution;
- ix) the person being an individual, such individual has neither been convicted under any law for the time being in force nor any prosecution for any offence is pending against him.
- x) the person being other than an individual, any of its directors or office bearers has neither been convicted under any law for the time being in force nor any prosecution for any offence is pending against him.

Further, the acceptance of foreign contribution by the association/ person is not likely to affect prejudicially –

- i) the sovereignty and integrity of India;
- ii) the security, strategic, scientific or economic interest of the State;
- iii) the public interest;
- iv) freedom or fairness of election to any Legislature;
- v) friendly relation with any foreign State;
- vi) harmony between religious, racial, social, linguistic, regional groups, castes or communities.

The acceptance of foreign contribution shall not lead to incitement of an offence and shall not endanger the life or physical safety of any person.

Procedure for Registration

Application for grant of registration / prior permission is to be submitted online in form FC-3 at the website frcanline.nic.in. A fee of ₹ 2,000/- shall be paid for filing the application for registration. Documents required for [registration](#) are as follows:

- i) Self-certified copy of registration certificate/Trust deed etc. of the organization
- ii) Self-certified copy of relevant pages of Memorandum of Association/ Article of Association showing aims and objects of the organization.
- iii) Activity Report indicating details of activities during the last three years;
- iv) Copies of relevant audited statement of accounts for the past three years (Assets and Liabilities, Receipt and Payment, Income and Expenditure) clearly reflecting expenditure incurred on aims and objects of the association and on administrative expenditure;

For obtaining [prior permission](#), along with the following list of documents, a fee of ₹ 1,000/- shall also be paid:

- i) Self-certified copy of registration certificate/Trust deed etc., of the association
- ii) Duly signed Commitment Letter from Donor.

- iii) If functioning as editor, owner, printer or publisher of a publication registered under the Press and Registration of Books Act, 1867, a certificate from the Registrar of Newspapers for India that the publication is not a newspaper in terms of section 1(1) of the said Act.

Validity and Renewal

Registration shall be valid for a period of 5 years and thereafter application for renewal of registration may be made before 6 months from the expiry of their existing registration.

Exemption from Registration or Prior Permission

i) Donation by NRI:

Contributions made by a citizen of India living in another country (Non-Resident Indian), from his personal savings, through the normal banking channels are not treated as foreign contribution.

ii) Foreign Remittances from Relative

Foreign remittances from relatives are not treated as foreign contribution. However, any person receiving foreign contribution in excess of Rs. 1 lakh or equivalent thereto in a financial year from any of his relatives shall inform the Central Government in Form FC-1 within 30 days from the date of receipt of such contribution.

iii) Government Department

All bodies constituted or established by or under a Central Act or a State act requiring to have their accounts compulsorily audited by Comptroller & Auditor General of India are exempted from the operations of all the provisions of FCRA, 2010.

3.4 ANNUAL FILING

An organization permitted to accept foreign contribution is required to maintain separate set of accounts and records exclusively for the foreign contribution received and submit an annual return, duly certified by a CA, giving details of the receipt and purpose-wise utilization of the foreign contribution. Annual returns of association are required to be filed in form FC-4

accompanied with scanned copies of income and expenditure statement, balance sheet and statement of receipt and payment, online at fraonlineservice.nic.in within a period of 9 months from the closure of the year i.e. by 31st December each year.

Submission of a 'NIL' return, even if there is no receipt/utilization of foreign contribution during the year, is mandatory. However, in such case, certificate from Chartered Accountant, audited statement of accounts is not required to be uploaded.

An association not filing annual return on time may face penalty for of late submission of return and even cancellation of registration.

3.5 BANK ACCOUNT

The foreign contribution should be received only in the exclusive single FC account of a Bank (also called designated FC account), as mentioned in the order for registration or prior permission granted and should be separately maintained by the association. However, one or more accounts (called Utilization Account) in one or more banks may be opened by the association for utilizing the foreign contribution after it has been received in the designated FCRA bank account, provided that no funds other than that foreign contribution shall be received or deposited in such account or accounts and in all such cases, intimation in FC-6D is to be given online within 15 days of opening of such account.

3.6 OTHER PROVISIONS

- i) An organization granted prior permission or registration under the repealed Foreign Contribution (Regulation) Act, 1976 shall be deemed to have been registered or granted prior permission, as the case may be, under the Foreign Contribution (Regulation) Act, 2010 (FCRA, 2010) and such registration shall be valid for a period of 5 years from the 1st May, 2011, i.e., up to the 30th April, 2016.
- ii) Every certificate of registration shall have to be renewed. The application for renewal is to be made in Form FC-3C along with the prescribed fee, six months before the date of expiry of registration. An association implementing an ongoing multi-year project shall apply for renewal twelve months before the date of expiry of the certificate of registration. In case no application for renewal of registration is received or such application is not accompanied by the requisite fee, the validity of the certificate of registration shall be

deemed to have ceased from the date of completion of the period of five years from the date of the grant of registration.

- iii) Foreign contribution cannot be mixed with local funds being handled by the organization.
- iv) An association who has been granted prior permission or registration is required to carry out the activities, for which foreign contribution is received, in India only and the amount should not be utilized for purposes other than for which it is received.
- v) Any fixed asset acquired out of the foreign contribution and any article received in kind from the foreign source should be in the name of the association and not in the name of any individual in the association.
- vi) Not more than 50% of the foreign contribution shall be defrayed to meet administrative expenses of the association. What constitutes 'administrative expenses' has been defined in Rule 5 of the Foreign Contribution (Regulation) Rules, 2011 (FCRR, 2011).
- vii) FCRA Registered organizations are not allowed to do the expenditure of more than ₹ 10,000/- other than by account payee cheque/draft. Cash expenditure exceeding ₹ 10,000 shall not be allowed as a deduction under Income Tax Act.
- viii) Any foreign contribution or any income arising out of it shall not be used for speculative business. What constitutes 'Speculative Business' has been defined in Rule 4 of FCRR, 2011.
- ix) An association granted prior permission or registration should maintain a separate set of accounts and records, exclusively for foreign contribution received and utilized. If the foreign contribution relates only to articles, the intimation shall be submitted in Form FC-1. If the foreign contribution relates to foreign securities, the intimation shall be submitted in Form FC-1. Every report submitted shall be duly certified by a chartered accountant.
- x) Every account giving details of the receipt and purpose-wise utilization of the FC, including the interest earned on the FC amount, should be maintained on an yearly basis, commencing on the 1st day of April each year, and every such yearly account is to be submitted, in prescribed Form FC – 4 along with the income and expenditure statement, balance sheet and statement of receipt and payment, duly certified by a chartered accountant in duplicate, within nine months of the closure of the year, i.e., before 31st December. Every such return in Form FC-4 shall also be accompanied by a copy of a statement of account from the bank where the exclusive foreign contribution account is maintained by the person, duly certified by an officer of such bank.

- x) **Quarterly Return:** Every FCRA Registered association shall file quarterly intimation for the grants received from foreign sources to FCRA Department. The Intimation shall be file latest by 15th day of Next Quarter.
- xii) The accounting statements shall have to be preserved by the NGO/association for a period of six years.
- xiii) Even if no FC is received during a year, a 'Nil' return is required to be filed with the Ministry of Home Affairs within the prescribed time limit.
- xiv) Associations/NGOs granted registration or prior permission, which have received foreign contribution in excess of one crore rupees, or equivalent thereto, in a financial year, shall place the summary data on receipts and utilization of the foreign contribution pertaining to the year of receipt as well as for one year thereafter in the public domain.
- xv) No FC should be transferred to an association which has not obtained either prior permission or registration under FCRA or to any person or association, prohibited under FCRA from receiving any FC.
- xvi) Change of name, address, registration, nature of activities or aims and objectives of an association should be intimated to the Ministry of Home Affairs within 30 days of effecting the change, along with the documentary evidence effecting the change.
- xvii) Prior permission of Ministry of Home Affairs should be obtained for replacing 50% or more of the office bearers.
- xviii) Prior permission of Ministry of Home Affairs should be obtained for changing bank account for valid and convincing reasons.

4. PAYMENT OF GRATUITY ACT, 1972

The Payment of Gratuity Act, 1972 is a social security enactment. It is derived from the word 'gratuitous', which means 'gift' or 'present'. However, having been enacted as a social security form, it ceases to retain the concept of a gift, rather it has to be seen as a social obligation by an employer towards his employee.

4.1 APPLICABILITY

Payment of Gratuity Act applies to

- a) Employees engaged in factories, mines, oilfields, plantations, ports, railway companies,
- b) Every shop or establishment within meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months;
- c) Such other establishments or class of establishments, in which ten or more employees are employed, or were employed, on any day of the preceding twelve months, as the Central Government may, by notification, specify in this behalf. Government has notified Motor transport undertakings, Clubs, chambers of commerce and industry.

NGOs are covered by this Act, provided that they are shops or establishments within the meaning of the Shops and Establishment Act applicable to their area of operation and that 10 or persons have been employed by them on any day in the preceding 12 months.

Note: It is applicable even after the number of persons employed has fallen below ten at a later stage.

4.2 AMOUNT OF GRATUITY

Payment of Gratuity

Gratuity shall be paid to an employee on the termination of his employment after he/she has rendered continuous service of not less than 5 years i.e. on superannuation, retirement, resignation, death or disablement due to accident or disease [Sec 4]. The period of 5 years is not necessary if the termination of the employee is because of death or disablement. In the case of death of an employee, the amount of gratuity shall be paid to the legal heirs.

“Continuous Service” means uninterrupted service which may be interrupted on account of sickness, accident, leave, absence from duty without (not being treated as break in service), lay-off, strike, lock-out or cessation of work not due to the fault of the employee. [Sec 2A].

Calculation of Gratuity

Gratuity is calculated at 15 days wages last drawn by the employee for each completed year of service. The monthly wage is divided by 26 and multiplied by 15. In computing a completed year of service, the period in excess of six months shall be taken as a full year.

Gratuity = (Monthly salary x 15 days x No. of years of service)/26

Note: The maximum amount of gratuity payable is ₹ 20 Lakh

4.3 FORFEITURE OF GRATUITY

Gratuity can be forfeited [Sec 4(6)] where an employee has been terminated:

- i) For any act, wilful omission or negligence causing any damage or loss to or destruction of any property belonging to the employer, to the extent of such loss or damage.
- ii) For riotous or disorderly conduct or any act of violence on his part.
- iii) For any act which constitutes an offence involving moral turpitude, provided the offence has been committed by him in the course of his employment.

5. EMPLOYEES' PROVIDENT FUND & MISCELLANEOUS PROVISIONS ACT, 1952

The preamble to the Act states that this is an Act to provide for the institution of:

1. Provident Fund
2. Pension Fund and
3. Deposit Linked Insurance Fund

For employees in factories and other establishments, it is with this background that one must interpret the various provisions of the Act and the Scheme related to it.

5.1 DEFINITIONS

Employee

Sec. 2(f), defines an employee as a person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment, and who gets wages directly or indirectly from the employer and includes any person:

- i) Employed by or through a contractor in or in connection with the work of an establishment
- ii) Engaged as an apprentice, not being an apprentice engaged under the Apprentices Act 1961, or under the standing orders of the establishment.

Apprentice

An apprentice means a person who according to the certified standing orders applicable to a factory or establishment is an apprentice or who is declared to be an apprentice by the authority specified by the appropriate government.

Excluded Employee

Section 2(f) defines an Excluded Employee as an employee:

- i) Who has been a member of the fund, withdrew the full amount of his accumulations on retirement or emigration or

- ii) Whose Basic pay at the time, he is otherwise entitled to become a member of the fund, exceeds ₹15,000 p.m.

Trainee

It has been held by various courts from time to time that the trainees are not employees and therefore, are not covered by the EPF Act. The courts have held that stipend paid is not wages. It must be noted that trainees were recruited under a particular Training Scheme and there was no guarantee of employment after completion of the training period and that they were not entitled to other benefits, which were available to other permanent employees. These aspects have been decided in Sri Rama Vilas Service Ltd. V RPFC 2000 –I-LLJ-709(Mad) and Gandhi Vinita Ashram v PFC 1996 (1) CLR 1140 (P&H).

5.2 CONTRIBUTIONS

The contribution envisaged under Sec 6 read with notification dated 9th April 1997 and Para 29 of the EPF Scheme, specifies that the rate of contribution under the E.P.F. Act as 12%. The employer has to deposit 12% of the basic wages, dearness allowance and retaining allowance (if any), on his part and an equivalent amount on behalf of the employee, which is to be recovered from the employee' salary (Para 32 of EPF Scheme). Also, employer is required to deposit Admin charges to the government.

5.3 DUE DATE FOR DEPOSIT

Para 38 of the EPF Scheme specifies that the contributions and administrative charges have to be deposited within 15 days of the close of the month through filing of Electronic Challan cum return (ECR).

5.4 CONSEQUENCE FOR NON-DEPOSIT OF EPF

Interest u/s 7Q

The employer shall be liable to pay simple interest at the rate of 12% per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment.

Penalty u/s 14B

Where an employer makes default in the payment of any contribution to the Fund the Pension Fund or the Insurance Fund or in the transfer of accumulations required to be transferred by him under sub-section 2 of section 15 or sub-section 5 of section 17 or in the payment of any charges payable under any other provision of this Act or of any Scheme or Insurance Scheme or under any of the conditions specified under section 17, the Central Provident Fund Commissioner or such other officer as may be authorized by the Central Government, by notification in the Official Gazette, in this behalf may recover from the employer by way of penalty such damages, not exceeding the amount of arrears, as may be specified in the Scheme.

6. DISCLAIMER

We have covered major laws that may be applicable upon an NGO. However, we do not endorse that this handbook contains exhaustive regulatory requirements that needs to be complied by an organization registered as an NGO. We have tried to illustrate intricacies of major statutes that shall be applicable upon an organization registered as an NGO. Having said this, there may be various other statutes that may be applicable upon an NGO such as:

- **Professional Tax:** It is a tax levied by the state on the income earned by way of profession or employment. Professional Tax is levied and collected by State Governments.
- **Maternity Benefits Act:** This Act protects the employment of women during the time of her maternity and entitles her of a 'maternity benefit' – i.e. full paid absence from work – to take care for her child. The act is applicable to all establishments employing 10 or more employees.
- **Employees' State Insurance Act:** The ESI Scheme is a comprehensive Social Security Scheme designed to accomplish the task of socially protecting the 'employees' in the organized sector against the events of sickness, maternity, disablement and death due to employment injury and to provide medical care to the insured employees and their families.
- **Indian Contract Act:** This Act prescribes the law relating to contracts in India and is the key act regulating Indian contract law. It determines the circumstances in which promises made by the parties to a contract shall be legally binding.
- **Shops & Establishment Act:** This Act is applicable on all the commercial establishments, such as the hotels, and eateries, amusement parks, theatres, and other entertainment houses, as well as any other such public amusement places, come under the purview of the Act.
- **Goods & Services Tax:** If the NGO is providing services like research activity or consultancy work etc. and if the gross revenue from such work crosses the basic exemption limit of GST, then GST shall be applicable on the NGO.

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