NONPROFIT LAW IN INDIA

Current as of November 2019

This section describes the legal framework governing nonprofit organizations (also known as non-governmental organizations or NGOs) in India, and includes translations of legislative provisions relevant for a foundation or advisor undertaking an equivalency determination of a foreign grantee under IRS Revenue Procedure 2017-53.

These reports have been prepared by the International Center for Not-for-Profit Law (ICNL). Please direct corrections and comments to Lily Liu.

We include hyperlinks to the following information, to the extent available:

- Longer country reports analyzing various aspects of local legislation; and
- Texts of local laws that affect the decision whether or not to qualify a grantee (generally in translation, although ICNL and the Council cannot warrant the accuracy of any translation; in addition, legislative excerpts were selected by in-country contacts, and ICNL and the Council cannot warrant that all relevant provisions have been translated).

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I. SUMMARY

A. TYPES OF ORGANIZATIONS

Not-for-profit organizations (NPOs) in India generally take three legal forms: trusts, societies, and limited (Section 8) not-for-profit companies.

1. TRUSTS

Public charitable trusts may be established for a number of purposes, including poverty relief, education, medical relief, the provision of facilities for recreation, and any other objective of general public utility. Indian public trusts are generally irrevocable. No national law governs public charitable trusts in India, although many states (particularly Maharashtra, Gujarat, Rajasthan, and Madhya Pradesh) have Public Trusts Acts. [1]

2. SOCIETIES

Societies are membership organizations that may be registered for charitable purposes. They are usually managed by a governing council or a managing committee and are regulated by the Societies Registration Act which has been modified and adopted by various states. Unlike trusts, societies may be dissolved.

3. SECTION 8 COMPANIES [2]

Under Section 8 of the Indian Companies Act, the Central Government may issue a license to a limited or private limited company which:

- Has as its purpose the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment, or any such other object;
- Intends to apply its profits, if any, or other income towards promoting its purposes; and
- Intends to prohibit the payment of any dividend to its members.

B. TAX LAWS

India's tax laws affecting not-for-profit organizations (NPOs) are similar to the tax laws of other Commonwealth nations.

The income of certain NPOs carrying out specific types of activities is exempt from corporate income tax, with the caveat that unrelated business income is subject to tax under certain circumstances.

India also subjects sales of certain goods and services to Goods & Services Tax (GST). Education and healthcare services are exempt under GST. The rates range from 5 percent to 28 percent, with most goods and services taxed at 18 percent. The GST Act (2017) came into force on July 1, 2017.

The income tax law and the corporate tax law provide tax benefits for donors. Taxable services rendered by NPOs (except those excluded per the "Negative list" [3]) were formerly subjected to service tax with a threshold exemption limit of INR 1 million. Under the GST, the threshold exemption limit is INR 4 million for the intra-state supply of goods and INR 2 million for the intra-state supply of services.

Finally, NPOs involved in relief work and in the distribution of relief supplies to the needy are 100 percent exempt from Indian customs duty on the import of items such as food, medicine, clothing and blankets. Other exemptions may also be available.

II. APPLICABLE LAWS

- Constitution of India
- Income Tax Act (1961)
- Public Trusts Acts of various states
- Societies Registration Act (1860)
- Indian Companies Act (2013) Section 8
- Foreign Contribution Regulation Act (2010)
- Maharashtra Value Added Tax Act (2002), as amended by Act No. IX of 2005

III. RELEVANT LEGAL FORMS

A. GENERAL LEGAL FORMS

The right of all citizens to form associations or unions is guaranteed by Article 19(1)(c) of the Constitution of India.

There are three pertinent legal forms of not-for-profit organizations (NPOs) under Indian law: trusts, societies, and Section 8 companies. Cooperatives and trade unions are mutual benefit organizations, and as such, are not discussed in this Note. Many state and central government agencies have regulatory authority over these not-for-profit entities. For example, all NPOs are required to file annual tax returns and audited account statements with agencies at both the state and national levels. At the state level, these agencies include the Charity Commissioner (for trusts), the Registrar of Societies (referred to in some states by different titles, including the Registrar of Joint Stock Companies), and the Registrar of Companies (for Section 8 companies). At the national or federal level, the regulatory bodies include the Income Tax Department and Ministry of Home Affairs (only for NPOs receiving foreign contributions). [4]

1. TRUSTS

Public charitable trusts, as distinguished from private trusts, are designed to benefit members of an uncertain and fluctuating class—meaning that any member of the general public or a class or section of the public could be a potential beneficiary. In determining whether a trust is public or private, the key question is whether the class to be benefited constitutes a substantial segment of the public. There is no central law governing public charitable trusts, although most states have a "Public Trusts Act." Typically, a public charitable trust must register with the office of the Charity Commissioner having jurisdiction over the trust (generally the Charity Commissioner of the state in which the trustees register the trust) in order to be eligible to apply for tax-exemption.

Trusts may be established for the following purposes:

- Relief of poverty or distress;
- Education;
- Medical relief;
- Provision of facilities for recreation or other leisure-time occupations (including assistance for such provision), if the facilities are provided in the interest of social welfare and public benefit; and
- The advancement of any other object of general public utility, excluding purposes which relate exclusively to religious teaching or worship.

While some states permit a trust to have a single or sole trustee, certain states require at least three trustees to register a public charitable trust. In general, Indian citizens serve as trustees, although there is no specific prohibition against non-natural legal persons or foreigners serving in this capacity.

Legal title of the property of a public charitable trust vests in the trustees. Trustees of a public charitable trust may not, however, in any way use trust property or their position for their own interest or private advantage. Trustees are bound to protect the interests of the trust's beneficiaries, and may not enter into agreements in which they may have a personal interest that conflicts or that may conflict with the interests of the beneficiaries of the trust. Trustees may not delegate any of their duties, functions, or powers to a co-trustee or any other person, though they may delegate ministerial acts. In essence, trustees may not delegate authority with respect to duties requiring the exercise of discretion.

Trustees of religious or charitable trusts are charged with discharging their duties with the degree of care that an ordinarily prudent person would exercise with respect to his personal property. Public charitable trusts are highly regulated in some states, however. For instance, in Maharashtra and Gujarat, purchases or sales of immovable property by a trust or taking a loan must be approved in advance by the Charity Commissioner.

Indian public charitable trusts are generally irrevocable. If a trust becomes inactive due to the negligence of its trustees, the Charity Commissioner may take steps to revive the trust. Furthermore, if it becomes too difficult to carry out the objects of a trust, the doctrine of *cy pres*, meaning "as near as possible," may be applied to change the purposes of the trust.

2. SOCIETIES

Societies are governed by the Societies Registration Act (1860), which is a national-level Act. Many states have variants of the Act.

Societies are similar in character to trusts, although there are a few essential differences, including that a minimum of seven members are required to form a society. The members must register the society with the relevant state Registrar of Societies to be eligible for tax-exempt status. A registration application includes the society's memorandum of association and rules and regulations. In general, Indian citizens serve as members of the managing committee or governing council of societies, although there is no prohibition in the Societies Registration Act against non-natural (legal) persons or foreigners serving in this capacity.

According to Section 20 of the Societies Registration Act, the types of societies that may be registered under the Act include, but are not limited to, the following:

- Charitable societies;
- Societies established for the promotion of science, literature, education, or the fine arts; and
- Public art museums and galleries, and certain other types of museums.

The governance of societies also differs from that of trusts: Societies are usually managed by a governing council or managing committee which is periodically elected by a general body of members, whereas trusts are governed by their trustees.

Both individuals and institutions may be members of a society. The managing committee, which is usually elected by the membership, governs the day-to-day affairs of the society. Members of the general body of the society have voting rights and can demand the submission of accounts and the annual report of the society for inspection. Members of the managing committee may hold office for such period of time as may be specified in the bylaws of the society.

Societies, unlike trusts, must annually file a list of the names, addresses and occupations of their managing committee members with the state Registrar of Societies. Furthermore, in a society all property is held in the name of the society, whereas all of the property of a trust legally vests in the trustees.

Unlike trusts, societies may be dissolved. Dissolution must be approved by at least three-fifths of the society's members. Upon dissolution, and after settlement of all debts and liabilities, the funds and property of the society may not be distributed among the members of the society. Rather, the remaining funds and property must be given or transferred to some other society, preferably one with similar objects as the dissolved entity.

3. SECTION 8 COMPANIES

The Indian Companies Act (2013), which principally governs for-profit entities, permits certain companies to obtain not-for-profit status as "Section 8 companies." [5] A Section 8 company may be formed for the purpose of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of the environment, or any such other purpose. [6] A Section 8 company must apply its profits, if any, or other income to the promotion of its objects, and should not pay any dividend to its members. The company may be incorporated with or without share capital.

At least two members are required to incorporate a private company and then seek license as a non-profit company under Section 8 of the Indian Companies Act 2013. The founders or promoters of a Section 8 company must submit application materials to the Registrar of Companies. The application must include copies of the memorandum and articles of association of the proposed company, as well as a number of other documents, including a statement of assets and a brief description of the work proposed to be done upon registration.

Like a society (but unlike a trust), a Section 8 company may be dissolved. Upon dissolution and after settlement of all debts and liabilities, the funds and property of the company may not be distributed among the members of the company. [7] Rather, the remaining funds and property must be given or transferred to some other Section 8 company, preferably one having similar objects as the dissolved entity.

B. PUBLIC BENEFIT STATUS

To be eligible for tax exemption under the Income Tax Act (1961), a not-for-profit entity must be organized for religious or charitable purposes. Charitable purposes include relief of the poor, education, yoga, medical relief, the advancement of any other object of general public utility, preservation of environment (including watersheds, forests and wildlife), and preservation of monuments or places or objects of artistic or historic interest.

Public charitable trusts, by definition, must be created for the benefit of the public. Societies may be registered for charitable purposes, among other purposes. Section 8 companies are formed for the limited purposes of promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of the environment, or any such other object.

IV. SPECIFIC QUESTIONS REGARDING LOCAL LAW

A. INUREMENT

Trustees of public charitable trusts may not engage in self-dealing.

The Societies Registration Act does not prohibit the inurement of any earnings of the society to any private shareholder or individual. However, such a society may not enjoy tax exemption.

The Indian Companies Act (2013) provides in Article 8 that a limited, not-for-profit company ("Section 8 company") must direct any profits towards the realization of the company's objectives and prohibits the payment of any dividend to its members.

In all cases, the Income Tax Act specifically provides that a not-for-profit entity will lose its tax exempt status if the author, founder, or any trustee or his/her relative derives any personal benefit. The Income Tax Act further provides that any remuneration paid to a Board Member "must not be in excess of what may be reasonably paid for such services" (Income Tax Act Sections 13(2)(c) and 13(3)(cc)).

B. PROPRIETARY INTEREST

For a public charitable trust, the trustees hold trust assets on the trust's behalf. Thus, although trustees have legal title to the trust's assets, they hold these assets for the beneficiaries of the trust, and do not have a proprietary interest in the assets. Members of the managing committee or governing council of a society or Section 8 company also hold the assets of a society or Section 8 company (Societies Registration Act Section 5), but do not have a proprietary interest in the assets either.

C. DISSOLUTION

Indian public charitable trusts are generally irrevocable. If a trust becomes inactive due to the negligence of its trustees, the Charity Commissioner may take steps to revive the trust. Furthermore, if it becomes too difficult to carry out the trust's objectives, the doctrine of *cy pres*, meaning "as near as possible," may be applied to change the objectives of the trust. Under certain circumstances a trust can also be officially de-registered or declared as inoperative, defunct or moribund.

Societies and Section 8 companies may be dissolved. Upon dissolution and after settlement of all debts and liabilities, the funds and property of the society or company may not be distributed among the members (Societies Registration Act Section 14). [8] Instead, the remaining funds and property must be given or transferred to some other society or Section 8 company, preferably one with similar objectives (Societies Registration Act Section 14).

D. ACTIVITIES

1. ECONOMIC ACTIVITIES

There are no restrictions on an Indian NPO's incidental business, commercial, or economic activities, provided that the NPO is established for and primarily runs programs for the relief of poverty or distress, education, or medical relief. However, profits must be applied fully towards charitable objects. If this is not done, the NPO will lose its income tax exemption and its income will be liable to taxation at the maximum marginal rate (30 percent). Further, the NPO must maintain separate books of account for the business, commercial, or economic activities (Income Tax Act Section 10(23C)(7), Section 11(4)-(4A)).

An NPO may receive income as a result of trade, commerce, or other business activity, provided that the income is derived from an activity that aims to advance an object of "general public utility," and the income does not exceed twenty percent of the total income of the NPO (Finance Act (2015)).

2. INVESTMENT ACTIVITIES

State and national laws limit the types of investments Indian NPOs may make. For example, Indian NPOs may not invest in shares of public or private limited companies. Furthermore, NPOs registered in India may not invest abroad. The Finance Act (2007) amended provisions of Section 13(1)(d)(iii) with retroactive effect to April 1, 1999, allowing NPOs to invest in shares of public sector companies as well as to acquire equity shares of a "depository." Investing in mutual funds is allowed, although the Foreign Contributions Regulation Act (FCRA) of 2010 bars doing so with funds from foreign sources.

E. POLITICAL ACTIVITIES

NPOs in India may not engage in political campaign activities or legislative activities. Indian not-for-profit entities may "lobby" for non-political causes, however, provided that such activity promotes the "general public utility" and is incidental to the attainment of the charity's objects. Societies may have as their primary objective the diffusion of political education (Societies Registration Act Section 20). [9] In addition, under FCRA, not-for-profit organizations involved in political activities may not receive foreign contributions.

F. DISCRIMINATION

Articles 15(1) and (5) of the Constitution prohibit discrimination against citizens on the grounds of religion, race, caste, sex, place of birth. The constitutional prohibition on discrimination does not, however, prevent the State from making special provisions "for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) or article 30."

Article 30 of the Constitution of India gives all "minorities," whether based on religion or language, the right to establish and administer educational institutions of their choice. Under the Finance Act (2014), however, the registration of a trust or other institution may be cancelled if it is found to be established for the benefit of any particular religious community or caste (Finance Act (2014) Section 9; Income Tax Act Sections 12AA and 13(1)).

G. CONTROL OF ORGANIZATION

With regard to charities in general, trustees are expected to be independent. It is, however, ordinarily possible for another legal person to influence the selection of directors, officers, or trustees—for example, by making a donation contingent on the donor's right to appoint a nominee member of the board in an ex officio position.

A for-profit company that creates a public charitable trust can exert more direct control. The for-profit company could, in the process of founding the public charitable trust, reserve the authority to appoint and remove trustees and to influence major policy decisions. This is typical of a form of public charitable trust known as a "corporate foundation," which is essentially controlled by its for-profit founder, or "settlor."

In the case of a society, members always have the right to remove members of the governing board and thus influence policy. These members can include for-profit entities.

Therefore, it is possible that an Indian charity may be controlled, perhaps indirectly, by a for-profit entity or by an American grantor charity (which requires that the charity specifically so provide in the affidavit).

V. TAX LAWS

A. TAX EXEMPTIONS

1. GENERAL SCHEME

The Income Tax Act (1961) governs tax exemption of not-for-profit entities. The Act, which is national law applicable throughout India, provides that organizations may qualify for tax-exempt status if the following conditions are met:

- The organization must be organized for religious or charitable purposes;
- The organization must spend 85 percent of its income in any financial year (April 1 to March 31) on the objects of the organization. The organization has twelve months following the end of the financial year to comply with this requirement, and must file a special online application (online Income tax Form 9A) to the income tax authorities. Surplus income may be accumulated for specific projects or a capital purpose for a period ranging from one to five years (online Income tax Form 10); [10]
- The funds of the organization must be deposited as specified in Section 11(5) of the Income Tax Act;
- No part of the income or property of the organization may be used or applied directly or indirectly for the benefit of the founder, trustee, relatives of the founder or trustee or a person who has contributed in excess of INR 50,000 (approximately $716) to the organization in a financial year;
- The organization must timely file its annual income return (within six months of the close of the fiscal year);
- The organization's income must be applied or accumulated in India. However, trust income may be applied outside India to promote international causes in which India has an interest, without being subject to income tax with prior permission of the Central Board of Direct Taxes; and
- The organization must keep a basic record (name, address, telephone number, and Permanent Account Number issued by income tax) of all donors contributing over INR 50,000 (approximately $700). According to Section 115BBC, introduced with the Finance Act (2006), all anonymous donations to charitable organizations are taxable at the maximum marginal rate of 30 percent. Finance Act No. 2 (2009), however, carves out the following exception: Anonymous donations aggregating up to 5 percent of the total income of the organization or a sum of INR 100,000 (approximately $1,400), whichever is higher, will not be taxed. Additionally, religious organizations including temples, churches, and mosques are exempt from the provisions of this Section.

The Finance Act (2016) governs the tax liability of “accreted income” for certain organizations (Finance Act (2016) Chapter XII-EB, Sections 115TD, 115TE, and 115TF). “Accreted income” is the difference between the fair market value of the assets and the liabilities of the trust or institution. Under these provisions, in certain situations, accreted income is subject to tax in addition to the income tax due on the total income of the trust or institution. Accordingly, “accreted income” of a trust or institution registered under Section 12AA is subject to tax at the maximum marginal rate (30 percent) in the following situations:

a) If the trust or institution converts into any form which is not eligible under Section 12AA (e.g., if an NPO takes on a for-profit form);

b) If the trust or institution merges with any entity other than a trust or institution that has similar objects and is registered under Section 12AA (e.g., if an NPO merges with a for-profit entity); or

c) If the trust or institution, in the case of dissolution, fails within a period of twelve months to transfer all of its assets to an exempt entity or entities registered under Section 12AA or referred to in Section 10(23C) sub-clauses (iv), (v), (vi), or (via) (e.g., if after dissolution the residuary funds are given to a for-profit entity).

The Finance Act (2017) requires that if there is any change in a trust or institution's objectives which does not conform with the conditions of registration, the organization must submit an application to the Commissioner of Income Tax (CIT) within 30 days.

Under the Finance Act (2019), the Principal Commissioner or Commissioner of Income Tax may cancel the registration of any trust or institution under Section 12AA (granting tax exemptions) if the trust or institution violates its obligations under any other law. The loss of registration under Section 12AA subjects a trust or other institution to an obligation to pay an annual income tax at the maximum marginal rate of 30 percent, as well as an annual tax on accreted income.

Additionally, the Goods & Services Tax (GST), took effect on July 1, 2017. The GST is an indirect tax applicable throughout India which has replaced multiple cascading taxes levied by the central and state governments. The GST incorporates various indirect taxes under one law, including central levies such as customs duty, excise duty, central sales tax, and service tax, and state levies such as the Value Added Tax (VAT), luxury tax, electricity duty, entertainment tax, and entry tax.

The GST provides an exemption for charitable activities by an entity registered under Section 12AA of the Income Tax Act (1961). Under the GST, "charitable activities" means activities relating to:

1. Public health services such as the care or counseling of:

    a. terminally ill persons or persons with severe physical or mental disability;
    b. persons afflicted with HIV or AIDS;
    c. persons addicted to a dependence-forming substance such as narcotics drugs or alcohol;
2. Promoting public awareness of preventive health, family planning or prevention of HIV infection;
3. Advancing religion, spirituality or yoga;

    a. Advancing educational programs or skill development relating to abandoned, orphaned, or homeless children;
    b. physically or mentally abused and traumatized persons;

c. prisoners; or
d. persons over the age of 65 years residing in a rural area;
e. Preserving the environment including watershed, forests, and wildlife;

2. CAPITAL CONTRIBUTIONS

Capital contributions or donations to an endowment should not be included when computing the total income of the organization.

3. BUSINESS INCOME

Under amendments to Section 11(4A) of the Income Tax Act (1961), an NPO is not taxed on income from a business that it operates that is incidental to the attainment of the objects of the NPO, provided that the entity maintains separate books and accounts with respect to the business. Furthermore, certain activities resulting in profit, such as renting out auditoriums, are not treated as income from a business.

Under the Finance Act (2008) and Finance Act (2011), institutions established for a “charitable purpose” aiming to advance “any other object of general public utility” would lose their tax exempt status if their business activity (i.e. any activity or services in the nature of trade, commerce, or business, for a fee, tax, or other consideration) had an aggregate value of more than INR 2.5 million (approximately $35,000).

Under the Finance Act (2015), even business activity below the INR 2.5 million limit will annul an institution’s “charitable purpose” tax exemption unless it meets additional requirements: a) The business activity must be undertaken in the course of actually carrying out of the “advancement of any other object of general public utility;” and (b) The aggregate receipts from such activity or activities during the previous fiscal year must not exceed twenty per cent of the total receipts of the trust or institution under such activity or activities of that same year. [11]

4. DISQUALIFICATION FROM EXEMPTION

The following groups are not eligible for tax exemption: private religious trusts and charitable trusts or organizations created after April 1, 1962, which are established for the benefit of any particular religious community or caste. However, a trust or organization established for the benefit of "Scheduled Castes, backward classes, Scheduled Tribes or women and children" is an exception. Such a trust or organization is not disqualified, and its income is eligible for tax exemption.

B. TAX DEDUCTION FOR DONORS

The Income Tax Act sets forth the types of donations that are tax-deductible (Income Tax Act Section 80G). The Act permits donors to deduct contributions to trusts, societies, and Section 8 companies. Many institutions listed under 80G are government-related; donors are entitled to a 100 percent deduction for donations to some of these government funds.

By contrast, donors are generally entitled to a 50 percent deduction for donations to non-governmental charities. Total deductions taken may not exceed 10 percent of the donor's total gross income. In addition, in order to qualify for tax deduction, any donation in excess of INR 10,000 ($143) cannot be made by cash.

Donors may deduct 50 percent of their contributions to entities not specifically enumerated in Section 80G, provided the following conditions are met:

- The institution or fund was created for charitable purposes in India;
- The institution or fund is tax-exempt;
- The institution's governing documents do not permit the use of income or assets for any purpose other than a charitable purpose;
- The institution or fund is not expressed to be for the benefit of any particular religious community or caste; and
- The institution or fund maintains regular accounts of its receipts and expenditures.

Donations to institutions or funds "for the benefit of any particular religious community or caste" are not tax-deductible. A not-for-profit organization created exclusively for the benefit of a particular religious community or caste may, however, create a separate fund for the benefit of "Scheduled castes, backward classes, Scheduled Tribes or women and children." Donations to these funds may qualify for deduction under Section 80G, even though the organization, as a whole, may be for the exclusive benefit of only a particular religious community or caste. The organization must maintain a separate account of the monies received and disbursed through such a fund.

In-kind donations are not tax-deductible under Section 80G. Receipts issued to donors by NPOs must bear the number and date of the 80G certificate and indicate the period for which the certificate is valid.

Under the Finance Act No. 2 (2009), approvals of tax deductions under Section 80G, once granted, shall be valid indefinitely. All the approvals granted after the Finance Act No. 2 (2009) became effective (January 10, 2009) are valid indefinitely, unless specifically withdrawn. Existing approvals expiring after January 10, 2009 need not be renewed and shall be deemed valid indefinitely, unless specifically withdrawn. Approvals expiring before January 10, 2009 will have to be renewed once, but after such shall be valid indefinitely, unless specifically withdrawn.

The Finance Act (2016) phased out a few weighted tax deductions:

a) Section 35AC: No deduction shall be available starting on April 1, 2017. Donors contributing to projects of approved u/s 35AC previously enjoyed 100 percent tax deductions. [12]

b) Section 35(1)(ii): Weighted deductions shall be restricted to 150 percent from between April 1, 2017 and March 31, 2020, and the deduction shall be restricted to 100 percent starting on April 1, 2020. Prior to March 31, 2017, deductions under this section for contributions to research institutions were 175 percent.

c) Section 53(1)(iii): Deductions shall be restricted to 100 percent starting on April 1, 2017. Until March 31, 2017, deductions under this Section for contributions to statistical research institutions were 125 percent.

Per the Finance Act (2017), a donor cannot claim tax deduction for a donation in excess of INR 2,000.00 (approximately $30) if it is made in cash. In order to enjoy a tax deduction, such donations must be made by check or wire transfer.

C. REPORTING FOREIGN CONTRIBUTIONS

Under the Foreign Contribution Regulation Act (2010) (FCRA), all NPOs in India, such as public charitable trusts, societies and Section 8 companies, that wish to accept foreign contributions must: a) register with the Central Government; b) agree to accept contributions through designated banks; [13] and c) maintain separate books of accounts with regard to all receipts and disbursements of funds. FCRA registration must be renewed every five years. Furthermore, quarterly information about the receipt of foreign contributions must be published on the NPO's website or on the website of the Ministry of Home Affairs; annual reports with the Home Ministry must also be filed. The entity must report the amount of the foreign contribution, its source, the manner in which it was received, the purpose for which it was intended, and the manner in which it was used. Foreign contributions include currency, securities, and articles. Funds collected by an Indian citizen in a foreign country on behalf of an NPO registered in India are considered foreign contributions. Moreover, even funds received in India, in Indian currency, are considered foreign contributions if they are from a foreign source. Contributions from an expatriate Indian are not considered "foreign contributions" if the individual has not become a citizen of a foreign country.

Under FCRA (2010), a foreign contribution does not include commercial receipts. NPOs may receive consultancy or other commercial receipts from foreign sources even without FCRA registration. FCRA-registered NPOs should receive such receipts in their domestic account, and such commercial receipts are not required to be reported to the FCRA department.

FCRA guidelines require that an organization allowed to receive funds from a foreign source may not provide funds from its FCRA account to another organization unless the other organization also has clearance from the Home Ministry to receive funds from a foreign source.

If the foreign donor agency specifies in writing that the whole or part of the grant may be directed to the recipient organization's capital fund or endowment, the organization may do so. Such an endowment or capital fund may be invested in an approved security.

The “interest” or “dividend” generated should be accounted for as an amount received by way of interest on a deposit drawn out of funds received from a foreign source. In other words, even the interest or dividend received in India, in Indian rupees, must be disclosed in the Return Form FC-4.

The FCRA (2010) also prohibits administrative expenditures exceeding 50 percent of an organization’s total expenditures. An ‘administrative expenditure’ would include:

- Remuneration and other expenditures for Board Members and Trustees;
- Remuneration and other expenditures for persons managing an NPO's activity;
- Office expenses;
- Cost of accounting and administration;
- Expenses towards running and maintenance of vehicles (unless used for program-related activities);
- Costs of writing and filing reports;
- Legal and professional charges; and
- Rent and repairs to premises.

The following expenditures are not considered to be administrative in nature:

- Salaries of personnel engaged in training or for collection or analysis of field data of an association primarily engaged in research or training; and
- Expenses related to activities, such as salaries to hospital doctors, salaries to school teachers, etc.

Applications and returns may only be filed online.

D. CUSTOMS DUTY

Not-for-profit organizations involved in relief work and in the distribution of relief supplies to the needy are 100 percent exempt from customs duties on the import of items such as food, medicine, clothing and blankets. Moreover, other exemptions may be available, such as an exemption from customs duties for scientific and technical equipment and components intended for research institutes. Donors should investigate whether an exemption from customs duty is available before shipping articles to not-for-profit entities in India.

E. DOUBLE TAX TREATY

India and the United States signed a double-tax treaty on September 12, 1989. The treaty does not address issues related to charitable giving or not-for-profit entities.

FOOTNOTES

[1] The exception is the India Trusts Act (1882), which is a national law and governs private trusts.

[2] The Indian Companies Act (2013) came into force on April 1, 2014, replacing the Indian Companies Act (1956). The Indian Companies Act (1956) governed limited companies under Section 25; accordingly, in the past they may have been referred to as Section 25 companies, as opposed to Section 8 companies. In view of the newly implemented Act, however, this Note will refer to limited, not-for-profit companies as Section 8 companies.

[3] See the Service Tax Act (1994) Section 66D for the "Negative list of services." Service tax in India is an indirect tax, such that it is automatically payable on all services barring those that are enumerated in the "Negative list."

[4] This Country Note principally focuses on national all-India legislation governing not-for-profit organizations (NPOs) in India. Readers should be aware that state laws and regulations, often adapted from the national laws, are also important to this framework. Moreover, the Charity Commissions and Registrars are state entities, not national ones. Thus, the regulation of NPOs varies from state to state. Detailed discussion of the state laws is beyond the scope of this Note.

[5] See note 2, above.

[6] Readers should consult Section 8 of the Indian Companies Act (2013), which expands the allowable purposes for Section 8 (previously Section 25) companies.

[7] The Companies Act does not state specifically that funds and property of the company may not be distributed among the members upon dissolution. During incorporation, however, the Registrar generally insists on the inclusion of such a clause in the company's memorandum and articles of association.

[8] See note 6, above.

[9] See also *Laxman Balwant Bhopatkar v. Charity Commissioner* (1963) 2 SCR 625; AIR 1962 SC 1589.

[10] The Income Tax Act also includes provisions governing the legitimacy of payments made in cash over a certain threshold. The mode of payment (i.e. cash or through banking channels such as debit cards, account transfers, checks, or demand drafts) may impact the legitimacy of the payment as well as the determination of an NPO's assets (Income Tax Act, Section 40A(3) and 43).

[11] For instance, if the total receipts of the trust or institution during the previous financial year (from donations, interest, rent etc.) amount to INR 10 million, then it cannot have business income in excess of INR 2 million; and in all cases the business or commercial activity must be undertaken in the course of actually carrying out of such "advancement of

any other object of general public utility.” The fact that a business or commercial activity may have been undertaken ultimately to apply such income toward a charitable purpose would be irrelevant.

[12] Broadly speaking, these include projects or programs benefiting rural communities or communities in urban slums. Such projects can include schools and medical facilities for such communities, sanitation projects, etc. Under this deduction, donors would enjoy a 100 percent tax deduction for contributions to such projects and programs upon approval by the government.

[13] The Ministry of Home Affairs now requires that FCRA bank accounts be housed in banks that are integrated with the Public Financial Management System (PFMS). The PFMS, previously known as the Central Plan Schemes Monitoring System (CPSMS), is a web-based online software application developed and implemented by the Office of Controller General of Accounts (CGA). Currently, about 59 banks in India are integrated with PFMS.