

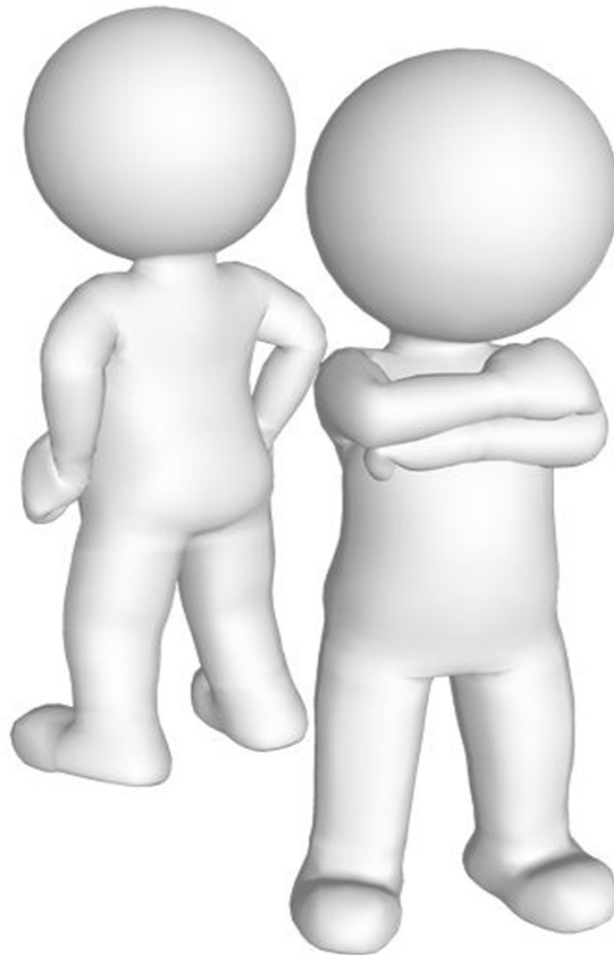
FCRA PUBLIC NOTICE ON TDS

◆ Legal Series Vol. XVII ◆ Issue 9

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Standards & Norms

Resource support on NGO Governance, Accounting and Regulations



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INTRODUCTION

- 1.01** FCRA law prohibits mixing of local fund with FC funds. However, in certain circumstances mixing of local fund with FC funds is inevitable for instance income tax refunds may comprise both type of funds but are transferred to one particular bank account only. There was no clarity with regard to the legal and accounting treatment of income tax refunds received in either domestic or FC bank account.
- 1.02** The FCRA Department has recently issued a Public Notice No. II/21022/23(12)/2020-FCRA-III dated 31.12.2024 which clarifies the treatment of TDS refund. In this issue the clarifications as well as issues arising out of the said Public Notice have been discussed.

CLARIFICATION ISSUED BY MINISTRY

- 2.01** The relevant portion of clarifications from the Public Notice No. D/21022/23(12)/2020-FCRA-III dt. 31/12/2024 has clarified as under:

“2. The matter has been examined and it has been decided with the approval of Competent Authority that in case the consolidated income tax refund is received in non-FCRA bank account, the proportionate income tax refund pertaining to FCRA account needs to be transferred back to FCRA bank account. Such transfer would not be treated as a violation of section 17 of the Foreign Contribution (Regulation) Act, 2010 (the Act) and are allowed as per spirit of the Act.

3. Further, with respect to accounting treatment of TDS and its refund thereof, it is clarified that at the time of deduction, such TDS may be accounted as utilization of FC and upon receipt of refund in FCRA account, it may be considered as “other income” and to be reported in clause 2(i)(b)(iii) in form FC-4.”

The said Public Notice is provided in Annexure-1.

KEY CLARIFICATION GIVEN BY MINISTRY ON TDS

3.01 Receipt of refund in non FCRA bank account will not be treated as violation: It is clarified that transfer of FC portion of TDS from Non-FCRA bank Account to FCRA Bank Account will not be treated as a violation of section 17 of the Foreign Contribution (Regulation) Act, 2010.

It is further clarified that in case the consolidated income tax refund is received in non-FCRA bank account, the proportionate income tax refund pertaining to FCRA account needs to be transferred back to FCRA bank account. Such transfer would not be treated as a violation of section 17 of the Foreign Contribution (Regulation) Act, 2010 (the Act) and are allowed as per spirit of the Act.

3.02 Clarification regarding the accounting treatment of TDS and its refund : It is also clarified that in the year in which tax is deducted, such TDS may be considered as utilization of foreign contribution and upon receiving refund of TDS in FCRA Account it may be considered as “ other income” and to be reported in clause 2(i)(b)(iii) in form FC-4. The Clause 2(i)(b)(iii) of FC 4 is reproduced as under:

(iii) Transfer of FC part of income tax refund from Non-FCRA Bank Account”

The above clarifications have raised further issues which needs clarity and have been discussed below.

TRANSFER FROM NON-FCRA BANK ACCOUNT TO FCRA BANK ACCOUNT WOULD NOT BE TREATED AS VIOLATION

4.01 Transfer from Non-FCRA Bank Account to FCRA Bank Account would not be treated as violation : It is clarified that transfer of FC portion of TDS from Non-FCRA Bank Account to FCRA Bank Account would not be treated as violation. In our opinion this clarification was needed as the case of consolidated refund of TDS this mixing of FC fund was unavoidable.

However, it is not clarified if the consolidated TDS amount is received in FCRA Bank Account and thereafter Non FC portion of TDS is transferred to Non-FCRA bank Account.

In our opinion the presumption of the ministry is very clear that the consolidated refund should be first deposited in Non-FCRA bank Account and thereafter FCRA portion should be transferred to FCRA Bank account as the clarification has specifically provided that *upon receipt of refund in FCRA account, it may be considered as "other income" and to be reported in clause 2(i)(b)(iii) in form FC-4*. Organisations are advised to use non FC bank account to receive income tax refunds. Further, in the light of the spirit of the said Public notice in our opinion if an organisation has received consolidated refunds in FC bank accounts then also the proportional amount should be transferred to the respective local account.

- 4.02 Other statutory payments not covered:** The ministry has clarified the issue of mixing of fund as far as refund of TDS is concerned whereas there are many areas where mixing of funds is unavoidable particularly for statutory payments like PF etc.

SUGGESTED ACCOUNTING TREATMENT IS AGAINST CASH BASIS PRACTICE UNDER FCRA

- 5.01** Under FCRA, income and utilization are considered on cash basis. However, accounting treatment as suggested by this Public Notice is to treat the tax deducted as utilization in the year of tax deduction inspite of the fact that this deemed utilization is a non - cash transaction. Therefore closing bank balance will be more than the closing FC balance if the tax deducted at source is not treated as contra entry. In other words, the amount of tax which was not received also has to be treated as FC receipt.
- 5.02 Suggested accounting treatment raises a number of other issues:** It has been clarified that the TDS being deducted shall be treated as utilised in the year in which TDS has been deducted and on receipt of refund of TDS in FCRA bank a/c shall be considered as "other income" and to be reported in clause 2(i)(b)(iii) of FC 4 Return.

The above clarification may result in two possible accounting scenario –

- a) First, the TDS will be deemed as utilised in the year in which tax is deducted and shall be considered as other income in the year in which refund of TDS is deposited in FC Bank account. This understanding results in treating the FC portion of TDS as utilisation first and then subsequently the FC Portion of TDS when received as income.
- b) The second scenario implies that TDS amount is first considered as FC income and utilization in the year in which TDS is deducted and again the same amount is considered as income and utilization in which the refund of TDS is received in FCRA Bank Account. If this interpretation is taken then it has result in duplication of reporting of FC portion of TDS firstly in the year tax was deducted and secondly in the year in which refund of tax was refunded back in the FC Bank account.

5.03 *Whether deduction of TDS can be considered as utilised for FCRA purpose:* As per FCRA, the FC fund needs to be utilised for definite purposes and therefore, the amount deducted at source by itself cannot be considered to be utilised for specified purpose. Therefore, FCRA purposes passing contra entry at the time of TDS deduction may not be legally correct, however for reporting purposes the contra entry may be passed with appropriate accounting and audit notes.

CASES WHERE TDS FORMS A PART OF FC CLOSING

BALANCE PRIOR TO ISSUE OF THIS PUBLIC NOTICE

- 6.01** Some of the organisations treat the FC income on gross basis including the TDS and include the TDS receivable as a part of closing FC balance. Further in some cases, refund of TDS is lying in non FC account and is yet to be re-imbursed to FC section.
- 6.02** In such cases in our opinion the TDS already collected and lying in non-FC bank, the the FC portion of income tax refund should be transferred to FC bank account. Further, in cases where TDS receivable is reflected in FC books, there is no need to

pass any entries of income and it will be credited to TDS receivable account in FC books.

CASES WHERE TDS DO NOT FORM PART OF FC REPORTING AT ALL

- 7.01** Some organisations are showing FC income net of TDS and refund of TDS is treated as foreign contribution in the year in which the refund is received from the Income Tax Department. In such cases FC portion of TDS should be transferred to FC Bank account and such amount should be reported as "other income" and to be reported in clause 2(i)(b)(iii) of FC 4 Return.

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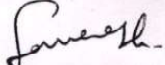
Major Dhyan Chand National Stadium
FCRA Wing, 1st Floor, MHA,
New Delhi - 110001
Dated: 31st December, 2024.

PUBLIC NOTICE

Subject: Clarification regarding refund of TDS pertaining to Foreign Contribution (FC).

This Ministry has been receiving representations from Associations over the difficulties faced by them over transfer of FCRA Component of funds out of the refund of tax deducted at source (TDS) received in their non-FCRA bank accounts.

2. The matter has been examined and it has been decided with the approval of Competent Authority that in case the consolidated income tax refund is received in non-FCRA bank account, the proportionate income tax refund pertaining to FCRA account needs to be transferred back to FCRA bank account. Such transfer would not be treated as a violation of section 17 of the Foreign Contribution (Regulation) Act, 2010 (the Act) and are allowed as per spirit of the Act.
3. Further, with respect to accounting treatment of TDS and its refund thereof, it is clarified that at the time of deduction, such TDS may be accounted as utilization of FC and upon receipt of refund in FCRA account, it may be considered as "other income" and to be reported in clause 2(i)(b)(iii) in form FC-4.
4. This issues with the approval of the Competent Authority.


(Saurabh Bansal)
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