

FCRA AMENDMENT

ADMIN EXPENSES

◆ Legal Series Vol. XVII ◆ Issue 10

For private circulation only

Standards & Norms

Resource support on NGO Governance, Accounting and Regulations



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CONTENTS

1.	Introduction	01
2.	New Proviso added to Rule 5	01
3.	Change in FC 4 Form	01
4.	Issues arising out of amendments	02
5.	Annexure-1 : Copy of MHA Notification	05

INTRODUCTION

1.01 The Rule 5 of FCRR defines the administrative expenses. Recently, amendments have been made in the Rule 5 and Form FC-4 with regard to administrative expenses. The Foreign Contribution (Regulation) Amendment Rules, 2024 has been notified on 31st December, 2024 and shall come in force on the 1st day of January, 2025. In this issue, the amendments and the implications thereof has been discussed. The copy of the notification is provided in Annexure 1.

NEW PROVISIO ADDED TO RULE 5

2.01 The following proviso has been inserted after the second proviso:—

*“Provided also that the association shall have the option to carry forward the unspent part of allowable administrative expenses in a **financial year to the immediately succeeding financial year**, for reasons to be mentioned in Form FC-4.”*

2.02 The above proviso allows carry forward of unspent part of allowable administrative expenses only for one year, i.e. administrative expenditure will not be permissible after one year from the end of the year in which administrative expenses were received. In other words, the utilisation of on foreign contribution has to be completed within the year of receipt and the subsequent year. Any unspent balance remaining after the end of the **immediately succeeding financial year** has to be utilized only for program expenses and the administrative expenses as defined in Rule 5 shall not be permissible.

CHANGE IN FC 4 FORM

3.01 With regard to the administrative expenses, the following change has been made in FC 4 form i.e. the return to be submitted annually by each FC registered/prior permission organisation :

In serial number 4, after clause (iii), the following clause has been inserted: (iv)

Carry forward of unspent part of allowable administrative expense in financial year.

Sl. No.	Particulars	Amount (in Rs.)
A.	Brought forward unspent part of allowable administrative expenses	
B.	Total foreign contribution received during the year	
C.	Allowable administrative expenses of current financial year [20 per cent. of B]	
D.	Total administrative expenses incurred during the current year	
E.	Administrative expenses of current year utilised out of A above.	
F.	Administrative expenses of current year utilised out of C above.	
G.	Unspent part of C above available to be carried forward.	
H.	Out of G above, amount to be carried forward to next financial year.	
I.	Reason for carry forward of unspent part of allowable administrative expenses to next financial year.	

ISSUES ARISING OUT OF ABOVE AMENDMENTS

4.01 Section 8(1) of the FCRA, 2010 states that the administrative expenditure should not exceed 20% of the foreign contribution received during financial year. The literal interpretation of this provision lead to absurdity and rendered the section otiose and inoperative in various circumstances. For example, an organisation receives Rs.5 lakh foreign contribution in the financial year 2021-22 but does not utilise the amount in the same financial year. In the subsequent financial year 2022-23, it does not receive any foreign contribution but utilises Rs.5 lakh for charitable purposes. In this case on a literal interpretation of section 8(1) of the FCRA, 2010 the organisation will not be entitled to any administrative expenditure in the FY 2022-23, which could not have been the intent of the statute.

It seems, in order to remove difficulty on calculating the limit of administrative expenses on the basis of Foreign contribution received, the amendment has provided the option to carry forward the unspent part of allowable expenses.

However, the amendments have raised the following new issues:

- Organisations have to utilise the entire funds received within the year of receipt and the subsequent financial year, beyond that administrative expenses shall not be permissible.
- Whenever there is an unspent part of allowable administrative expense in any financial year then it should be reported through the above inserted table of carry forward part of unspent expense and the reason for carry forward should also be mentioned. The inserted table in the FC - 4 shall separately disclose the eligible amount of administrative expenses both for the current year and the amount accumulated from previous year.
- Organisations cannot avail the benefit of claiming administrative expenses if they want to use their past accumulation or corpus fund. This is a step which will discourage organisations from utilising the past funds for advancement of their objects.
- Organisations can carry forward administrative expenses only to the extent of the unutilised portion of 20% of the FC receipts. For Example : If in the first year total foreign contribution received is Rs. 100/- out of which total utilization is only Rs. 50/- and the admin expense incurred is Rs. 8/-, then the concerned organization can carry forward the unspent part of allowable administrative expense to next financial year amounting to Rs. 12 with the reason that the total amount of foreign contribution received on the basis of which 20% limit has been calculated has not been fully utilized.
- The amendments have not clarified with regard to the brought forward unspent balance as on 1st April 2024 for the FY 24-25 as the amendment shall be operative from 1-01-2025 and how to show the administrative expenses out of the carry forward FC closing balance. In our opinion, in the interest of equity and rational application of the rules, the organisations should bring forward the unspent administrative expenses as per the conditions specified in the amended rules.

- The amendments effectively prohibit receipt of funds for multiple years except for the immediately succeeding year.
- A plain reading of the amendments suggests that an organisation cannot carry forward unspent administrative expenses if the entire foreign contribution has been utilised in the year of receipt. For Example : If in the first year total foreign contribution received is Rs. 100/- out of which total utilization is also Rs. 100/- and the admin expense incurred is Rs. 10/-. In other words, the organisation has spent only 10% on administrative expenses against the available limit of 20%. In such circumstances, the concerned organization cannot carry forward the unspent part of allowable administrative expense (Rs. 10/-) to next financial year.

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गृह मंत्रालय
अधिसूचना

नई दिल्ली, 31 दिसम्बर, 2024

सा.का.नि. 790(अ).—केंद्रीय सरकार, विदेशी अभिदाय (विनियमन) अधिनियम, 2010 (2010 का 42) की धारा 48 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, विदेशी अभिदाय (विनियमन) नियम, 2011 का और संशोधन करने के लिए निम्नलिखित नियम बनाती है, अर्थात् :-

1. संक्षिप्त नाम और प्रारंभ—(1) इन नियमों का संक्षिप्त नाम विदेशी अभिदाय (विनियमन) संशोधन नियम, 2024 है।

(2) ये 1 जनवरी, 2025 से प्रवृत्त होंगे।

2. विदेशी अभिदाय (विनियमन) नियम, 2011 (जिन्हें इसमें इसके पश्चात् उक्त नियम कहा गया है), के नियम 5 में, दूसरे परंतुक के पश्चात्, निम्नलिखित परंतुक अंतःस्थापित किया जाएगा, अर्थात् :-

“परंतु यह भी कि संगम के पास प्ररूप एफसी 4 में उल्लिखित किए जाने वाले कारणों से किसी वित्तीय वर्ष में अनुज्ञेय प्रशासनिक व्ययों के व्यय नहीं किए गए हिस्से को ठीक पश्चात्तवर्ती वित्तीय वर्ष में अग्रणीत करने का विकल्प होगा।”।

3. उक्त नियमों के प्ररूप एफसी-4 में,—

(क) क्रम सं. 2 के खंड (i) के उपखंड (ख) में, मद (ii) के पश्चात् निम्नलिखित मद अंतःस्थापित की जाएगी, अर्थात् :-

“(iii) गैर एफसीआरए बैंक खाते से आय-कर प्रतिदाय के विदेशी अभिदाय हिस्से का अंतरण”;

(ख) क्रम सं. 4 के खंड (iii) के पश्चात् निम्नलिखित अंतःस्थापित किया जाएगा, अर्थात् :-

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(1)

“(iv) किसी वित्तीय वर्ष में अनुज्ञेय प्रशासनिक व्ययों के व्यय नहीं किए गए हिस्से का अग्रनयन :

क्रम सं.	विशिष्टियां	रकम (रुपए में)
क.	अनुज्ञेय प्रशासनिक व्ययों का व्यय न किया गया अग्रानीत हिस्सा	
ख.	वर्ष के दौरान प्राप्त कुल विदेशी अभिदाय	
ग.	चालू वित्तीय वर्ष के अनुज्ञेय प्रशासनिक व्यय [ख का 20 प्रतिशत]	
घ.	चालू वर्ष के दौरान उपगत कुल प्रशासनिक व्यय	
ङ.	ऊपर क में से उपयोग किए गए चालू वर्ष के प्रशासनिक व्यय	
च.	ऊपर ग में से उपयोग किए गए चालू वर्ष के प्रशासनिक व्यय	
छ.	ऊपर ग का उपयोग न किया गया अग्रनयन के लिए हिस्सा	
ज.	ऊपर छ में से अगले वित्तीय वर्ष को अग्रनीत की जाने वाली रकम	
झ.	अनुज्ञेय प्रशासनिक व्यय के उपयोग न किए गए हिस्से को अगले वित्तीय वर्ष में अग्रनीत करने के लिए कारण	

(ग) क्रम सं. 8 के पश्चात् निम्नलिखित अंतःस्थापित किया जाएगा, अर्थात् :-

“9. नियम 17 के उपनियम (5) के अधीन प्रमाणपत्र जारी करने वाले चार्टर्ड अकाउंटेंट के व्यौरे :

- (i) चार्टर्ड अकाउंटेंट का नाम ;
- (ii) पता ;
- (iii) सदस्य रजिस्ट्रीकरण संख्या ;
- (iv) ई-मेल पता ;
- (v) प्रमाणपत्र जारी करने की तारीख ;
- (vi) क्या प्रमाणपत्र में अधिनियम के किसी उल्लंघन को इंगित किया गया है, यदि ऐसा है तो उसके व्यौरे”;

(घ) चार्टर्ड अकाउंटेंट द्वारा दिया जाने वाला प्रमाणपत्र, शीर्ष के अधीन, खंड (vii) के पश्चात् निम्नलिखित पैरा अंतःस्थापित किया जाएगा, अर्थात् :-

“मैंने सभी सुसंगत बहियों और अभिलेखों का परीक्षण कर लिया है, जिसके अंतर्गत एफसी-4 के स्तंभ 8 में उल्लिखित मदें भी हैं, और मेरे सर्वोत्तम ज्ञान और विश्वास के अनुसार (व्यक्ति/संगम का नाम) ने (जो कुछ लागू नहीं हो उसे काट दें)।

(i) विदेशी अभिदाय (विनियमन) अधिनियम, 2010 या उसके अधीन बनाए गए नियमों या उसके अधीन जारी की गई अधिसूचनाओं के किन्हीं उपबंधों का उल्लंघन नहीं किया है ; या

(ii) विदेशी अभिदाय (विनियमन) अधिनियम, 2010 या उसके अधीन बनाए गए नियमों या उसके अधीन जारी की गई अधिसूचनाओं के किन्हीं उपबंधों का उल्लंघन किया है। उल्लंघन (उल्लंघनों) के व्यौरे निम्नानुसार हैं :

[फा. सं. II/21022/23(12)/2020-एफसीआरए-III]

सौरभ बंसल, संयुक्त निदेशक

टिप्पण : मूल नियम, भारत के राजपत्र, असाधारण, भाग II, खंड 3, उपखंड (i) में अधिसूचना सा.का.नि. संख्यांक 349(अ), तारीख 29 अप्रैल, 2011 द्वारा प्रकाशित किए गए थे और तत्पश्चात्, सा.का.नि. संख्यांक 292(अ), तारीख 12 अप्रैल, 2012, सा.का.नि. संख्यांक 966(अ), तारीख 14 दिसंबर, 2015, सा.का.नि. संख्यांक 199(अ), तारीख 7 मार्च, 2019, सा.का.नि. संख्यांक 659(अ), तारीख 16 सितंबर, 2019, सा.का.नि. संख्यांक 695(अ), तारीख 10 नवंबर, 2020, शुद्धिपत्र सा.का.नि. संख्यांक 17(अ), तारीख 11 जनवरी, 2021, सा.का.नि. संख्यांक 506(अ), तारीख 1 जुलाई, 2022 और सा.का.नि. संख्यांक 683(अ), तारीख 22 सितंबर, 2023 द्वारा संशोधित किए गए।

MINISTRY OF HOME AFFAIRS

NOTIFICATION

New Delhi, the 31st December, 2024

G.S.R. 790(F).—In exercise of the powers conferred by section 48 of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010), the Central Government hereby makes the following rules further to amend the Foreign Contribution (Regulation) Rules, 2011, namely:-

1. **Short title and commencement.**—(1) These rules may be called the Foreign Contribution (Regulation) Amendment Rules, 2024.

(2) They shall come into force on the 1st day of January, 2025.

2. In the Foreign Contribution (Regulation) Rules, 2011 (hereinafter referred to as said rules), in rule 5, after second proviso, the following proviso shall be inserted, namely:—

“Provided also that the association shall have the option to carry forward the unspent part of allowable administrative expenses in a financial year to the immediately succeeding financial year, for reasons to be mentioned in Form FC-4.”.

3. In the said rules, in Form FC-4,-

(a) in serial number 2, in clause (i), in sub-clause (b), after item (ii), the following item shall be inserted, namely:-

“(iii) Transfer of Foreign Contribution part of income-tax refund from non-FCRA bank account”;

(b) in serial number 4, after clause (iii), the following shall be inserted; namely:-

“(iv) Carry forward of unspent part of allowable administrative expenses in a financial year.

Sl. No.	Particulars	Amount (in Rs.)
A.	Brought forward unspent part of allowable administrative expenses	
B.	Total foreign contribution received during the year	
C.	Allowable administrative expenses of current financial year [20 per cent. of B]	
D.	Total administrative expenses incurred during the current year	
E.	Administrative expenses of current year utilised out of A above.	
F.	Administrative expenses of current year utilised out of C above.	
G.	Unspent part of C above available to be carried forward.	
H.	Out of G above, amount to be carried forward to next financial year.	
I.	Reason for carry forward of unspent part of allowable administrative expenses to next financial year.	

(c) after serial number 8, the following shall be inserted, namely:-

“ 9. Details of Chartered Accountant issuing the certificate under sub-rule (5) of rule 17:

(i) name of the Chartered Accountant;

- (ii) address;
- (iii) Member Registration number;
- (iv) e-mail Address;
- (v) date of issue of certificate;
- (vi) Whether any violation of the Act has been pointed out in certificate, and if so, details thereof”;
- (d) under the heading, Certificate to be given by Chartered Accountant, after clause (vii), the following paragraph shall be inserted, namely:-

“I have examined all relevant books and records, including the items mentioned in column 8 of FC-4, and to the best of my knowledge and belief (name of the person/ association)..... has *(strike out whichever of the following is not applicable)*

(i) not violated any provisions of the Foreign Contribution (Regulation) Act, 2010 or rules made thereunder or notifications issued thereunder;

OR

(ii) violated the provisions of Foreign Contribution (Regulation) Act, 2010 or rules made thereunder or notifications issued thereunder. The details of the violation(s) are as under:.....”.

[F. No. II/21022/23(12)/2020-FCRA-III]

SAURABH BANSAL, Jt. Director

Note : The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* notification number G.S.R. 349(E), dated 29th April, 2011 and subsequently amended, *vide* G.S.R. 292(E), dated 12th April, 2012, G.S.R. 966(E), dated 14th December, 2015, G.S.R. 199(E), dated 7th March, 2019, G.S.R. 659 (E), dated 16th September, 2019, G.S.R. 695(E), dated 10th November, 2020, a Corrigendum *vide* G.S.R. 17(E), dated 11th January, 2021, G.S.R. 506(E), dated 1st July, 2022 and G.S.R. 683(E), dated 22nd September, 2023.