

Consultation on Review of Tax Exemptions / Deductions proposed by CBDT

- A Brief Report

The Government of India has taken many steps for simplifying the tax system in India. In order to simplify the laws, minimize distortion with the tax structure, the Union Government plans to review the exemptions that exist in the Income Tax Act, 1961. To avoid any radical change in the Act, The Central Board of Direct Tax (CBDT) on behalf of the Department of Revenue, Government of India is keen to involve the stake-holders in the process. Some of the provisions of exemptions proposed for debate are relevant to the Voluntary Sector. In India, voluntary organizations play a significant role in the socio-economic development. VANI in association with FMSF arranged consultation on review of tax exemptions/ deductions proposed by CBDT, to discuss the effects of any changes in provisions relating to exemption in the Income Tax Act, 1961 which are related to NGOs. This consultation was held on 7th June 2006. VANI had invited various voluntary organizations, tax experts, finance professionals, representative of ICAI, Planning Commission etc.

The consultation / meeting was started with the introductory note of Ms. Shakina Mushtaq of VANI. Mr. Sanjay Patra, Executive Director of Financial Management Service Foundation, chaired the meeting. At the beginning Mr. Sanjay Patra delivered his welcome address and then requested Mr. Manoj Fogla, Chartered Accountant, to give an overview of various exemptions and their implications on voluntary organizations. During the presentation made by Mr. Fogla, the legal scenario prior to the enactment of the Income Tax Act, 1961 was reflected wherein the income of the not-for-profit

organizations was totally exempted from tax. Even when the Income Tax Act came into existence, the voluntary contributions and corpus contributions were not considered as part of the income. It was further stated that with the various insertions and amendments made in the Finance Act from time to time, we can see that many of the privileges which were existing for non-profit sector prior to the enactment of the Income tax Act in 1961 have been systematically withdrawn over a period of last 45 years. With the various amendments, the non profit sector has only lost its privilege to be effective instruments of social change.

After the presentation of overview of various exemptions in Income Tax Act, 1961 and their implications on NGOs, the floor was open for discussion. The open discussion among the participants took place under the following categories:

1. Existing provisions as per which income is not considered as part of total income
2. Existing exemptions available to the NPO sector (i.e sect. 11, 12 & 13)
3. Deductions available on the basis of expenditure/donors
4. Deductions to be made in computing total income in respect of certain donations

During the discussion it was realized that there is an effort to limit the space available to the NGOs within the legal framework. The members also expressed that NGOs need to have high credibility in complying with the genuine obligations with the government.

Apart from this, on the basis of the rationale discussed in the section 'overview of various exemptions and their implications to NGOs' it was decided that the representation before the Government should be made on the following lines:

- The provisions categorized under the Group-1 should not be altered. Further the procedures for getting exemptions should also be simplified. The approval for the Institutions or organization u/s 10(23) should be in perpetuity unlike it is now being restricted for certain period of time. Further a clear time frame to dispose the application by the Income Tax Department should be inserted
- Status quo should be maintained in the provisions under Section- 11, 12 and 13 which have been categorized under Group-2. The provisions under these Sections should not be altered or removed from the Act. The organizations are already under stringent restrictions like utilization of receipts (85% of receipts has to be utilized to get tax exemption), time limit for the utilization of funds (Time limit of 5 years for utilizing fund accumulated), etc. Therefore it is would not be reasonable to put further restriction.
- The expenditures under Group3 should be allowed as it is there in the Act at present. The removal of privileges under this would lead to

discourage the organizations, especially business organization to spend more in the development activities. This will limit their Corporate Social Responsibility.

- Section 80G should not be removed from or altered in the Income Tax Act, 1961. Further the provisions of the Act should be considered for simplification. Presently NGOs have to get separate registration under Section 12A and Section 80G of the Income Tax, 1961. However the Government may consider one registration both for Section 12A and 80G. The registration should be in perpetuity without any time restriction.
- The new provisions of imposing tax on anonymous donations should be withdrawn as the ultimate utilization of fund is for charitable purposes and social cause. The Government is not justified on imposing tax on such donations.

Following the above consultation, FMSF in co-operation with VANI has prepared a Memorandum of Representation (MOR) to the Central Board of Direct Taxes (CBDT). Since CBDT has given 5th July 2006 as the deadline for receipt of comments on various tax provision, FMSF shared the memorandum with its partner network requesting them to send their representations to CBDT. The Memorandum drafted is presented here for your information.