

FOREIGN CONTRIBUTION (REGULATION) ACT, 2010

Regulation of Foreign Contribution and Foreign Hospitality [Sec.3 - Sec.10]

Question 1

State the persons who are prohibited from accepting foreign contribution under the FCRA, 2010.

Study Material

Answer

Provisions and Explanation:

Persons prohibited from accepting foreign contribution:
As per Sec .3 of FCRA, 2010 , no foreign contribution shall be accepted by any:
(a) Candidate for election;
(b) Corresponding, columnist, editor, owner, printer, or publisher of a registered newspaper;
(c) ***Public Servant. Judge, Government servant or employee of any other body controlled or owned by the Government;
Corporation means a corporation owned or controlled by the Govt. and includes a Govt. company;
(d) Member of any legislature;
(e) Political party or office-bearer thereof;
(f) Organization of a political nature as may be specified u/s 5 by the C.G;
(g) association or company engaged in the production or broadcast of audio news or audio visual news or current affairs programmers through any electronic mode, or any other electronic form as defined in the IT Act, 2000 or any other mode of mass communication;
(h) correspondent or columnist, cartoonist, editor, owner of the association or company referred to in clause(g)

*****Added through May 2021 Amendments**

Question 2

Mr. Soumak is an editor of a daily business news on BNN TV. He received a salary of US \$ 180,000 from Mr. Bob. Mr. Bob is a US citizen resident in India and operates BNN TV business operations in India. Mr. Bob received such payment i.e. salary given to Mr. Soumak from his parent Company BNN Inc. of USA. Examine under the provisions of the Foreign Contribution (Regulation) Act, 2010, whether receipt of salary by Mr. Soumak is prohibited? **(November 2020 Exam)**

Answer :

Provisions and Explanation:

According to section 3 of the Foreign Contribution (Regulation) Act, 2010, no foreign contribution shall be accepted by any editor.

Also, as per section 4, nothing contained in section 3 shall apply to the acceptance, by any person specified in that section, of any foreign contribution where such contribution is accepted by him, subject to the provisions of section 10, by way of salary, wages or other remuneration due to him or to any group of persons working under him, from any foreign source or by way of payment in the

FCRA Question Bank for May 2021 & onwards

ordinary course of business transacted in India by such foreign source.

Conclusion :

Hence, taking into account the above provisions, receipt of salary by Mr. Soumak from parent company BNN Inc. of USA is not prohibited.

Question 3

Whether foreign remittances received from a relative are to be treated as foreign contribution as per FCRA,2010? *Study Material*

Answer

Provisions and Explanation:

Foreign remittance received from a relative:

- ▶ As per **Sec.4 (e)** of the Foreign Contribution Regulation Act ,**2010** and **Rule6** of Foreign Contribution Regulation ,**2011**, even the persons prohibited u/s**3**, i.e., persons **not** permitted to accept foreign contribution, are allowed to accept foreign contribution from their relatives.
- ▶ However, in terms of **Rule6** of Foreign Contribution Regulation **Rules,2011**, 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 C.G in prescribed Form within **30** days from the date of receipt of such contribution.

Conclusion:

Foreign remittances received from a relative is **not** treated as foreign contribution.

Question 4

Mr. Indian received foreign contribution of amount 1.10 lakh from his relative residing abroad. Examine whether foreign remittances received by Mr. Indian to be treated as foreign contribution as per the FCRA, 2010. *(MTP Oct. 19)*

Answer:

No. As per **Section 4(e) of FCRA, 2010 read with Rule 6 of FCRR, 2011**, even the persons prohibited under section 3, i.e., persons not permitted to accept foreign contribution, are allowed to accept foreign contribution from their relatives. However, in terms of Rule 6 of FCRR, 2011, any person receiving foreign contribution in excess of one lakh rupees or equivalent thereto in a financial year from any of his relatives shall inform the Central Government in prescribed Form within thirty days from the date of receipt of such contribution.

So Mr. Indian shall inform the Central Government of his receiving of the foreign contribution of 1.10 lakh from his relative due to receiving of foreign contribution in excess of 1 lakh rupees.

Question 5

Mr. Satish, General Secretary of a political party received an invitation from the American Labour Party. He wants to avail foreign hospitality. Define the term "foreign hospitality ". In the light of the provisions of the Foreign contribution [Regulation] Act, 2010, decide whether he can avail it. Discuss also the exception, if any under which the provisions of the said Act may be relaxed. *Extra*

Answer

Provisions and Explanation:

Meaning of Foreign Hospitality:

Section 2(i) of Foreign Contribution Act,2010 defines the term "foreign hospitality" as any offer, **not** being a purely casual one, made in cash or kind by a foreign source for providing a person with the

FCRA Question Bank for May 2021 & onwards

costs of travel to any foreign country or territory or with free boarding, lodging, transport or medical treatment.

Restriction on acceptance of foreign hospitality:

As per **Section 6**, no member of a Legislature or office-bearer of a political party or judge or Government servant or employee of any corporation or any other body owned or controlled by the Government **shall**, while visiting any country or territory outside India, accept, except with the prior permission of the Central Government, any foreign hospitality.

Conclusion:

Mr. Satish is **not** allowed to avail foreign hospitality without the prior permission of Central Government [Ministry of home Affairs]

Exception:

✦ **Section 6** provides that it **shall not** be necessary to obtain any such permission for an emergent medical aid on account of sudden illness contracted during a visit outside India.

✦ But, where such foreign hospitality has been received, the person receiving such hospitality **shall** give an intimation to the C.G. as to the receipt of such hospitality **within one month** from the date of receipt of such hospitality, and the source from which, and the manner in which, such hospitality was received.

Question 6

X, is an association having certificate of registration transfers the Foreign Contribution received by it to another organization? Whether X can validity transfer the foreign contribution. If yes, then what is the process to do so? Is there any restriction on transfer of funds to other organization?

(MTP MAY 19)

Answer

Provisions and Explanation: ***Revised through May 2021 Amendments

Transfer of Foreign Contribution:

➤ As per Sec .7 of FCRA, **2010**, no person who is registered and granted certificate or has obtained prior permission under this Act; and receives any foreign contribution, **shall** transfer such foreign contribution to any other person.

➤ However, such person **may** transfer, with the prior approval of the Central Government, a part of such foreign contribution to any other person who has **not** been granted a certificate or obtained permission under this Act in accordance with the **rules** made by the Central Government.

Conclusion:

X cannot transfer the Foreign Contribution received by it to another organization in compliance of **Sec.7**.

Earlier, foreign contribution accepted with the permission of the Central Government could be transferred to any other person who is registered under FCRA, 2010 or has obtained prior permission. **It can be seen that the legislature has placed a blanket prohibition on transfer of foreign contribution received by any person to any other person.** The intention is to prevent recipients of foreign contribution acting as mere conduits or facilitating agents for obtaining foreign contribution.

FCRA Question Bank for May 2021 & onwards

Important Note : The relevance of Rule 24 in the light of the blanket prohibition is debatable. Central Government may refuse to grant permission citing section 7 as amended. Nevertheless, an amendment to the rules or a clarificatory circular would enable better compliance on this matter.

Restrictions on transfer of funds:

Rule 24 of FCRR, **2011**, prescribes the procedure for transferring foreign contribution to any unregistered person as under:

(1) A person who has been granted a certificate of registration or prior permission u/s **11** and intends to transfer part of the foreign contribution received by him to a person who has **not** been granted a certificate of registration or prior permission under the Act, **may** transfer such foreign contribution to an extent **not** exceeding ten per cent of the total value thereof and for this purpose, make an application to the Central Government in the prescribed Form (Form FC-5).

(2) Application **shall** be accompanied by a declaration to the effect that:

➤ The amount proposed to be transferred during the financial year is less than **10%** of the total value of the foreign contribution received by him during the financial year;

➤ The transferor **shall not** transfer any amount of foreign contribution until the C.G approves such transfer.

(3) A person who has been granted a certificate of registration or prior permission u/s **11 shall not** be required to seek the prior approval of the C.G for transferring the foreign contribution received by him to another person who has been granted a certificate of registration or prior permission under the Act **provided** that the recipients has **not** been proceeded against under any of the provisions of the Act.

(4) Both the transferor and the recipient **shall** be responsible for ensuring proper utilisation of the foreign contribution so transferred and such transfer of foreign contribution **shall** be reflected in the returns in Form to be submitted by both the transferor and the recipient.

Question 7

X, a registered association transfers the Foreign Contribution received by it to another person? Comment upon the validity of said act of X in terms of Foreign Contribution (Regulation) Act, 2010? (May 2021 RTP)

Answer:

In the light of section 7 of the FCRA, 2010, no person who –

- is registered and granted a certificate or has obtained prior permission under this Act; and
- receives any foreign contribution,

shall transfer such foreign contribution to any other person.

According to the section, the act of X, an association of transferring the Foreign Contribution another person, is not valid.

FCRA Question Bank for May 2021 & onwards

Question 8

An Association registered under the Foreign Contribution (Regulation) Act, 2010 (the Act) received donation from a club registered in Singapore. The Association proposes:

- (i) To transfer 10% of the donation to "Home for Aged Society", an unregistered person and 15% to "Welfare Club" a registered person under the Act,
- (ii) To invest portion of the donation in Chits promising high returns.

In the light of provisions of the Foreign Contribution (Regulation) Act, 2010 decide whether the Association can carry out the above proposals and if so state the procedures to be followed under the said Act? *(Nov.18 Exm.)*

Answer: *Revised through May 2021 Amendments**

(i) According to Section 7 of the Foreign **Contribution (Regulation) Act, 2010**, no person who is registered and granted a certificate or has obtained prior permission under this act and receives any foreign contribution, shall transfer such foreign contribution to any other person.

However, that such person may transfer, with the prior approval of the Central Government, a part of such foreign contribution to any other person who has not been granted a certificate or obtained permission to an extent not exceeding ten per cent of the total value thereof and for this purpose, make an application to the Central Government in prescribed Form. [Read with Rule 24 of FCRR, 2011]

In the instant case, the association cannot transfer 10% of the donation to "Home for Aged Society" an unregistered person after making an application to the Central Government in prescribed form and cannot also transfer 15% to "Welfare Club" a registered person under the Act.

Note : Important Note : The relevance of Rule 24 in the light of the blanket prohibition is debatable. Central Government may refuse to grant permission citing section 7 as amended. Nevertheless, an amendment to the rules or a clarificatory circular would enable better compliance on this matter.

(ii) According to proviso to **Section 8 of the FCRA, 2010** any foreign contribution shall not be used for speculative business.

Speculative activities have been defined in **Rule 4** of FCRR, 2011 as under: -

- ✓ any activity or investment that has an element of risk of appreciation or depreciation of the original investment, linked to market forces, including investment in mutual funds or in shares;
- ✓ participation in any scheme that promises high returns like investment in chits or land or similar assets not directly linked to the declared aims and objectives of the organization or association.

In the instant case, the association cannot invest portion of the donation in Chits promising high returns.

Question 9

XYZ Foundation, a society registered under the Societies Registration Act, 1860, has received foreign contribution from a Mala Company LLC, a company incorporated in Singapore. XYZ Foundation deposited the amount of foreign contribution in a bank and earned interest on it. XYZ Foundation desires to invest maturity proceeds from deposits in mutual funds. You are required to advise whether XYZ Foundation is allowed to make such investment considering the provisions of the Foreign Contribution (Regulation) Act, 2010 (Note: XYZ Foundation has obtained certificate of registration under section 11 of the Act). *(RTP Nov 2020)*

FCRA Question Bank for May 2021 & onwards

Answer

As per the explanation 2 to the definition of the Foreign Contribution under the Act, the interest accrued on the foreign contribution deposited in any bank referred to in section 17(1) or any other income derived from the foreign contribution or interest thereon shall also be deemed to be foreign contribution within the meaning of this clause.

Further as per section 8 of the Act, every person, who is registered and granted a certificate or given prior permission under this Act and receives any foreign contribution, shall utilise such contribution for the purpose for which the contribution has been received.

Provided that any foreign contribution or any income arising out of it shall not be used for speculative business, whereas speculative business includes investment in mutual fund. XYZ Foundation cannot use the contribution as well as the interest component for the Investment in Mutual Fund.

Question 10

Bharat Ltd. is a subsidiary of Global Ltd., which is a MNC registered in Hongkong. The Bharat Ltd. had obtained the permission to receive foreign contribution in a designated account in the SBI. Later it was discovered that the obtained foreign contribution was deposited in other account for its functioning. Advise on the given situation as to depositing of the amount of foreign contribution from designated account to any other account. And state the duty of the bank on the said transactions made?

(RTP May 2020)

Answer

*****Revised through May 2021 Amendments**

Every person who has been granted certificate or prior permission under section 12 shall receive foreign contribution only in an account designated as "FCRA Account" by the bank, which shall be opened by him for the purpose of remittances of foreign contribution in such branch of the State Bank of India at New Delhi, as the Central Government may, by notification, specify in this behalf:

Provided that such person may also open another "FCRA Account" in any of the scheduled bank of his choice for the purpose of keeping or utilising the foreign contribution which has been received from his "FCRA Account" in the specified branch of State Bank of India at New Delhi.

Provided further that such person may also open one or more accounts in one or more scheduled banks of his choice to which he may transfer for utilising any foreign contribution received by him in his "FCRA Account" in the specified branch of the State Bank of India at New Delhi or kept by him in another "FCRA Account" in a scheduled bank of his choice.

Provided also that no funds other than foreign contribution shall be received or deposited in any such account.

The specified branch of the State Bank of India at New Delhi or the branch of the scheduled bank where the person referred to in sub-section (1) has opened his foreign contribution account or the authorised person in foreign exchange, shall report to such authority as may be specified, —

- a) the prescribed amount of foreign remittance;
- b) the source and manner in which the foreign remittance was received; and
- c) other particulars,
- d) in such form and manner as may be prescribed.'

FCRA Question Bank for May 2021 & onwards

Hence ,we can say that transfer of foreign contribution cannot be transferred to any other account as it is an offence unless it is done for its utilization as per Section 17 of FCRA 2010.

Obligations of Bank receiving foreign contribution of its customer

According to Rule 16 of FCR, Rule 2011, the bank shall report to the Central Government within forty-eight hours any transaction in respect of receipt or utilisation of any foreign contribution by any person whether or not such person is registered or granted prior permission under the Act.

Registration (Sec. 11 –Sec.16)

Question 11

Answer the following:

- Can a private limited company or a partnership firm get registration or prior permission Under FCRA,2010?
- Whether an individual or a Hindu Undivided Family (HUF) can be given registration or prior permission to accept foreign contribution in terms of section 11 of FCRA, 2010?
- Whether organization under Central/State Governments are required to obtain registration or prior permission under FCRA,2010 for accepting foreign contribution?

(Extra)

Answer

Provisions and Explanation:

Registration of certain persons with the Central Government:

Section 11 of the FCRA, **2010** provides the provisions in relation to requirement of registration for the purpose of accepting foreign contributions. In accordance with the provisions of **Sec.11**, following conclusions **may** be drawn:

- Yes, a private limited company too **may** seek prior permission/registration for receiving foreign funds in case they wish to do some charitable work at some point of time.
- Yes, definition of the 'person' in the FCRA **includes** any individual and HUF among others. As such an Individual or an HUF is also eligible to apply for prior permission to accept foreign contribution.
- Yes, however, all bodies constituted or established by or under a Central Act or a State Act requiring to have their accounts compulsorily audited by CAG of India are exempted from the operations of all the provisions of FCRA, **2010**.

Question 12

A foreign co., Srikripa Ltd. established by few Indians in Singapore. Being a strong believer of Sai, the management of the company used to donate a huge amount to the sai trust, in Mumbai, India. Enumerate in the given situation whether the donation so made by Srikripa Ltd. is a foreign contribution. Is the acceptance of such donation by the Sai trust is valid

(MTP MAY 19)

Answer:

Provisions and Explanation:

As per the definition of Foreign Contribution given in **section 2(1)(h)** of FCRA, **2010**, "Foreign contribution" **means** the donation, delivery or transfer made by any foreign source,—

☛ of any article, (except given as a gift for personal use), if the market value, in India, of such article, on the date of such gift, is **not** more than such sum as **may** be specified from time to time, by the Central Government by the **rules** made by it in this behalf;

☛ of any currency, whether Indian or foreign;

☛ security and **includes** any foreign security under the Foreign Exchange Management Act, **1999**.

FCRA Question Bank for May 2021 & onwards

As per explanation to the **section**, a donation, delivery or transfer of any article, currency or foreign security referred to in this clause by any person who has received it from any foreign source, either directly or through one or more persons, **shall** also be deemed to be foreign contribution within the meaning of this clause.

Whereas the foreign source as per the definition given in **section 2(j)** of the FCRA **includes** a foreign company. Since the Srikripa Ltd. is a foreign company, so donation made by the Srikripa Ltd is a foreign contribution for the religious and charitable purpose.

Whereas, Sai Trust can accept foreign contribution with prior permission of Central Government, if it is **not** registered under the FCRA. But where if the Sai trust is registered under the FCRA, [**section 11** of FCRA, **2010**], it **may** accept the foreign contribution within the limit without seeking prior permission.

Question 13

A foreign company, Max Ltd. was established by few Indians in Singapore. The management of the company used to donate a huge amount to the religious trust, in Mumbai, India. Enumerate in the given situation in the light of the Foreign Contribution and Regulation Act, 2010 whether the donation so made by Max Ltd. is a foreign contribution? Is the acceptance of such donation by the Religious trust is valid? *(RTP NOV. 19)*

Answer

Provisions and Explanation:

As per the definition of Foreign Contribution given in **section 2(1)(h)** of FCRA 2010, "Foreign contribution" **means** the donation, delivery or transfer made by any foreign source,-

- of any article, (except given as a gift for personal use), if the market value, in India, of such article, on the date of such gift, is not more than such sum as may be specified from time to time, by the Central Government by the rules made by it in this behalf:
- of any currency, whether Indian or foreign; security and includes any foreign security under the Foreign Exchange Management Act, 1999

As per explanation to the section, a donation, delivery or transfer of any article, currency or foreign security so referred to in this clause by any person who has received it from any foreign source, either directly or through one or more persons, shall also be deemed to be foreign contribution within the meaning of this clause.

Whereas the foreign source as per the definition given in section 2(j) of the FCRA includes a foreign company. Since the Max Ltd. is a foreign company, so donation made by the Max Ltd is a foreign contribution for the religious and charitable purpose.

Whereas, Religious Trust can accept foreign contribution with prior permission of Central Government, if it is not registered under the FCRA But where if the Religious trust is registered under the FCRA [**section 11 of FCRA 2010**], it may accept the foreign contribution within the limit without seeking prior permission.

Question 14

State under what circumstances Government can cancel the certificate of registration granted to a person under FCRA? *Study Material*

Answer

Provisions and Explanation:

FCRA Question Bank for May 2021 & onwards

Cancellation of Certificate of registration granted under FCRA:

Sec.14 of foreign Contribution (Regulation) Act, **2010** deals with the situations under which the situations under which certificate of registration **may** be cancelled. Accordingly, the C.G. **may**, by an order, cancel the certificate if-

- (a) The holder of the certificate has made a statement in, or in relation to, the application for the grant of registration or renewal thereof, which is incorrect or false; or
- (b) The holder of the certificate has violated any of the terms and conditions of the certificate or renewal thereof; or
- (c) In the opinion of the Central Government, it is necessary in the public interest to cancel the certificate; or
- (d) The holder of certificate has violated any of the provisions of this Act or **rules** or order made thereunder; or
- (e) If the holder of the certificate has **not** been engaged in any reasonable activity in its chosen field for the benefit of the society for two consecutive years or has become defunct.

Accounts, institution, Audit and Disposal of Assets, etc. [**Sec.17-Sec.22**]

Question 15

Can foreign contribution be received in and utilized from multiple Bank Account?

RTP May 2018

Answer

Provisions and Explanation:

*****Revised through May 2021 Amendments**

As per **Sec.17** of FCRA, **2010**, Every person who has been granted certificate or prior permission under section 12 shall receive foreign contribution only in an account designated as "**FCRA Account**" by the bank, which shall be opened by him for the purpose of remittances of foreign contribution in such branch of the State Bank of India at New Delhi, as the Central Government may, by notification, specify in this behalf:

Provided that such person may also open another "FCRA Account" in any of the scheduled bank of his choice for the purpose of keeping or utilising the foreign contribution which has been received from his "FCRA Account" in the specified branch of State Bank of India at New Delhi.

Provided further that such person may also open one or more accounts in one or more scheduled banks of his choice to which he may transfer for utilising any foreign contribution received by him in his "FCRA Account" in the specified branch of the State Bank of India at New Delhi or kept by him in another "FCRA Account" in a scheduled bank of his choice.

Conclusion:

The foreign contribution should be received only in the exclusive single foreign contribution account of a Bank. However, for utilization purpose, more than one bank **may** be opened.