

## FCRA-APPLICABILITY TO GIFTS RECEIVED BY INDIVIDUALS



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### INTRODUCTION

- 1.1.1** The new Foreign Contribution Regulation Act (FCRA), 2010 includes individuals under its scope. Therefore, the issue arises whether gift received by individuals from foreigners is subject to FCRA. This issue becomes even more confusing by reading the FAQs issued by Ministry of Home Affairs, FCRA Department, which clarifies that gifts and donations received by individuals are covered under FCRA. Therefore, all gifts/donations received by individuals from foreign source are subject to FC approval. The relevant MHA FAQ's no. 3, 6, 9 and 10 are provided in **Annexure 1**.

- 1.1.2** The Rule 6 of Foreign Contribution Regulation Rules (FCRR), 2011 provide that only gift received from relatives (who are foreigners) shall be exempted. An intimation in Form FC-1 has to be sent to the Home Ministry if the amount exceeds ₹ 1 lakh in a year. Such rule is causing undue hardship to people; for example old parents of receiving money from children staying abroad having foreign citizenship. Such parent have to file intimation to FCRA department if the amount exceeds ₹ 1 lakh. The issue is whether such rule is sustainable when the act does not debar any such receipts.
- 1.1.3** Similarly, the Rule 6A of Foreign Contribution Regulation Rules (FCRR), 2011 provides that individuals can receive articles from foreign source to the extent\* of ₹ 25,000.00 in a year. It may be noted that there is no provision for receiving cash or currency. The issue again is whether such rule is sustainable when the act does not debar any such receipts.
- 1.1.4** In this issue we are technically analysing the applicability of FCRA on gifts/contribution received by individuals for personal consumption. It may be noted that receiving foreign contribution for a definite purpose and for personal consumption are two different things. It seems that despite the rules and the FAQs, FCRA laws does not apply to gifts/contribution received by individuals for personal consumption, unless the person is debarred from receiving FC. It may also be noted that section 3 of FCRA debar only certain specific persons from receiving FCRA. The text of section 3 is provided in **Annexure 2**. Persons other than the one mentioned in section 3 can receive foreign contribution subject to the provisions pertaining to prior permission and registration.

## LAW PERTAINING TO CONTRIBUTIONS (INCLUDING GIFTS) FOR PERSONAL PURPOSES

- 1.2.1** The term 'person'\*\*\* includes individuals. Therefore, all individuals except the prohibited category can receive foreign contribution subject to the compliance of FCRA 2010. The FCRA, 2010 has confusing provisions in this regard. However, the overall intent seems to be towards regulating all foreign contributions received by individuals from foreign source.
- 1.2.2** An individual may receive foreign contribution or gift for personal consumption or as a trustee to execute any specific programme, research, activity etc. Some foreign

\* The sum, as stated above, has been specified as ₹ 25,000/- vide the Foreign Contribution (Regulation) Amendment Rules, 2012 [G.S.R. 292 (E) dated 12<sup>th</sup> April, 2012].

\*\* In terms of FCRA, 2010 "person" includes (i) an individual; (ii) a Hindu undivided family; (iii) an association; and (iv) a company registered under section 25 of the Companies Act, 1956.

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donors do send money in individual bank accounts for charitable project. The issue is whether both type of foreign contribution receipts shall be covered by the act or not.

**1.2.3** Section 11(1) of the FCRA provides that any person receiving foreign contribution for a definite programme should apply for registration. In other words, it implies that any person receiving foreign contribution for personal use may not apply for registration. This provision creates confusion on whether individuals receiving gifts or contribution for personal purposes are exempted from the law. Further section 12(4)(a)(vi) provides that any person applying for registration or prior permission shall not use foreign contribution for personal gain or divert it for any undesirable purpose.

**1.2.4** To sum up, the registration and procedural provisions of the act have been structured only to cover contribution received for a definite purpose, but the statutory definition of foreign contribution and inclusion of individuals in the definition of the term 'person' makes it applicable on all individuals who receive foreign contribution from a foreign source. But at the same time the act is not clear how such contribution received by individuals will be regulated when the registration and prior permission are required to be taken only when foreign contribution is received for definite purpose.

**1.2.5** In other words, the application of the act on an individual is very clear. Further gifts from foreign sources also seem to be covered under the definition of foreign contribution. But the act does not regulate personal gifts or contribution and therefore, individuals or even institution, technically can receive gifts from foreign sources without prior permission or registration. The regulation of personal receipts and gifts from foreign sources have not been properly articulated. Further, the act does not debar receiving gifts and contribution for personal purposes. The act provides for reporting of gifts received from relatives above ₹ 1 lakh, but it is silent about reporting of gifts received from foreign source. Further, the preamble of the act as provided in the beginning of the act, states that the act is to regulate the foreign contribution or foreign hospitality of only certain individuals, associations or companies. In other words, the act at the outset also makes it clear that it does not apply to all category of persons. The preamble is reproduced as under :

*“An Act to consolidate the law to regulate the acceptance and utilisation of foreign contribution or foreign hospitality by certain individuals or associations or companies and to prohibit acceptance and utilisation of foreign contribution or foreign hospitality for any activities detrimental to the national interest and for matters connected therewith or incidental thereto.”*

**1.2.6** Overall, it seems that the act applies to all persons for foreign contribution received **for a definite purpose**. In other words, the act would not apply to foreign contribution received for personal use or as gift. Only the specified individual under section 3 are debarred from receiving FC except gifts from relatives.

## TREATMENT OF FOREIGN REMITTANCES RECEIVED FROM A RELATIVE

**1.3.1** Rule 6 of FCRR, 2011 provides any gift received from a relative in excess of ₹ 1 lakh, per annum, needs to be intimated to the Central Government. It may be noted that no prior permission is necessary to receive gifts from relatives staying abroad but an intimation has to be sent within 30 days in Form FC-1. Rule 6 of FCRR 2011 is reproduced as under :

*“6. Intimation of receiving foreign contribution from relatives. - 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 Form FC-1 within thirty days from the date of receipt of such contribution.”*

**1.3.2** In this context it may be noted that the FCRA law would not apply if the relative is an Indian holding valid Indian passport. The Form FC-1 is available on the website <http://mha.nic.in/fcra/forms/fc-1.pdf>.

**1.3.3** Since even the persons specified in Section 3 of FCRA 2010, i.e., persons not permitted to accept foreign contribution, are also permitted to accept gifts from their relatives under Section 4(e) of the Act, subject to the provisions of Section 10, it is obvious that any other person in general is also permitted to accept gift from his/her relative.

**1.3.4** Rule 6A creates an anomalous situation which is described as under :

- A gift from relative holding Indian passport is totally exempted for everybody.
- A gift from non-relative holding Indian passport is also totally exempted for everybody.
- A gift from relative who is a foreigner is also totally exempted for everybody, but an intimation has to be sent within 30 days in Form FC-1, if the amount exceed ₹ 1 lakhs in a year.
- A gift from non-relative who is a foreigner is also totally exempted for everybody, and it seems that no intimation has to be sent within 30 days in Form FC-1.

**1.3.5** Therefore, the contradiction in applying Rule 6A have to be addressed under the primary provisions of the Act and therefore, foreign contribution including gift for personal consumption does not seem to be under the regulatory scope of FCRA.

**FAQs ISSUED BY MHA\* RELATING TO GIFTS & DONATIONS**

**Q.3 Section 2(c)(i) of repealed FCRA, 1976 inter alia defined foreign contribution as the donation, delivery or transfer made by any foreign source of any article, not given to a person as a gift for personal use, if the market value, in India, of such article exceeds one thousand rupees. What limit has been prescribed in FCRA, 2010 in respect of such articles?**

**Ans.** The limit has been specified as Rs. 25000/- through insertion of the following Rule 6A in FCRR, 2011 *vide* the Foreign Contribution (Regulation) Amendment Rules, 2012 [G.S.R. 292 (E) dated 12<sup>th</sup> April, 2012]:

**“6A. When articles gifted for personal use do not amount to foreign contribution.**—Any article gifted to a person for his personal use whose market value in India on the date of such gift does not exceed rupees twenty-five thousand shall not be a foreign contribution within the meaning of sub-clause (i) of clause (h) of sub-section (1) of section (2).”

**Q.6 Who cannot receive foreign contribution?**

**Ans.** As defined in Section 3(1) of FCRA, 2010, foreign contribution cannot be accepted by any:

- (a) a candidate for election;
- (b) correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper;
- (c) Judge, government servant or employee of any Corporation or any other body controlled or owned by the Government;
- (d) member of any legislature;
- (e) political party or office bearer thereof;
- (f) organization of a political nature as may be specified under sub-section (1) of Section 5 by the Central Government.
- (g) association or company engaged in the production or broadcast of audio news or audio visual news or current affairs programmes through any electronic mode, or

\* Source : <http://mha.nic.in/fcra.htm>.

any other electronic form as defined in clause (r) of sub-section (i) of Section 2 of the Information Technology 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).

*Explanation*—In clause (c) and section 6, the expression “corporation’ means a corporation owned or controlled by the Government and includes a Government company as defined in section 617 of the Companies Act, 1956.

(i) individuals or associations who have been prohibited from receiving foreign contribution.

**Q.9 Whether donation given by an individual of Indian origin and having foreign nationality is treated as ‘foreign contribution’?**

**Ans.** Yes. Donation from an Indian who has acquired foreign citizenship is treated as foreign contribution. This will also apply to PIO card holders and to Overseas Citizens of India. However, this will not apply to ‘Non-resident Indians’, who still hold Indian citizenship.

**Q.10 Whether foreign remittances received from a relative are to be treated as foreign contribution as per FCRA, 2010?**

**Ans.** The position in this regard as given in Section 4(e) of FCRA, 2010 and Rule 6 of FCRR, 2011 are as under:

Subject to the provisions of section 10 of the FCRA, 2010, nothing contained in section 3 of the Act shall apply to the acceptance, by any person specified in that section, of any foreign contribution where such contribution is accepted by him from his relative. 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 Form FC-1 within thirty days from the date of receipt of such contribution. This form is available on the website <http://mha.nic.in/fcra/forms/fc-1.pdf>.

## PERSONS BARRED FROM RECEIVING FOREIGN CONTRIBUTION

As defined in Section 3(1) of FCRA, 2010, foreign contribution cannot be accepted by certain specified persons. The text of Sec. 3(1) is as under :

“3.(1) No foreign contribution shall be accepted by any—

- (a) A candidate for election;
- (b) correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper;
- (c) Judge, Government servant or employee of any corporation or any other body controlled or owned by the Government;
- (d) member of any Legislature;
- (e) political party or office bearer thereof;
- (f) organization of a political nature as may be specified under sub-section (1) of Section 5 by the Central Government.
- (g) association or company engaged in the production or broadcast of audio news or audio visual news or current affairs programmes through any electronic mode, or any other electronic form as defined in clause (r) of sub-section (1) of Section 2 of the Information Technology 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).

Explanation – In clause (c) and section 6, the expression ‘corporation’ means a corporation owned or controlled by the Government and includes a Government company as defined in section 617 of the Companies Act, 1956.

- (2) (a) No person, resident in India, and no citizen of India resident outside India, shall accept any foreign contribution, or acquire or agree to acquire any currency from a foreign source, on behalf of any political party, or any person referred to in sub-section (1), or both.
- (b) No person, resident in India, shall deliver any currency, whether Indian or foreign, which has been accepted from any foreign source, to any person if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to any political party or any person referred to in sub-section (1), or both.
- (c) No citizen of India resident outside India shall deliver any currency, whether Indian or foreign, which has been accepted from any foreign source, to—
  - (i) any political party or any person referred to in sub-section (1), or both; or
  - (ii) any other person, if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to a political party or to any person referred to in sub-section (1), or both.



(3) No person receiving any currency, whether Indian or foreign, from a foreign source on behalf of any person or class of persons, referred to in section 9, shall deliver such currency —

- (a) to any person other than a person for which it was received, or
- (b) to any other person, if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to a person other than the person for which such currency was received.”

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