Key Definitions and Concepts under FCRA, 2010

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A. Foreign Contribution

Q1. What is foreign contribution?

As defined in Section 2(1)(h) of FCRA, 2010, "foreign contribution" means the donation, delivery or transfer made by any foreign source –

(i) of any article, not being an article given to a person* as a gift for his personal use, if the market value, in India, of such an 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 on this behalf.

(ii) of any currency, whether Indian or foreign;

(iii) of any security as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 and includes any foreign security as defined in clause (o) of Section 2 of the Foreign Exchange Management Act,1999.

Explanation1–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. Explanation 2 – The interest accrued on the foreign contribution deposited in any bank referred to in sub-section (1) of Section 17 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. Explanation3–Any amount received, by any person from any foreign source in India, by way of fee (including fees charged by an educational institution in India from foreign student) or towards cost in lieu of goods or services rendered by such person in the ordinary course of his business, trade or commerce whether within India or outside India or any contribution received from an agent or a foreign source towards such fee or cost shall be excluded from the definition of foreign contribution within the meaning of this clause.

In terms of FCRA, 2010 "person" includes –

(i) an individual;

(ii) a Hindu undivided family;

(iii) an association;

(iv) a company registered under section 25 of the Companies Act,1956 (now Section 8 of Companies Act, 2013).

Q2. Who can receive foreign contributions?

Any “Person” can receive foreign contribution subject to the following conditions:-

a) It must have a definite cultural, economic, educational, religious or social programme. b) It must obtain the FCRA registration/prior permission from the Central Government

c) It must not be prohibited under Section 3 of FCRA, 2010.

Q3. Who cannot receive foreign contributions?

As defined in Section 3(1) of FCRA, 2010, the following are prohibited to receive foreign contribution:

(a) candidate for election;

(b) Correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper;

(c) Public Servant, 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 point (g).

(i) Individuals or associations who have been prohibited from receiving foreign contributions.

Q4. Can foreign contributions be received in rupees?

Yes. Any donation, delivery or transfer received from a ‘foreign source’ whether in rupees or in foreign currency is construed as ‘foreign contribution’ under FCRA, 2010. Such transactions including interest on foreign contribution or income derived from foreign contribution even in rupees terms are considered as foreign contribution.

Q5. Will interest or any other income earned from foreign contribution (FC) be considered foreign contribution?

Yes. It will become part of F.C. Please see Explanation 2 under Question 1.

Q6. Can interest or any other income earned out of foreign contribution be shown as fresh foreign contribution receipt during that year?

No. The interest or any other income earned out of foreign contribution should be shown against Column 2(i)(b) in the annual return (Form FC-4) during the year in which it is earned. Such interest or income would be considered as F.C.

Q7. Whether earnings from foreign client(s) by a person in lieu of goods sold or a service rendered by it is treated as foreign contribution?

No. As clarified at Explanation 3 under section 2(1)(h), foreign contribution excludes earnings from foreign client(s) by a person in lieu of goods sold or services rendered by it as this is a transaction of commercial nature/quid pro quo in the normal course of business trade etc within or outside India.

Q8. Can donations given by Non-Resident Indians (NRIs) be treated as ‘foreign contribution’?

Contributions made by a citizen of India living in another country (i.e., Non-Resident Indian), from his personal savings, through the normal banking channels, are not treated as foreign contributions. However, while accepting any donations from such NRI, it is advisable to obtain his/her passport details to ascertain that he/she is actually an Indian citizen.

Q9. Can donation given by an individual of Indian origin and having foreign nationality be treated as ‘foreign contribution’?

Yes. Donations from an Indian origin person who has acquired foreign citizenship is treated as foreign contribution. This will also apply to PIO / OCI cardholders. They are foreigners. However, this will not apply to 'Non-resident Indians', who still hold Indian citizenship as they are not foreigners.

Q10. Can foreign remittances received from a relative be treated as foreign contribution as per FCRA, 2010?

No. As per section 4(e) of FCRA,2010 and 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 ten lakh rupees or equivalent thereto in a financial year from any of his relatives shall inform the Central Government in electronic Form FC-1 within three months from the date of receipt of such contribution. This form may be filled online on the website: https://fcraonline.nic.in

Q11. Can individuals not covered under Section 3 or a HUF accept foreign contributions freely for the purposes listed in section 4 of FCRA, 2010?

Yes. Since, subject to the provisions of Section 10, even the persons specified under section 3, i.e., persons not permitted to accept foreign contribution, are allowed to receive foreign contribution for the purposes listed in section 4, it is obvious that Individuals in general and a HUF are permitted to accept foreign contribution without permission for the purposes listed in section 4. However, it should be borne in mind that the monetary limit for acceptance of foreign contribution in the form of any article given as gift to a person for his personal use has been specified as Rs. one lakh video FCR Amendment Rules, 2019.

Q12. Can fees paid by foreign delegates/participants attending/participating in a conference/seminar etc. be termed as foreign contribution and thus require permission from FCRA?

No. “Delegate/participation Fees” paid by foreign delegates/participants for participation in a conference/seminar and which is utilized for the purpose of meeting the expenditure of hosting the conference/seminar is not treated as foreign contribution and as such no permission under FCRA is required by the recipient.

Q13. Section 2(c)(i) of repealed FCRA, 1976 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?

The limit has been specified as Rs. One lakh through insertion of the following Rule 6A in FCRR, 2011 vide the Foreign Contribution (Regulation) (Second Amendment) Rules, 2019 [G.S.R. 659 (E) dated 16th September, 2019]: "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 one lakh shall not be a foreign contribution within the meaning of sub-clause (i) of clause (h) of sub-section (1) of section (2).

B. Foreign Source

Q14. What is a foreign source?

Foreign source, as defined in Section 2(1) (j) of FCRA, 2010 includes:-

(i) the Government of any foreign country or territory and any agency of such Government;

(ii) any international agency, not being the United Nations or any of its specialized agencies, the World Bank, International Monetary Fund or such other agency as the Central Government may, by notification, specify in this behalf;

(iii) a foreign company;

(iv) a corporation, not being a foreign company, incorporated in a foreign country or territory;

(v) a multinational corporation referred to in sub-clause (iv) of clause (g) of section 2 of FCRA,2010;
• (vi) a company within the meaning of the Companies Act, 1956, and more than one-half of the nominal value of its share capital is held, either singly or in the aggregate, by one or more of the following, namely:- a. the Government of a foreign country or territory; b.the citizens of a foreign country or territory; c. corporations incorporated in a foreign country or territory; d. trusts, societies or other associations of individuals (whether incorporated or not), formed or registered in a foreign country or territory; e. foreign company; provided that where the nominal value of share capital is within the limits specified for foreign investment under the Foreign Exchange Management Act, 1999, or the rules or regulations made thereunder, then, notwithstanding the nominal value of share capital of a company being more than one-half of such value at the time of making the contribution, such company shall not be a foreign source.

(vii) a trade union in any foreign country or territory, whether or not registered in such foreign country or territory;

(viii) a foreign trust or a foreign foundation, by whatever name called, or such trust or foundation mainly financed by a foreign country or territory;

(ix) a society, club or other association or individuals formed or registered outside India;

(x) a citizen of a foreign country;”

NOTE – A few bodies/ organizations of the United Nations, World Bank and some other International agencies/multilateral organizations are exempted from this definition, and are not treated as foreign sources. Hence, the funds received from them are not considered as foreign contributions. List of such bodies / organizations, which are not treated as ‘foreign source’, are available on the website https://fcraonline.nic.in.

Q15. Can an Individual of Indian Origin who has acquired foreign nationality be treated as foreign source?

Yes. The contribution received from all the non- Indian Passport Holders is treated as “Foreign Source.”

Q16. What is a foreign company?

Please see section 2(1)(g) of FCRA, 2010. Foreign company means any company or association or body of individuals incorporated outside India and includes-

a) a foreign company within the meaning of Section 379 of the Companies Act,2013

b) a company which is a subsidiary of a foreign company

c) the registered office or principal place of business of a foreign company referred to in sub-clause (i) or company referred to in sub-clause(ii);

d) a multinational corporation

Q17. What is a Multinational Corporation?

As per explanation given under clause (g) of sub-section 1 of Section 2 of FCRA, 2010 a corporation incorporated in a foreign country or territory shall be deemed to be a multinational corporation if such corporation,-

(a) has a subsidiary or a branch or a place of business in two or more countries or territories; or

(b) carries on business, or otherwise operates, in two or more countries or territories;

Q18. Can a company incorporated in India under the Companies Act, 2013 having its operations in 2 or more countries be treated as a MNC under FCRA, 2010?

No.

C. Other Key Definitions and Concepts

Q19. What is a candidate for election?

A candidate for election means a person who has been duly nominated as a candidate for election to any legislature with effect from the date of his such nomination.

Q20. What is a registered newspaper?

“registered newspaper” means a newspaper registered under the Press and Registration of Books Act, 1867.

Q21. What is a political party?

Please see section 2(1)(4) of FCRA, 2010. “Political party” means –

(i) an association or body of individual citizens of India –

- to be registered with the Election Commission of India as a political party under section 29A of the Representation of the People Act, 1951; or
- which has setup candidates for election to any Legislature, but is not so registered or deemed to be registered under the Election Symbols (Reservation and Allotment) Order, 1968;

(ii) a political party mentioned in column 2 of Table 1 and Table 2 to the notification of the Election

Commission of India No. 56/J&K/02, dated the 8th August, 2002, as in force for the time being;

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