

A. Foreign Contribution

Q.1 What is foreign contribution?

Ans. 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 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 rules made by it in this behalf. (This sum has been specified as Rs. 25,000/- currently);
- (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.

Explanation 1 – A donation, delivery or transfer or 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 with 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.

Explanation 3 – Any amount received, by a 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;
- (iii) an association;
- (iv)) a company registered under section 25 of the Companies Act, 1956 (now Section 8 of Companies Act, 2013).

Q.2 Who can receive foreign contribution?

Ans. Any individual, HUF, association or a company registered under Section 25 of Companies Act 1956 (Now Section 8 of Companies Act, 2013) can receive foreign contribution subject to 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.
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Q.3 Who cannot receive foreign contribution?

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

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

Q.4 Can foreign contribution be received in rupees?

Yes. Any amount received from 'foreign source' whether in rupees or foreign currency is construed as 'foreign contribution' under FCRA, 2010. Such transactions even in rupees term are considered foreign contribution.

Q.5 Will interest or any other income earned from foreign contribution be considered foreign contribution?

Ans. Yes.

Q.6 Whether interest or any other income earned out of foreign contributions be shown as fresh foreign contribution receipt during that year or not?

No. The interest or any other income earned out of such deposit should be shown against Column 2(i)(b) in the annual return (Form FC-4) during the year in which it is earned.

Q.7 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?

Ans. No. As clarified at Explanation 3 in Q. 1 above, 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.

Q.8 Whether donation given by Non-Resident Indians (NRIs) is treated as 'foreign contribution'?

Ans. 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, is not treated as foreign contribution. However, while accepting any donations from such NRI, it is advisable to obtain his passport details to ascertain that he/she is an Indian passport holder.

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 / OCI cardholders. However, this will not apply to 'Non-resident Indians', who still hold Indian citizenship.

Q.10 Whether infusion of foreign share capital in a company registered under section 25 of the Companies Act, 1956 attracts the provisions of FCRA, 2010?

Ans. Yes, infusion of foreign share capital in a company registered under section 25 of the Companies Act, 1956 (now Section 8 of Companies Act, 2013) is treated as foreign contribution.

Q.11 Whether foreign remittances received from a relative are to be treated as foreign contribution as per FCRA, 2010?

Ans. 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 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: fcraonline.nic.in

Q.12 Whether individuals not covered under Section 3 or a HUF can accept foreign contribution freely for the purposes listed in section 4 of FCRA, 2010?

Ans. 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. 25,000/ vide FCR Amendment Rules, 2012.

Q.13 Can the fee paid by the foreign delegates/participants attending/participating in a conference/seminar etc. be termed as foreign contribution and thus require permission from FCRA?

Ans. 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

Q.14 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 12th 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)."