

NGO Compliance

Compliance

What will be covered?

Core focus will be What & Why of

1. Compliance
2. Section 2(15)
3. Section 12 in terms of post approval compliance
4. Section 80(G) in terms of post approval compliance
5. Inter charity donation rules and compliance
6. TDS-Key aspects, important sections, threshold limits, deduction rates and remittance timelines and timelines for filing quarterly returns
7. Labour Laws Key understanding on type of organization and type of human resources
8. Labour Laws on PT, PF, ESIC, Gratuity, S&EA, MWA and Code on wages
9. GST by way of Q & A
10. FCRA by way of Q & A

Compliance

What is it?

Adhering to statutory and mandatory stipulations like

- Following the conditions stipulated for any approvals
- Submission/filing of returns and reports
- Disclosure
- Periodical renewals
- Payment of periodical fees

Why is it necessary?

- Law of the land
- Noncompliance may result in fines/penalties including reputation risk/loss of concessions
- In extreme cases it can result in closure of the organization
- Mandated in the concessions given
- First items to be verified by donors
- Many of the compliances like PF, ESIC, Gratuity are part of welfare measures
- Defines organizational values

Compliance

Sections	Explanation	Important compliance required
Section 2(15)	<p>Stipulates 7 charitable activities:</p> <ol style="list-style-type: none">1. Relief to the poor,2. Medical,3. Educational,4. Environment protection,5. Preservation of monuments, places of artistic and historical significance,6. Promotion of yoga and7. Charitable activities of general public utility	<ul style="list-style-type: none">• Choice of activities should be aligned to activities mentioned in the Trust Deed /By-Law/MOA• In respect of 7th type of activities, if any fees/charges are collected, it shall not exceed 20% of the total revenue and separate accounts should be maintained.

Compliance

Sections	Explanation	Important compliance required
Section 12AB & Section 10(23C) & Section 11	<ul style="list-style-type: none">• Permits exemption from payment of tax• Permits registration of NGOs• Provides unique ID for NGOs• It is a must for opening SB account in the banks• Mandatory for CSR registration and FCRA permission• Stipulates what type of investments can be made by NGOs-Section 11(5)	<ul style="list-style-type: none">• Exemption in tax is subject to filing of annual return and not automatic• 85% of the income must be spent in the year it was received. If there is a shortfall, file 10 or 9A• Tax audit is mandatory if taxable income is more than Rs.2,50,000/- per annum.• Audit completion by 30th September and filing of returns by 31st October every year• 10B (Income > 5Cr or FCRA funds received, or Income spent abroad) and 10BB in all other cases. To be filed by CA• It should be filed by 30th September every year• Renew every 5 years and submit renewal application before 6 months of expiry

Questions and answers

Question 1: Can NGOs receive donations in cash?

- a) NGOs can receive donations in cash
- b) The donor is eligible for exemption u/s 80G so long as the donation by cash does not exceed Rs.2,000/- per annum.
- c) Hence, NGOs can only issue a receipt u/s 80G maximum of Rs.2,000/- only
- d) For the balance amount if any, a general receipt should be issued
- e) NGOs should be aware of restrictions u/s 269ST. The cash component of any transaction shall not exceed Rs.2,00,000/- per year.

Questions and answers

Question 2: Can NGOs receive Anonymous donations?

- a) Anonymous donations are those where the identity of the donor is not established. The rules are as follows
- b) The NGOs can receive anonymous donations.
- c) The anonymous donation should not be more than 5% of the total donations collected or Rs.1,00,000/- per year, whichever is higher.
- d) It is better not to collect such donations unless the NGO is a religious institution

How do we deal with box collections of donations?

Questions and answers

Question 3: Can NGOs receive donation from another NGO?

- a) Yes, it can be received but four important aspects should be known
- b) It should not be from FCRA Funds
- c) The objects of the NGOs should match and they should have registered so in 12AB
- d) The funds should not be from the unspent amount carried forward (9A or 10).
- e) For the Donor NGO, only 85% of the amount is treated as applied for charitable purposes

Compliance

10 BD & BE- Importance & readiness for filing

<ul style="list-style-type: none">• Mandatory Requirement• Delay/Non filing results in two problems<ul style="list-style-type: none">• Penalty• Failure of obligation to donors/grantors	<ul style="list-style-type: none">• It is an annual return to be filed on or before 31st May• Uploading of the details of donations/Grants received during the FY year duly reconciled with the books of accounts	<ul style="list-style-type: none">• Before filing the returns let us be firm with certain mandatory requirements• What are the information we require• The Donor cannot claim exemption in IT without 10BE (ARN)• Delay results in a penalty of Rs.200/ per day subject to maximum of the donation amount in question. Can also result in fine of Rs.10,000 to Rs.1,00,000/-
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Question :What are the important details required for 10BD?

- a) Complete address
- b) PAN/Aadhaar/Ration Card/Driving License/Passport/Voter ID/TIN details
- c) Mode of remittance, cash/check/electronic transfers/UPI payments
- d) Type of contribution, donations/grants/corpus contribution
- e) Should we include FCRA Donations/Grants?

Discussion: The benefits of 80G is somewhat nullified due to New Regime Taxation?

Compliance

TDS Important Sections, TDS Rates, Threshold Limits and Timelines				
Section	Description	Rate	Threshold Limit	Explanation
192	Salaried Employees	Slab Rate	Depends on the Regime	Omitted for explanation
194 (C)	Payment to Contractors	1% (Ind & HUF) 2% (Others)	Rs.1,00,000 pa	The individual contract shall not exceed Rs.30,000/-
194 (I)	Payment of rent	2% for P&M 10% others	Rs.2,40,000 pa	
194(J) A & B	Payment to Professionals & Technical services	10% 194J B 2% 194J A	Rs.30,000 pa	It has two sub sections
195	ALL Payments to NRI	30.12%	NIL	Reduced rate if ITO letter u/s 197

1. Deduction shall be made once it crosses the threshold limit but on the entire payments
2. Deduct when paid or credited to the account in the books (Not when provision is made as per MAS)
3. Delayed deduction attracts interest of 1% pm
4. Remit the deducted amount using TAN on or before 7th of the succeeding month except 4th qtr. (1M)
5. Pay 1.5% per month interest for the delayed remittance
6. File 24Q, 26Q & 27Q within one month of the close of the quarter, except the 4th qtr. (2 months)
7. **No PAN or PAN & Aadhar not linked TDS rates goes up to 20%**

Labour Laws

Compliance- Labour Laws

Before we get into the labour laws, we must understand

1. Nature of our organization

- a. Do not take up any trade, business or service oriented commercial activity
- b. Do take up trade, business or service oriented commercial activity with an intention of making profit or not
- c. A combination of charitable and trade/business/service activities

2. Composition of Human resources in the organization

- a. Employees
- b. Volunteers-paid or unpaid
- c. Professionals and technical persons taken as consultants or any other name
- d. Persons employed through contractors

Compliance- Labour Laws

LABOUR LAWS

- **Important Labor Laws (In all 18 labor laws)**

1. Professional Tax
2. Provident Fund Act
3. Employee Insurance Corporation (ESIC)
4. Payment of Gratuity Act, 1972
5. Minimum Wages Act
6. Code on Wages or Wages Code (Non starter)
7. Prevention of Sexual Harassment in the workplace
8. Child Protection Act
9. Equal Remuneration Act
10. Rights of Persons with Disabilities Act, 2016
11. National & Festival Holidays Act (Mandatory holidays)
12. Payment of Wages Act (Specified date <1,000-7th & above 10th)
13. Employment Exchanges Act
14. Contract Labor Act
15. Employees Compensation Act (Non ESI)
16. Industrial Employment (Standing order) Act, 1946 (300 or more as per COW (Code on Wages), earlier 50/100)
17. Industrial Disputes Act
18. Maternity Benefit Act

Compliance- Labour Laws

Important Acts	Key aspects
Professional Tax	<ol style="list-style-type: none"> 1. Registration of the organization and renewal every year 2. Even if one employee, deduct and remit 3. Amount is fixed by the? 4. Remit within stipulated time
Provident Fund Act	<ol style="list-style-type: none"> 1. Applicable if 20 or more employees 2. Starts from the date of employment 3. Mandatory coverage up to wage of Rs.15,000/. Above this, the contribution of employer is not mandatory 4. Employee & Employer contribution @ 12% of eligible amount 5. Employer contribution is split: 8.33% to pension & 3.67% to PF of employee 6. EDLI Scheme : Min Rs.2.50 Lakhs & Max Rs.7.00 Lakhs (Employee Deposit Linked Insurance) 7. Pension eligibility 58 years minimum, subject to 10 years of continuous service prior to superannuation. 8. PF contribution along with admin charges shall be paid by 15th of the succeeding month 9. Seeding of Aadhaar is mandatory

Compliance- Labour Laws

Important Acts	Key aspects
Employee State Insurance Act	<ol style="list-style-type: none">1. Applicable if 10 or more employees2. Mandatory coverage if the wage is Rs.21,000/ or less.3. Gross salary is considered for determining the threshold & for contribution4. Eligible employees should be enrolled within 10 days of joining for duty5. Employee & Employer contribution @ 0.75% and 3.25%, respectively6. Employee need not contribute for salary up to Rs.5,000/-7. The registration should be obtained for every working unit.8. Contribution, both employee and employer, shall be paid by 15th of the succeeding month9. Aadhaar ceding is mandatory10. Contribution cut off period is April-Sept & Oct-March

Compliance- Labour Laws

Important Acts	Key aspects
Payment of Gratuity Act, 1972	<ol style="list-style-type: none"> 1. Applicable for 10 or more employees 2. Minimum continuous service of 5 years 3. For every completed year of service, 15 days wages (last wage) 4. Basic and DA are considered. Basic shall be at least 50% (In Karnataka) 5. Employee shall apply within 30 days of cessation and employer to pay within 30days of receipt of the application 6. For any delayed payment, interest shall be paid @10% pa 7. Buy policy from LIC and pay (Respective state prerogative to mandate this)
Shops & Establishments Act	<ol style="list-style-type: none"> 1. Applicable if more than 10 employees and engaged in providing trade/service/business 2. Employer shall ensure proper working hours, payment of wages, leave. Working hours should be displayed in the office premises. 3. Maintain mandatory registers

Compliance- Labour Laws

Important Acts	Key aspects
Minimum Wages Act	<ol style="list-style-type: none"> 1. Mandatory coverage irrespective of the sector as per Code on wages 2. Earlier only basic and DA was treated as wage. The code on wages has redefined the wages to include all kinds of monetary compensation in whatever name it is given excepting certain items like HRA, conveyance etc. 3. Though it is Central Act, the respective State Governments are empowered to declare minimum wages and enforce implementation 4. Mandatory maintenance of salary registers, issuance of wage slips 5. Payment of overtime
Code on Wages	<ol style="list-style-type: none"> 1. It is an attempt to simplify labor laws by subsuming four labor laws, MWA, ERA, PWA and PBA effective August 2019, yet to be operationalized 2. Universal application to all the sectors 3. Uniform definition of wages unlike each law defining wages differently 4. Shift from regime of inspection and imposition of fines and penalties to supervision, guidance support, facilitation of compliance, and penalties will be imposed only after giving sufficient chance for corrective steps. 5. No stringent imposition of imprisonment and permission for compounding the fines and penalties

Foreign Contribution Regulation Act, 2010 (FCRA) & Foreign Contribution Regulation Rules, 2011 (FCRR)

Compliance- FCRA & FCRR

Receipt of money from foreign sources are regulated and controlled by two Acts

- Foreign Exchange Management Act, 1999 (FEMA) –earlier it was FERA, 1974 (RBI)
- Foreign Contribution Regulation Act, 2010 (FCRA)- earlier it was FCRA, 1976 (MHA)
- Foreign Contribution Regulation Rules, 2011(FCRR)- earlier it was FCRR, 1976 (MHA)

Purpose

To regulate the acceptance and utilization of foreign contribution or foreign hospitality in order to prevent activities that may be detrimental to the national interest (Sovereignty & Security)

Compliance- FCRA & FCRR

Applicability: Entire India including NRIs & foreign branches of Indian organizations.

Persons: Individuals, HUF, Associations, Companies u/s 8 of Companies Act ,2013

Associations: Individuals, whether incorporated or not but having office in India, Societies/Trusts whether registered or not, and any other organizations whether registered or not.

What is a foreign source: Foreign government, Agencies, Companies incorporated abroad, foreign nationals including OCI card holders, Foreign non-profit organizations, foundations, branches and subsidiaries of multinational companies operating in India

Let us check it out whether Foreign Source or not

1. A NRI with Indian passport holder transfers money from London in Pounds
2. A NRI with American passport transfers money from his local account in India (NRO)
3. SBI branch in New York donates money to an NGO in India
4. Indian branch office of McKinsey donates money to NGO in India
5. Amazon India donates money under CSR

Compliance- FCRA & FCRR

What are covered: Donations/grants in cash or kind, gifts to individuals (>Rs.1,00,000/-), proceeds from sale of assets, rent, CSR donations, Cash transfers beyond Rs.10,00,000/ received by the relatives

Who can receive foreign donations?: Person/s having definite cultural, economic, educational, religious or social program/s. **But they must have either prior permission or obtained registration certificate.**

Who cannot receive: A candidate for election, correspondent, columnist, cartoonist, printer, publisher, political parties, judges, government servant, members of legislature, etc

If neither of the above?

- “Relatives” of foreign nationals can freely receive but must notify to MHA if it exceeds Rs.10,00,000/- in a year
- Other than relatives, only in the form of gifts whose value is not more than Rs.1,00,000/-
- **Others cannot freely receive it**
- If a NRI with American passport gives a loan to a relative in India?

Compliance- FCRA & FCRR

Important aspects relating to operational guidelines

1. Is it cash based accounting or accrual-based accounting?
2. All documents shall be preserved for a minimum of ----- years
3. The source of funds shall be clearly established before accepting foreign funds
4. Can cash payments be made under FCRA? If so what is the limit?

Compliance- FCRA & FCRR

Important aspects relating to operational guidelines

6. Fixed assets procured from FC funds shall be purchased in the name of the association only and the details shall be maintained separately.
 - a) Can we purchase an asset using both FC & Local Funds?
 - b) When this asset is sold, how do we account for the proceeds?
8. FC permission is valid for 5 years and renewal shall be taken up six month prior to the date of expiry
9. For any change of key members (addition/deletion) shall be notified by filing FC-6E and permission shall be obtained from MHA.
10. Change in the objects, address, registration, nature of activities, bank or bank account shall be intimated online

Compliance- FCRA & FCRR

Important aspects relating to operational guidelines

11. FC funds shall be received only in account opened with SBI Main branch New Delhi. Such funds can be transferred to one or more utilization accounts as approved by MHA
12. Annual return shall be submitted on or before 31st December every year even if the receipt of foreign funds are nil. If not filed what happens?
13. FC-4 shall reflect foreign contribution received in the FCRA account at SBI, New Delhi Main branch, and include the details of other bank accounts if any for utilisation.
14. Receipt of FC funds details shall be notified on quarterly basis within 15 days of closure of the quarter
15. The activities for which foreign funds are received shall be carried out in India only and shall be utilized for the purpose for which it was received.

PAN, TAN & NGO DARPAN & TDS

Compliance- PAN, TAN, DARPAN ID

WHY	WHAT	HOW
NGO DARPAN		
<ul style="list-style-type: none"> • Mandatory in some cases • Authentic data to the Government • Access to Government (Central) Grants • Unique Registration Number 	<ul style="list-style-type: none"> • Portal dedicated for NGOs • Owned and Managed by NITI Aayog (National Institution for Transforming India) 	<ul style="list-style-type: none"> • First create an account by visiting the portal at https://ngodarpan.gov.in • Please keep the details ready before creating the account, in the format to be shared later • PAN, Registration Document, Complete Address, FCRA (If applicable), email id, website details • Key members details with PAN & Aadhaar • Contact person details

Compliance- PAN, TAN, DARPAN ID

Criteria	Acts
Universal application	<ol style="list-style-type: none"> 1. POSH 2. Child Protection 3. National & Festival Holidays Act (Mandatory holidays) 4. Payment of Wages Act (Specified date <1,000-7th & above 10th) 5. Equal Remuneration Act (Nondiscrimination) 6. Minimum Wages Act 7. Professional Tax Act 8. Maternity Benefit Act
Depending on the number of employees	<ol style="list-style-type: none"> 1. Provident Fund Act 2. Employees State Insurance Corporation Act 3. Payment of Gratuity Act 4. Rights of Persons with Disabilities Act, 2016 (20 or more) 5. Industrial Disputes Act
Special conditions	<ol style="list-style-type: none"> 1. Shops & Establishments Act 2. Employment Exchanges Act 3. Contract Labour Act 4. Employees Compensation Act (Non ESI) 5. Industrial Employment (Standing order) Act, 1946 (300 or more as per COW, earlier 50/100)



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