TAX ISSUES IN INDIA:

Mathew Cherian, Director CAF India, New Delhi

Greater foreign funding also raises the issue of sustainability of NGOs since in worst-case scenario withdrawal of funding results in collapse of NGO operations. For instance NGOs in Sri Lanka are no longer a priority. Asia Foundation is thus looking at resource mobilisation. Tomorrow India may have to face a similar situation of depleted funding with 72.7% NGOs surviving on Indian money. Bilateral agencies score much worse with 99% of NGOs not receiving money from Bilaterals. Therefore the USAID, DFID money goes to the top 1% NGOs. The maximum frequency is of NGOs having a budget of 1 - 5 lakhs, which is about 31.5%. That is the market segment surviving on Indian money to be tackled. With plenty of surpluses in India, many of us feel that indigenous funds will enhance the credibility of the sector. Therefore the issue of tax exemption is central to fundraising in the Indian context.

There has been over the years an increased influence of the non-profit sectors, with the, the power increasingly shifting in several countries from government to a range of non-profit state agencies. There is partly an attempt at combating government discourse around who represents the sector and are they self appointed guardians of the people, based on democratic elections and their accountability to the electorate. Leading figures in the governments around the world and in India have often questioned non-profit sector representatives about their credibility and accountability. A part of this work is an attempt to combat this discourse from a whole range of leaders in the governments to companies across the world.

The third factor is a preemptive strike by non-profit committee in several countries before the government actually imposes a regulatory framework. They were concerned about the level of control and constrain that might be put of on the work and the creativity that the non-profit agencies could bring to the development sector in a particular country. More importantly, they were concerned about the fact that governments would not be able to do a equitable and satisfactory job of regulating and monitoring. For instance, in England, while Charities Commission with a bureaucracy of 250 plus people attempt to monitor and evaluate, interaction has revealed that notwithstanding the size of staff, the capacity to give quick turn around and decisions, was not the desire of many programs. In South Africa the unit within the Ministry of Welfare had as many as 10 people, so even if they put it place a regulatory frame work, there was no chance of actually policing it an effective way.

The fourth fact is a general concern around the public trust and credibility and need for greater transparency and accountability. In developing a typography of different NGO’s
Alan Fowler and others came up with a whole set of creative acronyms from quangos which are quasi non-government organisations, bungos which are business organised NGOs and Dongos which are donor organised Ngos, Fongos which are family organised NGOs and of course political ones. In Africa the political leaders also spoke about NGI’s, which were non-government individuals. This work was accelerated due to value judgments being made about the structure, the form and the genesis and the mission driving these organisations.

Over the last 20 to 30 years, NGOs have faced major crisis around issues of financial management and human resources all over the world. South Africa must be no exception to this during the struggle. Dr. Alan Bush a very high profile leader within liberation movement was one example which I have heard. Closer home in India, NGO’s aligned to Gandhi called Gandhian NGO’s were troubled by former Prime Minister, Mrs Indira Gandhi for opposing her and the Emergency. Later a commission called the Kudal Commission was constituted to enquire into NGO’s and tax benefits and permission to receive foreign funds was withdrawn to several Gandhian NGO’s more out of political vendetta, than any matter of great substance. NGOs therefore are expected to have high degrees of ethics and accountability. However I would like to caution that while the donors are very comfortable about giving money for program costs they have not made significant investment in terms of institutional development and are the first ones to point out financial mismanagement which is often financial incompetence or financial lack of capacity and very often not fraudulence.

It is imperative for the donor community in development to think about such minimum investment to be made for building a sustainable sector and look at tax reform to encourage local philanthropy and social investments.

The issue of tax reform has been engaging the Indian voluntary sector for many years, inspite of the fact that the voluntary sector has been able to utilize less of the tax concessions offered by the government while the private foundations have utilized every rule in the book.

It may be imperative to understand the tax structure of the non profit organisations. There is also a registration to receive foreign money which is outside the tax machinery and controlled by the Home Ministry within the government.
TAXATION OF NON-PROFIT ORGANIZATIONS IN INDIA

Returns have to be filed every year at state level with the charity commissioner or registrar of societies, as the case may be, and at federal level with the income tax authorities and also the Home Ministry if the organization is registered under the Foreign Contribution (Regulation) Act.

Charity’ is a matter for state control, so different states in the Republic of India have their own legislation (ie trusts or endowment Acts) to govern and regulate public charitable NGOs. For example, all public charitable trusts in the state of Maharashtra are regulated by the Bombay Public Trusts Act 1950. The same Act, with minor changes, also operates in the state of Gujarat. Rajasthan has a trusts Act of 1959, and Madhya Pradesh has a 1951 Act. In certain southern states (eg Andhra Pradesh) there are endowment Acts, whereas a number of northern and north-eastern states in India have no trusts Act at all. Even the capital of India, New Delhi, has no public trusts Act. A few trusts in New Delhi (as in other states) are registered under the Indian Trusts Act 1882, which essentially governs private or family trusts.

The Societies Registration Act 1860, however, is federal legislation, each state adopting certain modifications.

Forms of non-profit organization
A non-profit organization may also be registered as a company under section 25 of the Indian Companies Act 1956, which is federal legislation. Such companies are known as ‘section 25 companies’. (refer Annexure -III for a comparative assessment of these entities) very much like Section 16 companies in South Africa.

ISSUES:
The main issue in our own experience is that there are certified self regulatory bodies like the Institute for Auditors or the Bar Association for lawyers which is also an NGO in a sense. They regulate their members- there is a dress code and are restricted from giving out our visiting cards to public without being asked. This helps audit professionals and lawyers to maintain our credibility. This itself does not mean that all are doing a good job or that there will not be bad eggs. But what it does is to maintain a minimum level of credibility and liability. In the NGO sector there is or hardly any self regulation making it easier for tax authorities to apply their own discretion and interpretation.

The second issue is that I also feel that from our experience of validation which is very similar to what CRISIL (a rating agency for companies) does in India. It is the objective to certify non-profit organisations which meet the minimum criteria of financial management and accountability. From this limited point of view, we can try and go to a broader area of self regulation and self discipline. We cannot talk about rating until we understand it ourselves and in my 20 years of experience with NGOs, I have found that they are so differentiated, so complex and vary from region to region in India that there is no single uniform system. This causes the bulk of the sector to gravitate from any form of self regulation. Lack of self regulation and lack of objective validation exposes the NGO sector to negative attacks from the media thus giving the overall sector a bad name and not highlighting the good work that goes on under very difficult circumstances. The taxman does not appreciate this and incentives are difficult for several NGO’s.

The government at the same time has also been not helpful and have also constantly been changing the definition of development. I think at some level, development is very obvious- there are some poor people out there who need to be helped and there are some good and efficient NGOs out there so give them the money and they will do it. But we know now that it is more complicated than that. It is about reordering social relations, power relations, resources for poor people, all of which are within the government policy. It is not alien to the government thinking- there is joint forest management, water shed development, community managing education, local village governance etc… When you talk about tax regulation we have to find out why the NGOs are into development? If it is because they are honest and efficient, that is one reason. We will pick up the honest
NGOs and the rest will follow. If on the other hand, structuring society is the reason, which also seems to be the agenda of the government, resources to the poor etc… then you have to ask a different set of questions. What makes for an efficient NGO and all the other questions that we are asking are relevant but not enough to find exactly where the challenge lies. If you are going to get the NGO’s to be only efficient and honest, and they should be that, that is not why you want the NGOs to partner the government. India has a long tradition of NGO action. At one time NGOs were not only talking of welfare, they are now talking of major changes in governance. A task force was set up by the Government of India to look at these issues which culminated from a long discussion on tax issues affecting the sector. The initial credit for the advocacy effort is with VANI (Voluntary Action Network India) a network like SANGOCO which made the government draft a collaborative mechanism. (refer Annexure -I for details). The special recommendations in Annexure -II was dropped by the government as their understanding is still not complete.

These issues are still not appreciated by the government much less by the tax authorities and as a result tax exemptions become more and more difficult for the real cutting edge NGO’s and the ones working for genuine change amongst the poor.

**Income tax laws in India**

The Income Tax Act 1961 is federal legislation that affects all NGOs (trust, society or section 25 company) uniformly throughout India. It treats all of them equally in terms of exempting their income and in granting a certificate under section 80G whereby donors to the NGOs may claim a tax rebate against donations made. Of the 298 sections of this Act, only a few -- sections 2(15), 10, 11, 12, 13, 35 and 80G -- are of special importance to NGOs.

An important principle under the Income Tax Act is that NGOs in India that have a public charitable purpose are not liable for any income tax, provided certain conditions required in law are fulfilled. These conditions include the following.

- The NGO must use 75 per cent (60 per cent under the proposed new Bill) of its income in any financial year (1 April to 31 March) on the objects of the
organization. If the organization is unable to spend 75 per cent of its income in the financial year, owing to late receipt of income or for any other reason, the trustees may spend the surplus during the immediately following 12 months (under the new Bill, this has been reduced to just three months). Surplus income can also be accumulated for a period ranging from one to ten years for specific projects (under the new Bill, this provision has been dropped).

- The funds of the NGO are deposited according to the forms and modes specified under section 11(5) of the Income Tax Act. (Under the proposed new Bill, the limited choice offered under this section has been further circumscribed by omitting the investment of funds in industrial development or credit banks, housing finance corporations and mutual funds.)

- No part of the income or property of the NGO is used or applied, directly or indirectly, for the benefit of the founder, trustee, relative of the founder or trustee or a person who has contributed in excess of Rs50,000 to the organization in a financial year.

- The NGO files its return of income annually within the prescribed time limit.

**Corpus fund or capital receipt**

Corpus donations are capital contributions and should be ignored when computing the total income of the organization. They should be held as corpus or capital of the trust and should not be spent like any other income (although any interest or dividend derived from the investment of such donations may be used on the objects or operation of the NGO). The accounts of the organization should reflect this position clearly.

The direction for the donation -- whatever the amount -- to be applied to the corpus of the organization can be given only by the donor. Such a direction should be given in writing. (Under the proposed new Bill, a cash contribution received (ie other than in kind or by crossed cheque or crossed bank draft) towards the corpus of the NGO will be deemed to be a contribution otherwise than towards the corpus of the trust, regardless of the donor’s intended use of the donation. Income received through cash collection boxes at temples, churches, hospitals or schools will be treated as ‘income’ (and not as ‘capital receipt’), regardless of any indication put on or near the collection
boxes that contributions are towards the corpus. Therefore, 60 per cent of the amount will have to be used for charitable purposes.)

If the NGO accepts membership fees, all life membership subscriptions and entrance fees (being a collection from members and in the nature of capital receipt and not for any specific service) may be taken as capital -- and therefore not treated as income for the purpose of computing total income. People paying such membership fees and subscriptions, however, cannot deem them to be a ‘donation’ and claim a rebate under section 80G.

**Business income**

Under section 11(4A) of the Income Tax Act 1961 (as amended with effect from 1 April 1992), if the income from business is incidental to the attainment of the NGO’s objects and separate books of accounts are maintained by the organization in respect of such business, the profit is not considered for taxation. For example, the profit from the sale of goods produced by the beneficiaries during their training is fully exempt from tax.

Income from a business undertaking that is itself held in trust for charitable purpose is also exempt (section 11(1)(a)).

Furthermore, an activity resulting in profit need not always be treated as business. For example, hiring out halls (whether for private or public functions) or rest houses (ie subsidized accommodation for travelers or pilgrims, or sanatoria or convalescent homes) by NGOs is not regarded as business.

**Capital gains**

If an NGO sells its capital asset, capital gain arising on such sale is not liable to tax if the net sale proceeds are invested in the purchase of a new capital asset. Such re-investment should, as far as possible, be made during the same accounting year.
Disqualification from exemption

All private religious trusts and NGOs created after 1 April 1962 that are for the benefit of any particular religious community or caste are not eligible for tax exemption (sections 11 and 12 of the Income Tax Act). However, an NGO for the benefit of scheduled castes, backward classes, scheduled tribes, women or children is not considered an organization for a particular religious community or caste and therefore its income is exempt. This is based on the separation of Charitable organisation and religious organisations.

Special exemption for certain institutions

The income of certain NGOs engaged in activities pertaining to scientific research, education, charitable hospitals, etc, is exempt from payment of tax by various provisions contained in a group of clauses of section 10 of the Income Tax Act.

Organizations exempt under the clauses of section 10 enjoy various benefits. For example, a charitable hospital or medical institution approved under section 10(23C(iiiac), (iiiae) or (via) of the Finance No 2 Act 1998 or an educational institution approved under section 10(23C)(iiiab), (iiiad) or (vi) of the 1998 Act need not use 75 per cent of its income during the financial year on the objects of the organization. The special exemption provides much more operational freedom.
TAX REBATE FOR DONORS

Section 80G

Donors -- whether individuals, associations, companies, etc -- are entitled to a deduction (in computing their total income) if they make a donation to an NGO enjoying exemption under section 80G of the Income Tax Act. The amount donated should not, however, exceed 10 per cent of the donor’s gross total income after subtracting allowable deductions (other than the deduction under section 80G) for the purpose of tax rebate. Even if the donation is in excess of 10 per cent of the donor’s gross total income, only the 10 per cent can be considered for deduction under this section.

Donations made to various funds set up by the federal or the state government (e.g. the National Defence Fund, the Jawaharlal Nehru Memorial Fund, the Prime Minister’s Drought Relief Fund, the National Foundation for Communal Harmony) qualify for 100 per cent tax rebate (i.e. the whole of the amount donated is allowable as a deduction). However, donations made to non-government NGOs exempt under section 80G(5) of the Income Tax Act qualify for only 50 per cent tax rebate.

Places of worship such as temples, mosques, gurudwaras, churches or other places notified by the federal government to be of historic, archaeological or artistic importance or to be a place of public worship of renown throughout any state or states may also apply for, and secure, exemption under section 80G(2)(vii)(b) of the Income Tax Act for renovation or repair. Donors contributing towards the repair or renovation of such a place of worship would be entitled to a 50 per cent tax rebate when computing their income for tax purposes.

Donations in kind (such as computers, medical equipment, vehicles, etc) are not eligible for deduction under section 80G. The donation must be of money.

In order to qualify for exemption under section 80G, the NGO must be a wholly charitable (not religious), recognized, tax-exempt institution and should not be for the benefit of any particular religious community or caste.
An NGO exclusively for the benefit of any particular religious community or caste may, however, create a separate ‘women and children fund’. Donations given to this fund could qualify for deduction under section 80G, even though the organization as a whole may be for the exclusive benefit of only a particular religious community or caste. However, a separate account must be maintained of the funds received and disbursed for the welfare of women and children.

Receipts issued to donors by NGOs should bear the number and date of the 80G certificate and indicate the period for which the certificate is valid.

**Section 35AC**

Section 35AC was inserted in the Income Tax Act 1961 by the Finance (No 2) Act 1991 and came into force on 1 April 1992.

Contribution(s) made to a project or scheme notified as an eligible project or scheme for the purpose of section 35AC of the Income Tax Act entitle the donor (individual, institution or company) to a 100 per cent deduction of the amount of the contribution.

Unlike the certificate granted under section 80G (whereby a donation made to a qualifying organization entitles the donor to a 50 per cent deduction), the certificate under section 35AC is not given to any organization as a whole, but only to an eligible and approved project or to an eligible and approved project of an organization.

Eligible projects and schemes for exemption under section 35AC include one or more of the following.

- Construction and maintenance of drinking water projects in rural areas and in urban slums, including installation of pump-sets, digging of wells, tube-wells and laying of pipes for the supply of drinking water.
- Construction of dwelling units for the economically weaker sections of society.
- Construction of school buildings, primarily for children belonging to the economically weaker sections of society.
- Establishment and running of non-conventional and renewable source of energy systems.
• Construction and maintenance of bridges, public highways and other roads.
• Pollution-control projects.
• Promotion of sports.
• Any other programme for the uplift of the rural poor or urban slum dwellers, as the national committee may consider fit for support, including:
  -- family welfare and immunization;
  -- tree plantation;
  -- social forestry;
  -- development of irrigation resources;
  -- rural sanitation (construction of low-cost latrines);
  -- medical camps in rural areas;
  -- rural health programmes;
  -- land development and reclamation of waste land or degraded land, with special emphasis on ecological improvement;
  -- soil and water conservation, including harvesting of run-off water;
  -- non-formal education and literacy, especially for women and children;
  -- rural non-farm activities;
  -- creation of employment opportunities for urban and rural populations living below the poverty line;
  -- supportive services for women to engage in productive work (care of children of working women by providing an improved environment, care and food and by establishing creches/balwadis, etc);
  -- leprosy eradication.

Section 35(1)(ii) and (iii)
A deduction of 100 per cent is allowed to donors for contribution(s) made to organizations -- such as a scientific research institute or a university, college or other institution -- approved under section 35(1)(ii) specifically for ‘scientific research’, and under section 35(1)(iii) specifically for ‘research in social science or statistical research’.

An organization approved under section 35(1)(ii) or 35(1)(iii) must maintain a separate account of the money received by it for scientific research or for research in social
science or statistical research. It must also submit to the prescribed authority, each financial year, a copy of the audited annual return, showing the total income and expenditure and a balance sheet indicating its assets and liabilities.

The auditors should also certify that amounts received by the organization for scientific research or research in social science or statistical research have been spent for that purpose only.

**Concluding Remarks:**

In our estimation, the sector in India needs to use the available exemptions before asking for further concessions. The NGO sector needs to achieve a fair amount of self regulation and a degree of accountability so that there is a level of comfort within and outside the sector. Some of these steps like validation, rating will help in determining the organisation’s net worth and will enhance credibility for the sector. Tax concessions will then be automatic. However the driving force for this change must be within the sector rather than from an outside agency.

It is also pertinent to note that both in South Africa and India, many NGO’s who are devoted to the concept of struggle and freedom from exploitation do not avail or get any tax concessions. This does not help them receive any form of local philanthropy. It gets driven to social welfare and charitable projects. Is there a mechanism that we may use tax instruments to improve the flow to such agencies which are working at the structural causes of poverty and can we be able to partner in this process?
First Report of the Task Force on Laws relating to the Voluntary Sector

1. The joint Machinery for Collaborative Relationship between the Government and the voluntary Organisations met in June 2000, with the Deputy Chairman, Planning Commission, presiding. The meeting decided that the DG CAPART would organise discussions to reexamine laws relating to the Vos. Accordingly, he convened a meeting on 25 October 2000, of a number of persons from the voluntary sector as well as representatives of the Planning Commission and the Central Board of Direct Taxes. As decided in this meeting the Planning Commission set up a “Task force on Laws relating to the Voluntary Sector”, on 3 November 2000. A copy of the planning Commission's Memorandum setting up the Task Force is at Annexure 1. The task asked to make its recommendations on the Income Tax Act in December 2000, and on other laws by April 2001.

2. The Task Force met on 16 November and 23 November to consider the change in the Income Tax Act and procedures of the department, so that recommendations on these could be made to the Ministry of Finance (Department of Revenue) by about mid-December. At these meetings Ms. Deepa Krishan, Director (TPL-I), CBDT, a member of the Task Force was not present, much to the regret of the other members, as her contributions to the discussions would have been of great value.

3. The Task Force considered the various provisions of the Income Tax Act from the point of view of ironing out difficulties experienced by NGOs, without taking away from the basic features of the Law. For this purpose the Task Force discussions were greatly facilitated by and drew upon the experience of NGOs engaged in varied activities in many fields, as well as the suggestions and recommendations made by many of them including the Voluntary Action Network India (VANI) and the Indian Centre for Philanthropy. The Task Force is grateful to CAPART which had put together a compilation of such suggestions and recommendations.

The task Force also considered that the provisions of the Income Tax law should facilitate larger and smoother flows of grants/donations to NGOs from income tax payers of all categories. The NGO sector has in the recent decades grown very significantly in
terms of numbers, the diversified fields of activity and the spread in the country. NGO experience in many fields has been noted by government departments which have utilised it in improving their own official programmes in terms of approach, content and methodologies of implementation. In terms of approach, content and methodologies of implementation. In major programmes of the government aimed poverty in the rural areas, for example, government programmes of the few years have acknowledged the pioneering and innovative work of NGOs in different parts of the country. Partly such NGOs have had the support has been from foreign sources whether multilateral, bilateral, or from development- funding NGOs abroad . It is high time, the task Force feels, Indian donors should be given the right signals in the Income Tax law to induce them to increase their donations/grants to the NGO sector. It is not necessary any longer for the tax law to indicate preferences or priorities for particular fields of developmental activity. This point has been taken care of in the new definition of “charitable purpose” referred to later in this Report. Another point in the same vein lies in the resource crunch faced by practically all State governments, and to some extent the central government also, which has constrained the free flow of adequate funds for a variety of programmes for the poorer people, considering their very large and growing numbers; there is enough room for government departments as well as the NGO sector, and the latter obviously. One may note also that in many programmes NGO performance has been more cost-effective than that of official agencies.

The recommendations of the Task Force have been framed in the light of the considerations above and are set out in the following.

4. VANI had recommended that “charity” should be distinguished from ‘development’ and ‘training and skill development’ should figure in the Law. In this connection there has been a suggestion of the CBDT that “charitable purpose” as defined in Section 2(15) of the Income Tax Act may be replaced by “charitable purpose including relief of the poor, education, medical relief, and the advancement of any other public cause or object for social environmental welfare including economic empowerment and development of the weaker and disadvantaged sections for sustainable livelihood and social justice”. The Task Force noted that this definition is of an inclusive nature, and should cover all activities of NGOs deserving public support. Accordingly, the Task Force noted that this definition is of an inclusive nature, and should cover all activities of NGOs deserving public support. Accordingly, the Task Force recommends that this definition should be incorporated in the Act.
5. The Task Force noted that NGOs generally need to build a corpus fund for sustainability and stability of their organisations, and make efforts to obtain donations/grants for their corpus funds after duly resolving to establish such funds. The Task Force felt that a specific provision in the Income Tax Act is necessary allowing for NGOs to set up corpus funds and for exempting from income tax the donations/grants received for the corpus funds including any grant to an NGO generally to support its objects.

6. Any Ngo whose gross income does not exceed the general income limit for exemption from income tax—presently Rs. 50,000 in the year—should be exempt from income tax.

7. The task force felt that it would be in order if deductions from taxable incomes of donors, under any provision of the income tax law, are allowed only for donations made by cheques or demand drafts on banks, where the donor indicates his PAN (Permanent number from the Income Tax Dept), he should be entitled to 100% deduction of the donation from his taxable income.

8. The limits on the amounts of donations for the purpose of determining the exemption from income tax in the hands of the donors should be removed.

9. The present wording of Section 10 (23 C) sub clauses relating to eligibility for complete exemption for tax of all income of an NGO engaged in activities of importance to a state or the nation, needs to be modified so as to include activities which may be taken up by the NGO in a part of the state or the country in terms of the new definition of “charitable purpose” recommended above in para 4. The present wording gives room for an individual officer of the Income Tax department to apply it in a narrow manner, for instance that an NGO works only in a part of a state, and therefore cannot be considered for exemption under this section.

10. Any capital gains accruing to an NGO should be exempt from tax if it is used/applied for activities in furtherance of its objects.

11. i) The Act should be modified so that income from income generation projects of an NGO is not treated as business income attracting Section 44AB.
ii) NGOs registered under section 12 A of the Act should be entitled to receive interest on investments made by it (within the categories permitted under section 11(5) of the Act) without deduction of income tax at source on the interest amounts.

12. Section 11(2) of the Act should be modified to do away with the percentage stipulations applicable to expenditure from grants/donations received by an NGO for particular programmes or projects, so that no unspent balance is liable to tax. It should be left to the person or the agency making the grant/donation to make sure that it is spent properly.

13. Section 13(3) (b) has a monetary limit of Rs. 50,000 for the cumulative contribution to an NGO by a person, above which he is considered a key person. All transactions with that person come under scrutiny. This monetary limit would be too low for a regular donor contributing say just Rs. 50,000 or 6,000 a year to an NGO, because in 8-10 years that donor would become a key person. Large NGOs like CRY would have to track hundreds of donors cumulative contributions for years, not knowing when any of them would cross the monetary limit. As an alternative, the Task Force suggests that instead of a monetary limit, say 1 per cent of the cumulative income of an NGO, or Rs. 50,000, whichever is higher, as may be stipulated. With such a small financial stake a donor will not be able to manipulate the NGO’s affairs, and the intention of the law will be met.

14. Far too often the intention of the law in providing exemptions from taxable income under different sections is defeated by the delays in disposal of applications from NGOs under Section 80G, 35AC, 10(23C) etc. The Task Force recommends that where an NGOs application is complete, it must be disposed off with in say 60 days, or 90 days, as may be appropriate for applications under different sections, at the end of the period, the exemption sought should be taken as automatically granted, unless within that period the departmental officer raises any serious queries on any matter furnished in the application. If an application is rejected, the reasons for the rejection must be clearly specified, so that the NGO can appeal to a higher departmental authority against the rejection, or ask the first authority to review its decision.

15. The Task force feels that if the government amends the low on the lines recommended above, the NGOs on the other had should accept the obligation to make public sufficient details of their affairs to enable interested people to from informed opinions of the worth of NGO’s work. It is suggested that where an NGO is given a dispensation under one or the other Section Providing for exemption of donations from
income tax, or is allowed complete exemption of its income from tax, the NGO should have its accounts and the annual reports of its activities to the Tax Officer also publish in local newspapers the abridged audited accounts and a sufficiently informative reports of its activities for that year. Local people in the area of the NGO’s work would be the best placed to judge how it has performed. The NGO should furnish to the tax officer copies of the material published thus in local newspapers. Failure of an NGO in this regard should automatically lead to its losing the tax exemption dispensation. This condition may not perhaps apply to NGO’s which are engaged in only training, facilitation and funding support to other NGO’s and have in direct activities in the field.

16. There are thousands of small localised NGO’s in the country who have not registered themselves under the Income Tax Act, or field returns under the Act. They need to be helped to come into the mainstream, without attracting penalties. It is recommended that some sort of a voluntary disclosure scheme may be framed, under which they could register themselves now, and be excused from penalties for the omission to do so in the past and for not filing returns.

17. The Income Tax department should develop a database for donations by tax payers for which they claim and have been given exemptions from tax. It is necessary that this database is published and is available to researchers, the NGO community, and the general public. The database could categorise donations by donations different categories of tax payers, the Sections of the Act under which exemptions have been allowed/claimed, the categories of NGOs and the purposes/activities for which the donations were made.

18. The Task Force feels that officers of the Income department need to be given through orientation and training in this area of their work of administering the Income Tax Act.

19. It would be very desirable for the department to set up standing committees at the CBDT level and in the Commissioners (various IT offices ), to which NGOs can represent their grievances and suggestions for improving the interfaces between the department and NGOs.

20. Certain other suggestions received are shown in the Annexure 2 to this Report.
MEMORANDUM

Subject: Setting up of a Task Force on Laws relating to Voluntary Sector

In the meeting of the Joint Machinery for Collaborative relationship between GO and VOs held in June 2000 under the chairmanship of Deputy Chairman. Planning commission. It was decided that CAPART would organise discussions on re examining laws relating to voluntary sectors. A meeting on the subject was organised on 25th October 2000 under the chairmanship of DG. CAPART. In pursuance of a decision taken in the above referred meeting it was decided to constitute a Task Force on Laws relating to Voluntary Sector.

2. The composition of the Task Force would be as follows:

1. Shri. V.B. Eswaran - Chairperson
2. Ms. Pushpa Sundar ICP - Member
3. Shri. Anil Singh VANI - Member
4. Shri. P.M. Tripathi ,AVARD - Member
5. Shri. Shankar Ghose NFI - Member
6. Shri. Mathew Cherian CAFI - Member
7. Shri. Sanjay Agarwal AccountAid - Member
8. Ms. Deepa Krishan, Director (TPI-I) CRDT - Member
9. Representative of Do legal Affairs - Member
10. Representative of Legislative Department - Member
11. Representative of Do Women & child Dev - Member
12. Representative of planning Commission - Member
13. DDG. CAPART - Member- Secretary

Following would be the Terms of Reference of the Task Force.

1. To examine the various laws particularly Central laws dealing with Voluntary sector.

2. To take a view on the representations made by various VOs. NGOs about difficulties being faced by them in meeting the requirements of these laws and procedures there under.
3. To make appropriate recommendations for removing the immediate difficulties and constraints by suggesting a set of amendments and changes to the existing legislation and rules & procedures etc.


CAPART headquarters, New Delhi will service the Task Force. CAPART will provide necessary administrative assistance including the secretariat staff.

The Task Force may co-opt invite any official or expert as and when required.
Annexure II- Special Recommendations

1. It is suggested that provisions of TDS except in the case of salaries, should be made not applicable to all such payments for registered organisations u/s 123A.

2. The approved investments definition should be expanded and investments by voluntary organisation in Sec. 25 companies should be allowed.

3. A specific provision in the Income Tax Act is necessary allowing for NGO’s to set up the corpus funds and for exempting from Income Tax, the savings out of donations/Grants received for the Corpus Fund.

4. The organisations which publish and disseminate widely their annual report can furnish the copies of their annual reports to the Tax Officers.

   Explanation for inclusion of the above mentioned sentence in para 15: keeping in mind the costs involved in publication of such report in national dailies for VOs which are working in the national capital or other metropolitan cities, this provision needs to be made optional.

   Publication and wide dissemination of annual reports by the VOs giving the kinds of activities undertaken and expenditure incurred by them should be considered sufficient to ensure transparency. These annual reports should be submitted to the tax officers.

5. Para 15: the recommendation that every NGO should publish an abridged statement of accounts in a local newspaper, is not realistic. Space in newspapers is extremely costly, and no newspaper can afford to donate such space to hundreds of NGOs. This requirements will, therefore, prove irksome. All NGOs should be required to publish an annual report containing an accounts statement and their activities, and it should be available to the public on demand.

6. Para 17: While the recommendation re database is most welcome, we should also request that the database should categorize charitable trusts into donating, fund receiving, and both. This would help the compilation of information material useful to grant seekers, and even for policy purposes.

7. Individual donors: Individual salaries employees at present do not get benefit under section 80G for purposes of TDS deduction by the employer under section 192. An employee is therefore forced to claim refund, or claim the benefit in his tax return if
filed separately. It works as a disincentive for the salaried classes to give donations. To encourage charity (and especially in view of pay roll deductions) tax benefits should be available while deducting tax from the employees payrolls on the strength of the appropriate certificates from NGOs.

8. Exemption from donations in Kind: Presently tax benefit is available only for donations in cash. Donations made in kind including services, shares, works of art, equipment, etc. are not covered. The provisions of 80 G should enlarge to cover donations in kind and also the money equivalent of technical/professional services in kind and also the money equivalent of technical/professional services rendered through deputations, secondments, etc. to charitable organisations.

9. Just as other interest groups are invited for a pre-budget consultation the voluntary sector should also be invited to make a representation if any.
Annexure –III

There are structural differences between NGOs registered as trusts, societies or companies. The main differences are outlined in Table 1, and are examined in turn below.

**Table 1** The main differences between a trust, a society and a section 25 company

<table>
<thead>
<tr>
<th></th>
<th>Trust</th>
<th>Society</th>
<th>Section 25 company</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Statute/legislation</strong></td>
<td>Bombay Public Trusts Act 1950</td>
<td>Societies Registration Act 1860</td>
<td>Indian Companies Act 1956</td>
</tr>
<tr>
<td><strong>Jurisdiction</strong></td>
<td>Charity commissioner (Maharashtra)</td>
<td>Registrar of societies (Maharashtra)</td>
<td>Registrar of companies.</td>
</tr>
<tr>
<td><strong>Registration</strong></td>
<td>As trust (Maharashtra)</td>
<td>In some states (e.g. Maharashtra)</td>
<td>As a company under s 25 Act and totally outside the purview of the charity commissioner’s department</td>
</tr>
<tr>
<td><strong>Main document</strong></td>
<td>Trust deed</td>
<td>Memorandum of association and rules and regulations</td>
<td>Memorandum and articles of association</td>
</tr>
<tr>
<td><strong>Stamp duty</strong></td>
<td>Trust deed to be executed on non-judicial stamp paper, the value of which is about 4% of the value of the trust property</td>
<td>No stamp paper required for memorandum of association and rules and regulations</td>
<td>No stamp paper required for memorandum and articles of association</td>
</tr>
<tr>
<td><strong>Number of</strong></td>
<td>Minimum two</td>
<td>Minimum seven;</td>
<td>Minimum seven;</td>
</tr>
<tr>
<td>Individual</td>
<td>Trustees; no upper limit</td>
<td>no upper limit</td>
<td></td>
</tr>
<tr>
<td>------------</td>
<td>--------------------------</td>
<td>---------------</td>
<td></td>
</tr>
<tr>
<td>required to</td>
<td>limit</td>
<td></td>
<td></td>
</tr>
<tr>
<td>form the organization</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Board of management</th>
<th>Trustees</th>
<th>Governing body or council/managing or executive committee</th>
<th>Board of directors/managing committee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mode of succession on board of management</td>
<td>Usually by appointment</td>
<td>Usually election by members of the general body</td>
<td>Usually election by members of the general body</td>
</tr>
</tbody>
</table>