

# Funding By Companies to Political Parties

On 31<sup>st</sup> January, 2013, through ‘The Electoral Trusts Scheme, 2013’, the Central government specified the eligibility and procedure for registration of Electoral Trusts. It is to be noted that only such companies are eligible to make an application for approval as an Electoral Trust which are registered under Section 25 of the Companies Act, 1956 (Now registered under Section 8 of the Companies Act, 2013). The Central Government amended the Income Tax Rules, 1962 on the 31<sup>st</sup> January, 2013, to insert Rule 17CA which lists the functions of Electoral Trusts approved by the Central Bureau of Direct Taxes (CBDT). The Central Government, also launched ‘The Electoral Trusts Scheme, 2013’ which specified the eligibility and procedure for registration as an Electoral Trust apart from laying down the format for their registration. The Election Commission of India (ECI), strongly felt that before the launch of the Electoral Trusts scheme, there was no transparency requirement, either regarding source of funding or disbursement of funds to political parties, routed through Electoral Trusts. Thus, on 6<sup>th</sup> June, 2014, the Commission circulated guidelines for submission of contribution reports of Electoral Trusts.



## CS N Balasubramanian, FCS

Practising Company Secretary  
Kochi  
[balu@directus.co.in](mailto:balu@directus.co.in)

## INTRODUCTION

Ever since elections were started in our country, we know how political parties get their funding done through various sources, mainly from the companies, then by organisations and by individuals. We are on the verge of witnessing the next General Elections during April-May, 2024. At this juncture, let us analyse the different modes of political contributions by the companies to political parties and the procedures to be followed for the same.

## ELECTORAL TRUSTS

Under the scheme notified by the UPA-2 government on January 31, 2013, any company registered under Section 25 of the Companies Act, 1956, can form an electoral trust.

Under Section 17CA of the Income-tax Act, 1961, any citizen of India, a company registered in India, or a firm or Hindu Undivided Family or association of persons living in India, can donate to an electoral trust.

The electoral trusts have to apply for renewal every 3 financial years. They must donate 95% of contributions received in a financial year to political parties registered under the Representation of the People Act, 1951. The contributors' PAN (in case of a resident) or passport number (in case of an NRI) is required at the time of making contributions.

## ELECTORAL TRUSTS YEARLY DONATION (2013-14 to 2021-22)

Year	Donation (in Rs cr)
2013-14	85.37
2014-15	177.4
2015-16	49.50
2016-17	325.27
2017-18	194.78
2018-19	266.14
2019-20	424.66
2020-21	258.43
2021-22	487.05
<b>Total</b>	<b>2,268.6</b>

*Source: Annual contribution reports of ETs to ECI (2013-2014 till 2021-2022)*

An Electoral Trust is a Trust set up by companies with the sole objective to distribute the contributions received by it from other Companies and individuals to the political parties. On 31<sup>st</sup> January, 2013, through ‘The Electoral Trusts Scheme, 2013’, the Central government specified the eligibility and procedure for registration of Electoral Trusts. It is to be noted that only such companies are eligible to make an application for approval as an Electoral Trust which are registered under Section 25 of the Companies Act, 1956 (Now registered under Section 8 of the Companies Act, 2013).

The Central Government amended the Income Tax Rules, 1962 on the 31<sup>st</sup> January, 2013, to insert Rule 17CA which lists the functions of Electoral Trusts approved by the Central Bureau of Direct Taxes (CBDT). The Central Government, also launched ‘The Electoral Trusts Scheme, 2013 which specified the eligibility and procedure for registration as an Electoral Trust apart from laying down the format for their registration. The Election Commission of India (ECI), strongly felt that before the launch of the Electoral Trusts scheme, there was no transparency requirement, either

regarding source of funding or disbursal of funds to political parties, routed through Electoral Trusts. Thus, on 6<sup>th</sup> June, 2014, the Commission circulated guidelines for submission of contribution reports of Electoral Trusts.

On receipt of funds from those contributors who comply with the conditions, the Electoral Trusts are required to issue a receipt to the contributor recording the following information apart from maintaining a counter-foil with the same information for its records:

- (i) Name and address of the contributor.
- (ii) PAN of donor/ passport number in case of NRI.
- (iii) Amount and mode of contributions (with name and branch of Bank, date of receipt of donation).
- (iv) Name of Electoral Trust.
- (v) PAN of Electoral Trust.
- (vi) Date and number of approval by CBDT.
- (vii) Name and designation of person issuing the receipt.

The funds collected shall not be utilized for direct/indirect benefit of the Trusts' members or their relatives (including the Founder of the Trust) or any person who has made contribution to the Trust.

The ET may receive voluntary contributions from:

- an Individual (citizen of India)
- a Company registered in India
- a Firm or HUF or Associations of Persons or Body of Individuals resident in India

The ET shall accept contributions only by way of an account payee cheque/bank draft/electronic transfer to its bank account. It shall not accept any contributions in the form of cash. The ET shall be issuing a receipt immediately on receipt of any contribution. The ET shall not accept any contributions without PAN of the contributor who is a resident and passport number in the case of a citizen of India, who is not a resident.

The ET shall not accept voluntary contributions from:

- An Individual who is not a citizen of India
- Any Foreign entity whether incorporated or not
- From any other electoral trust which has been registered as a company under Section 25 of Companies Act, 1956 (Now under Section 8 of the Companies Act, 2013) and approved as an electoral trust
- From a Government company as defined in Section 2 of Companies Act, 2013
- From a foreign source as defined in Section 2 Foreign Contribution Regulation Act, 2010 Deductions/Exemptions
- Corporate Donors can claim deduction under Section 80GGB for amount of donation made to political parties.

- Other persons (except local authority and artificial juridical person funded by Government) can claim deduction under Section 80GGC

For administrative expenses, the Electoral Trusts are permitted to set aside a maximum of 5% of the total funds collected during a financial year along with any surplus carried forward from the previous financial year. The remaining 95% of total income of the Trusts including any surplus from previous financial year is required to be distributed to eligible political parties. Such contributions to political parties should always be followed by a receipt obtained from the benefiting party, along with the political party's PAN, registration number and name and designation of the person signing the receipt.

Electoral trusts are required to keep and maintain books of account and other documents in respect to their receipts, distributions and expenditure to enable the computation of its total income in accordance with the provisions of the Act. The book of accounts should comprise the list of people from whom contributions have been received and to whom the same have been distributed, donors' name, address and permanent account number along with the details of the amount and mode of payment received including the name and branch of the bank.

Every electoral trust is required to get its accounts audited by an accountant and furnish the audit report in the format specified (Form No. 10BC) along with particulars forming part of its Annexure, to the Commissioner of Income-tax or the Director of Income-tax, having jurisdiction over the electoral trust, on or before the due date specified for furnishing the return of income by a company under Section 139.

There were 6 Electoral Trusts – General Electoral Trust, Electoral Trust, Harmony Electoral Trust, Corporate Electoral Trust, Bharti Electoral Trust and Satya Electoral Trust – which donated to political parties before the launch of Electoral Trusts Scheme in 2013. As the rules are not retrospective, these 6 Electoral Trusts are not required to follow the rules set down in the Electoral Trusts Scheme, 2013. Thus, details of donors to these 6 Electoral Trusts remain unknown.

## ELECTORAL BONDS

- Electoral Bond is a financial instrument for making donations to political parties
- The bonds are issued in multiples of Rs.1,000/- Rs.10,000/-, Rs.1 lakh, Rs.10 lakhs and Rs.1 crore without any maximum limit
- State Bank of India is the authorised bank to issue and encash these bonds, and valid for 15 days from the date of issuance
- They are redeemable in the designated account of a registered political party
- The bonds are available for purchase by any person (who is a citizen of India)

- A person can buy bonds either singly or jointly with other individuals
- The Donor's name is not mentioned on the bond.

How is Electoral Trust Scheme different from Electoral Bonds Scheme?

- **Transparency and Accountability:**
  - ♦ The functioning of ETs is marked by transparency. Contributors and beneficiaries are disclosed.
  - ♦ Electoral Trusts adhere to a robust reporting system, submitting detailed annual contribution reports to the Election Commission of India (ECI). This ensures a comprehensive record of donations and their allocation.
  - ♦ On the other hand, the Electoral Bond Scheme introduces a significant lack of transparency.
- The anonymity of donors creates an opaque environment in the funding process, making it challenging to trace the origins of contributions.
- **Funding Trends (2013-14 to 2021-22):**
  - ♦ Data from 9 financial years (2013-14 to 2021-22) show that political funding through the two government schemes shot up after the introduction of EBs, with the bulk of donations coming through the EB scheme.
  - ♦ Between 2017-18 and 2021-22, political parties got a total Rs 1,631 crore through ETs, while Rs 9,208 crore was donated through EBs.
- **Political Party Receipts:**
  - ♦ As per a report by the Association for Democratic Reforms (ADR), a single political party has secured 72% of the total donations facilitated by ETs in the year 2021-22 and 57% of the funding through EBs from 2013-14 to 2021-22.
  - ♦ The report also found that more than 55% of the funding for political parties came through EBs.

Few days back, Supreme Court came down heavily on Electoral bonds. Such bonds could enable individuals to donate anonymously to registered political parties by purchasing these bonds directly from State Bank of India (SBI), and the same could be encashed by the concerned political parties. This was formalised by the Parliament by amending several legislations. When this was challenged, Supreme Court by its landmark verdict, struck down the scheme and all associated amendments, holding them unconstitutional, as follows:

- 1) The entire electoral bond scheme;
- 2) The amendment to Representation of People Act, 1951 that exempted political parties from reporting to the Election Commission of India about the money received from such bonds;
- 3) The amendment to the Companies Act, 2013, that omitted the provisions that required companies to disclose the particulars of parties to whom they had donated, and

Ever since elections were started in our country, we know how political parties get their funding done through various sources, mainly from the companies, then by organisations and by individuals. We are on the verge of witnessing the next General Elections during April-June, 2024. At this juncture, let us analyse the different modes of political contributions by the companies to political parties and the procedures to be followed for the same.

also the amendment in the Act that removed the cap on corporate contributions to 7.5% of net aggregate profits and by extension, had removed the bar on loss making companies from contributing to parties;

- 4) The amendment to Income Tax Act, 1961 that exempted electoral bonds from the category of "voluntary contributions over Rs.20,000/-" for which parties must maintain accounts of names and details of donors

SBI has been ordered to immediately cease issuing electoral bonds, share the names of the purchasers, value of the bonds and their recipients with the Election Commission who need to disclose the details by March 13<sup>th</sup>.

Electoral Trusts are an alternative that could receive contributions from Indian citizens and corporations and distribute them to registered political parties, and a trust will not offer anonymity to donors, as compared to electoral bonds.

## PROVISIONS IN THE COMPANIES ACT, 2013

For easy reference, Section 182 of the Companies Act, 2013 is reproduced below:

*"(1) Notwithstanding anything contained in any other provision of this Act, a company, other than a Government company and a company which has been in existence for less than three financial years, may contribute any amount directly or indirectly to any political party:*

*Provided that no such contribution shall be made by a company unless a resolution authorising the making of such contribution is passed at a meeting of the Board of Directors and such resolution shall, subject to the other provisions of this Section, be deemed to be justification in law for the making of the contribution authorised by it.*

*(2) Without prejudice to the generality of the provisions of sub-Section (1),--*

*(a) a donation or subscription or payment caused to be given by a company on its behalf or on its account to a person who, to its knowledge, is carrying on any activity which, at the time at which such donation or subscription or payment was given or made, can reasonably be regarded as likely to affect public support for a political party shall also be deemed to be contribution of the amount of such donation, subscription or payment to such person for a political purpose;*



(b) the amount of expenditure incurred, directly or indirectly, by a company on an advertisement in any publication, being a publication in the nature of a souvenir, brochure, tract, pamphlet or the like, shall also be deemed,—

(i) where such publication is by or on behalf of a political party, to be a contribution of such amount to such political party, and

(ii) where such publication is not by or on behalf of, but for the advantage of a political party, to be a contribution for a political purpose.

[(3) Every company shall disclose in its profit and loss account the total amount contributed by it under this Section during the financial year to which the account relates.

(3A) Notwithstanding anything contained in sub-Section (1), the contribution under this Section shall not be made except by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account:

Provided that a company may make contribution through any instrument, issued pursuant to any scheme notified under any law for the time being in force, for contribution to the political parties.

(4) If a company makes any contribution in contravention of the provisions of this Section, the company shall be punishable with fine which may extend to five times the amount so contributed and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months and with fine which may extend to five times the amount so contributed.

*Explanation.-- For the purposes of this Section, "political party" means a political party registered under Section 29A of the Representation of the People Act, 1951 (43 of 1951)."*

From the above, we can understand that Section 182 of the Companies Act, 2013 prohibits certain companies to make political contribution and restricts some companies to make political contribution subject to the compliances of Section 182. These are:

- A Government Company
- A company which has been in existence for less than 3 financial years.

Other than the above companies, all other companies can make political contribution to a political party. There are some compliances to be followed in this regard:

1. The company must pass a Board Resolution at a Board meeting authorising such political contribution.
2. The company shall disclose in its profit and loss account the total amount contributed by it under this Section during the financial year to which the account relates.
3. The contribution shall be made by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account.
4. A company can also make contribution through any instrument, issued pursuant to a scheme notified under any law for the time being in force.

Without prejudice to the generality of the political contribution, there are some transactions which shall be treated as a political contribution:

- A donation or subscription or payment caused to be given by a company on its behalf or on its account to a person who, to its knowledge, is carrying on any activity which, at the time at which such donation or subscription or payment was given or made, can reasonably be regarded as likely to affect public support for a political party shall also be deemed to be contribution of the amount of such donation, subscription or payment to such person for a political purpose;
- The amount of expenditure incurred, directly or indirectly, by a company on an advertisement in any publication, being a publication in the nature of a souvenir, brochure, tract, pamphlet or the like, shall also be deemed,—
  - (i) Where such publication is by or on behalf of a political party, to be a contribution of such amount to such political party, and
  - (ii) Where such publication is not by or on behalf of, but for the advantage of a political party, to be a contribution for a political purpose.

If a company violates the provisions of Section 182 of the Companies Act, while making political contributions, the company shall be punishable with fine which may extend to 5 times the amount so contributed and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to 6 months and with fine which may extend to 5 times the amount so contributed.

## CONCLUSION

To conclude, there is a robust legal regime governing political contributions and Indian businesses need not shy away from bona fide political contributions to support political parties that they believe will provide the Nation with good leaders and sound governance.

## REFERENCES:

- i. <https://adrindia.org/sites/default/files/FAQs%20on%20Electoral%20Trust%20-%20English.pdf>
- ii. <https://www.drishtiiias.com/daily-updates/daily-news-analysis/electoral-trusts-scheme-2013>
- iii. *The Companies Act, 2013 (Bare Act)* 