

Conference on Practical approach and
important aspects of Companies Act, 2013
and Amendment Act, 2020

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Corporate Social Responsibility (CSR)



Corporate Social Responsibility

Corporate Social Responsibility (CSR) is a self-regulating business model that helps Corporates to be socially accountable: to itself, its stakeholders, and the public.

Corporate Social Responsibility (CSR) means the activities undertaken by a Company in pursuance of its statutory obligation laid down in Section 135 of the Companies Act, 2013.

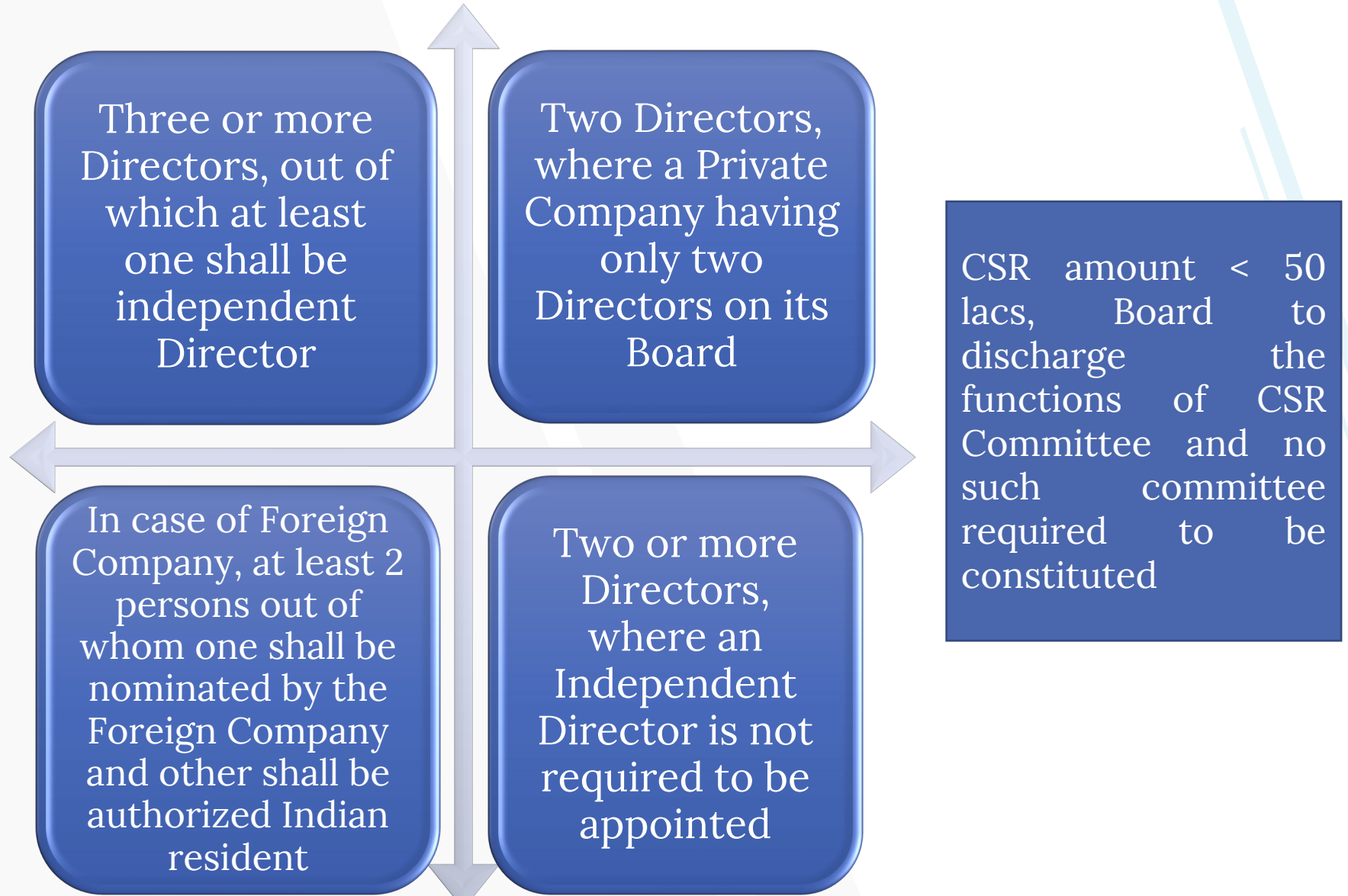
Corporate Social Responsibility ultimately facilitates Companies to have a cognizance of their impact on economic, social and environmental aspects of society.

Applicability of CSR

**Any
Company**

- having a net worth of Rs 500 Crores or more
- having a turnover of Rs 1000 crores or above
- having a net profit of Rs 5 crores or above;
during the immediately preceding financial year
- Foreign Company having Branch Office or Project Office in India

Constitution of CSR Committee



Role of CSR Committee

- Formulate the CSR Policy and recommend the same to the Board, indicating the CSR activities to be undertaken by the Company;
 - Recommend the amount of expenditure to be incurred by the Company; and
 - Monitor the CSR Policy from time to time.
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- *The definition of CSR Policy has been redefined to include a statement containing the approach and direction given by the board of a company, taking into account the recommendations of its CSR Committee, and includes guiding principles for selection, implementation and monitoring of activities as well as formulation of the annual action plan.*

Role of CSR Committee

Formulate and recommend to the Board, an annual action plan in line with the CSR Policy:

- List of CSR projects or programmes that are approved to be undertaken in areas or subjects specified in Schedule VII of the Act;
- manner of execution of such projects or programmes;
- the modalities of utilisation of funds and implementation schedules for the projects or programmes;
- monitoring and reporting mechanism for the projects or programmes; and
- details of need and impact assessment, if any, for the projects undertaken by the company.

CSR Activities under Schedule VII

Eradicating hunger, poverty and malnutrition, promoting health care including preventive health care and sanitation including contribution to the Swachh Bharat Kosh and making available safe drinking water.

Promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly and the differently abled and livelihood enhancement projects.

Promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centers and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups.

CSR Activities under Schedule VII

Ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agroforestry, conservation of natural resources and maintaining quality of soil, air and water including contribution to the Clean Ganga Fund set-up by the Central Government for rejuvenation of river Ganga.

Measures for the benefit of armed forces veterans, war widows and their dependents, Central Armed Police Forces (CAPF) and Central Para Military Forces (CPMF) veterans, and their dependents including widows.

Training to promote rural sports, nationally recognized sports, Paralympic sports and Olympic sports.

CSR Activities under Schedule VII

Contribution to the Prime Minister's National Relief Fund or Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund)] or any other fund set up by the central govt. for socio economic development and relief and welfare of the schedule caste, tribes, other backward classes, minorities and women.

Contribution to incubators or research and development projects in the field of science, technology, engineering and medicine, funded by the Central Government or State Government or Public Sector Undertaking or any agency of the Central Government or State Government.

Rural Development Projects.

CSR Activities under Schedule VII

Contributions to public funded Universities; Indian Institute of Technology (IITs); National Laboratories and autonomous bodies established under Department of Atomic Energy (DAE); etc, Council of Scientific and Industrial Research (CSIR), engaged in conducting research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGs).

Slum Area Development.

Disaster Management including relief, rehabilitation and reconstruction activities.

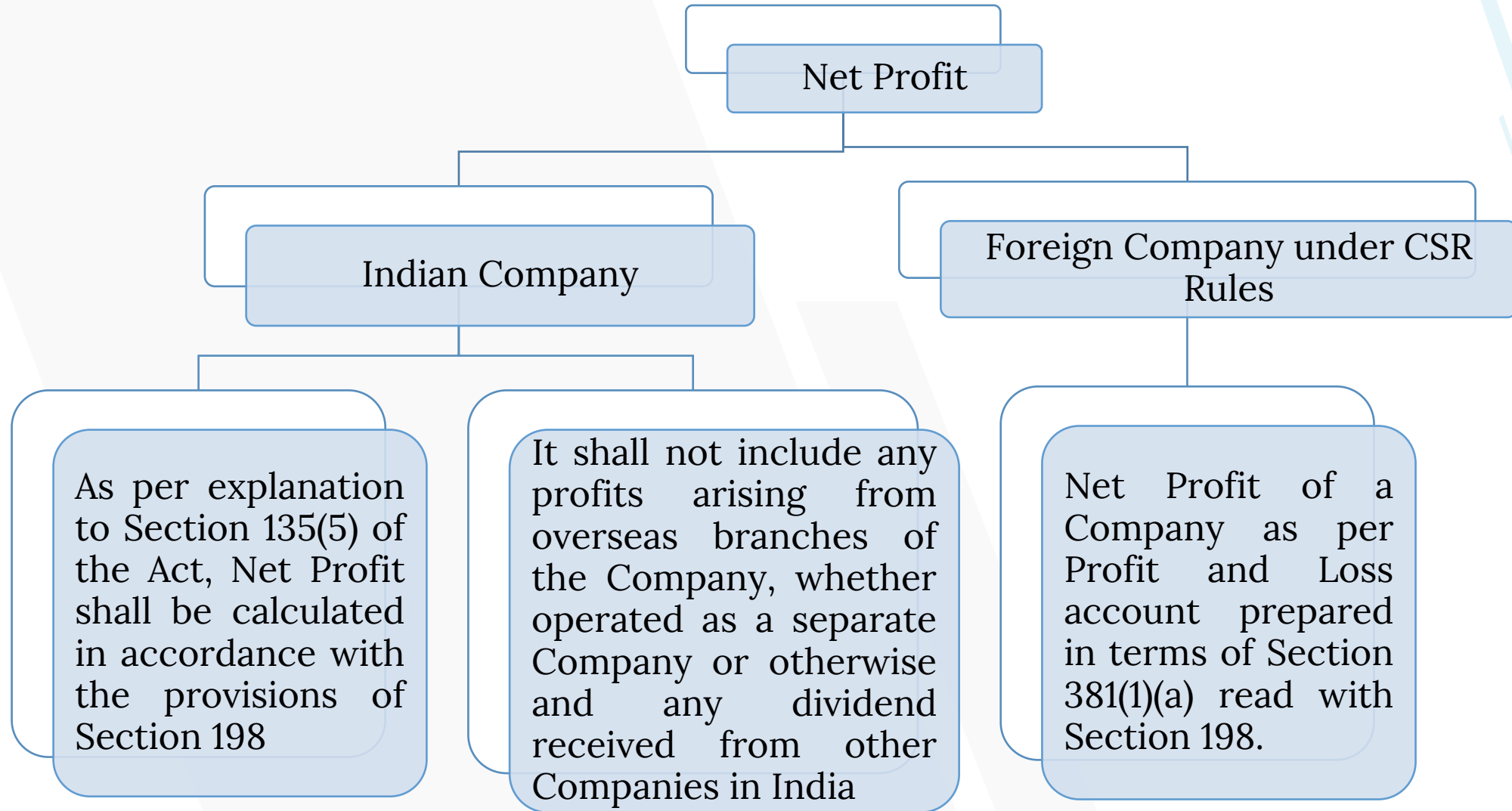
Activities not included in CSR

- Activities undertaken in normal course of Business
- Activity undertaken by the company outside India except for training of Indian sports personnel representing any State or Union territory at national level or India at international level
- Contribution of any amount directly or indirectly to any political party
- Activities benefitting employees of the company
- Activities supported by the companies on sponsorship basis for deriving marketing benefits for its products or services
- Activities carried out for fulfilment of any other statutory obligations

CSR Spend

- Atleast 2 per cent of the average net profits of the company made during the three immediately preceding financials years
- in case if the company has not completed the period of three financial years since incorporation:
 - 2 per cent of the average net profits of the company during such immediately preceding financial years.
- Preference to be given to the local areas around which the company operates.

Calculation of Net Profits for CSR



Determination Of Net Profit

Net profits as per Profit and Loss a/c (Profit Before Tax)

Add:

Government Bounties and subsidies (to be considered only if the Bounties/Grant received have been accounted for as income in the Profit and loss statement)

Any compensation, damages or payments made voluntarily that is to say, otherwise than by virtue of any legal liability including liability arising from a breach of contract.

Loss of a capital nature including loss on sale of the undertaking or any of the undertakings of the company or of any part thereof not including any excess of the written-down value of any asset which is sold, discarded, demolished or destroyed over its sale proceeds or its scrap value.

Any change in carrying amount of an asset or of a liability recognised in equity reserves including surplus in profit and loss account on measurement of the asset or the liability at fair value.

CSR Expenditure incurred and debited to the P&L Account

Unrealised Loss / (Gain) from Foreign Exchange transactions

Determination Of Net Profit

Less:

Depreciation if in excess of amount as per Sec 123

Any amount representing unrealised gains, notional gains or revaluation of assets.

Profits of capital nature including profits from the sale of the undertaking or any of the undertakings of the company or any part thereof, and Immovable property or fixed assets of capital nature.

Any change in carrying amount of an asset or of a liability recognised in equity reserves including surplus in profit and loss account on measurement of the asset or the liability at fair value.

The excess of expenditure over income, which had arisen in computing the net profits in accordance with this Section in any year, in so far as such excess has not been deducted in any subsequent year preceding the year in respect of which the net profits have to be ascertained.

Profit arising from any overseas branch or branches of the company, whether operated as a separate company or otherwise

Any dividend received from other companies in India, which are covered under and complying with the provisions of section 135 of the Act

Transfer of Unspent CSR Amount

Unspent Amount pursuant to any ongoing project*

- Shall be transferred within 30 days from the end of Financial year to Unspent CSR account.
- Needs to be spent within 3 financial years from such transfer to fulfill CSR obligation.
- If not spent within 3 financial years, transfer to Clean Ganga Fund or any other Fund specified under Schedule VII within 30 days from the end of 3rd FY.

Unspent Amount in any other case

- Transfer within 6 months from the end of Financial Year.
- Directly to any Clean Ganga Fund or any other Fund specified under Schedule VII.

**Ongoing Project: Multi-year project whose duration is not less than one year but not exceeding 3 years excluding the financial year in which it was commenced.*

Set-off of excess CSR amount spent

- Set off of excess amount is now permissible
- Excess spent in any Financial Year to be set off up to immediately succeeding three financial years
- Conditions for set off :
 - Surplus arising out of the CSR activities, if any, not to be included.
 - Board Resolution to be passed to that effect.

Penalty – Failure of Unspent CSR Amount

Penalty to be levied, if

- CSR amount is not spent and unspent amount is not transferred in funds mentioned in Schedule VII ; or
- Unspent amount on Ongoing Projects are not parked in Unspent Corporate Social Responsibility Account

Penalty leviable to the Company shall be lower of

Twice the amount to be transferred to a Fund specified in Schedule VII or Unspent Corporate Social Responsibility Account or INR One Crore.

Penalty leviable to every officer in default

1/10th of the amount to be transferred to a Fund specified in Schedule VII or Unspent Corporate Social Responsibility Account or INR 2 Lakhs.

**Major Amendments in
The Companies (Corporate Social
Responsibility Policy)
Amendment Rules, 2021**

CSR Implementation

Implementation of CSR projects can be undertaken by Company itself or through

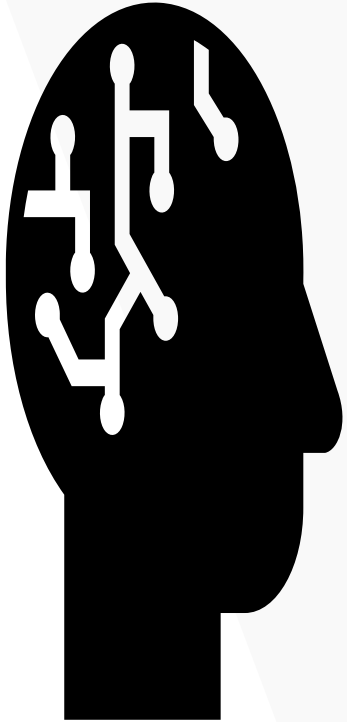
Section 8 Company/ Registered Public Trust / Registered Society, registered under section 12A and 80 G of the Income Tax Act, 1961, established by the company, either singly or along with any other company

Section 8 Company/ Registered Trust/ Registered Society, established by the Central Government or State Government

Any entity established under an Act of Parliament or a State legislature

Section 8 company/ registered public trust/ registered society, registered under section 12A and 80G of the Income Tax Act, 1961, and having an established track record of at least three years in undertaking similar activities

CSR Implementation



Filing of Form CSR-1 with the Registrar is mandatory for all the entities to become an Implementing Agency with effect from 01.04.2021

CSR Implementation

- Engage international organisations for designing, monitoring and evaluation of CSR projects or programmes as per its CSR Policy as well as for capacity building of their own personnel for CSR
 - International Organisation means an organisation notified by the Central Government as an international organisation under section 3 of the United Nations (Privileges and Immunities) Act 1947 (46 of 1947), to which the provisions of the Schedule of the said Act apply
- Collaborate with other companies for undertaking projects or programmes
- Board responsibility and CFO Certification
- Board to monitor the implementation of the project as per the approved timelines and year wise allocation

Impact Assessment

- Company having average CSR obligation \geq Rs. 10 crores in the 3 immediately preceding financial years, shall undertake impact assessment, through an independent agency, of their CSR Projects having outlay of \geq Rs. 1 Crore and completed < 1 year before undertaking the impact study.
- The Impact assessment Report shall be placed before the Board and to be annexed with Annual report on CSR.
- Company undertaking impact assessment may book the expenditure towards CSR for that financial year, which shall not exceed 5 % of the total CSR expenditure for that financial year or fifty lakh rupees, whichever is less.

Treatment of Surplus arising out of CSR Activities

- Surplus arising out of the CSR activities shall not form part of business profit.
- Treatment of such surplus shall be as following:
 - Plough it back into the same project from which it has been generated or;
 - Transfer it to “Unspent Corporate Social Responsibility Account” and spent in pursuance of CSR Policy and annual action plan, in case of on-going projects or;
 - Transfer it to Fund specified in Schedule VII, within 6 months from the end of financial year, in case of other projects.

Utilization of CSR Amount for creation or acquisition of Capital Asset

- A company may utilize CSR amount for creation or acquisition of a capital asset if the capital asset is held by:
 - Section 8 Company or Registered Public Trust or Registered society having charitable objects and filed CSR-1;
 - Beneficiaries of the said CSR Project; or
 - Public authority.
- A company holding a capital asset created prior to the commencement of the CSR Amendment Rules, 2021, shall comply with these rules, within a period of 180 days from such commencement which may be extended by 90 days subject to the approval of the Board.

Maximum Permissible Limit for Administrative overheads

- *Administrative overheads have been defined as the expenses incurred by the company for 'general management and administration' of Corporate Social Responsibility functions in the company but shall not include the expenses directly incurred for the designing, implementation, monitoring, and evaluation of a particular Corporate Social Responsibility project or programmes.*
- Such administrative overheads shall not exceed five percent of the total CSR expenditure of the company for the financial year.
- However, expenses incurred by implementing agencies on management of CSR activities shall not amount to administrative overheads.

Display of CSR activities on Website of Company

- the composition of the CSR Committee;
- CSR Policy;
- Projects approved by the Board on their website, if any, for public access;
- As a good governance practice, the Impact Assessment Report, if applicable may also be disclosed at the website.

Disclosures in Annual Report [to be included in Board's Report]- Applicable on or after 1st April 2020

- Outline on CSR Policy and Composition of CSR Committee;
- Web- link where Composition of of CSR Ccommittee, CSR Policy and CSR projects approved by the board are disclosed on the website of the company;
- Details of Impact assessment of CSR projects, if applicable;
- Amount available for set-off and amount required for set-off for the Financial year;
- Average Net Profits of the Company, CSR Expenditure to be made, Surplus arising out of CSR Projects or programmes, Amount required to be set-off, Total CSR Obligation for the Financial year;
- CSR Amount spent or unspent;
- Details of CSR Amount spent against Ongoing Projects for the Financial year and preceding Financial year and against Projects other than Ongoing Projects for the Financial year;
- Amount spent in Administrative Overheads, Amount spent on Impact assessment, if any, Total amount spent for the Financial year;
- Excess Amount for set-off, if any, Details of Unspent CSR amount for the preceding three financial years;
- In case of creation or acquisition of capital asset, furnish the details relating to the asset so created or acquired through CSR spent in the financial year;
- Reasons for not spending 2 percent of Average Net Profits

Additional Important Points

- General Penalty as per Section 450 of CA 2013 to be applicable for default/non-compliance under any other provisions of section or Rules (apart from not spending the required amount or deposit of the unspent amount in separate bank account)
- As per Rule 3 (2) of the Companies (Corporate Social Responsibility) Rules, 2014, a Company has to continue with its CSR committee and the compliance's u/s 135 of the CA 2013 related to activities of the CSR committee, at least for a period of three consecutive financial years.



Commonly Asked Questions

CSR – COVID Pandemic

To boost support from Corporate Sector to fight the COVID-19 pandemic, contributions made/amount spent for items listed hereunder shall qualify as CSR expenditure:

- Contribution made to the PM CARES Fund
- Spending of CSR Funds for COVID-19 activities falling under Schedule VII related to promotion of health care including preventive health care, sanitation and disaster management
- Spending of CSR Funds for awareness campaigns on COVID-19 vaccination programmes

CSR – COVID Pandemic

- Setting up makeshift hospitals and temporary COVID care facilities
- Expenditure on Health Infrastructure for COVID Care, Establishment of medical oxygen generation & storage plants
- Manufacturing and Supply of Oxygen Concentrators, ventilators, cylinders and other medical equipments for countering COVID 19 or similar such activities
- Research and Development for new vaccine of COVID-19 in normal course of business

Commonly Asked Questions

Whether a holding or subsidiary of a company fulfilling the criteria under section 135(1) has to comply with the provisions of section 135, even if the holding and subsidiary itself does not fulfill the criteria?

Applicability of provisions of Section 135 of the Act is company specific. Hence, every company whether holding or subsidiary satisfying the prescribed criteria shall comply with the provisions. By mere relationship between two companies as Holding and Subsidiary, shall not extend the applicable provisions to the other company.

Commonly Asked Questions

If a company has unspent CSR amount for the financial years 2018-19 and 2019-20, is the company required to transfer the entire unspent amount for the said years in the financial year ended 31st March 2021?

Amendment for transfer of unspent amount was introduced with effect from 22nd January 2021. The applicability of Amendment Rules is prospective and therefore, unspent amount, if any, from FY 2020-21 shall be transferred.

Commonly Asked Questions

The Company has transferred Rs. 10 Lakhs to an implementing agency to comply with CSR obligation of FY 2020-21. However, the implementing agency will be spending it in FY 2021-22. Whether it will be considered as sufficient Compliance by Company?

CSR obligation of the Company is the actual expenditure incurred by Company for CSR initiatives and not just giving it to the Implementing Agency. The intent of Act is to inculcate a sense of involvement and responsibility in the Corporate Sector for Social Development. Therefore, the Company need to obtain utilization certificate from Implementing Agency.

Commonly Asked Questions

The Company has not spent CSR obligations for FY 2019-20 and provided reasons for not spending the same in Board Report. Whether it will be considered as unspent amount and the Company is required to transfer such amount?

The amendment is effective from 22nd January 2021 and not with retrospective effect. So, if there is any unspent amount as on 31st March 2021 it is required to be transferred. However, unspent amount for FY 2019-20 is not required to be transferred unless there is a specific mention in the Board report that the amount will be spent.

Commonly Asked Questions

A company has been given six months' time to transfer the unspent CSR amount, other than the amount pertaining to ongoing projects, to any fund included in Schedule VII of the Act. Can the company spend unspent amount in the said period of six months on any CSR activity?

Companies are not permitted to spend the unspent CSR amount, other than the amount pertaining to ongoing projects on any CSR activity during the intervening period of six months after the end of the financial year. Such unspent CSR amount is required to be transferred to any fund included in Schedule VII of the Act.

Commonly Asked Questions

If the Company's ordinary Business is Research and Development and it carried out Research for COVID-19 vaccines, drugs etc., whether it will be considered as an eligible CSR Activity?

It may be considered as an eligible CSR Activity for FY 2020-21, 2021-22, 2022-23 if such research and development activities carried out in collaboration with any of the institutes or organizations mentioned in item (ix) of Schedule VII to the Act;

The details of such activities shall be disclosed separately in the Annual report on CSR included in the Board's Report.

Commonly Asked Questions

If a company cannot take the benefit of set off of excess amount spent in the previous financial year because of non applicability of CSR provisions, will the excess amount lapse?

According to Rule 7(3) of Companies (CSR Policy) Rules 2014, excess CSR amount spent can be carried forward up to 3 immediately succeeding financial years. However, if such excess amount is not fully set off during such period, then it will get lapsed at the end of the said period.

Example: If in FY 2020-21, company had spent Rs. 50 lakhs in excess out of which it sets-off Rs. 20 lakhs in FY 2021-22. However, from FY 2022-23, the Company does not fall into the criteria mentioned in Section 135(1), then the company may continue to retain the remaining excess amount of Rs. 30 lakhs up to 2023-24, and thereafter the same shall lapse.

Commonly Asked Questions

Whether excess CSR spent in FY 2019-20 to PM Cares Fund can be offset against the CSR obligation for FY 2020-21?

Excess amount can be offset against the requirements to be spend in the FY 2020-21, if:

- The unspent CSR amount for previous financial years, if any, shall first be settled against such excess amount;
- The Chief Financial Officer shall certify that the contribution to “PM-CARES Fund” was made on 31st March 2020 and the same shall also be certified by the statutory auditors of the Company; and
- The details of such contribution shall be disclosed separately in the Annual Report on CSR as well as in the Board’s Report for FY 2020-21.

Commonly Asked Questions

A Company satisfies the criteria of net profit in the F.Y. 2018-19 and had complied with the provisions of Section 135. But in F.Y. 2019-20, the Company do not meet any of the 3 criteria, does the Company has to comply with the provisions of Section 135 of the Act?

As per CSR Rules, every Company which ceases to be Company covered under Section 135(1) of the Act for 3 consecutive F.Y.s shall not be required to constitute CSR Committee and not required to comply with the provisions of Section 135(2) to (6) of the Act.

Therefore, the Company which meets the criteria of net profit in F.Y. 2018-19, the Company is required to constitute CSR Committee and comply with provisions of the said section in F.Y. 2019-20 even if does not meet any of the criteria and shall continue to comply for subsequent 3 F.Y.s i.e., 2019-20, 2020-21, 2021-22.

Commonly Asked Questions

Is CSR activity outside India also considered?

As per sub-clause (ii) of clause (d) of Rule 2 of the Companies (CSR Policy) Rules 2014, an activity undertaken by the Company outside India will not be considered as CSR activity.

However, the Company shall give preference to the local area(s) around it for spending the amount earmarked for the CSR activities.

Which Company is not required to constitute a CSR Committee?

A Company whose CSR obligation under 135(5) does not exceed INR fifty lakhs, such Company is not required to constitute Corporate Social Responsibility Committee and the functions of such Committee shall be discharged by the Board of Directors of such company.

Commonly Asked Questions

What tax benefits can be availed under CSR?

No specific tax exemptions have been extended to CSR expenditure. The Finance Act, 2014 also clarifies that expenditure on CSR does not form part of business expenditure, if it does not fall under Section 30 to 36 of Income Tax Act, 1961.

However, Spending on several activities like Contributions to Prime Minister's Relief Fund, scientific research, rural development projects, skill development projects, agricultural extension projects, etc. enjoy exemptions under different sections of the Income Tax Act, 1961.



Thank You