

Amita Desai & Co., Company Secretaries, Mumbai

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FAQ's on Corporate Social Responsibilities (CSR)—10th March 2021

Q.1 The Company is required to spend Rs.10 Lac before 31 March 2021 as part of CSR spend. The Company **will transfer this Rs.10 Lac to an Implementing Agency** on or before 31 March 2021, however the Implementing Agency will be spending it on the project during 2021-22. Whether it is considered to be sufficient compliance by the Company? **By spend, what do we actually mean?** Does this mean that the spend as well as the utilization to be completed by 31st March every year?

A.1 In the ordinary parlance "to spend" means *to give or pay money for something*. To spend is also mean *"to disburse, give, pay, shell out"*. However, the spirit and the essence of the provisions of CSR is to use the funds to benefit the less deserving ones. If **contributions** and **expenditures** are defined as **"giving" and "spending"**, then it's a tricky situation if the Company draws a cheque in favour of Implementing Agency, it may or may not be considered as spend but giving of contribution. High Level Committee of 2015 in its Report mentioned that the actual expenditure to be reported with no obligation to carry over and hence we believe that the CSR obligation is actual spend and not just giving to the Implementing Agency. The Committee had also mentioned that the intent of the Act is to inculcate a sense of involvement and responsibility in the Corporate Sector for Social Development by utilizing not just their funds but also their capabilities and managerial skills. We hope that MCA will come up with FAQs clarifying it.

Q.2 The Company has not spent CSR obligations of previous years when the provision was **COMPLY or EXPLAIN**. However, the company had given detailed explanation of its not spending in the Directors Report. **Now can it be considered as Unspent Amount** and Company is required to transfer it to Unspent CSR Account (For Ongoing Project) or transfer to a Fund specified in Schedule VII by 30th Sept 2021 (for not an Ongoing Project).

A.2 The amendment to Section 135 and the Companies (CSR Policy) Amendments Rules, 2021 were effective from January 22, 2021 and not with retrospective effect. Hence, any unspent amount of CSR remains as on March 31, 2021 is required to be transferred to Unspent CSR Account (For On-going Project) or transfer to a Fund specified in Schedule VII by 30th Sept 2021 (for not an On-going Project). For any unspent amount of CSR which has been disclosed in the Directors Report, is sufficient compliance of section 135 as per provisions of the Act, prior to amendment of January 22, 2021.

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Q.3 If Company A, **transfers entire amount of CSR obligation to an Implementing Agency** on or before 31st March 2021, Whether Company A needs to take utilization Certificate from that Implementing Agency?

A.3 Answer is partially discussed in Q1 below and in spirit the Act requires the Company to spend for the benefit of less deserving ones and not to just contribute and hence this remains a tricky situation until MCA clarifies the same. We hope that MCA will come up with FAQs clarifying it.

Q.4. A Company had approved Rs. 50 Lakhs in FY 2019-20 to be donated to a Trust for building a school for the blind. Out of this, in FY 2019-20 only Rs.15 Lakhs were spent and in the FY 2020-21 the Company didn't contribute balance amount of Rs.35 Lakhs as the construction had stopped for statutory approvals. **Can Company consider it as an On-Going project?**

A.4. The Board of your Company can consider and approve this running project, as an Ongoing Project with reasonable justification.

Q.5 The Company has a running project which was commenced few years back and it will still continue to run for next 2 years. **Can this be considered as an Ongoing project** or is it so that any Ongoing project needs to be commenced after the amendment came into effect?

A.5 The definition of "Ongoing Project" as per Amendment Rule, 2021- is a **multi- year project** but not exceeding three years excluding the year in which it was commenced. The Board of your Company can now consider and approve this current running project as an Ongoing Project with reasonable justification.

Q.6 Due to COVID 19 Pandemic there was a cut down in spending on a Project which is to carry on for at least more than one year, **will the resultant unspent be allowed as Ongoing Project?**

A.6 The definition of "Ongoing Project" as per Amendment Rule, 2021- is a **multi- year project** but not exceeding three years excluding the year in which it was commenced. The Board of your Company can now consider and approve this current running project as an Ongoing Project with reasonable justification.

Q.7 I would like to have clarification regarding CSR project undertaken and abandoned by Implementing Agency due to lack of additional funds, can the company undertake it as a new **Ongoing Project**.

A.7 Before 31.03.2021, the Board of the Company may include such Project as a multi year project based on reasonable justification.

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Q.8 The Company approved **Ongoing Project but the same was abandoned** due to certain reasons in June 2021, can Company take new project and consider it as an Ongoing Project (while actual one is abandoned)?

A.8 The Board of the Company must have included the project as Ongoing Project based on reasonable justification as per definition of Ongoing Project. Later, if the Project is abandoned due to certain reason, shall also require approval of the Board as the duty is cast on the Board as per Rule 4 (5) of the Company (CSR Policy) Amendment Rules, 2021. Further, the Board may alter the Annual Action Plan for Project at any time during the financial year as per the recommendation of CSR committee based on the reasonable justification to that effect.

Q.9. If the company has identified a **project in its Annual Action Plan as an Ongoing Project**, and divided the disbursement in three installments for next 3 years so, average spends for next two years also need to be deposited into bank account opened with Schedule bank?

A.9 For any Ongoing Project identified in FY 2020-21, any amount remained unspent in FY 2020-21, as per Section 135 (5) need to be transferred to separate Bank Account to be called as *"Unspent Corporate Social Responsibility Account"* with Scheduled Bank to be used in three FY for such Ongoing Project.

The average spends for next 2 years are not to be bifurcated for transfer to special Bank account, but all unspent amount for FY2020-21 to be transferred in that *"Unspent CSR Account"*.

Q.10 If a company has identified a project for a year and amount has been disbursed in that year, but implementation has delayed due to Covid-19 Pandemic, can Board take appropriate reasons and call it as **an Ongoing Project**?

A.10 If the Company has disbursed the amount to Implementing Agency (IA), the CSR Committee and the Board need to take report of its spend from the implementing agency. As per Rule 4 (5), Board is required to satisfy itself that the funds disbursed have been utilized for the purpose and in the manner as approved by it and the Chief Financial Officer or the person responsible for financial management need to certify to the effect. It wouldn't be feasible to get the refund from such implementing agency and hence the Board need to bring out all the facts and reasons and with reasonable justification include such Project as Ongoing Project and clarify that the funds are already spent by the Company to IA.

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Q.11 The Company contributed certain amount to the Implementing Agency for construction of school, and the school will be completed in 2 years by 2021-22. Where as the company has paid the whole amount of its CSR obligations at once in FY 2020-21 for its obligations of CSR. Is it treated as **Ongoing Project** for the Company.

A.11 If the Company has already paid the whole amount of its CSR obligations for FY 2020-21, then it is not required to consider it as Ongoing Project. However, it is the duty of the Board as per Rule 4 (5) to satisfy itself that the funds so disbursed have been utilized for the purpose and in the manner as approved by it and the Chief Financial Officer or the person responsible for financial management need to certify to the effect. Hence the Company need to have report from IA for the spends and utilization of funds and report it in the Board Report for FY 2020-21 with facts and details.

There is no question of transfer of funds to a separate Bank Account to be called as "*Unspent Corporate Social Responsibility Account*" with Scheduled Bank to be used in three FY for such Ongoing Project, as the Company has already disbursed the amount. More clarity may be given by MCA by way of FAQs.

Q.12 If **section 8 company** receives Donation/ Grant due to which profit exceeds more than Rs. 5 crore, does it require to comply with CSR provisions? Profit is not because of its CSR activities but only because of Donation/ Grant received which is not Corpus money. Also the donor gave Grant with the condition that, if the Grant amount is not utilized as per the requirement of the donor, the amount shall be refunded.

A.12 If Section 8 Company crosses the threshold criteria of Net Worth, Turnover and Net Profit of immediately preceding FY, then it require to comply with provisions of Section 135 of the Companies Act, 2013. With reference to donor's condition, the same need to be complied by Section 8 company.

Q.13 In FY 2020-21, the Board **had approved 4% of Average Net Profit** of previous three FY for its CSR contribution, however the actual spent till Feb 2021 was only 2% of Average Net Profit of previous three FY. In such case, **what would be the target spend?**

A.13 If the Company fails to spend the amount approved by the Board (that is 4% in the current case), the Company has two options :

- (a) Select and approve Ongoing Project, then transfer balance unspent amount by 30.04.2021 to a special account opened with Scheduled Bank and spend the same in 3 FY, after which if anything remains unspent , the same to be transferred by 30.04.2024 to a Fund specified in Schedule VII
- (b) If no Ongoing Project is approved, then transfer balance unspent amount to a Fund specified in Schedule VII by 30.09.2021

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Comment: 2nd Proviso of section 135 (5) reads “such amount” and hence with our limited understating, our opinion is as above.

However, the Board may take any of the following decisions

- (a) That as against 4% the company has spent 2% and now it has no intention to spend the balance amount of 2%; OR
- (b) Approve Ongoing Project and transfer money for ongoing project account.

We hope that MCA may come up with FAQs or guidance for the purpose

Q.14 Can a Company consider **lowering the CSR Target** which was earlier fixed at a percentage higher than 2% of the average Net Profit of 3 preceding financial years, thereby reducing the amount of unspent CSR target required to be transferred to the Govt. specified Fund?

A.14 Section 135 (5) cast responsibility on the Company to spend **such amount**, which should not be less than 2% of average net profits of the company made during the three immediately preceding years . Once the Board has approved CSR Target, it requires to **spend it or transfer unspent** of such amount to specified Funds mentioned under Schedule VII, unless it is for Ongoing Project.

Comment: 2nd Proviso of section 135 (5) reads “such amount” and hence with our limited understating, our opinion is as above.

However, the Board may take any of the following decisions

- (a) That as any higher %, the company has spent 2% and now it has no intention to spend the balance amount OR
- (b) Approve Ongoing Project and transfer money for ongoing project account.

We hope that MCA may come up with FAQs or guidance for the purpose

Q.15 If the Company is not able to spend CSR funds **due to cash loss** this year due to COVID - 19 Pandemic and also having accumulated losses of previous years, can this be sufficient reason for not spending and also not transferring the funds to Funds specified under Schedule VII as per the new provision?

A.15. If the company ceases to be covered under the criteria for three consecutive F.Y. then only, it will not require to comply with section 135 of the CA 2013 , otherwise it has to spend 2% of average Net Profit of pasts 3 FY.

Q.16 Can **accumulated losses** of previous years be adjusted from the amount to be spent under CSR and give the justification in Board Report?

A.16 The Company is required to spend atleast 2% of average Net Profit of three immediately preceding FY and such Net Profit to be calculated as per provisions of section 198 of the Companies Act, 2013.

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Q.17. Whether the **Board has power to spend CSR beyond the % prescribed** u/s 135 (5) or not, as the profits belong to the shareholders? Can Board spend excess without members' approval?

A.17. Yes, the Board can spend more than % prescribed u/s 135 (5) as it is the obligation and separate provisions for CSR and not charity contribution like section 181.

Provision u/s 181 of the CA 2013 is different than CSR, which provides that the Company may contribute to bonafide and charitable funds upto 5% of its Average Net Profit for the three immediately preceding FY and beyond 5%, the Board requires prior permission of the Company in general meeting.

Q.18 Can a **group company contribute to its another company** in the same group, for the purpose of setting up covid- 19 testing center, if the same can be considered as fulfillment of CSR obligation?

A.18 A company may also collaborate with other companies including group company also for undertaking projects or programmes or CSR activities in such a manner that the CSR committees of respective companies are in a position to report separately on such projects or programmes in accordance with these rules.

Q.19 Can Company **collaborate with other companies** to fulfill CSR criteria?

A.19 Yes, Provided CSR Committees of respective companies are in a position to report separately on CSR programs.

Q.20 Can CSR amount be spent on **Capital Asset**? Who will be the owner of such Capital Assets?

A.20 Yes, as per Rule 7 (4) of the Amended Rules, 2021, CSR amount may be sent by a company for **Creation or Acquisition** of capital assets. However, with this amendment any capital asset should be held by:

- (a) a Section 8 company, or a Registered Public Trust or Registered Society having charitable objects and CSR Registration Number; or
- (b) beneficiaries of the said CSR project in the form of self-help groups, collectives, entities; or
- (c) a public authority

Further, any Capital Asset created by the company prior to the commencement of this Amended Rules, 2021, the company need to transfer it to any of the above three entities within maximum 180 days from the commencement of amended rules, which may be extended to further period of not more than 90 days with the approval of board on reasonable justification.

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Q.21 How does the Company transfer **Capital Assets** which is standing in the name of the Company and out of this certain portion of assets are used by the Company also?

A.21 As per the Amended Rules, 2021, any Capital Assets created by the Company **prior to this amendment** need to be transferred as follows, in 180 days from 22nd January, 2021 (by 21st July 2021), which can be further extended to 90 days (by 20th October, 2021) with the approval of the Board based on reasonable justification.

- (a) Section 8 Company or a Registered Public Trust or Registered Society, having charitable objects and also having CSR Registration Number by filing Form CSR-1 on 1st April, 2021; or
- (b) Beneficiaries of the said CSR project, in the form of self-help groups, collectives, entities; or
- (c) a public authority:

The intent of the Act is that the ownership of assets created for public purpose rests with the public, and the company acts as a custodian to operate it and make it self-sustaining. This is also in keeping with the 17th SDG of "Partnerships for goals".

Comments: The Company may find it a challenge to transfer such Capital Assets within the short period of time of max 180+90 days from 22nd Jan 2021. We hope that MCA may come up with FAQs or guidance for the purpose. There may be waiver of stamp duty for such transfer.

Q.22 Beneficiary in the form of self-help group, collectives and entities need to be clarified further before any **transfer of Capital Assets** and whether Right To Information Act (RTI), 2005 will be applicable to such self –help group, collectives and entities? If no, then there is opacity in the provision.

A.22 True. Hope to get clarification from MCA on the same

Q.23 How can the **spending be carried forward for current FY 2019-20**. If the spending under 135(5) is done before amending of the rules i.e. 22.01.2021

A.23 If the Company had already spent on CSR exceeding the requirement provided u/s 135 (5), prior to the Amendments in the Rules on 22 Jan 2021, it is not clear whether the Company can take set off of such excess amount against the requirement to spend u/s 135 (5) for immediately succeeding three FY, subject to conditions that excess amount is not surplus arising out of CSR Activities and the Board has passed a resolution to that effect. However, according to our understanding, it cannot be from retrospective effect.

We hope MCA will come up with FAQs and clarifies the query.

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- Q.24 The Company has its own registered trust for charitable activities. Whether contribution made to this Trust be treated as CSR expenditure? This registered trust is new and not having **three years track record**?
- A.24 If the Company has established (either singly or along with any other company) either section 8 Company or a registered public trust or a registered society, registered under section 12A and 80G of the Income Tax Act, 1961, the company can undertake CSR Activities through this Registered Trust registered under section 12A and 80G of the Income Tax Act, 1961 even if it does not have track record of at least three years in undertaking similar activities.
- Q.25 Can the **salary paid to Employee** 'deputed' for CSR Activities be treated as a part of CSR Spending? In many companies it is their own employees who are part of the CSR implementation team, can then 5% of the total project cost subject to a maximum of proportionate salary based on the time spend on CSR activities be claimed as administrative overheads?
- A.25 No, according to our views, salary paid to employee deputed for CSR Activities cannot be treated as a part of CSR spending. In practice, it might not be feasible as it could become subjective, if not arbitrary in allocating cost of the employees time spent on CSR activities of the Company.
Further, "Administrative Overheads" is defined in Amended Rules, 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 programme;
- Q.26 Is it generally **profit before tax** for calculation of average net profit in order to get the liability of CSR?
- A.26 Computation of Net Profit for section 135 is as per section 198 of the Companies Act, 2013, which primarily is NET PROFIT BEFORE TAX.
- Q.27 Although earlier **CSR policy** along with the expenditure to be done has been approved by the Board, is it required to again approve the CSR policy prior to 31st March 2021 by the Board incorporating the changes as per recent CSR amendment Rules, 2021? Is it required to include the Annual Action Plan in the said CSR policy?
- A.27 As per substituted Rule 9, the Board of Directors shall mandatorily disclose composition of the CSR committee and CSR policy and projects approved by the Board. Rule 6 defining CSR Policy has been deleted and instead CSR Policy has been defined as follows in Definition under Rule 2 .

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*"CSR Policy" means 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;*

Hence as per our view, every company to which CSR is applicable need to draft and approve new CSR Policy as per new definition giving company's approach and guiding principles for selection, implementation and monitoring of CSR project and blue print of Annual Action Plan.

Comments: Though it is not mandatory for companies to amend their CSR policy. However in view of the definition under the amended Rules, it may be imperative for companies to amend their policy unless it is well covered in the policy, earlier itself.

- Q.28 The Registered Trust carries out 20 to 30 CSR activities every quarter, whether the Company can insist on providing **Utilisation Report** for all these 20-30 activities or consolidated Utilisation Report ?
- A.28 The Board of a company need to satisfy itself that the funds disbursed by it to the Registered Trust for CSR activities, have been utilized by the Registered Trust for the purposes and in the manner as approved by the Board. Further, the Chief Financial Officer or the person responsible for financial management of the Company is also required to certify the use of the CSR funds disbursed and hence the Company may ask Registered Trust to provide it Utilisation Report for all these 20-30 activities or a consolidated Utilisation Report.
- Q.29 If the average obligation of CSR of the Company is not exceeding Rs. 10 crores, but a single project outlay is more than Re.1 crores, whether the Company need to have **Impact Assessment study**? Or Both conditions to be satisfied?
- A.29 As per Rule 8 (3) every company having average CSR obligation u/s 135 (5) of Rs.10 crore or more in the 3 (three) immediately preceding FY, shall undertake Impact Assessment, through an Independent Agency, of their CSR projects having outlays of Re.1 Crore or more, and which have been completed not less than one year before undertaking the impact study. Hence, if the average obligation of CSR of the Company is not exceeding Rs. 10 crores it does not require to have Impact assessment study.

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Q.30 Whether **Impact Assessment** needs to be done considering donation to one Implementing Agency or outlay for each project to be considered separately?

A.30 As per amended Rule 8, every company having average CSR obligation of Rs.10 Cr or more in 3 immediately preceding FY, mandatorily require to undertake Impact Assessment through an Independent Agency, of its CSR Projects having outlays of Re.1 Cr or more **and** which have been completed not less than 1 year before undertaking the impact study.

In view of this provision, if the Company has given donation to one Implementing Agency for its CSR Projects of (a) Re.1 Cr or more and (b) the project is older than one year, then the Company need to have Impact Assessment study for each of such project. If these two conditions are fulfilled for outlay of each project, then the Company need to have Impact Assessment study separately for each project. The Impact Assessment study is for the **Project** and **not for Implementing Agency**.

Q.31 Can **voluntary spend on Impact Assessment** be treated as Expenses?

A.31 This expenses may be booked as expenditure towards CSR for that FY, however the Board need to ensure that total Administrative Overhead should not be exceeding 5% of total CSR expenses of the Company for that FY. [Rule 7 (1)]

We hope MCA will come up with FAQs and clarifies the query.

Q.32 **Can Impact Assessment be done through International Organization?** if yes, then there could be chances of misuse of this provision , as the company is permitted to spend max 5% of total CSR Expenses for that FY or Rs.50 Lakhs, whichever is less, which is quite substantial.

A.32 Impact Assessment study to be done by an independent agency and there is no restriction that International Organisation cannot be appointed.

Q.33 **Impact Assessment** should be undertaken by every company?

A.33 No, companies having average CSR obligation of Rs.10 crore or more in the 3 immediately preceding financial years are required undertake Impact Assessment of its CSR projects (a) having outlays of Rs. 1 crore or more, and (b) which have been completed not less than 1 year before undertaking the impact study.

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Q.34 How much expenditure can a company incur for undertaking **Impact Assessment study?**

A.34 A Company undertaking Impact Assessment may book the expenditure towards CSR for that FY, which shall not exceed 5% of the total CSR expenditure for that financial year or Rs.50 Lakhs, whichever is less.

Q.35 Can excess amount spend for the Financial Year 2019-20 be **set off and adjusted** for spend for FY 2020-21 to 2022-23? i.e. before this rule came into effect?

A.35 If the Company had already spent on CSR exceeding the requirement provided u/s 135 (5), prior to the Amendments in the Rules on 22 Jan 2021, it is not clear whether the Company can take set off of such excess amount against the requirement to spend u/s 135 (5) for immediately succeeding three FY, subject to conditions that excess amount is not surplus arising out of CSR Activities and the Board has passed a resolution to that effect. However, according to our understanding, it cannot be from retrospective effect. We hope MCA will come up with FAQs and clarifies the query.

Comments: We understand that the Amended Rules can be prospective a and not retrospective and hence any excess amount spent in FY 19-20 can't be adjusted against future obligations. We hope MCA will come up with FAQs and clarifies the query.

Q.36 Certain NGOs charge some % of overall CSR project given to them as NGO's management fees. Where does it find place? is it allowed under 5% limit of **Administrative Overhead?**

A.36 One need to understand and ask for bifurcation of such management fees. What will be the scope of management etc.

"Administrative Overheads" is defined in Amended Rules, 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 program.

There is lack of clarity as to whether this ceiling of 5% Administrative Overheads applies to the costs incurred by the company or it also includes the cost of the Implementing Agencies. Further there need to be a clarification whether Administrative Overheads expenses can include expenses incurred on capacity building of the personnel of the Company?

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- Q.37 If the **Board is cast with all the duties** of ensuring, monitoring and disclosing CSR Projects, is it not discouraging the corporate from taking any CSR Projects and instead contribute to Fund specified in Schedule VII. Is that the agenda of the Government to take mandatory contribution instead of genuine spent by the corporate for the Society.
- A.37 Intent of the Act is to sensitize the companies to contribute in social development with a focus on serving the unserved. Core of CSR provision is use of corporate innovation and management skills in the delivery of public goods. At the same time it may not be expected that a company shall divert its focus from the principal business and concentrate on running CSR activities and hence it has been encouraged to take help of Implementing Agencies and be a Responsible Corporate Citizen. With the use of CSR, the Company can build a Brand and Reputation and hence it cannot be understood that merely the responsibility is cast on the Board , it will prefer to do contribution to Fund specified in Schedule VII.
- Q.38 Whether **MCA will mandate any further filing, reporting and compliances** by entities who are required to take CSR Registration Number by filing Form CSR -1, if yes, will it not increases the compliance burden on such entities due to dual reporting, one with the State authorities and with the Central authorities?
- A.38 There could be possibility to mandate the Company to give details and facts for transparency and accountability, but not to the Implementing Agency unless it is governed under the Companies Act, 2013.
- Q.39 Can a company engage **International Organisation for implementation of CSR?**
- A.39 No. A company may engage International Organisations for designing, monitoring and evaluation of the CSR projects or programmes as per its CSR policy as well as for capacity building of their own personnel for CSR but not for implementing the project.
- Q.40 Is it mandatory to **display CSR activities on company's website?**
- A.40 Yes, as per Rule (9) of the Amended Rules, 2021, the Board of Directors of the Company shall mandatorily disclose the composition of the CSR Committee, CSR Policy and Projects approved by the Board on their website, if any, for public access.
- Q.41 CSR is applicable to **companies which has not completed 3 years?**
- A.41 Yes, as per amended section 135 (5) the Board of such company to which CSR obligation is applicable as per Section 135 (1) , should ensure that the company spend 2% of average Net Profit of immediately preceding financial years,even if it is less than 3 years since its incorporation.

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Q.42 **Activities undertaken outside India** will be considered as CSR activity?

A.42 No, activity undertaken by the company outside India will not be considered as CSR activity except for training of Indian sports personnel representing any State or Union territory at national level or India at international level.

Q.43 What happens if **the company spends CSR in excess of the requirements** under the Act?

A.43 As per Rule 7 of the Amended Rules, 2021, where a company spends an amount in excess of requirement provided under Section 135 (5), such excess amount may be set off against the requirement to spend under Section 135 (5) up to immediate succeeding 3 (three) FY subject to the conditions that (i) the excess amount available for set off shall not include the surplus arising out of the CSR activities and (ii) the Board of the company shall pass a resolution to that effect.

Q.44 For how **many years can such the excess spent on CSR be set off?**

A.44 The excess amount of CSR spent may be set off against the requirement to spend under section 135(5) up to immediately succeeding 3 financial years.

Q.45 Which Companies are required to **Constitute CSR Committee?**

A.45 The Company which crosses the following threshold in the immediately preceding FY need to comply with provisions of CSR spend .

- a. Net Worth of Rs.500crore or more, or
- b. Turnover of Rs.1000crore or more, or
- c. Net Profit of Rs.5crore or more

However as per newly inserted Section 135 (9) , if the amount to be spent by a company does not exceed Rs.50 Lakhs, then such company is not required to constitute CSR Committee and the Board can discharge the function of CSR Committee.

Q.46 All Companies requires **Independent Director in CSR Committee?**

A.46 No, only following companies which require to have Independent Director on its Board u/s 149 of the Act requires Independent Director in CSR Committee also.

- (a) Public Listed Companies;
- (b) Public companies having paid up share capital of Rs.10 Crore or more;
- (c) Public companies having turnover of Rs.100 Crore or more; and
- (d) Public companies having outstanding loans, debenture and deposits exceeding Rs.50 Crore

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Q.47 What should be the composition of **CSR Committee of a Foreign Company**?

A.47 As per Rule 5 (1) of the Rules, at least two persons to be in CSR Committee of such Foreign Company, out of which one person should be India Resident authorized to accept any services and notices or documents on behalf of the Foreign Company and another person to be nominated by the foreign company.

Q.48 **Net Profit** includes dividend from other companies in India?

A.48 No, it is excluded. "Net profit" is defined under Rule 2 of the Amended Rules, 2014 as, Net Profit of a company as per its financial statement prepared in accordance with the applicable provisions of the Act, but shall not include the following, namely:

- (i) any profit arising from any overseas branch or branches of the company, whether operated as a separate company or otherwise; and
- (ii) any dividend received from other companies in India, which are covered under and complying with the provisions of section 135 of the Act:

Provided that in case of a foreign company covered under these rules, net profit means the net profit of such company as per profit and loss account prepared in terms of clause (a) of sub-section (1) of section 381, read with section 198 of the Act.

Q.49 **Net Profit** includes profit of overseas subsidiary or branch office?

A.49 No, Net Profit of a company shall not include any profit arising from any overseas branch or branches of the company, whether operated as a separate company or otherwise.

Q.50 **Net Profit** includes the dividend received from other Indian Company?

A.50 Net Profit shall not include the dividend received from other Indian Company, if such other Indian Company is covered under and complying with the provisions of section 135 of the CA, 2013.

Q.51 **Indian subsidiary of foreign holding company** need to follow CSR criteria of Sec. 135 of CA 2013?

A.51 Yes, as Indian subsidiary company is formed under the CA in India section 135 applies to it.

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Q.52 India subsidiary company of a foreign holding company **spends on CSR activities in the country where foreign holding company** is incorporated. Is this considered as CSR spent as per sec. 135?

A.52 No, Activities undertaken in India shall only be considered as CSR spend.

Q.53 Can Companies get any **tax relief** after contributing in CSR activities?

A.53 No, Company do not get any tax relief. No specific tax exemptions have been extended to CSR expenditure per se. Finance Act, 2014 also clarifies that expenditure on CSR does not form part of business expenditure. While no specific tax exemption has been extended to expenditure incurred on CSR, spending on several activities like contributions to Prime Minister's Relief Fund, scientific research, rural development projects, skill development projects, agricultural extension projects, etc., which find place in Schedule

Q.54 For **Implementation of CSR activities**, can Company do it through Registered Public Trust or a Registered Society or through Section 8 company (Companies formed with charitable objects) or can do it by itself also?

A.54 As per Rule 4 CSR implementation of CSR activities can be undertaken by the Company by itself also or through :

(a) a Company established under section 8 of the Act, or a Registered Public Trust or a 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, or

(b) a Company established under section 8 of the Act or a Registered Trust or a Registered Society, established by the Central Government or State Government; or

(c) any Entity established under an Act of Parliament or a State legislature; or

(d) a Company established under section 8 of the Act, or a Registered Public Trust or a 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

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Q.55 Can **surplus arising out of CSR** activities form part of business profit of a Company?
What treatment to be given to such surplus arise?

A.55 Surplus arising out of CSR activities shall not form part of business profit of a Company and it need to be ploughed back in to the same project or shall be transferred to the Unspent CSR Account or spent as per CSR Policy and Annual Action Plan or transfer such surplus amount to a Fund specified in Schedule VII in 6 months of the expiry of the FY.

Q.56 Can company **stop complying** with Sec 135 of CA 2013 i.e. formation of CSR committee and CSR policy, if it ceases to cover under the criteria of Net Worth, Turnover and Net profit of immediately preceding FY?

A.56 If the company ceases to be covered under the criteria of Net Worth, Turnover and Net profit of immediately preceding FY for three consecutive F.Y. than only it can cease to comply with section 135 of CA 2013 wrt CSR.

Q.57 What are considered as **CSR Activities** as per Amended Rules, 2021?

A.57 As per Definition under Rule (2) of Amended Rules, 2021

“Corporate Social Responsibility (CSR)” means the activities undertaken by a Company in pursuance of its statutory obligation laid down in section 135 of the Act in accordance with the provisions contained in these rules, but **shall not include the following**, namely:-

- (i) activities undertaken in pursuance of **normal course of business** of the company: Provided that any company engaged in research and development activity of new vaccine, drugs and medical devices in their normal course of business may undertake research and development activity of new vaccine, drugs and medical devices related to COVID-19 for financial years 2020-21, 2021-22, 2022-23 subject to the conditions that-
 - (a) such research and development activities shall be carried out in collaboration with any of the institutes or organisations mentioned in item (ix) of Schedule VII to the Act;
 - (b) details of such activity shall be disclosed separately in the Annual report on CSR included in the Board's Report;
- (ii) any 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;
- (iii) contribution of any amount directly or indirectly to any **political party** under section 182 of the Act;
- (iv) activities **benefitting employees of the company** as defined in clause (k) of section 2 of the Code on Wages, 2019 (29 of 2019);

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- (v) activities supported by the companies on **sponsorship basis** for deriving marketing benefits for its products or services;
- (vi) activities carried out for fulfilment of any other **statutory obligations** under any law in force in India

Q.58 If any **CSR activities benefit only the employees** of the Company or their families, is it considered as CSR activities?

A.58 No, it is not considered as CSR activities. CSR activities must be for general public at large and not exclusively for the employees and their relatives.

Q.59 If a company **contributes directly or indirectly in the political party**, is it considered as CSR activity?

A.59. No, It is not considered as CSR activity

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FAQ's as per MCA Website

Q.1 What is meaning of 'any financial year' mentioned in Section 135 (1) of the Companies Act, 2013?

A.1 "Any Financial year" referred under Sub- Section (1) of Section 135 of the Act read with Rule 3(2) of Companies CSR Rule, 2014 implies any of the three preceding financial years (may refer General Circular No. 21/2014, dated: 18.06.2014)

Q.2 Compliance under section 135 of the Act i.e. Corporate Social Responsibility, is applicable from which Financial Year?

A.2 The compliance of the provisions of CSR under the Companies Act, 2013 i.e. constitution of CSR Committee, formulation of CSR Policy, the spending of requisite amount on CSR activities came into force from April, 2014.

Q.3 Whether expenditure by Companies on activities covered under Schedule VII for the fulfillment of any Act/Statute of Regulations will count as CSR expenditure?

A.3 This would not count as CSR expenditure. (may refer point no. (iii) of General Circular No. 21/2014, dated: 18.06.2014)

Q.4 Can the expenditure incurred towards personnel exclusively appointed by the companies for implementing the CSR activities of the company, be included in the expenditure earmarked for CSR activities?

A.4 Salary paid by the companies to regular CSR staff as well as employees, who render their services for CSR will be part of Administrative Overheads and should not exceed 5% of the total CSR expenditure as per rule 4(6) of CSR Policy, Rules 2014.

Q.5 Whether CSR expenditure of a company can be claimed as a business expenditure?

A.5 The amount spent by a company towards CSR cannot be claimed as business expenditure. The Finance Act, 2014 provides that any expenditure incurred by an assessee on the activities relating to CSR as per section 135 of the Companies Act, 2013 shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession.

Q.6 Whether the 'average net profit' criteria for section 135(5) is Net profit before tax or Net profit after tax?

A.6 Computation of net profit for section 135 is as per section 198 of the Companies Act, 2013 which primarily is **NET PROFIT BEFORE TAX.**

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Q.7 Can the CSR expenditure be spent on the activities beyond Schedule VII?

A.7 General Circular No. 21/2014 dated June 18, 2014 of MCA has clarified that the statutory provision and provisions of CSR Rules, 2014, is to ensure that while activities undertaken in pursuance of the CSR policy must be relatable to Schedule VII of the Companies Act 2013. However, the entries in the said Schedule VII must be **interpreted liberally** so as to capture the essence of the subjects enumerated in the said Schedule. The items enlisted in the Schedule VII of the Act, are broad-based and are intended to cover a wide range of activities.

Q.8 What tax benefits can be availed under CSR?

A.8 No specific tax exemptions have been extended to CSR expenditure per se. Finance Act, 2014 also clarifies that expenditure on CSR does not form part of business expenditure. While no specific tax exemption has been extended to expenditure incurred on CSR, spending on several activities like contributions to Prime Minister's Relief Fund, scientific research, rural development projects, skill development projects, agricultural extension projects, etc., which find place in Schedule VII, already enjoy exemptions under different sections of the Income Tax Act, 1961.

Q.9 Which activities would not qualify as CSR Expenditure?

A.9 The CSR projects or programs or activities that benefit only the employees of the company and their families shall not be considered as CSR activities in accordance with section 135 of the Act.

- One-off events such as marathons/ awards/ charitable contribution/ advertisement/sponsorships of TV programmes etc. would not be qualified as part of CSR expenditure.
- Expenses incurred by companies for the fulfillment of any Act/ Statute of regulations (such as Labour Laws, Land Acquisition Act etc.) would not count as CSR expenditure under the Companies Act.
- Contribution of any amount directly or indirectly to any political party shall not be considered as a CSR activity.
- Activities undertaken by the company in pursuance of its normal course of business.

Q.10 Will being a holding or subsidiary company of a company which fulfils the criteria under section 135(1) make the company liable to comply with section 135, even if the company itself fulfils the criteria

A.10 Being a holding or subsidiary company of a company which fulfils the criteria under section 135(1) doesn't make the company liable to comply with section 135, unless the company itself fulfils the criteria.

Q.11 Whether provisions of CSR are applicable on Section 8 Company, if it fulfils the criteria of section 135(1) of the Act.

A.11 Section 135 of the Act reads " Every company.....", i.e no specific exemption given to section 8 companies with regard to applicability of section 135, hence section 8 companies are required to follow CSR provisions

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Q.12.Can donation of money to a trust by a company be treated as CSR expenditure of the company?

A.12.General Circular No. 21/2014 of MCA dated June 18, 2014 clarifies that Contribution to Corpus of a Trust/ Society/ Section 8 companies etc. will qualify as CSR expenditure as long as (a) the Trust/ Society/ Section 8 company etc. is created exclusively for undertaking CSR activities or(b) where the corpus is created exclusively for a purpose directly relatable to a subject covered in Schedule VII of the Act.

Q.13There is no need to prepare director's report for Foreign company so whether it is mandatory for foreign Company also to give reporting of CSR activity

A.13.In case of a foreign company, the balance sheet filed under Section 381(1) (b) shall contain an Annexure regarding report on CSR.

Q.14.Whether contribution to political party is considered as CSR activity?

A.14Contribution of any amount directly or indirectly to any political party under section 182 of the Act, shall not be considered as CSR activity.

(May refer Rule 4(7) of CSR Policy, Rules 2014).

Q.15Whether CSR projects or programmes for employee of the Company and their family will form part of CSR activity?

A.15No, The CSR projects or programs or activities that benefit only the employees of the company and their Families shall not be considered as CSR activities in accordance with section 135 of the Act'.

(May refer Rule 4(5) of CSR Policy, Rules 2014).

Q.16.Whether expenditure incurred on Disaster Relief qualifies for CSR or not?

A.16Disaster Relief can cover wide range of activities that can be appropriately shown under various items listed in Schedule VII. For example,

- (i) medical aid can be covered under 'promoting health care including preventive health care.'
- (ii) food supply can be covered under eradicating hunger, poverty and malnutrition.
- (iii) supply of clean water can be covered under 'sanitation and making available safe drinking water'.

(May refer to annexure to General Circular dated 18.06.2014)

Q.17.Whether contribution in kind is permissible as CSR or not?

A.17Section 135 prescribes "....shall ensure that company spends....".The company has to spend the amount.
