



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

FAQs on Corporate Social Responsibility



FAQs ON CORPORATE SOCIAL RESPONSIBILITY



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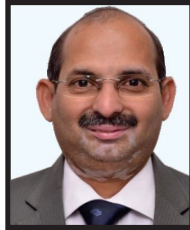
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Preface



“If you take care of your immediate surroundings, the universe will take care of itself.”

– Mahatma Gandhi

Corporate Social Responsibility (CSR) is also often referred to as company responsibility and its action on environmental, ethical, social and economic issues. CSR is not something new to India and the concept of trusteeship advocated by Mahatma Gandhi, the father of the Nation was embraced by many companies, in various forms over the years.

CSR is a concept whereby organizations serve the interests of their activities on customers, employees, shareholders, communities and the environment in all aspects of their operations. The government perceives CSR as a business contributing towards the nation’s sustainable development goals.

CSR has gained growing recognition as a new and emerging form of governance in business. It is fair to say that corporate India has performed exceedingly well in the discharging its responsibilities towards CSR and bringing transformational changes in the nation by enhancing social well-being and in uplifting the weaker sections of the society.

The Ministry of Corporate Affairs (MCA) on 22nd January, 2021 notified the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021. The said amendments have introduced significant changes in carrying out the CSR activities by India Inc. With a view to guide the members a webinar on “New dimensions: Corporate Social Responsibility” was conducted by ICSI. Considering the queries received during the webinar,

these FAQs have been framed to aid the stakeholders in understanding the new concepts and substantial changes introduced in CSR.

I would like to place on record my sincere appreciation for the support and motivation received from CS Devendra Vasant Deshpande, Vice President, the ICSI; CS Manish Gupta, Central Council Member and CS Deepak Kumar Khaitan, Central Council Member. My sincere appreciation to CS Makarand Joshi, Partner, Makarand M. Joshi & Co. and CS Sudhakar Saraswatula, Vice-President (Corporate Secretarial), Reliance Industries Limited for their contribution in reviewing FAQs. I commend the dedicated efforts put in by CS Anamika Chaudhary, Deputy Director in preparing these FAQs under the guidance of Dr. Prasant Sarangi, Director, Directorate of Prospective and Futuristic Planning and under the stewardship of CS Asish Mohan, Secretary, the ICSI.

I am confident that the publication will prove to be immensely beneficial to the stakeholders.

Place: New Delhi

Date: 29th April, 2021

CS Nagendra D. Rao

President

The Institute of Company Secretaries of India

FAQs ON CORPORATE SOCIAL RESPONSIBILITY

Q.1 On which companies, Corporate Social Responsibility Policy (CSR) provisions specified under section 135 of the Companies Act, 2013 are applicable?

A.1 A company satisfying any of the following criteria during the immediately preceding financial year has to comply with CSR provisions specified under section 135 of the Companies Act, 2013 read with the CSR Rules made thereunder:

- i. net worth of rupees five hundred crore or more, or
- ii. turnover of rupees one thousand crore or more or
- iii. a net profit (as calculated under Section 198 with other adjustments as referred in Rule 2(h) of CSR Rules.) of rupees five crore or more

The Central Government may give directions to a company or class of companies as it considers necessary to ensure compliance of provisions of this section and such company or class of companies shall be required to comply with such directions.

Q.2 When does the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021 come into effect?

A.2 The Ministry of Corporate Affairs vide Notification No. G.S.R. 40(E) dated 22nd January, 2021 issued the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021. The same has been made effective from the date of their publication in the Official Gazette i.e. 22nd January, 2021.

Q.3 Which companies are not required to constitute CSR Committee?

A.3 In accordance with section 135(1) of the Companies Act, 2013 (“the

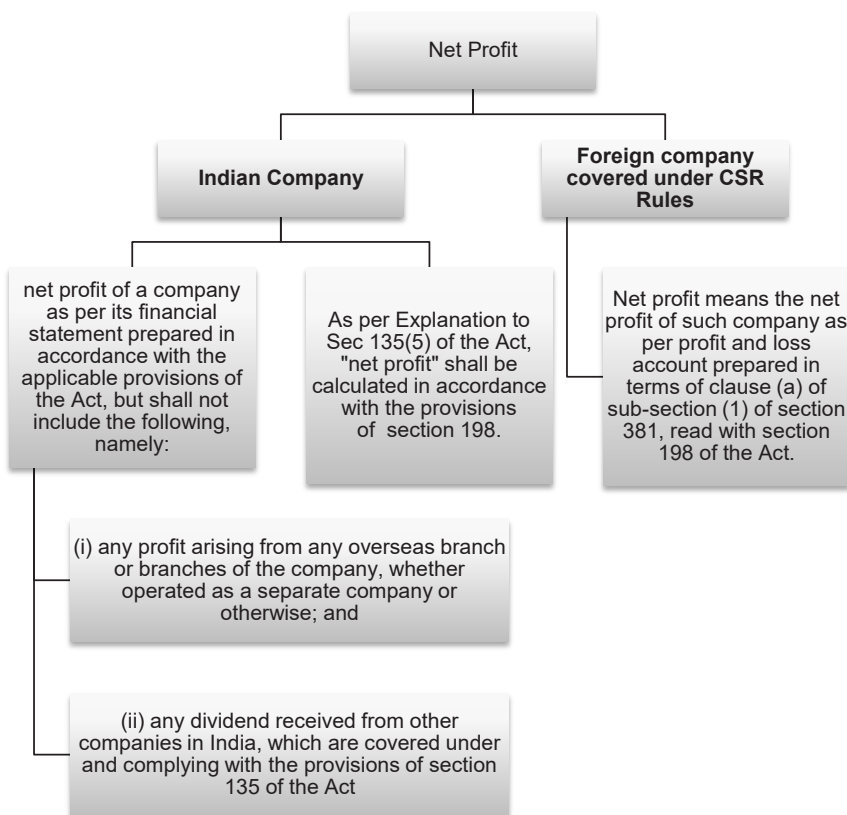
Act”), every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit (as calculated under Section 198 of the Act with other adjustments as referred in Rule 2(h) of CSR Rules.) of rupees five crore or more during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board.

Further a new sub-section (9) inserted by Companies (Amendment) Act, 2020 provides that where the amount to be spent by a company does not exceed fifty lakh rupees, the requirement under sub-section (1) for constitution of the Corporate Social Responsibility Committee shall not be applicable and the functions of such Committee shall be discharged by the Board of Directors of such company.

Listed Companies	Three or more directors, out of which at least one should be independent.
Unlisted Public Companies	Three or more directors, out of which at least one should be independent, however if there is no requirement of having independent directors in the company under Section 149 (4), then two or more directors.
Unlisted Private Companies	Any two directors.
Foreign Company	At least two persons out of which- <ul style="list-style-type: none"> (a) one shall be as specified under clause (d) of sub-section (1) of section 380 of the Act and (b) another shall be nominated by the foreign company.

Q.4 How the 'Net Profit' is required to be calculated as per these CSR Rules (the Rules)?

A.4



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

A.5 Computation of net profit for section 135 is as per section 198 of the Companies Act, 2013 which is primarily PROFIT BEFORE TAX (PBT) with other adjustments as referred in Rule 2(h) of CSR Rules. [Clarified by MCA vide General Circular No. 1/2016 dated 12th January, 2016]

Q.6 What are the functions of CSR Committee?

A.6 As per Section 135(3) of the Act the Corporate Social Responsibility Committee shall:

- a) formulate a CSR Policy and recommend it to the Board, which shall indicate the CSR activities to be undertaken by the company;
- b) recommend the amount of expenditure to be incurred on the CSR activities;
- c) monitor the CSR Policy of the company from time to time; and

As per Rule 5(2) of the Rules-

The CSR Committee formulate and recommend to the Board, an annual action plan in pursuance of its CSR policy, which shall include the following:

- a) the list of CSR projects or programmes that are approved to be undertaken;
- b) the manner of execution of such projects or programmes;
- c) the modalities of utilisation of funds and implementation schedules for the projects or programmes;
- d) monitoring and reporting mechanism for the projects or programmes; and
- e) details of need and impact assessment, if any, for the projects undertaken by the company:

For companies covered under Sec 135(9) and not having CSR Committee these functions shall be carried out by the Board itself.

Q.7 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?

A.7 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.

A Holding or subsidiary of a company falling within the ambit

of section 135 of the Act, is not required to comply with section 135(1) unless the holding or subsidiary, as the case may be, itself fulfills the criteria. [General Circular No. 1/2016 dated 12th January, 2016]

For example: Company A is covered under the criteria mentioned in section 135. Company B is holding company of company A. Since, Company B by itself does not satisfy any of the criteria mentioned in section 135, therefore Company B is not required to comply with the provisions of section 135.

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

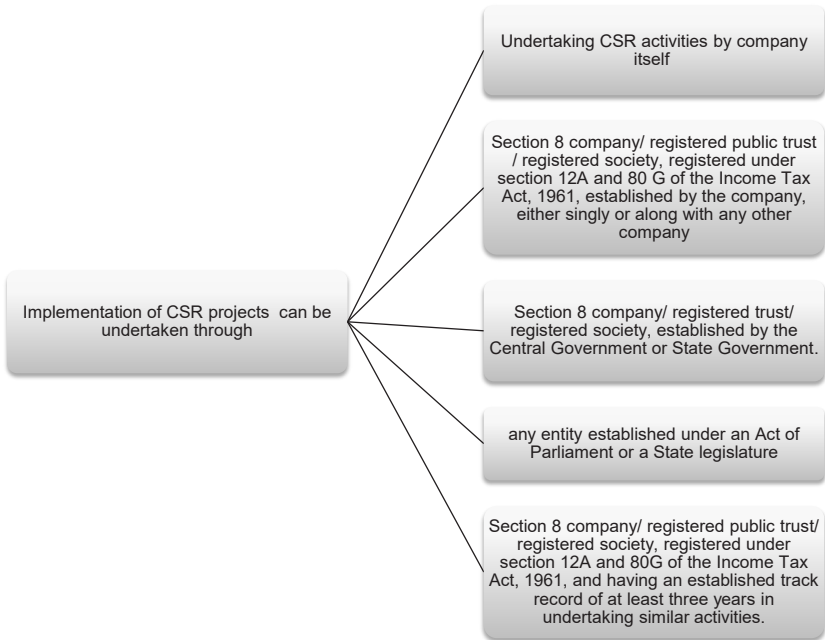
A.8 Section 135 of the Act reads “Every company.....”, i.e., no specific exemption has been provided to section 8 companies with regard to applicability of section 135. Hence, section 8 companies are also required to comply with the CSR provisions. [General Circular No. 1/2016 dated 12th January, 2016]

Q.9 If a company has not completed the period of three financial years since incorporation, is it required to comply with the CSR provisions?

A.9 As per the provisions of section 135(5), if the Company has not completed the period of three financial years since incorporation, but it satisfies any of the criteria mentioned in section 135(1), then it has to comply with CSR provisions. The Company will be required to constitute a CSR committee and comply with other requirements of section 135 including spending of at least two percent of the average net profits of the company made during such immediately preceding financial years since the date of incorporation.

Q.10 What are the broad methods by which CSR projects can be implemented by a company?

A.10 A company may undertake the implementation of CSR projects through the following methods:



Q.11 Whether reporting of CSR is mandatory in Board's Report?

A.11 As per Rule 8(1) the Board's Report of a company covered under CSR rules pertaining to any financial year shall include an Annual Report on CSR containing particulars specified in Annexure I or Annexure II, as applicable.

In case of a foreign company, the balance sheet filed under clause (b) of sub-section (1) of section 381 of the Act, shall contain an Annual Report on CSR containing particulars specified in Annexure I or Annexure II, as applicable.

Q.12 What are the disclosure requirements at the website of the company?

A.12 In terms of Rule 9, 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.

As a good governance practice, the Impact Assessment Report may also be disclosed at the website.

Q.13 What do we mean by 'CSR activities'?

A.13 In the Companies (CSR Policy) Rules, 2014, the term CSR has been defined by way of enlisting of activities which shall not be considered as CSR.

According to Rule 2(1)(d) "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);

- 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;

Further, the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities. This provision has to be followed in letter and spirit. [General Circular No. 06/2018 dated 28.05.2018]

Q.14 How should the list provided in Schedule VII of the Companies Act be construed for the purpose of undertaking CSR Activities?

A.14 The statutory provision and provisions of CSR Rules, 2014, are to ensure that activities undertaken in pursuance of the CSR policy must relate to Schedule VII of the Companies Act, 2013. 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. It is for the Board of the company to take a call on this. [General Circular No. 1/2016 dated 12th January, 2016 and General Circular No. 21/2014 dated June 18, 2014 of MCA has clarified]

Q.15 How has the CSR spending pertaining to COVID-19 been inculcated in the Act?

A.15 As per item no. (viii) of the Schedule VII of the Companies Act, 2013, which enumerates activities that may be undertaken by companies in discharge of their CSR obligations, *inter alia* provides that contribution to any fund set up by the Central Government for socio-economic development and relief qualifies as CSR expenditure. The PM-CARES Fund has been set up to provide relief to those affected by any kind of emergency or distress situation such as that posed by COVID 19 pandemic. Accordingly, it is clarified that any contribution made to the PM CARES Fund shall qualify as CSR expenditure under the Companies Act 2013. [eF. No. CSR-05/1/2020-CSR-MCA OFFICE MEMORANDUM dated 28.03.2020]

Keeping in view the spread of novel corona virus (COVID-19) in

India, its declaration as pandemic by the world health organisation (WHO), and decision of Government of India to treat this as a notified disaster, it is hereby clarified that spending of CSR Funds for COVID-19 is eligible CSR activity. Funds may be spent for various activities related to COVID-19 under item nos. (i) to (xii) of schedule VII relating to promotion of health care including preventive health care and sanitation, an, disaster management. [General Circular no. 10/2020 DATED 23.03.2020]

Further, spending of CSR Funds for carrying out awareness campaigns/ programmes or public outreach campaigns on COVID-19 Vaccination programme is an eligible CSR activity under item no. (i), (ii) & (xii) of Schedule VII of the Act relating to promotion of health care, including preventive healthcare and sanitization, promoting education, and, disaster management respectively, subject to fulfilment of Companies (CSR Policy) Rules, 2014 and Circulars related to CSR issued from time to time. [General Circular No. 01/2021 DATED 13.01.2021]

Q.16 The impact assessment is required to be conducted for ‘projects completed not less than one year before undertaking the impact study’. Considering this provision, is the impact assessment for CSR projects implemented during FY 2018-19 or prior to that up to FY 2013-14 is required?

A.16 In terms of the provisions of Rule 8(3)(a) of the Companies (Corporate Social Responsibility Policy) Rules, 2014 (‘Rules’), every company having average CSR obligation of Rs. 10 crore or more in pursuance of subsection (5) of section 135 of the Act, in the three immediately preceding financial years, shall undertake impact assessment, through an independent agency, of their CSR projects having outlays of one crore rupees or more, and which have been completed not less than one year before undertaking the impact study.

Accordingly, the company is required to undertake impact assessment of the CSR projects taken up or completed on or after January 22, 2021.

Q.17 What do you mean by CSR Policy?

A.17 As per Rule 2(1)(f) of the amended Companies (Corporate Social Responsibility Policy) Rules, 2014.

“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.

Q.18 Who is the competent authority to approve the CSR policy?

A.18 As per provisions of Section 135(4) and Section 135(5) the Board shall,—

- a. approve the CSR Policy
- b. disclose contents of such Policy in its report and also place it on the company's website, if any,
- c. ensure that the activities included in CSR Policy are undertaken by the company.
- d. ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years.

Q.19 If a CSR project was planned for a certain amount to be executed during specified period by the Board and the CSR project is completed before the prescribed time with funds remaining utilised. In such case, is the Board free to use the unutilised amount in other project or it has to transfer the same to fund specified in Schedule VII after 3 years or completion of the project?

A.19 In terms of the provisions of Rule 5(2) of the amended Rules, the CSR Committee shall formulate and recommend to the Board, an annual action plan in pursuance of its CSR policy which shall specifically include:

- a) the list of CSR projects or programmes that are approved to be undertaken in areas or subjects specified in Schedule VII of the Act;
- b) the manner of execution of such projects or programmes;
- c) the modalities of utilisation of funds and implementation schedules for the projects or programmes;

- d) monitoring and reporting mechanism for the projects or programmes; and
- e) details of need and impact assessment, if any, for the projects undertaken by the company.

It is further provided that the Board may alter such plan at any time during the financial year, as per the recommendation of its CSR Committee, based on the reasonable justification to that effect.

Accordingly, in the given case if the CSR project could be completed and the amount of money left unutilised, be considered by the Board for spending for other CSR projects / activities after amending the Annual Action Plan accordingly. This fact should also be disclosed in the CSR Report.

Q.20 The Company plans to cover medical health camp for its unskilled labour under its CSR activity. Whether it is permissible under the Act and Rules?

A.20 In terms of the provisions of Rule 2(d)(iv) of amended Rules, CSR activities shall not include any activity benefitting employees of the company as defined in clause (k) of section 2 of the Code on Wages, 2019.

As per Clause 2(k) of the Code on Wages, 2019 “employee” means, any person (other than an apprentice engaged under the Apprentices Act, 1961), employed on wages by an establishment to do any skilled, semi-skilled or unskilled, manual, operational, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and also includes a person declared to be an employee by the appropriate Government, but does not include any member of the Armed Forces of the Union.

Hence medical camp exclusive for the unskilled labour hired by the company shall not be permitted as a CSR activity.

Q.21 If a Company plans to empanel an agency to execute its proposed CSR Project and finds an implementing agency which was enrolled on a website. The website host charges an amount of Rs. 1,00,000 as fee for providing the information regarding the implementing agency. Can the same be

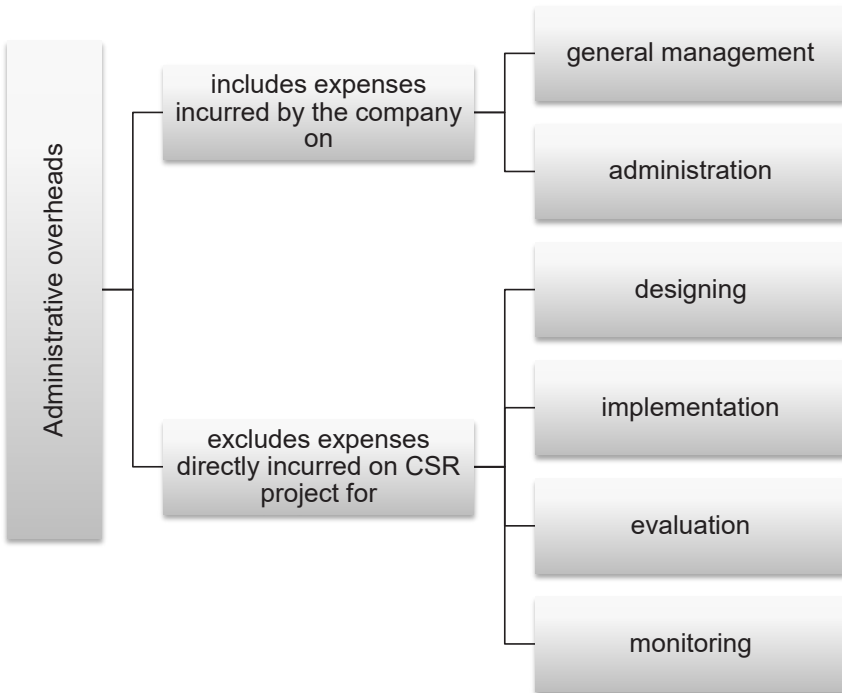
considered as administration expense towards CSR and be claimed under the 5% limit?

A.21 In terms of the provisions of Rule 2(b) of the amended Rules, the administrative overheads are 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 programme.

Accordingly, in the given case, the expenditure shall not be treated as an administrative expense.

Q.22 What is the meaning of the term 'Administrative Overheads'? What is the maximum permissible limit for Administrative Overheads?

A.22 As defined in Rule 2 (b) of the amended Rules, Administrative overheads are:



The Board shall ensure that the administrative overheads shall not

exceed five percent of total CSR expenditure of the company for the financial year.

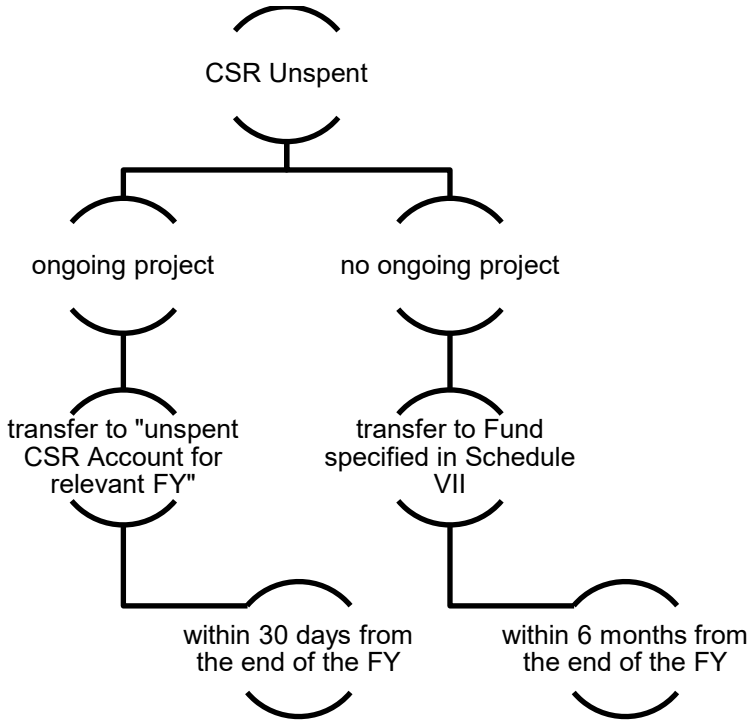
Q.23 If a company has unspent CSR amount for the financial years 2014-15, 2015-16, 2016-17, 2017-18,2018-19 and 2019-20,is the company required to transfer the entire unspent amount for the said years in the financial year ended 31st March, 2021?

A.23 Section 135 of Companies Act, 2013 was amended w.e.f 22nd January 2021 by inserting a new sub-section (6) which states the treatment of unspent amount of CSR in case of on-going projects. The second proviso to Sub section (5) of section 135 was also amended w.e.f 22nd January 2021, which now states that if the Company fails to spend the amount prescribed in Section 135(5) and unless the unspent amount relates to any on-going project referred to in sub-section (6), the Company shall transfer such amount to a Fund specified in Schedule VII, within a period of 6 months of the expiry of the financial year. The applicability of this amendment is prospective and therefore the unspent amount for the financial year 2020-21 onwards shall be transferred to the fund specified in Schedule VII within six months of the expiry of the said financial year, unless the same pertains to any ongoing project.

However, if the Company has created a provision for unspent CSR obligation for the financial years 2014-15, 2015,-16, 2016-17, 2017-18, 2018-19 and 2019-20, and if such provision remains outstanding as on 31st March, 2021, such amount should be transferred to separate bank account or Fund specified in Schedule VII, as the case may be.

Q.24 What is the treatment of unspent amount which was required to be spent in pursuance of the CSR policy?

A.24 In case the company fails to spend the obligatory amount, the Board shall specify the reasons for not spending the same, in the Board's report.



Q.25 A company is having ongoing projects carried out by an implementing agency which is not registered under section 12A and 80G of the Income Tax Act, 1961. Will the company become non-compliant under law if it continues with the same implementing agency?

A.25 As per Rule 4 of the amended Rules, the requirement of registration for an implementing agency under section 12A and 80G of the Income Tax Act, 1961 is effective from 22nd January, 2021.

In the given case, since the company has already assigned projects which are being carried out by the implementing agency, such agency should obtain the requisite registration at the earliest and in the meanwhile may continue to carry on with the projects assigned.

However, in case of new assignment, the implementing agencies should have prior registration.

Q.26 Does the term ‘ongoing project’ mean projects involving capital assets like Building, Hospital and any other Infrastructure related CSR Project which generally takes more than a year to complete?

A.26 Ongoing project has been defined under the Rule 2(i) of the amended Rules so as to mean a multi-year project undertaken by a company in fulfilment of its CSR obligation having timelines not exceeding three years excluding the financial year in which it was commenced and shall include such project that was initially not approved as a multi-year project but whose duration has been extended beyond one year by the board based on reasonable justification.

Such ongoing project may or may not involve capital assets or development of any other infrastructure.

Q.27 Can the CSR amount be utilised by a company for creation or acquisition of a capital asset?

A.27 As per Rule 7(4) the CSR amount may be utilised by a company for creation or acquisition of a capital asset, provided that such capital asset shall be held by anyone of the following:

- a) a company established under section 8 of the Act, 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:

If any capital asset has been created by a company prior to the commencement of the CSR Amendment Rules, 2021 then the company shall comply with the requirements of this rule within a period of one hundred and eighty days from such commencement and such period may be extended for a further period of not more than ninety days with the approval of the Board based on reasonable justification.

Q.28 Can a company open one unspent CSR account for all its projects?

A.28 The terms used in section 135 of the Act are “*Any amount remaining*”

unspent, pursuant to any ongoing project/ relates to any ongoing project.....special account to be opened by the company in that behalf for that financial year". Hence, if the company opens one bank account for the unspent amount on the ongoing projects for that financial year, it would be necessary compliance. However, though it is not mandatory, to have transparency and in order to have a clear project wise demarcation of the amount unspent, the company may open separate unspent CSR accounts for separate projects.

Q.29 If a company plans to spend 2.5% of its average net profits but out of this 0.5% remains unspent, will the penal provisions and requirement for transfer of unspent amount apply to the Company over and above the mandatory 2% spend?

A.29 In terms of the provisions of section 135 of the Act, the penal provision under sub-section 7 and requirement for transfer of unspent amount under sub-section(5) & (6) shall not be applicable on non-mandatory CSR expenditure.

Q.30 Is it mandatory to mention the Annual Action Plan in the CSR Policy?

A.30 In terms of the provisions of Rule 2(f) of amended Rules "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.

Under the amended Rule 5(2), the CSR Committee shall formulate and recommend to the Board, an annual action plan in pursuance of its CSR policy. The annual action plan need not be a part of the CSR policy, but it should be in pursuance of the CSR policy and include the prescribed factors. Further, the CSR Policy should include the guiding principles for formulation of the annual action plan.

Q.31 Whether an annual action plan can be altered?

A.31 According to proviso to Rule 5 of the amended Rules, the annual action plan may be amended by the Board as per the recommendation of CSR Committee, accompanied with reasonable justification.

Q.32 Whether a company is required to direct the implementing agency to refund to the Company the unutilised amounts at the year end and then contribute it to the unspent CSR Account?

A.32 Any unutilised money shall include unspent CSR money disbursed by the Company and lying with the implementing agency. It's the responsibility of the Company to deposit such unspent CSR money to a specified fund in Schedule VII within six months of the expiry of the financial year or in a separate bank account, if the amount was disbursed towards any on-going project as defined in the CSR Rules within 30 days of expiry of the financial year. Hence, it is immaterial that whether the implementing agency refunded the money or not, it's the responsibility of the company to transfer such unspent money to the specified fund in Schedule VII or separate bank account, as the case may be.

Q.33 According to section 135 of the Act the company is given six months' timeline to transfer amount to unspent CSR Fund, whether the company can spend this amount in the said period of six months such that the company will be free from the liability to transfer amount to said fund?

A.33 The CSR money pertaining to a financial year should be spent in that financial year only i.e. before March 31st. Companies are not permitted to spend the unspent CSR amount after the end of the Financial Year and if the CSR obligation remains unspent, partially or fully, it is required to be transferred to a Fund specified in Schedule VII, unless such unspent amount is towards on-going project as defined in the CSR Rules.

Therefore, in the given case, the company cannot spend the unspent CSR amount during the period succeeding six months.

Q.34 If a company has unspent amount Rs. 10 Lacs as on 31.03.2021, whether such amount will be transfer to said fund before 30.09.2021 or company may spend any amount (out of unspent amount) during the said six months after close of financial year and can transfer remaining unspent amount in Fund?

A.34 No. If, on or before the last day of the relevant FY falling on or after January 22, 2021 to which the unspent amount relates, and

the said unspent amount was not already allocated to an Ongoing Project already approved by the Board, then the Company cannot allocate or use such unspent amount for any other project and shall mandatorily transfer the same to the Fund specified in Schedule VII within the said 6 months from the end of the relevant FY.

Q.35 What is the responsibility of the Board in case of ongoing projects?

A.35 In case of ongoing project, the Board of a Company shall:

- approve a project as a multi-year on-going project, i.e., extend the duration beyond one year, based on reasonable justification,
- monitor the implementation of the project with reference to the approved timelines and year-wise allocation ,
- shall make modifications, if required, for smooth implementation of the project within the overall permissible time period.

Q.36 CSR contribution made through Implementation Agencies does not qualify to be an “Ongoing Project”. Is this correct?

A.36 It is not correct. Ongoing project is defined as per Rule 2(1) (i) of amended Rules so as to mean, a multi-year project undertaken by a Company in fulfilment of its CSR obligation having timelines not exceeding three years excluding the financial year in which it was commenced, and shall include such project that was initially not approved as a multi-year project but whose duration has been extended beyond one year by the board based on reasonable justification. Once the Board approves a project as an ongoing project and has assigned the project to the implementing agency to implement or taken by itself to implement, then it would amount to an Ongoing project. Even if the Board has not approved a project as On-going project, but it is assigned to an implementing agency to implement, then also subsequently Board may approve it as an on-going project as defined in CSR Rules.

Q.37 What are the requirements of transferring unspent amount in case of an ongoing project?

A.37 In case, there is an unspent amount related to ongoing project, such unspent amount shall be transferred by the company to

a special account to be called the Unspent Corporate Social Responsibility Account which is to be opened by the company for that financial year in any scheduled bank. This amount is required to be transferred within a period of thirty days from the end of the financial year.

Such amount shall be spent by the company in pursuance of its obligation towards the Corporate Social Responsibility Policy within a period of three financial years from the date of such transfer.

In case, the company fails to spend in accordance with the above, the company shall transfer the same to a Fund specified in Schedule VII, within a period of thirty days from the date of completion of the third financial year.

Q.38 What are the penal provisions for not complying with the provisions of transferring unspent amount of a CSR project?

A.38 The following non-compliance may attract the following penalties as per section 135(7):

- **Company** - Twice the amount required to be transferred to a fund specified in Schedule VII or Unspent CSR account, as the case may be or one crore rupees, whichever is less.
- **Every Officer in Default** - 1/10th of the amount required to be transferred to a Fund specified in Schedule VII or Unspent CSR account or two lakh rupees, whichever is less.

Q.39 Are the abovementioned penal provisions specific to not transferring the unspent amount or is applicable for any other non-compliance relating to CSR provisions?

A.39 Section 135 (7) clearly states the penalty for default in complying with the provisions of sub-section (5) or sub-section (6). In case of any other non-compliance/default under any other provision of the section, or Rules, then the provisions of general penalty under section 450 of the Act shall be applicable.

Q.40 Any entity established by the Government or by an Act of Parliament or State Legislature is not required to get registration under section 12A and 80G of the Income Tax Act, 1961?

A.40 According to Rule 4(1), a company established under section 8 of

the Act, or a registered public trust or a registered society, which is established by the Company, either singly or along with any other company OR having an established track record of at least three years in undertaking similar activities and which proposes to undertake CSR activities is required to be registered under section 12A and 80 G of the Income Tax Act, 1961.

Further as per Rule 4(1), for a company established under section 8 of the Actor Registered Trust or Registered Society established by the Central Government or State Government or an entity established under an Act of Parliament or State Legislature, the requirement to be registered under section 12A and 80 G of the Income Tax Act, 1961 is not prescribed.

Therefore, an entity established by the Government or by an Act of Parliament or State Legislature is not required to obtain registration under section 12A and 80G of the Income Tax Act, 1961. However, such entity needs to obtain CSR Registration Number from MCA under Rule 4(2) before undertaking CSR activities.

Q.41 Whether all implementing agencies are required to be registered with the Central Government by filing the form CSR-1?

A.41 Except the company which is implementing its CSR projects on its own, all other implementing agencies covered under Rule 4(1) are required to register with the Central Government by filing form CSR-1. The entities mentioned under Rule 4(1) are:

- 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 (43 of 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.

The provisions of this sub-rule shall not affect the CSR projects or programmes approved prior to the 01st day of April 2021. Therefore, for ongoing projects prior to 1st April, 2021, implementing agencies shall not require filing of Form CSR-1.

Example: Company A carries out its CSR project X through an implementing agency during the FY 2020-21. Company A intends to start a new CSR project Y in the FY 2021-22. The implementing agency will have to register itself for project Y by filing form CSR-1. As project X is an ongoing project, the implementing agency is not required to file form CSR -1.

Q.42 What is form CSR-1? For which companies is it mandatory to file form CSR-1?

A.42 Companies can undertake CSR activities on its own or only through implementing agencies which are registered with MCA. With effect from 1st April, 2021.

Rule 4(2) of the amended Rules mandates all the prescribed categories of implementing agencies to register itself with the Central Government by filing the form CSR-1 electronically with the Registrar, with effect from the 01st day of April 2021.

In case the company itself carries out the CSR activities, there is no requirement of filing form CSR-1.

Form CSR-1 shall be signed and submitted electronically by the entity and shall be verified digitally by a Chartered Accountant in practice or a Company Secretary in practice or a Cost Accountant in practice. On the submission of the Form CSR-1 on the portal, a unique CSR Registration Number shall be generated by the system automatically.

Q.43 In case, the registration of trust is not mandatory, then what would be constituted as 'Registered trust' or 'Registered public trust'?

A.43 'Registered Trust' or 'registered public trust' (as referred in Rule 4(1) of the Companies CSR Rules, 2014) would include Trusts

registered under Income Tax Act 1961, for those States where registration of Trust is not mandatory. [General Circular No. 21/2014 dated 18th June, 2014]

Q.44 Whether international organisations may be engaged in CSR implementation?

A.44 As per rule 2(1)(g)“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, to which the provisions of the Schedule to the said Act apply.

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.

However, international organisations cannot be engaged for CSR implementation as they cannot act as Implementing Agencies.

Q.45 Is CFO certification on utilisation of CSR funds applicable for the funds spent in FY 2020-21?

A.45 In terms of the provisions of Rule 4(5) of the amended Rules, it is the responsibility of the Board to satisfy itself that the CSR funds disbursed to various implementing agencies and on various projects are being utilised for the given purpose. Since the modified Rules came into force effective January 22, 2021 the Chief Financial Officer or the person responsible for financial management shall certify such utilisation of the funds for FY 2020-21 onwards.

Q.46 How does surplus from CSR project is generated?

A.46 Surplus from CSR projects may be generated in various forms, for e.g. interest on temporarily parked funds, revenue received from the completed CSR projects, etc. The said surplus arising out of CSR activities has to be utilised for CSR activities only. Such expenditure can't be set off against future CSR expenditure.

Q.47 If a company spends an amount in excess of the requirements provided under section 135, whether such an excess amount can be set off in next year?

A.47 As per Rule7 (3) the amended Companies Rules, where a company

spends an amount in excess of requirement provided under sub-section 135(5), such excess amount may be set off against the requirement to spend under sub-section (5) of section 135 up to immediately succeeding three financial years subject to the conditions that:

- i. the excess amount available for set-off shall not include the surplus arising out of the CSR activities, if any, in pursuance of sub-rule (2) of this rule.
- ii. the Board of the company shall pass a resolution to that effect.

The aforesaid position is based on third proviso to Sec 135(5) as amended w.e.f. 22nd January, 2021. Accordingly, while the excess amount spent, if any against the prescribed CSR dues of the FY ending 31st March, 2021 may be carried forward for being set off during next three FYs, the said carry forward shall not be allowed for excess amounts spent, if any during any FY which ended before 22nd January, 2021.

Q.48 Can the Board, for sufficient cause and reasons, change the ongoing project completely within 3 years' of time? E.g. If the Board approved a project of Rs. 80 lacs for Rain water harvesting for 3 years but after 2 years, the Company which has already spent Rs. 40 lacs on Rain water harvesting is not satisfied with the outcome. Can the Board divert the remaining funds of Rs. 40 Lacs to different project say related to Health and Medical for remaining one year?

A.48 As per the amended Rules, the Board shall be competent to make modifications, if any, for smooth implementation of the project within the prescribed time period. The Board may alter such plan at any time during the financial year, as per the recommendation of its CSR Committee, based on the reasonable justification to that effect, change the ongoing project partially or wholly. However, changing the allocation completely would not be viable.

Q.49 Is the cost of impact assessment covered under the administration expenses or considered separate from that?

A.49 According to Rule 8(3)(c) of the amended Rules, a Company undertaking the impact assessment may book the expenditure

towards CSR for that financial year, which shall not exceed five percent of the total CSR expenditure for that financial year or fifty lakh rupees, whichever is less.

Administration overheads are defined in Rule 2(b) of the amended Rules as to mean 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.

Therefore, the cost of impact assessment is not covered in administration expenses and will be in addition to the administration expenses.

Q.50 The format of the Annual Report on CSR Activities to be Included in the Board's Report For Financial Year Commencing on or After 1st Day of April, 2020, Annexure II of the CSR Policy Rules, mentions Project ID in point 9(b) in column 2 of the table. How will this project ID be created?

A.50 Project ID is not defined in the Rules, this may be internally created by the company in case of more than one CSR project is running.

Q.51 Whether CSR expenditure of a company can be claimed as a business expenditure?

A.51 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 Corporate Social Responsibility referred to in 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. [General Circular No. 1/2016 dated 12th January, 2016]

Q.52 What tax benefits can be availed under CSR?

A.52 No specific tax exemptions have been extended to CSR expenditure per se. The 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. [General Circular No. 1/2016 dated 12th January, 2016]

Q.53 How can companies with small CSR funds take up CSR activities in a project /programme mode?

A.53 A well-designed CSR project or programme can be managed with even a small fund. Further, there is a provision in the CSR Policy Rules, 2014 that such companies can combine their CSR programs with other similar companies by way of pooling their CSR resources. A company may also collaborate with other companies 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. (Refer Rule 4 in Companies (CSR Policy) Rules, 2014). [General Circular No. 1/2016 dated 12th January, 2016]

Q.54 Whether companies can pool CSR funds into a Fund set up by an entity other than Government (which may be a company, society, etc.) with the objective of spending in areas as envisaged in Schedule VII of the Companies Act, 2013 (the 'Act') or for the purpose of conducting CSR activities, etc.?

A.54 It is clarified that contribution of CSR funds is allowed only to funds set-up by, or designated for such contribution by, Central Government as prescribed in the Companies (Corporate Social Responsibility Policy) Rules, 2014 (CSR Rules) and no other fund. Contribution to private funds such as those set-up by a not-for-profit company, etc. is not allowed as per the CSR Rules. [25.01.2018 No.10/7/2017- CSR (Pt)]

Q.55 Whether contribution in kind can be monetized to be shown as CSR expenditure?

A.55 Section 135 prescribes "...shall ensure that company spends." Hence contribution in kind is not a CSR expenditure. The company has to spend the amount. [General Circular No. 1/2016 dated 12th January, 2016]

Q.56 What are the activities which do not qualify as CSR Activities?

A.56 In addition to the activities excluded in definition of CSR under Rule 2(1)(d), One-off events such as marathons/ awards/ charitable contribution/ advertisement/ sponsorships of programmes etc. shall not qualify as CSR activities.

Q.57 Rule 3(2) of the Companies (CSR Policy) Rules, 2014, requires that even those companies which ceases to be a company covered under subsection (1) of section 135 of the Act shall continue with its CSR Committee and comply with the provisions of Sec 135 related to activities of the CSR Committee and spending of 2% average profits, at least for three consecutive financial years.

A Company which is covered under Sec 135, having established a CSR Committee, and which is required to spend less than Rs. 50 Lacs in a year on its CSR activities in a year or say upto three consecutive financial years, decides to avail the option under Sec 135(9) as amended, and thus disband/ suspend its CSR Committee and carry out its CSR obligations directly through the Board, for the said FY or for each of the said three consecutive FYs.

Will such disbanding/ suspending of the CSR Committee by the Company under Sec 135(9) be deemed to be a violation of Rule 3(2) of the Companies (CSR Policy) Rules, 2014?

A.57 No. Such disbanding/ suspension of the CSR Committee by the Company u/s 135(9) during the FYs when its total amount required to be spent u/s 135(5) in a year is less than Rs. 50 lacs will not amount to violation of Rule 3(2) of the Companies (CSR Policy) Rules, 2014, in view of the fact that, while Rule 3(2) as a whole, talks about the requirement to continue with compliance of relevant provisions of Sec 135, and Sec 135(9) is only a procedural relaxation given to the certain Companies (*which are required to spend an amount of not more than Rs. 50 Lacs on its CSR activities in a year*) and all the functions of the CSR Committee would still be discharged by the Board.

Q.58 What are the various other aspects that may be kept in mind while undertaking CSR?

A.58 (i) it should be noted that companies, while undertaking Corporate Social Responsibility activities under provision of the Companies Act, 2013, shall not contravene any other prevailing laws of the land including Cigarettes and Other Tobacco Products Act (COTPA), 2003. [General Circular No. 05/2016 dated 16th May, 2016]

(ii) Contribution and involvement of employees in CSR activities of the company will no doubt generate interest / pride in CSR work and promote transformation from Corporate Social Responsibility (CSR) as an obligation to Socially Responsible Corporate (SRC) in all aspects of their functioning. Companies therefore, should be encouraged to involve their employees in CSR activities. However monetization of pro bono services of employees would not be counted towards CSR expenditure. [General Circular No. 1/2016 dated 12th January, 2016]

(iii) It is further clarified that CSR activities should be undertaken by the companies in project/ programme mode [as referred in Rule 4 (1) of Companies CSR Rules, 2014]. One-off events such as marathons/ awards/ charitable contribution/ advertisement/ sponsorships of TV Programmes etc. would not be qualified as part of CSR expenditure. General Circular No. 21/2014 18th June, 2014

(iv) 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. [General Circular No. 21/2014 18th June, 2014- also covered in rules]

(v) Salaries paid by the companies to regular CSR staff as well as to volunteers of the companies (in proportion to company's time/hours spent specifically on CSR) can be factored into CSR project cost as part of the CSR expenditure. [General Circular No. 21/2014 18th June, 2014]- This is omitted – [In continuation of the General Circular No. 21 of 2014 dated 18.06.2014, the following clarifications are hereby issued: (i) Rule 4(6) of the Companies (Corporate Social Responsibility Policy) Rules, 2014 as notified on 27.02.2014 has been amended by notification dated 12.09.2014;

and (ii) Consequently, clarification (iv) in General Circular No. 21 of 2014 dated 18.06.2014, stands omitted. [General Circular No. 36/2014 dated 17 Sep 2014]

Expenditure incurred by Foreign Holding Company for CSR activities in India will qualify as CSR spend of the Indian subsidiary if, the CSR expenditures are routed through Indian subsidiaries and if the Indian subsidiary is required to do so as per section 135 of the Act. [General Circular No. 21/2014 18th June, 2014]

Motto

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