Nishith Desai Associates
LEGAL AND TAX COUNSELING WORLDWIDE

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# Unlocking Corporate Philanthropy.

Towards Unlimited Potential.

A Handbook on CSR, Compliance & Strategy.

# Foreword by Dr. Nishith Desai.

Dear Friends,

Corporate Social Responsibility (CSR) is no longer just an ethical obligation—it is a transformative force that has the potential to redefine India's development trajectory. As the world's largest democracy and the fastest-growing major economy, India has an extraordinary opportunity to harness corporate resources for nation-building. The CSR framework under the Companies Act, 2013, was a pioneering step, making India the first country in the world to legislate mandatory CSR contributions. Over the last decade, this policy has mobilized over INR 1.5 lakh crore in corporate funding towards social and environmental causes, demonstrating the power of regulatory foresight.

Yet, we stand at an inflection point. As the complexities of CSR evolve, so must our regulatory framework. While compliance rates have steadily improved—reaching 97% in FY 2021-22—there remain challenges in ensuring that CSR funds create measurable, long-term impact. The introduction of impact assessment requirements, stricter utilisation timelines, and the transfer of unspent funds to designated accounts are commendable steps toward enhancing transparency and efficiency. However, for India to truly maximise its CSR potential, we must move beyond a compliance-driven approach to an impact-first philosophy.

## The Role of Bureaucracy in Strengthening CSR

The role of policymakers and regulators is pivotal in creating an enabling environment for CSR. Our bureaucratic machinery must transition from being seen as a mere enforcer of regulations to a facilitator of corporate participation in national development. This requires:

- **Simplification & Digitisation of Compliance:** CSR reporting and approvals must be streamlined through technology-driven platforms, reducing bureaucratic bottlenecks while enhancing transparency.

- **Incentivizing High-Impact Projects:** Regulatory frameworks should encourage outcome-based CSR investments, particularly in areas such as education, healthcare, digital inclusion, climate resilience, and rural entrepreneurship.

- **Encouraging Collaborative Models:** Public-private partnerships (PPPs) should be actively promoted, allowing corporates to work alongside government agencies to solve India's most pressing challenges.

- **Evidence-Based Policy Enhancements:** Regular reviews of CSR policies should be conducted, leveraging real-world impact assessments to refine and adapt regulatory measures dynamically.

## An Inspirational Call to Action

India has always been a land of visionaries and changemakers. From the cooperative movement that transformed rural India to the Aadhaar revolution that reshaped financial inclusion, regulatory foresight has driven extraordinary progress. Now, with the rise of AI-driven governance, impact measurement tools, and digital social audits, we have an unprecedented opportunity to redefine CSR governance for the 21st century.

Imagine a future where every rupee spent on CSR is tracked in real time, where regulators can assess impact through big data and AI, and where corporate India is seamlessly aligned with India's $5 trillion economic vision. This is not just an ideal—it is within our reach. It is time to embrace regulatory innovation, build frameworks that inspire trust, and create a CSR ecosystem that is admired globally.

I commend the efforts of the Dasra team and all contributors to this comprehensive handbook. This resource will serve as a vital tool for corporations, policymakers, and compliance officers alike, ensuring that CSR in India is not just about compliance but about creating real, sustainable impact.

Together, let us reimagine CSR as a catalyst for India's inclusive growth and global leadership in responsible business.

Warmly,

**Dr. Nishith Desai**
Founder, Nisith Desai Associates
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# Foreword by Deval Sanghavi.

Over the past 25 years, Dasra has worked alongside corporations, philanthropists, and nonprofits to build a stronger, more strategic approach to giving in India. We've seen first-hand how corporate philanthropy has evolved—from well-intentioned but fragmented efforts to a more structured, impact-driven approach. Today, CSR sits at the intersection of corporate governance, development finance, and impact-driven philanthropy.

Through our work with Families & Foundations over the last two decades, we have witnessed how family-owned firms have championed social responsibility long before the 2014 legal mandate with family-owned firms contributing ~70% of total CSR funding. These firms are continuing to reshape the philanthropic landscape, with more business leaders combining personal wealth and corporate resources to create deeper, more lasting impact.

Every year, the India Philanthropy Report (IPR) co-authored by Dasra, highlights significant shifts in India's giving landscape:

- The regulatory environment is evolving, with stronger expectations around fund utilization, impact assessments, and alignment with Environmental, Social, and Governance (ESG) principles.
- Private sector funding in India is expected to grow faster at 10%–12% over next 5 years, driven by domestic giving across family philanthropy, high-net-worth individuals (HNIs), and CSR spending. More companies are stepping up, with the number of firms complying with CSR regulations increasing by over 20% from ~12,000 in FY22 to ~15,000 in FY23.
- Family-owned firms are reshaping the giving landscape by supporting underfunded sectors, building infrastructure to strengthen the ecosystem, increasing the involvement of women, Inter-gen and Now-gen givers, and professionalizing their approach.
- Collaboratives have become a powerful mechanism for systemic change. The number of collaboratives launched in India per year has surged fivefold in the past three years, with approximately 53% of collaboratives focused on climate action and ecosystem strengthening.

Over the past two decades, Dasra has played a critical role in shaping fields (such as urban sanitation, adolescent health, informal work, etc.) for triggering thematic paradigm shifts and we have seen a significant increase in the willingness amongst stakeholders to not only channel greater funds but also do more, strategically and deliberately.

Dasra's report on India's NGO landscape with AT Kearney, has shown that India's non-profit ecosystem is mature and agile with over 265,000 registered non-profit organizations, playing a critical role as development partners building awareness among underserved communities, and strengthening last-mile access to services. However, over 70% of these face funding deficits. NGOs struggles to fundraise for core needs such as institution-building, capacity-building, and program overheads.

We have witnessed the crucial role of CSR funds through our work with over 1400 nonprofits over the years, including organizations such as Magic Bus, Lend a Hand India and Sneha. Now, more than ever, CSR has the potential to strengthen grassroot NGOs by providing sustained financial support, capacity-building opportunities, and strategic partnerships that enhance local implementation and scalability. But to truly maximize impact, we need stronger mechanisms to help social sector organizations navigate this landscape and ensure their resources create transformative change.

This handbook, developed by Nishith Desai & Associates serves as a comprehensive guide for those looking to better understand India's evolving CSR landscape. It provides clarity on compliance, regulatory requirements, financial structuring, and fund management. But more importantly, it challenges us to think about CSR differently—not just as a regulatory requirement, but as an opportunity to meaningfully contribute to India's development.

CSR in India is at an inflection point. As it continues to evolve, we must move toward long-term approaches, deeper partnerships and collaborations, and more intentional impact measurement. It's time to stop asking if we are spending enough and ask if we are doing enough.

We hope this handbook helps spark that shift.

**Deval Sanghavi,**
Co-Founder, Dasra

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# 1.

# Leveraging the Intersection of ESG and CSR.

Question 1

# What is the distinction between Environmental, Social, and Governance (ESG) frameworks and Corporate Social Responsibility (CSR) initiatives? How do they differ in practice?

Answer

ESG and CSR are components of corporate governance and overlap in their application. Their core principles remain the same—adoption of practices and policies by corporations intended to have a positive impact on society and the environment.

CSR is a form of corporate self-regulation integrated into business models, covering social, environmental, and economic concerns within a company's policies, practices, and decision-making. CSR commitments serve as foundations for corporate culture, offering employees, investors, and consumers insight into company values. The objective is to enhance long-term profitability and sustainability by fostering positive public relations, ethical business practices and shareholder trust while reducing legal and reputational risks.

CSR and ESG both focus on ethical business practices but differ in their scope and approach: CSR is a legal obligation for companies meeting certain financial thresholds, requiring them to allocate a portion of their profits toward social and environmental causes as codified under laws such as India's Companies Act, 2013. It emphasizes qualitative impact and accountability, focusing on a company's moral responsibility to contribute to societal welfare. Non-compliance leads to legal consequences.

ESG is a voluntary, quantifiable framework that assesses a company's long-term sustainability and ethical practices across three dimensions—Environmental impact, Social responsibility, and Governance. ESG metrics provide measurable indicators on climate change, supply chain management, and diversity. While ESG disclosures are gaining importance for investors, they remain voluntary, unlike CSR, which mandates spending. Thus, CSR is focused on mandatory social contributions, while ESG measures voluntary, performance-based sustainability efforts.

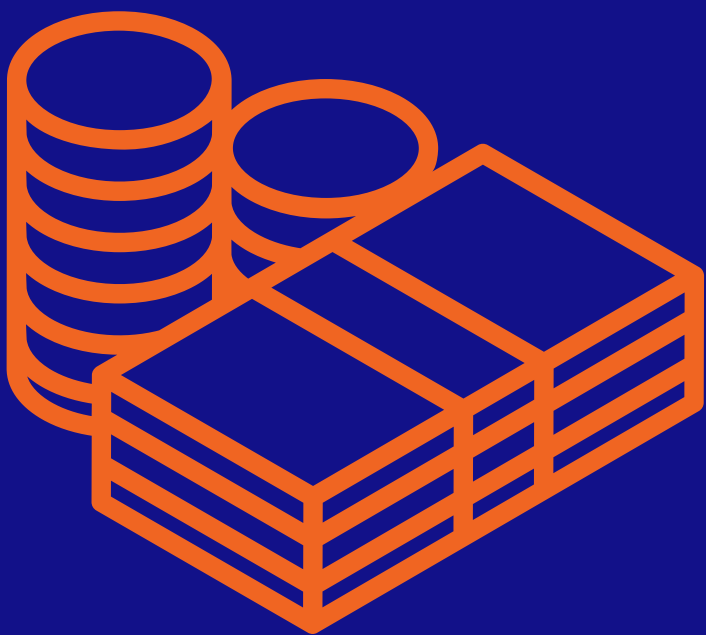
Currently, ESG Crediting, carried out by ESG Credit agencies registered with SEBI, evaluates companies from an investor's perspective, analyzing business performance, future risks, and sustainability. ESG includes activities such as conducting audits, setting measurable goals, and following good governance policies, ensuring effective business management. In contrast, CSR mandates spending a specific portion of a company's revenue on social development initiatives in the community where it operates.

While ESG and CSR share similarities and differences, they can be used together as complementary strategies within a business framework.[1]

1 https://www.thecorporategovernanceinstitute.com/insights/lexicon/what-is-the-difference-between-csr-and-esg/#:~:text=CSR%20focuses%20on%20corporate%20volunteering,the%20valuation%20of%20the%20business

# 2.

# Exploring Flexible Funding Models.



Question 1

# Is it mandatory for companies to undertake specific activities to fulfill their CSR obligations, or can they comply by deploying CSR contribution to various blended finance models?

Answer

As per rule 4(1) of the CSR Rules, the Board of a company must ensure that CSR activities are undertaken by the company itself or through the following entities:

- (a) A company established under Section 8 of the Companies Act, or a registered public trust, or a registered society under Section 12A and 80G of the Income Tax Act, 1961, established by the company, either individually or in collaboration with another company.
- (b) A company established under Section 8, a registered public trust, or a registered society set up by the Central Government or State Government.
- (c) Any entity established under an Act of Parliament or a State legislature.

  (d) A company established under Section 8, a registered public trust, or a registered society under Section 12A and 80G of the Income Tax Act, 1961, with a proven track record of at least three years in carrying out similar activities.

These entities are commonly referred to as 'Implementing Agencies', though this term is not explicitly mentioned in the CSR Rules. Companies can fulfill their CSR obligations by directly executing CSR projects, partnering with Implementing Agencies, or adopting a hybrid approach that combines both methods. Additionally, contributions to specific funds covered under Schedule VII of the Act are also considered CSR-compliant.

However, a mere financial contribution to an Implementing Agency does not qualify as CSR unless the activities undertaken by the agency aligns with the company's CSR Policy. As per the Ministry of Corporate Affairs ("MCA") Circular[2], the provisions of Schedule VII should be interpreted liberally to implement the underlying intent of CSR. Furthermore, MCA General Circular No. 21/2014 clarifies that the activities listed in Schedule VII are broad-based and cover a diverse range of social impact initiatives.

### CSR and Blended Finance Models

Companies may deploy their CSR contributions through blended finance models, provided that these models support activities that fall within the scope of Schedule VII. To ensure regulatory compliance, companies must:

- Clearly document CSR contributions to show alignment with Schedule VII and the company's CSR Policy.
- Structure and draft CSR financing agreements carefully to prevent regulatory non-compliance.
- Ensure proper reporting and impact assessment of CSR-funded activities within blended finance models.

By following these measures, companies can effectively integrate blended finance mechanisms while adhering to CSR regulatory frameworks.

2 https://www.mca.gov.in/Ministry/pdf/General_Circular_21_2014.pdf

# 3.

# Monitoring and Ensuring CSR Compliance.

# Monitoring and Ensuring CSR Compliance.

Question 1

## How has the monitoring of CSR activities evolved over time, particularly in relation to impact assessment? Have the requirements become more stringent, and if so, in what specific ways?

Answer

CSR was not a mandatory expenditure before the enactment of Companies Act, 2013. The formalization of CSR in India can be tracked back to the 'Voluntary Guidelines on Corporate Social Responsibility, 2009' released by the Ministry of Corporate Affairs ("MCA"), marking the first step towards a structured CSR framework. These were later refined as the 'National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business, 2011', introducing nine guiding principles. However, since these guidelines were voluntary and lacked a clear framework for impact assessment, the Indian Government took further steps, including mandating Central Public Sector Enterprises to allocate a CSR budget. Subsequently, Section 135 of Companies Act led to the formulation of the Companies (Corporate Social Responsibility Policy) Rules, 2014 ("CSR Rules, 2014"), which established a mandatory framework for CSR expenditure and monitoring. Monitoring of CSR projects is an integral part of implementation, ensuring adherence to timelines, budgetary allocations, and milestones.

### Stricter Monitoring and Compliance Measures

- **Rule 4(5) of CSR Rules:** The Board of Directors must ensure that CSR funds are utilized for approved activities and in the manner sanctioned.

- **Rule 4(6) of CSR Rules:** In ongoing projects, the Board must monitor implementation, ensuring compliance with approved timelines and year-wise allocations. The Board also has the authority to make modifications within the permissible time frame for smooth execution.

- **Mandatory CSR spending:** Companies meeting CSR obligations must allocate 2% of their average net profits over the three preceding financial years toward CSR.[3] Any unspent amount must be transferred to a fund under Schedule VII within 30 days after the end of financial year. Failure to comply results in penalties, including a fine of twice the unspent amount to be deposited in the designated fund.[4]

- **CSR committee exemptions:** The 2020 amendment to the CSR Rules exempted companies with a CSR fund of less than INR 50 lacs from the requirement to constitute a CSR Committee.[5] The MCA aims to channel more CSR funds into social impact activities rather than administrative expenses, capping impact assessment costs at 2% and administrative overheads at 5% of the total CSR expenditure.

### Evolution of Impact Assessment Requirements

Earlier, impact assessment was a voluntary measure. However, with amendments to the CSR Rules, 2014, it has now become a mandatory requirement.[6]

- **Rule 8(3)(a) of CSR Rules:** Companies with an average CSR obligation of INR 10 crore or more over the three preceding financial years must conduct an impact assessment through an independent agency for CSR projects with an outlay of INR 1 crore or more that have been completed at least one year before the study.

- **Rule 8(3)(b) of CSR Rules:** The impact assessment report must be submitted to the Board and annexed to the company's annual CSR report.

- **Rule 8(3)(c) of CSR Rules:** Companies conducting an impact assessment may book the expenditure toward CSR for that financial year, but it must not exceed 5% of total CSR expenditure or INR 50 lacs, whichever is lower.

The monitoring of CSR activities has significantly evolved from being voluntary and loosely structured to becoming a rigorous, compliance-driven framework with mandatory impact assessments and strict fund utilization policies. Companies must now regularly assess, report, and ensure accountability in their CSR spending, reinforcing transparency and efficiency in achieving social impact goals.

3 Section 135(5) of Companies Act, 2013
4 Section 135(5) of Companies Act, 2013
5 https://e-book.icsi.edu/notificationdetail.aspx?acturl=6CoJDC4uKVUR7C9FI4rZdatyDbeJTqg3hn2kFSDHZSI3Ctnq7VTiPg==
6 Rule 8, Companies (Corporate Social Responsibility Policy) Rules, 2014

Question 2

# What recent changes have occurred in CSR regulations or laws over the past year or two? What key updates should companies be aware of, and how do these changes impact CSR compliance, reporting requirements, and the overall approach to CSR?

Answer

The MCA has recently introduced amendments to the Corporate Social Responsibility Rules, 2014 ("CSR Rules, 2014"), significantly impacting CSR compliance, reporting, and implementation. These amendments introduce stricter regulations to ensure CSR funds are utilized effectively while minimizing administrative overheads.

### Key Amendments to CSR Rules

- Companies may now undertake CSR activities through a registered public trust or a registered society that is exempted under sub-clauses (iv), (v), (vi) or (via) of clause (23C) of Section 10[7] of the income Tax Act, 1961.

- This is in addition to the existing option of trusts registered under Section 12A[8] and 80G of the Income Tax Act, 1961[9], or non-profit companies registered under Section 8 of the Companies Act. The allowable expenditure for conducting a CSR Impact Assessment has been reduced from 5% to 2% of total CSR expenditure.

- Companies required to undertake Impact Assessment must bear the extra cost beyond INR 50 lacs or 2% of CSR expenditure, whichever is higher, from their own finances rather than from the CSR fund.[10]

- Previously, Rule 7 of the CSR Rules, allowed CSR expenditure to include all contributions to the corpus of a trust, Society or Section 8 company. However, as of 22 January 2021, this provision has been removed, and CSR contributions to the corpus no longer qualify as CSR expenditure.

Instead, the concept of 'on-going projects' has been introduced, allowing companies to carry forward unspent CSR funds for up to three years while ensuring timely implementation.

### Impact on CSR Compliance and Reporting Requirements

- Greater focus on social impact: Companies must demonstrate tangible outcomes from their CSR spending rather than merely allocating funds.

- Stricter regulatory enforcement: Courts and regulatory bodies have actively imposed penalties on companies that either fail to spend CSR funds or do not provide adequate disclosure explaining unspent amounts.[11]

- Companies that meet turnover criteria under Section 135 can no longer avoid CSR compliance, as mandatory disclosure and reporting have been strengthened.

- While the MCA has expanded options for CSR contributions, corporates and implementing agencies continue to face challenges in meeting reporting and impact assessment criteria.

7 Section 10 of the Income Tax Act, 1961
8 Section 12A of the Income Tax Act, 1961
9 Section 80G of the Income Tax Act, 1961
10 Rule 8, Companies (Corporate Social Responsibility Policy) Rules, 2014; The Companies (Corporate Social Responsibility Policy) Amendment Rules, 2022 Dated 20.09.2022 https://e-book.icsi.edu/notificationdetail.aspx?acturl=6CoJDC4uKVUR7C9Fl4rZdatyDbeJTqg3hn2kFSDHZSl3Ctnq7VTiPg==
11 Delta Finochem (P) Ltd. v. Registrar of Companies, 2023 SCC OnLine NCLT 9182

Question 3

## Do companies have to spend CSR funds within the financial year or can they allocate them to NGOs to be spent in the next financial year?

Answer

Companies have the flexibility to either spend their CSR funds within the financial year or allocate them to eligible implementing agencies, as per Rule 4 of the CSR Rules.[12] Implementing agencies are required to submit quarterly or annual project reports to the CSR funder, aligned with Form CSR-2 or Annexure 2 of the CSR Rules. Companies must then file these reports with the MCA under Rule 9 of the CSR Rules, ensuring compliance with reporting obligations. These reports must provide detailed project information, including the name, location, mode of implementation, and the nature of CSR activities undertaken.

Any surplus generated from CSR activities must be reinvested into the same project or other CSR-compliant initiatives, in accordance with Rule 7 of the CSR Rules. It cannot be included in the company's profits. Additionally, companies must adhere to the 5% cap on administrative overheads, covering monitoring, outcome verification, and related administrative functions.

For long-term CSR projects, where fund disbursement is linked to milestones, companies may carry forward unspent CSR funds to the next financial year. However, this must comply with Rule 10 of the CSR Rules, which requires unspent CSR funds to be transferred to a designated unspent CSR account and utilized within three years for the same project. If the funds remain unutilized within this period, they must be transferred to a fund specified under Schedule VII of the Companies Act. Companies must carefully structure long-term CSR engagements to ensure compliance with regulatory requirements, including timely fund utilization in accordance with the prescribed milestones.

Question 4

## Are there any forms that companies are required to fill to report their CSR contribution? Who is the appropriate reporting authority?

Answer

A company undertaking CSR activities must register itself with the Central Government by electronically filing Form CSR 1 with the Registrar of Companies (ROC), as mandated under Rule 4(1) and (2) of the CSR Rules, 2014.

From a compliance perspective, the annual report on CSR activities must be recorded in the Board's Report in the format of Annexure-II of the CSR Rules, 2014.

12 Rule 4 of the CSR Rules

# 4.

# Navigating CSR Taxation.

Question 1

## Can you avail deduction for computing tax on an expenditure incurred for CSR activity under Section 37 of the IT Act? Is there a prohibition to do so? How can companies benefit from Section 37 otherwise?

Answer

Section 37 of the IT Act, 1961 provides a specific prohibition under Explanation 2, which explicitly disallows CSR expenditure as a deductible business expense. The section states that any expenditure (not covered under Sections 30 to 36 and not classified as capital or personal expenses) incurred wholly and exclusively for business or profession purposes shall be allowed as a deduction while computing income chargeable under "Profits and Gains of Business or Profession".

To simplify, business-related expenditures not covered under Sections 30 to 36 fall under categories such as:

- Rent, rates, taxes, repairs and insurance for buildings,
- Repairs and insurance of machinery, plant and furniture,
- Depreciation,
- Development Rebate,
- Expenses related to scientific research, and
- Other business conditions,

are deductible under "Profits and Gains of Business or Profession".

**Types of Deductible Business Expenditures under Section 37:**

- Preserving assets or prevent their loss, destruction, or waste for the benefit of the business.
- Litigation expenses to defend business ownership or assets.
- Expenses related to obtaining loans from financial institutions.
- Royalties paid for using a company logo or brand.
- Software maintenance costs
- Environmental and community development initiatives (not classified as CSR under Section 135).
- Expenses incurred for modifying Articles of Association to comply with amendments in the Companies Act.[13]

**Impact of explanation 2 to Section 37 on CSR expenditure:**

While CSR expenses are explicitly disallowed under Explanation 2 of Section 37, it does not necessarily mean that all social contributions are non-deductible. The taxpayer must establish a direct business nexus between the expenditure and the business' operational objectives. Simply categorizing an expense as CSR does not automatically disqualify it, provided that:

- The expenditure enhances goodwill and brand recognition.
- It facilitates workforce availability, ensuring business continuity.
- It supports smoother business operations by improving local infrastructure or community relations.
- It boosts demand for the company's products or services.

Thus, if an expense benefits business operation and is not solely classified as CSR under Section 135, it may still qualify as a deductible expenditure despite the restrictions imposed by Explanation 2 to section 37 of the Act.

13 https://www.tataaig.com/knowledge-center/group-health-insurance/section-37-1-of-the-income-tax-act

Question 2

## Is CSR a charitable donation? Where can companies avail the most benefits for such donations? How can the companies avail maximum benefit under Section 80G of the IT Act, 1961?

Answer

Section 80G of the IT Act, promotes charitable donations by providing tax deductions for contributions made to eligible organizations. This allows a company to reduce its taxable income by the amount donated, thereby lowering its overall tax liability. While CSR spending serves a social purpose, similar to charitable contributions, CSR expenditure is not considered a tax-deductible donation under Explanation 2 to Section 37 of the IT Act. However, companies can still opt for additional charitable contributions beyond their mandatory CSR obligation, which may qualify for deductions under Section 80G.

Under Section 80G (2) (iiihk) and (iiihl) of the IT Act, donations made to specific government-backed funds, such Swachh Bharat Kosh and the Clean Ganga Fund, are entirely deductible while computing a company's income, but only for amounts donated beyond the mandatory 2% CSR requirement. Section 80G(1)(ii), read with sub-section 2(a)(iv) of the IT Act, allows a deduction of 50% of the donated amount from taxable income when a donation is made to any fund or any institution that meets the requirement of sub- section (5) of Section 80G. This deduction is applicable even if the assessee has classified the expenditure as CSR expenditure, as there is no prohibition or restriction imposed by the Parliament on such donations being treated as CSR spending.[14]

The primary benefit of a Section 80G exemption is that it enables donors to claim deductions on their taxable income when they contribute to eligible funds or institutions. The deduction amount can range from 50% to 100% of the donated sum, depending on the institution's registration status and the nature of the cause it supports. To qualify for Section 80G benefits, the fund or institution must have valid registration under Section 80G, as issued by the Income Tax Department. It is essential for donors to verify the registration status to ensure their donations are eligible for tax deductions. The provisions of Section 80G have undergone through multiple amendments and currently provide for the following:

100% tax deduction- Donations made to certain government funds, including the National Relief Fund, Prime Minister's National Relief Fund, and specific approved charities, qualify for a full tax deduction, allowing corporations to reduce their tax liability significantly.

50% tax deduction for other NGOs- In most cases, donations made to NGOs registered under Section 80G qualify for a 50% tax deduction. For example, if a corporate donates INR 10,000 to an eligible NGO, they can claim a deduction of INR 5,000 from their taxable income, effectively reducing their tax liability while encouraging contributions to charitable causes.

14 American Express (India) P. Ltd. v. Principal Commissioner of Income-tax, [2024] 166 taxmann.com 91 (Delhi - Trib.)

Question 3

## What are the recent changes and clarifications that companies should know before availing tax deductions? What factors should companies consider for taxation benefits under the IT Act, 1961?

Answer

The amendment to Section 37(1) of the IT Act, 1961 stipulates that any expenditure incurred by taxpayers on CSR activities, as referenced in the Companies Act shall not be allowable as a business expenditure. In essence, CSR expenditure cannot be deducted when calculating income under the head 'Profit and Gains from Business or Profession'. However, questions have arisen regarding its deductibility under Section 80G when CSR expenditure is made in the form of donations.

Recent rulings by the Income Tax Appellate Tribunal (ITAT) in India have clarified that if any part of CSR contribution qualifies for deduction under Chapter VI-A of IT Act, 1961, there is no bar on companies claiming it as a deduction under Section 80G.[15]

The ITAT Ruling further clarifies that if a company structures its CSR expenditure as a donation to a charitable fund eligible for exemption under Section 80G, the expenditure may qualify for either a 50% or 100% tax deduction, depending on the category of the donation. Additionally, if the expenditure is incurred for business purposes, meaning it is necessitated by business considerations and dictated by commercial expediencies, the deduction under Section 37(1) of the IT Act, 1961 can be availed.[16]

Companies should carefully distinguish between expenditures made for commercial interests and those for donations or social purposes. Proper classification of the expenditures in their books of accounts is essential to ensure compliance. CSR expenditure should be allocated towards an exempted institution or fund eligible under Section 80G of the IT Act, 1961, to maximize taxation benefits where possible.

15 Ibid.
16 Principal Commissioner of Income Tax, Vadodara v. Gujarat Narmada Valley Fertilizer and Chemicals Ltd., [2020] 121 taxmann.com 82 (Gujarat)

Question 4

## What are the implications of allowing CSR expenditures as tax deductions under Section 80G of the IT Act, 1961, for corporate financial planning? Will it incentivize companies to go beyond the 2%? As a business leader, how will you leverage this opportunity to create meaningful change?

Answer

Corporations may strategically allocate resources to maximize tax benefits, potentially shifting their CSR approach from a holistic community-driven model to one that aligns with Section 80G criteria. The provision allows for 100% deductions when donations are to Central Government approved schemes identified under the IT Act, 1961, and 50% deductions for contributions to eligible charitable organizations. This incentive may encourage companies to structure their CSR strategies in a way that meets tax efficiency while also addressing environmental and social concerns linked to their operations.

The law also encourages companies to focus CSR initiatives on areas near their operations, helping them build stronger local community support and potential avoid regulatory penalties such as those imposed by the National Green Tribunal. The fundamental idea of CSR is that companies should give back to the society that contributes to their business growth.

Section 80G of the IT Act, 1961, further enables companies to reduce their tax liabilities through CSR expenditures, which would otherwise be taxable. Additionally, with increasing shareholder activism, investors are closely monitoring a company's the long-term social impact, including its environmental compliance, local community relations, employee welfare, and regional economic development. A company's CSR spending can influence its public reputation, regulatory standing, and investor confidence.

By leveraging Section 80G exemptions, companies can opt to go beyond the mandatory 2% CSR expenditure, as the tax benefits make additional philanthropic contributions financially viable.

Question 5

# How can companies balance the financial benefits of CSR deductions with the need for genuine social impact? How can companies optimize their CSR spending to align with tax efficiency while maximizing social impact?

Answer

A significant challenge from recent tax tribunal rulings is that companies tend to prioritize CSR activities that qualify for deductions under Section 80G of the IT Act, 1961. This narrow focus may limit the diversity of CSR initiatives, potentially overlooking critical areas essential for social and environmental development. As a result, long-term projects that do not provide immediate tax benefits may struggle to secure funding, affecting their sustainability and overall effectiveness.

To address this, companies must adopt a balanced approach that allows them to leverage CSR deductions while ensuring genuine social impact. Aligning CSR initiatives with broader business goals can reinforce the idea that social responsibility is not merely a compliance obligation but a driver of long-term success. Striking a balance between short-term and long-term CSR objectives is equally crucial. While tax-deductible projects offer immediate financial benefits, companies should also invest in sustainable initiatives that may not yield quick returns but significantly enhance social well-being over time.

Effective tax planning plays a key role in maintaining this balance. Collaborating with tax advisors can help companies structure their CSR spending efficiently, ensuring both compliance with tax regulations and maximization of available incentives. By adopting strategic CSR planning, companies can invest in a diverse range of projects, both deductible and non-deductible, without compromising their commitment to meaningful social contributions. Ultimately, CSR contributions can be a mutually beneficial practice. Companies can enhance their brand image and public perception, gain tax benefits, and simultaneously create a positive impact on society.

Question 6

## How can the companies structure their expenditure on CSR activities to be tax-efficient from the beginning? What are the most suitable tax-efficient organizations to donate CSR funds to?

Answer

Rule 4 of the CSR Rules, 2014 mandates that CSR activities must be undertaken by the company itself or through the following entities:

- A non-profit company under Section 8 of the Companies Act, 2013, a registered public trust, a registered society, which is either exempted under sub-clauses (iv), (v), (vi) or (via) of clause (23C) of Section 10 or registered under Section 12A and approved under 80G of the IT Act, 1961. These entities may be established by the company itself, individually or in collaboration with other companies.
- A company established under Section 8 of the Companies Act, or a registered trust or a registered society that has been established by the Central Government or State Government.
- Any entity established under an Act of Parliament or a State legislature.
- A non-profit company under Section 8 of the Companies Act, 2013, a registered public trust. or a registered society, which is either exempted under sub-clauses (iv), (v), (vi) or (via) of clause (23C) of Section 10 or registered under Section 12A and approved under 80G of the IT Act, 1961, with a track record of at least three years in undertaking similar activities.

To maximize tax efficiency, companies should either establish an entity under clause (a) or route CSR expenditures through eligible entities under clauses (b), (c), or (d). CSR funds channeled through such registered and eligible entities allow companies to claim a 50% or 100% deduction, depending on the Donation Receipt issued by the Section 80G-approved entity.

For clarity, Section 12A entities under the IT Act, 1961, include non-profit organizations such as charitable trusts, welfare societies, NGOs, and religious institutions, which are entitled to tax exemptions for their contribution towards to society. These entities are exempt from tax under Sections 11 and 12 of the IT Act, 1961. However, to claim these tax benefits, they must be registered under Section 12A of IT Act, 1961. If a non-profit organization fails to register under 12A, all future financial transactions and receipts will be deemed taxable.

On the other hand, a Section 8 non-profit company, registered under the Companies Act, 2013, established for charitable purposes and does not aim to generate profits. These organization focus areas such as science, culture, research, sports, and religion, and are exempt from dividend payments. They are licensed by the Central Government and do not have require a minimum paid-up share capital.

Question 7

# Do the companies need to justify any conditions while establishing a Section 12A or 12AA Company as a channel for CSR Expenditure? How are they categorized for a CSR Expenditure?

Answer

he Income Tax Authorities have observed in various judgments that for grant of registration under Section 12AA of IT Act, 1961 only two parameters need to be examined for the registration of a trust:

- **1. The object of the trust.**
- **2. The genuineness of the activities of the trust/institution.**

The Commissioner of Income Tax is not required to examine eligibility or activities of the trust beyond these two parameters. All other aspects, including the eligibility for exemption under Section 11 of the IT Act, fall within the jurisdiction of the Assessing Officer at the time of the assessment. The Commissioner does not have the authority to assess whether the trust's activities align with the Companies Act. Furthermore, once registered, a trust granting funds to another charitable society for the purpose of seeking exemption under Section 11 is a matter to be considered by the Assessing Officer, not the Commissioner under Section 12AA of the IT Act, 1961.[17]

It is a well-established position that registration of a trust for CSR expenditure purposes cannot be denied by the Income Tax Commissioner simply on the grounds that it is intended to fulfill CSR obligations. Various tribunal rulings have clarified that is a company establishes a trust to comply with the CSR obligations, the registration under Section 12AA of the IT Act, 1961. cannot be denied, particularly because CSR activities also qualify as charitable activities under the IT Act, 1961.[18]

17 Commissioner of Income Tax (Exemptions) v. Nanak Chand Jain Charitable Trust, [2024] 162 taxmann.com 353 (Punjab & Haryana)
18 Escorts Skill Development v. Commissioner of Income-tax Exemptions), Chandigarh, [2019] 108 taxmann.com 53 (Delhi - Trib.)

Question 8

## Can the companies claim any donation as a business expenditure? How can companies structure their activities to avail the benefits of Section 37(1) of the IT Act, 1961? How has the understanding been established in the current tax regime?

Answer

The income tax tribunals have held that, to claim a deduction under Section 37 of IT Act, 1961, the expenditure incurred must meet the following conditions:

- **(i) It should not fall under any of the provisions referred to in Sections 30 to 36 of the IT Act, 1961.**
- **(ii) It should not be in the nature of a capital expenditure or personal expenses of the assessee.**
- **(iii) It must have been wholly or exclusively for the purposes of business or profession.**

If these conditions are met, the expenses can be deducted while computing the income chargeable under "Profits and gains of business or profession[19]". The Gujarat High Court has reaffirmed, based on previous High Court rulings, that voluntary expenditures, including donations, are not necessarily barred from being claimed as deductions under Section 37(1). The wording of Section 37(1) specifies that expenditures must be "wholly and exclusively for the purpose of business", but this does not mean "necessarily". It is at the assessee's discretion to determine whether an expenditure should be incurred in the course of its business operations.

"Business" would signify an organized and continuous course of commercial activity, which is carried on with the end in view of making or earning profits. Under Section 37(1), the connection has to be established between the expenditure incurred and the activity undertaken by the assessee with such object.[20] Furthermore, it is established that the Explanation 2 of Section 37(1) is prospective in nature i.e. CSR Expenses made for the assessment years before April 01, 2015 are allowed as deductible expenditure under Section 37(1) of the IT Act, 1961.[21]

Question 9

## What should the companies check in a fund or institution before making donations to avail the Section 80G tax exemption? What should the companies be vigilant about?

Answer

To avail a Section 80G exemption, the donee fund or institution must be validly registered and eligible to provide such exemptions. Section 80G of It Act, 1961, specifies that the fund or institution should be a charitable institution established in India, and its income should not be eligible for inclusion under Sections 11 and 12 of the IT Act, 1961. Before making a donation, the company should ensure that:

- The institution or fund does not contain any provision for the transfer or application (whole or any part) of its income or assets for any purpose other than a charitable purpose.
- The institution or fund is not expressed to be for the benefit of any particular religious community or caste.
- The institution or fund maintains regular accounts of its receipts and expenditure.
- The institution or fund is either constituted as a public charitable trust, registered under the Societies Registration Act, 1860, a non-profit company under the Companies Act, 2013, a University established by law, or any other educational institution recognized by the Government or affiliated with a University established by law.

19 Mecon Ltd. v. Assistant Commissioner of Income-tax, [2024] 165 taxmann.com 149

20 Principal Commissioner of Income Tax, Vadodara v. Gujarat Narmada Valley Fertilizer and Chemicals Ltd., [2020] 121 taxmann.com 82 (Gujarat)

21 Principal Commissioner of Income-tax v. Steel Authority of India Ltd. [2023] 148 taxmann.com 132 (Delhi)

Question 10

## What is the condition for availing a deduction under Section 80G of the IT Act, 1961, for CSR expenditure? Is there any specific mode in which the money must be transferred?

Answer

Expenditure incurred towards CSR is specifically prohibited from being allowed as deduction under Section 37(1) of IT Act, 1961, effective from. 01 April 2015. The only condition for claiming deduction under Section 80G is that the institution receiving the donation must be registered under Section 80G of the IT Act,1961. Once this condition is fulfillled, the donor is entitled to avail the deduction.[22]

Clause 5D of Section 80G[23] of IT Act, 1961 specifies that no deduction shall be allowed for a donation exceeding INR 2,000 unless the payment is made by any mode other than cash. Companies must therefore ensure that CSR contributions are made through banking channels, electronic transfers, or other approved methods to qualify for deductions under Section 80G.

Question 11

## What should a company check in a proper receipt to avail the deduction under Section 80G of IT Act, 1961? Are there any form filings required as well?

Answer

Ans: A donation made under Section 80G of the IT Act, 1961 must be accompanied by a donation receipt issued by the trust or charitable organization receiving the amount. This receipt should include:

- Name and address of the fund or institution
- Name of the donor
- Amount donated (clearly mentioned in both words and figures)
- Registration number of the trust, as issued by the Income Tax Department under Section 80G, along with the period of validity

Additionally, the company or taxpayer entity must mandatorily file Form 58A[24] to claim a 100% deduction on the donation. Without filing Form 58A, the donation will not qualify for a 100% deduction. Form 58A is applicable only for certain types of eligible deductions, specifically for donations made toward eligible projects or schemes approved by the National Committee, payments to a Public Sector company, a local authority, or to an association or institution.[25]

22 Ericsson India Global Services (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-7(1), [2024] 160 taxmann.com 599 (Delhi - Trib.)
23 Section 80G(5D), Income Tax Act, 1961
24 https://img.indiafilings.com/learn/wp-content/uploads/2017/08/12010350/Form58A-Format-for-Section-80G.pdf
25 https://www.indiafilings.com/learn/section-80g-deduction-income-tax- act/#:~:text=Section%2080G%20tax%20exemption%20is,lowering%20your%20overall%20tax%20liability.

# 5.

# Creating a Collaborative Pool Fund.

Question 1

# Can companies create a collaborative fund to pool resources for a common objective?

Answer

The Companies Act recognizes the concept of collaborative funding. Collaborative funds are philanthropic organizations that bring together multiple contributors, provide subject matter expertise, and allocate resources to nonprofits and communities best positioned to drive progress on complex social issues such as poverty, climate change, racial equity, and global health.[26] Collaborative funds have seen significant growth in philanthropy, with over 400 such funds already in existence.

Under Sub-rule 4 (4) of the CSR Rules, 2014, companies are allowed to collaborate to undertake CSR projects, programs or activities, provided that the CSR committees of each participating company are able to report separately on their respective contributions. While companies are permitted to form and contribute to a collaborative fund, they must:

- Individually account for their respective contributions, ensuring compliance with CSR reporting obligations.
- Align on a common theme or objectives, ensuring that CSR spending from the collaborative fund is directed toward a mutually agreed-upon purpose.

**Examples for Successful Collaborative Funds**

Several real-life examples demonstrate how collaborative funds enable companies to contribute toward shared social impact goals. Nudge Fund, assists corporate entities in deploying CSR funds effectively, ensuring they benefit communities and individuals, with a focus on social inclusion and youth empowerment. TATA Group, one of India's largest conglomerates, partnered with Nudge Foundation to support poverty alleviation initiatives.[27]

26 https://collaboratives.gatesfoundation.org/about-collaboratives
27 https://thecsrjournal.in/tata-trusts-partners-with-the-nudge-foundation-for-poverty-alleviation/

# 6.

# Transforming Aspirational Districts with CSR Funding.

Launched in 2018, the Aspirational Districts Programme (ADP) by NITI Aayog is a flagship initiative aimed at transforming 112 of India's most underserved districts by improving socio-economic indicators in areas such as health, education, agriculture, financial inclusion, and infrastructure. The program operates on the principles of convergence, collaboration, and competition, leveraging a data-driven approach to track and improve district-level performance.

For corporates, CSR investments in aspirational districts provide an opportunity to contribute to high-impact, measurable development initiatives while ensuring alignment with national priorities and compliance with Schedule VII of the Companies Act, 2013.

Question 1

# How can CSR funds legally support projects in aspirational districts, especially considering the convergence of central and state schemes? Are there any specific legal guidelines for such collaborations?

Answer

In 2018, the Government of India encouraged Central Public Sector Enterprises (CPSEs) to strengthen their CSR efforts in aspirational districts, aiming to foster development in these underserved areas. The compliance requirements for CSR initiatives in aspirational districts largely mirror those for general CSR activities.

Companies must adhere to the Companies Act, 2013, ensuring that their CSR initiatives align with the categories specified in Schedule VII, which include promoting education, healthcare, rural development, and other socio-economic objectives.

To support projects in aspirational districts, companies are required to:

- Report their CSR expenditures in their annual reports, providing detailed information on contributions to aspirational districts.
- Establish mechanisms for monitoring and evaluating project impact, ensuring transparency and accountability.
- Comply with local laws and regulations governing project implementation, as regulatory adherence is critical for successful execution.

A key principle of the Aspirational Districts Program is the convergence of central and state schemes. To align with this framework, companies should:

- Engage with Local Self-Governance Institutions (LSGIs) and relevant government bodies to enhance the effectiveness of CSR initiatives.
- Collaborate with decentralized planning boards to identify specific local needs and structure CSR projects to complement central and state programs, fostering a holistic approach to development.

Additional government-issued guidelines in 2018 provided specific directives for CPSEs regarding CSR expenditure in aspirational districts, reinforcing the importance of strategic planning and integration with existing schemes.

Question 2

# What are the guidelines for Central Public Sector Enterprises (CPSEs) regarding CSR activities in aspirational districts? How does this benefit CSR as a concept? Does it require any additional mandatory compliances under Section 135 of the Companies Act?

Answer

The Department of Public Enterprises has established specific guidelines for CPSEs to enhance the impact of their CSR activities, particularly in aspirational districts. These guidelines ensure that CPSEs align their CSR initiatives with national development priorities while meeting legal compliance requirements.

**Key Guidelines for CPSEs in Aspirational Districts**

CPSEs must identify a common theme for CSR each year. For 2018-19, the priority areas were school education and healthcare.

- At least 60% of the annual CSR budget should be directed toward the identified theme to maximize impact.
- Projects in Aspirational Districts, as designated by NITI Aayog, should be prioritized to ensure meaningful developmental outcomes.
- Each CPSE must appoint a senior-level functionary as a nodal officer to coordinate with the district administration of the chosen aspirational district.
- CPSEs must submit details of the nodal officer and selected districts to NITI Aayog and the relevant ministries.
- The nodal officer must update the Central Prabhari Officer on CSR initiatives in the district.

**Compliance and Statutory Requirements**

All CSR activities must comply with the Companies Act, 2013, ensuring there are no deviations from statutory provisions. These guidelines replace earlier advisories regarding CSR fund allocations, particularly those related to sanitation activities. Additionally, administrative ministries and departments must ensure that CPSEs are aware of and implement these guidelines effectively.

Question 3

# What compliance measures should companies follow when engaging in decentralized development projects in politically complex or underserved areas under CSR initiatives?

Answer

CSR can be an important source of funding for Local Self-Governance Institutions (LSGIs), particularly in the context of decentralized development projects. Companies should prioritize the following compliance measures:

- **Adherence to local laws:** Companies must familiarize themselves with local laws and ensure compliance with the Companies Act, particularly concerning project approval and execution.
- **Coordination with LSGIs & Planning Boards:** Companies should collaborate with decentralized planning boards and LSGIs to align projects with state and central government schemes. This includes ensuring convergence between LSGI projects and broader government initiatives.
- **Community engagement:** Involving local communities in the planning process ensures that initiatives address specific needs and fosters trust through transparent communication.
- **Monitoring and evaluation:** Establishing a robust framework for tracking project effectiveness allows for continuous adjustments based on stakeholder feedback.
- **Record-keeping and accountability:** Maintaining detailed records of project plans, expenditures, and outcomes is crucial for regulatory compliance and ensures accountability in CSR reporting.

Question 4

# Have you observed companies venturing into uncharted territories with their CSR initiatives? What challenges do they face, and what potential benefits could arise from such efforts, such as enhanced CSR branding or other positive outcomes?

Answer

Yes, many companies are exploring uncharted territories through innovative CSR initiatives. Some notable examples include:

- **Mental health support initiatives:** Providing accessible counseling services to rural communities, where mental health remains stigmatized and access to professional support is limited.
- **Technology for social good:** Companies leveraging tech-driven solutions to address social issues, such as remote education platforms that bring quality learning opportunities to underserved populations.

While venturing into new CSR domains offers significant potential, companies also face key challenges and risks.

**Challenges Faced:**

- Companies may struggle to grasp local socio-cultural norms, leading to misaligned projects that fail to resonate with community needs. This can result in reputational risks and legal challenges.
- Navigating the complex regulatory landscapes in unfamiliar territories can be challenging. Companies must ensure strict adherence to local laws, as non-compliance may lead to legal penalties, project delays, or termination of operations.
- Evaluating CSR initiatives in new geographies requires specialized assessment tools. Failure to track compliance can expose companies to legal risks and accountability concerns.

**Potential Benefits:**

- Successfully entering new areas positions a company as a socially responsible leader, reinforcing brand credibility.
- Long-term engagement builds trust and partnerships, resulting in customer loyalty and sustainable collaborations.
- Establishing CSR presence in uncharted regions can uncover potential business opportunities, fostering growth and profitability.

Companies can significantly contribute to poverty alleviation, education, healthcare, community well-being, reinforcing their role in broader social progress.

# 7.

# Supporting MSMEs Through Deregulation.

Question 1

## Can CSR funds be utilized to support the growth and development of MSMEs? What legal boundaries exist for using these funds in capacity-building and deregulation initiatives in the MSME sector?

Answer

While the Companies Act, 2013 does not explicitly include contributions to Micro, Small, and Medium Enterprises (MSMEs) under Schedule VII, there are several ways in which companies can strategically utilize CSR funds to support the development of this crucial sector.

As per Rule 7 of CSR Rules, 2014, CSR expenditure includes all contributions made to projects or programs that align with Schedule VII, as approved by the company's Board of Directors, based on recommendations from its CSR Committee. Although direct contributions to MSMEs are not explicitly listed as CSR activities, companies can support broader initiatives that contribute to MSME growth in alignment with Schedule VII.

**Indirect Support for MSMEs**

- **Supporting government schemes:** Companies can allocate CSR funds to government-backed initiatives supporting MSME development. By contributing to these programs, companies play a role in strengthening the overall MSME ecosystem, enhancing access to resources and market linkages.
- **Investing in rural development:** Rural development projects can improve infrastructure, access to credit, and local economic resilience, creating an enabling environment for MSMEs to operate and expand. Investments in roads, digital infrastructure, and logistics can enhance connectivity and market access for small enterprises.
- **Strengthening vocational education and skill development:** Supporting education and vocational training initiatives can equip individuals with entrepreneurial and technical skills, increasing employment readiness and enabling small businesses to access a more skilled workforce. Programs that focus on financial literacy, business management, and digital upskilling can further empower MSME entrepreneurs.
- **Enhancing livelihood and entrepreneurship:** CSR contributions toward livelihood enhancement projects can help strengthen small businesses, particularly those led by women, youth, and marginalized communities. Such initiatives foster inclusive economic growth, enabling MSMEs to thrive in a sustainable and equitable manner.

# 8.

# Enhancing Skilling and Employment Initiatives.

Question 1

# What are the legal implications of using CSR funds for skilling and employment programs? Are there specific compliance measures companies should follow when funding internships or skill development initiatives through CSR budgets?

Answer

Using CSR funds for skilling and employment programs is permissible under the Companies Act, 2013, as it aligns with Schedule VII, which includes provisions for "promoting education, including special education and employment-enhancing vocational skills." This allows corporates to support various skill development initiatives, including internships and apprenticeship training. However, specific compliance measures must be followed to ensure CSR expenditures adhere to legal requirements.

CSR-funded skilling or employment programs must align with the activities specified in Schedule VII, ensuring they contribute to enhanced employability and vocational training. According to the CSR Process Manual[28], CSR funds can specifically be utilized for apprenticeship training, which is recognized as a skill training category under Schedule VII. Companies can allocate CSR funds toward basic training costs and stipends for apprentices as per the Apprentices Act, 1961.

The Process Manual further clarifies that expenditures on apprenticeship training can include stipends payable to apprentices. Additionally, if a company spends over the 2.5% minimum requirement under the Apprentices Act, the excess can be accounted for as a CSR spending.

Companies must ensure that their skill development initiatives meet CSR criteria and avoid activities that do not qualify as CSR under Schedule VII:

- **Internal employee training:** Training programs focuses solely on upskilling a company's own employees do not qualify as CSR, as they are considered part of regular business operations.

- **Profit-driven skill development projects:** Any skill development project aimed at increasing company profits or directly linked to marketing efforts is not considered CSR.

- **One-time workshops or events:** Short-term workshops or events without a sustained impact on employability typically do not qualify as CSR, as CSR activities should have a long-term community impact.

- **Non-specific donations:** CSR contributions should not be directed toward organizations that lack a clear or specific agenda aligned with skill development objectives.

- **Mandatory compliance training:** Training programs required by law, such as those mandated under the statutory compliance frameworks, do not qualify as CSR activities.

28 https://nsdcindia.org/sites/default/files/files/CSR-Process-Manual-(SoP)-Latest.pdf

Question 2

## The Company plans to organize a medical health camp for its unskilled labor under its CSR activity. Is this permissible under the Act and Rules?

Answer

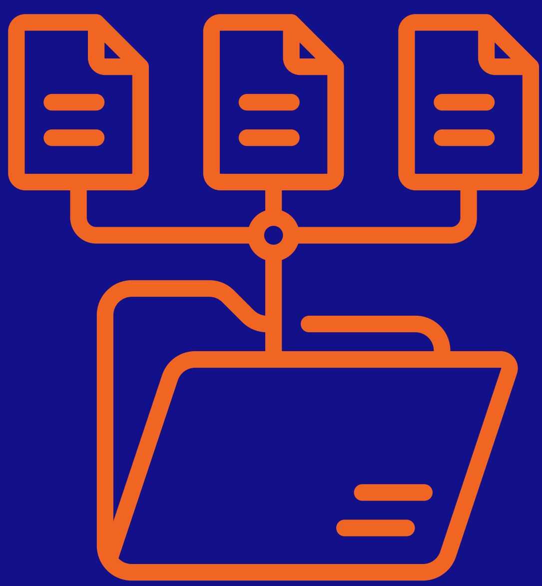
As per Rule 2(d)(iv) of the CSR Rules, 2014, CSR activities shall not include any activity benefitting a company's employees, as defined in Clause (k) of Section 2 of the Code on Wages, 2019.

According to Clause 2(k) of the Code on Wages, 2019, an "employee" is defined as any person (other than an apprentice engaged under the Apprentices Act, 1961), who is employed on wages by an establishment to perform skilled, semi-skilled, or unskilled manual, operational, supervisory, managerial, administrative, technical, or clerical work, whether under an express or implied contract. This definition also includes any individual declared as an employee by the appropriate Government, but excludes members of the Armed Forces of the Union.

As unskilled labor hired by the company falls within this definition of employees, a medical camp exclusively for them does not qualify as a CSR activity and is therefore not permissible under the CSR framework.

# 9.

# Managing the 5% Administrative Overhead Cap.



Question 1

# Classification and Compliance: How can companies ensure accurate classification of expenses under the 5% administrative overhead cap, particularly when distinguishing between office expenses, employee costs, and programmatic activities, to maintain legal compliance?

Answer

As per rule 4(6) of CSR Rules, 2014, salaries paid to regular CSR staff and employees involved in CSR activities are classified as administrative overheads and must not exceed 5% of the total CSR expenditure.

Additionally, the Cost Accounting Standards (CAS) issued by the Institute of Cost Accountants of India (ICAI) provide guidance on Administrative Overheads under CAS 11, which helps in categorizing expenses for CSR expenditure.

**Expenses classified as administrative overheads for CSR:**

- Office costs and operational lease expenses.
- Cost of administrative services, including applicable taxes and duties, procured externally.

**Expenses excluded from administrative overheads for CSR:**

- Subsidies, grants, or incentives received for administrative costs
- Abnormal administrative costs, such as those incurred due to natural calamities
- Fines or penalties paid by the company
- Credit or recoveries related to administrative overheads

Under CAS 11, administrative overheads must be assigned to cost objects based on one of the following principles:

- **Cause and Effect** – Where costs are incurred due to a particular process, operation or activity.
- **Benefits received** – Overheads are apportioned based on the extent of benefits received by different cost objects.

By accurately classifying CSR-related expenses, companies can ensure compliance with the 5% administrative overhead cap while maintaining proper financial reporting and regulatory adherence.

# 10.

# Directing CSR Funds Toward Research.

Question 1

# What legal guidelines exist for allocating CSR funds to research activities, particularly in areas related to social impact?

Answer

The Ministry of Corporate Affairs, through a notification dated 24th August 2020, added two sub-clauses to Clause(ix) of Schedule VII of the Companies Act, 2013.[29] These amendments expanded the scope of CSR activities by including contribution to incubators or research and development projects in the fields of science, technology, engineering and medicine (STEM), as well as funding research institutions in India. This expansion was introduced to encourage corporate support for the Government's COVID-19 recovery efforts and to facilitate CSR contributions toward R&D activities for developing new vaccines, drugs, and medical devices related to COVID-19.[30]

The Indian Council of Medical Research (ICMR), an autonomous body under the Department of Health Research (DHR), Ministry of Health and Family Welfare (MoHFW), issued CSR guidelines in August 2023.[31] These guidelines clarify that research institutes, universities, research foundations, medical colleges, and institutions (both public and private) are eligible to receive CSR funds. CSR funds can be utilized for:

- Research and development purposes,
- Supporting the development and/or delivery of technologies of national health importance,
- Conducting lab-based, pre-clinical and clinical research, and
- Supporting training and teaching related to medical/biomedical research.

ICMR has also stated that publications, products, processes, activities, and technologies developed through corporate CSR contributions may acknowledge the company's support alongside ICMR.

The Council for Scientific and Industrial Research (CSIR) has issued guidelines to accelerate research and incubation efforts in STEM fields, specifically those aligned with Schedule VII activities under Section 135 of the Companies Act and the Sustainable Development Goals.[32] One notable feature highlighted by CSIR is that projects can be funded collaboratively by multiple corporations using their CSR funds.

The Department of Science and Technology, Ministry of Science and Technology, has also introduced guidelines on Scientific Social Responsibility (SSR).[33] These guidelines were formulated in response to discussions during the 104th session of the Indian Science Congress (2017), which emphasized the need for fostering science for societal welfare. The primary objective of SSR is to bridge the science-society, science-science, and society-science gaps, promoting trust, collaboration, and responsibility in the pursuit of social goals
.

As per DST's May 2022 publication, CSR has been identified as an important resource to support SSR activities (see Section 8 "Resources"). Additionally, CSR contributors are recognized as 'Supporters' of SSR activities (see Section 4 "Stakeholders"). Consequently, these SSR guidelines can be considered alongside CSR regulations when allocating CSR funds toward scientific research and STEM-based initiatives.

29 https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=NzY1OA==&docCategory=NotificationandCirculars&type=open
30 https://www.pwc.in/assets/pdfs/news-alert- tax/2020/pwc_news_alert_25_august_2020_amendments_widening_the_scope_of_csr_activities_under_the_companies_act_2013.pdf
31 https://www.icmr.gov.in/icmrobject/custom_data/1711439270_guidelines_csr_final.pdf
32 https://www.csir.res.in/corporate-social-responsibility-csr
33 https://dst.gov.in/sites/default/files/SSR%20Guidelines%202022%20Book_0.pdf

# 11.

# Supporting Incubators and Startups Through CSR.

Question 1

# What are the legal and compliance considerations when using CSR budgets to support incubators or startups? How does this align with CSR regulations?

Answer

When utilizing CSR budgets to support incubators or startups, companies must comply with the legal framework under Section 135 of the Companies Act, and the CSR Rules, 2014. CSR activities must align with the objectives listed in Schedule VII of the Act, which include the promotion of education, rural development, vocational skills, and technology incubation, among others. Accordingly, CSR funds may be used to support incubators or startups if their activities contribute to these public benefit areas, such as social entrepreneurship, healthcare, or rural development initiatives.

Under Rule 4 of the CSR Rules, CSR funds can be allocated to incubators funded or supported by the Central or State Government or public institutions, such as IITs, or organizations established under an Act of Parliament or State Legislature. This enables companies to contribute CSR funds to government-backed incubators or research centers fostering startups engaged in innovation or socially relevant sectors. However, direct contributions to private, for-profit startups or incubators are not explicitly permitted under the CSR framework unless they are Section 8 companies or registered trusts engaged in CSR-eligible activities.

Additionally, CSR spending is not tax-deductible under Section 37 of the Income Tax Act, 1961, as it is considered an obligation rather than a business expense. However, companies may claim tax benefits for contributions made to scientific research institutions or universities recognized under Section 80GGA.

To ensure compliance, companies must monitor and disclose CSR contributions to incubators or startups in their annual reports. The Board of Directors is responsible for ensuring that the funds are utilized for their intended social purpose, in alignment with the CSR policy and Schedule VII. Furthermore, companies that have spent more than INR 10 crore on CSR activities in the last three financial years are required to conduct an impact assessment of the funded projects, including incubators, as per the CSR Amendment Rules, 2021. This third-party evaluation helps validate that the supported incubator or startup contributes to the intended social outcomes as envisaged by the CSR regulations.

# 12.

# Optimizing the Use of Unspent CSR Funds.

### Social Impact Schemes:

Fund innovative programs such as MSME Credit Guarantee Schemes or allocate funds to strengthen capital for social programs, including skill development initiatives.

As per General Circular No. 14 /2021[34], issued by the Ministry of Corporate Affairs under Question No. 7.2, it has been clarified that a company that transfers unspent CSR funds to a fund specified under Schedule VII of the Companies Act shall be deemed to have fulfillled its CSR obligations.

### Engage Implementation Agencies:

Provide capital assets and additional funding to implementation agencies working on infrastructure projects or supporting other initiatives under Schedule VII.

As per Question No. 7.4 of General Circular No. 14 /2021, a company's CSR obligations are not fulfillled by merely transferring funds to an implementation agency. The company's board must ensure that the funds are utilized by the agency for the intended purpose.

### Community Causes:

Organize health camps, community clean-up drives, or environmental initiatives such as tree-planting programs, aligning with health and sustainability goals.

As per Question No. 7.3 of General Circular No. 14 /2021, companies are given a period of six months after the end of the financial year to utilize unspent CSR funds by transferring them to a fund under Schedule VII. Therefore, such unspent funds cannot be used for any other CSR activity outside of this framework.

**Question 1**

## Do one-off events such as marathons, awards, charitable contributions, advertisement, or sponsorships of programs qualify as CSR activities?

**Answer**

A company may undertake various projects and programs that have social impact. However, to fulfill its CSR obligations, the company must ensure that any activity falls within the scope of Schedule VII of the Companies Act and is implemented in a project/ programme mode.

As per General Circular No. 21/2014[35], notified on 08 June 2014, in addition to the activities excluded from the definition of CSR under Rule 2(1)(d), one-off events such as marathons, awards, charitable contributions, advertisements, or sponsorships of programs do not qualify as CSR activities.

34 https://www.mca.gov.in/Ministry/pdf/FAQ_CSR.pdf
35 https://www.mca.gov.in/Ministry/pdf/General_Circular_21_2014.pdf

# Contributors.

The Unlocking Corporate Philanthropy handbook is a collaborative effort between Nishith Desai Associates and Dasra. The researchers and writers leading this effort include Rahul Rishi, Sehar Sharma, and Divyansh Bhardwaj from the Nishith Desai Associates team, and Divya Puri, Shrutika Jadhav, Ninad Ankleshwaria, Kumar Vikash, and Hinali Doshi from the Dasra team.

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