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Corporate Social Responsibility as per Section 135 of Indian Companies Act 2013 & Income Tax, 1961

Eligibility Criteria: Company (includes foreign company with branches or project in India) having: -

- Minimum net worth of rupees 500 Crore.
- Turnover up to "1000 Crore"
- having a net profit of at least '5crore'.

during any financial year in the preceding 3 financial years, are covered by this provision.

The corporate social responsibility (CSR) contribution would have to be at least two per cent of the average net profit, made during the three immediately preceding financial years (Net profit here means Profit before tax and it excludes dividends from other Indian companies and profits generated outside India through overseas branches or subsidiaries).

Administration and reporting

• The Board would appoint a three member CSR committee including one Independent Director. A private company or an unlisted public company is exempted from the requirement of having independent directors for CSR committee.
• The CSR committee would be responsible to formulate CSR policy, recommend CSR initiatives and monitor CSR expenditure.
• The Board would be required to mandatorily report on CSR in the Board's report. In case of failure to spend the prescribed amount, reasons would have to be disclosed in the Board's report and the same shall be displayed on the company's website, if any.

What if not complied?

- No monetary penalty for not spending
- Directors need to specify, in their report, the reasons for not spending
- Non disclosure may lead to a fine => INR 50k < INR 2.5 million plus imprisonment =< 3 years

Composition of CSR Committee

The Company should constitute a Corporate Social Responsibility Committee as follows:

1. The Committee shall consist of minimum 3 (three) including 1 (one) Independent Director, however in case of Private Company or the Company, which is not required to appoint Independent Director on board, or Foreign Company the committee can be formulated with (2) two directors.

S.No.	Type of Co.	CSR Committee
1	A Pvt. co. having only 2 directors on its Board	with 2 such directors
2	Foreign company	one person (i.e. person resident in India authorised to accept on behalf of the company service of process any notices or other documents served on the company) and another person shall be nominated by the foreign company

2. The CSR Policy shall be in accordance with Schedule VII and the CSR Committee will be responsible for framing the policy, finalizing the amount to be spent on CSR, monitoring & implementation of the Scheme.

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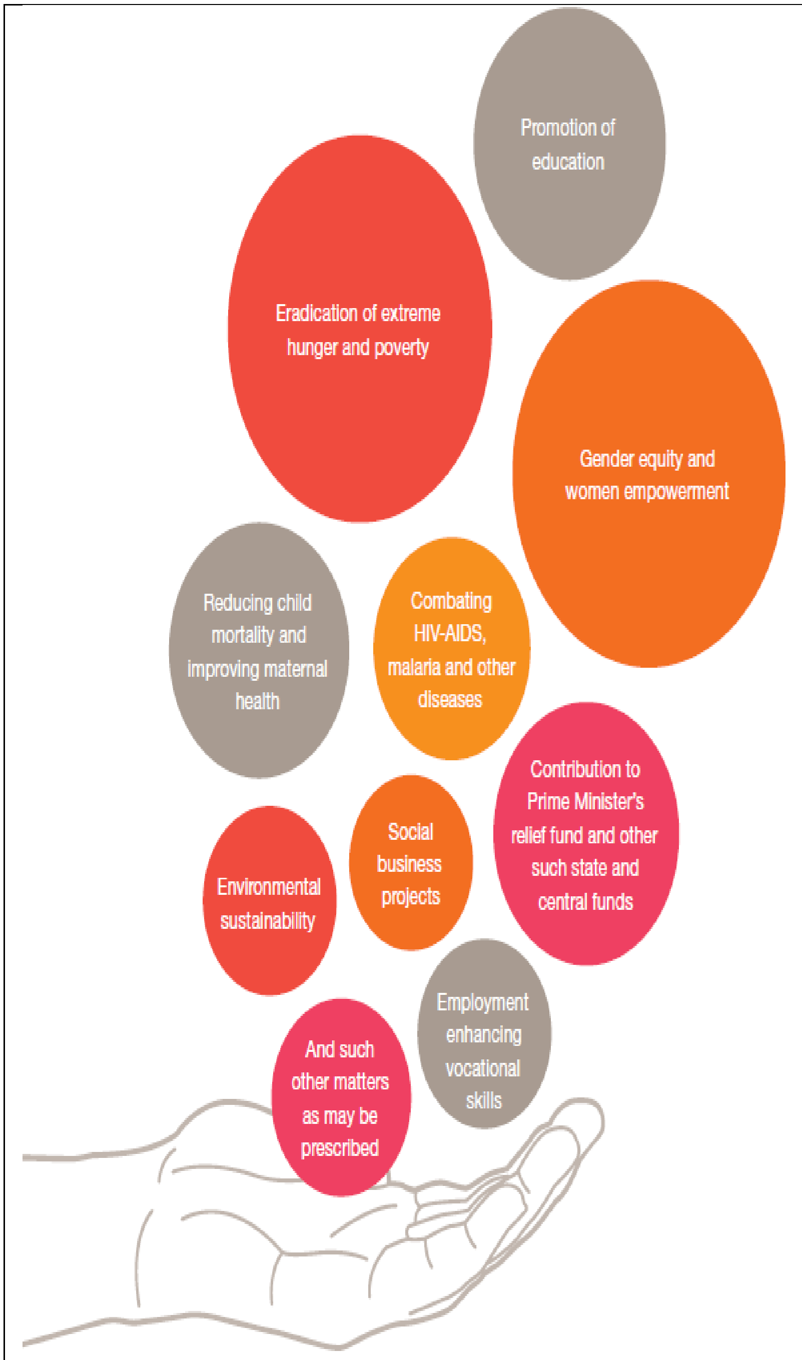
Brief on CSR Activities as prescribed under Schedule VII of CA, 2013



1. Objective to efface the daily life segments including poverty, malnutrition and hunger while enhancing the standard of living and promoting the facets of better health care and sanitation.

2. Initiative to promote the different segments of education including special education and programs to enhance the vocation skills for all ages like children, women, elderly and conducting other livelihood enhancement projects.

3. Aim to bring the uniformity in respect of different sections of the society to promote gender equality and other facilities for senior citizens and developing hostels for women and orphans and taking initiative for empowering women and lowering inequalities faced by socially and economically backward groups.

4. Elevate the segment of flora and fauna to bring the ecological balance and environmental sustainability in respect of animal welfare, conservation of natural resources and ago forestry while maintaining the quality of air, water and soil.

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5. Enhancement of Craftsmanship while protecting art and culture and measures to restore sites of historical importance and national heritage and promoting the works of art and setting up of public libraries.

6. Steps to bring worthy to the part of war windows, armed force veterans and their departments.

7. Sports programs and training sessions to enhance the level of rural sports, nationally recognized sports, Paralympic sports and Olympics sports.

8. Favoring to Prime Minister's National Relief Fund and contribution to other fund set up by the central government to promote socio-economic development and welfare of the schedule castes and Schedule Tribes and for supporting backward classes, minorities and women.

9. To uplift the technology of incubator that's comes under academic institutions and which are approved by the Central Government.

10. Introducing varied projects for Rural Development.

The below activities doesn't include under the CSR activities of the Company.

1. Business run in the normal course.

2. Outside the territory of the India or abroad.

3. For the welfare of the employees and their families.

4. Political party contribution of any amount directly and indirectly as defined u/s 182 of the Act.

CLARIFICATIONS:

- Surplus arising out of CSR activities will have to be reinvested into CSR initiatives, and this will be over and above the 2% figure
- The company can implement its CSR activities through the following methods:
    - Directly on its own
    - Through its own non-profit foundation set- up so as to facilitate this initiative
    - Through independently registered non-profit organisations that have a record of at least three years in similar such related activities
    - Collaborating or pooling their resources with other companies
- Only CSR activities undertaken in India will be taken into consideration
- Activities meant exclusively for employees and the families will not qualify
- A format for the board report on CSR has been provided which includes amongst others, activity-wise , reasons for spends under 2% of the average net profits of the previous three years and a responsibility statement that the CSR policy, implementation and monitoring process is in compliance with the CSR objectives, in letter and in spirit. This has to be signed by either the CEO, or the MD or a director of the company.
- **Group CSR projects or joint CSR projects permitted:** Companies belonging to the same group can set up a registered trust or a registered society or a company established under section 8 of the Act, to undertake CSR activities. Companies can also join hands with other companies to undertake CSR projects jointly, in such a manner that such companies can report separately on such projects. This is a positive development as it would allow groups and companies operating in an area to come together and undertake projects of a larger scale.
- **Three years of non-applicability required to exit CSR compliance requirements:** Once covered under CSR provisions, companies will need to have 3 consecutive years, where the provisions do not apply to them, before they can stop complying with the requirements relating to CSR.
- Section 8 companies are intended to apply profits in promoting the charitable and other objects i.e. promotion of commerce, art, science, sports, education etc. , these should not be required to follow CSR provisions.

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TAX EFFECT OF EXPENDITURE INCURRED.

The Finance (No.2) Bill, 2014 inserted an Explanation below Section 37(1) to clarify that such expenditure shall not be deemed to be an expenditure incurred by the assessee for the purposes of business or profession Accordingly deduction of CSR expenditure shall not be allowed under Section 37(1) of the Income Tax Act, 1961 while computing income of the business.

The memorandum explaining the provision of the Finance (No.2) Bill, 2014, however, clarifies that the CSR expenditure which is of the nature described in Sections 30 to 36 shall be eligible for deduction under these Sections subject to fulfillment of condition, if any, provided in these sections.

In this regard, it may be relevant to note following sections where one can claim the expenditure for CSR as a deductible expense:

Section 35(1)(ii) – paid to research Association University, collage or other institution used for scientific research is eligible for deduction of 1.75 times the sum paid.

Section 35(1)(iia) - Sum paid to scientific R&D Company to be used by it for scientific purpose is eligible for deduction of 1.25 times the sum paid.

Section 35(1)(iii) – Sum paid to research Association University, collage or other institution to be used in social science or statistical research is eligible for deduction of 1.25 times the sum paid.

Section 35(2AA) – Sum paid to national Laboratory or a university or IIT or a specified person with a direction that such sum is to be used for scientific research is eligible for deduction of 2 times the sum paid.

Section 35AC – The expenditure incurred on a project or scheme for promoting a social and economic welfare or uplift of the public, as approved by the National Committee set up for this purpose, is eligible for deduction while computing profit and gains of business or profession.

Section 35CCA – As per provision of Section 35CCA, expenditure incurred by way of payment to an institution for carrying out rural development programme is eligible for deduction under Section 35CCA.

Section 35CCB – Payment to an institution for carrying out programmes of conservation of natural resources is an eligible deduction under Section 35CCB.

Section 35CCC – Expenditure incurred on agricultural extension project, as notified by the Board under Section 35CCC is eligible for weighted deduction of 150%

Section 35CCD – Expenditure incurred on skill development project, as notified by the Board

Section 80G – Still in case above projects or approvals are not found to be practically feasible by corporates, the alternative option can be, to contribute the amount of the CSR to a trust or institution which is registered u/s 12AA for carrying out the CSR activities so that the amount of contribution can be claimed as deduction by the corporate as eligible donation to the extent of 50% under Section 80G of the Incometax Act. The same can be contributed to the Prime Minister's National relief fund or any other fund specified in Schedule VII of Companies Act, 2013 to claim the 100% deduction u/s 80G. It is to be noted that under the Companies Act, 2013 it is permissible that the CSR activities are either carried out by the corporate itself or through a trust or institution.

MAT IMPACT

The Bill states that CSR expenses would not be allowed under section 37 as the same are not deemed to have been incurred wholly and exclusively for the purpose of carrying on business or profession. However, while computing book profit under section 115JB of the Act relating to Minimum Alternate Tax (MAT) the CSR expenditure should not be considered as a below the line item. Hence, the book profit to be computed under section 115JB of the Act should not be increased by the expenditure incurred on CSR. No adjustment in section 115JB has been provided in the Bill with respect to CSR expenditure.