

Corporate Social Responsibility (CSR) under the Companies Act 2013



**CA Milan Mody
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WIRC, Mumbai**

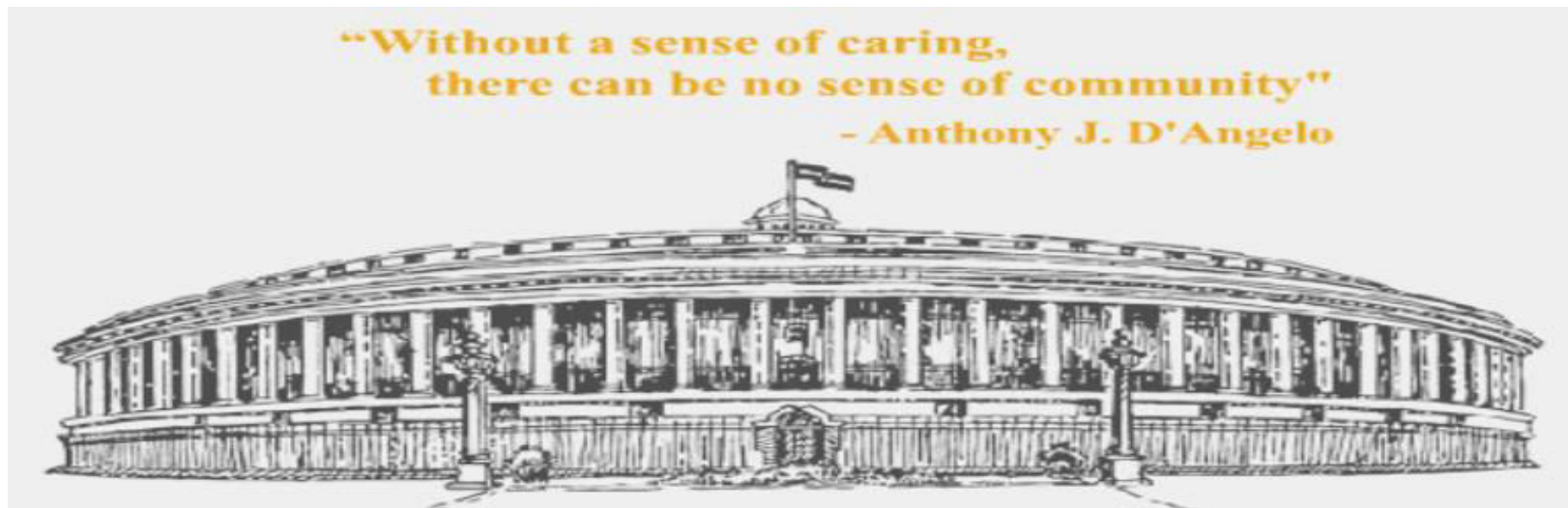
KNOWLEDGE THAT MATTERS. EXPERIENCE THAT COUNTS.

What are we covering today

- Overview
- Applicability
- Compliance requirements
- Computation of CSR Amount / Profit
- Practical Issues
- Modalities [will be covered in separate presentation]

Overview

Enactment of Companies Act, 2013 by the Ministry of Corporate Affairs, Government of India was one of the world's largest experiments of introducing the CSR as a mandatory provision by imposing statutory obligation on Companies to take up CSR projects towards social welfare activities. This has made India the only country which has regulated and mandated CSR for some select categories of companies registered under the Act. This CSR Initiative will push the nation towards achievement of sustainable development goals and public-private partnership in transforming India.

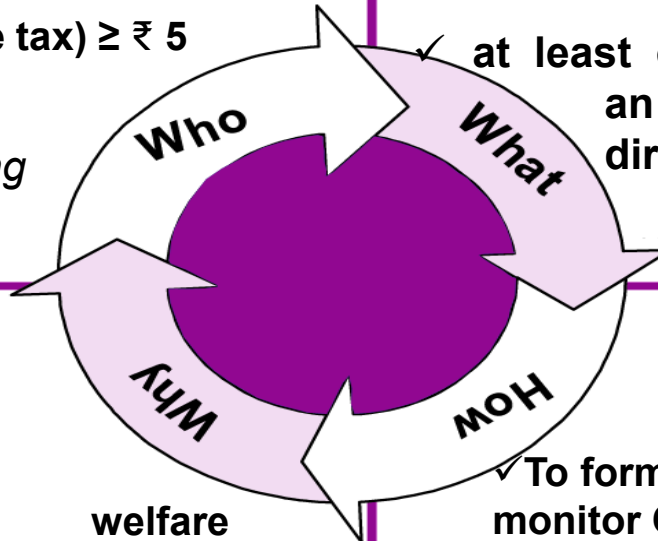


Applicability

- ✓ Net worth \geq ₹ 500 crores or
- ✓ Turnover \geq ₹ 1000 crores or
- ✓ Net Profits (before tax) \geq ₹ 5 crores

immediately preceding financial year

- ✓ constitute a CSR Committee
- ✓ consisting of three or more directors
- ✓ at least one director shall be an independent director.



- ✓ To promote welfare initiatives. [Areas / Activities specified in Schedule VII]

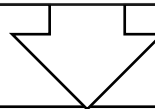
- ✓ To formulate, recommend & monitor CSR policy.

- ✓ CSR Committee to be constituted (include at least 1 ID in case of listed company)

Compliance requirements

Disclosure in Board's Report

Composition of CSR committee

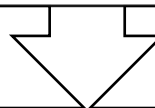


Role of the CSR Committee

CSR Policy

Amount of Expenditure

Monitor Activities

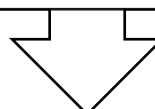


Role of Board of Directors

Approve CSR Policy

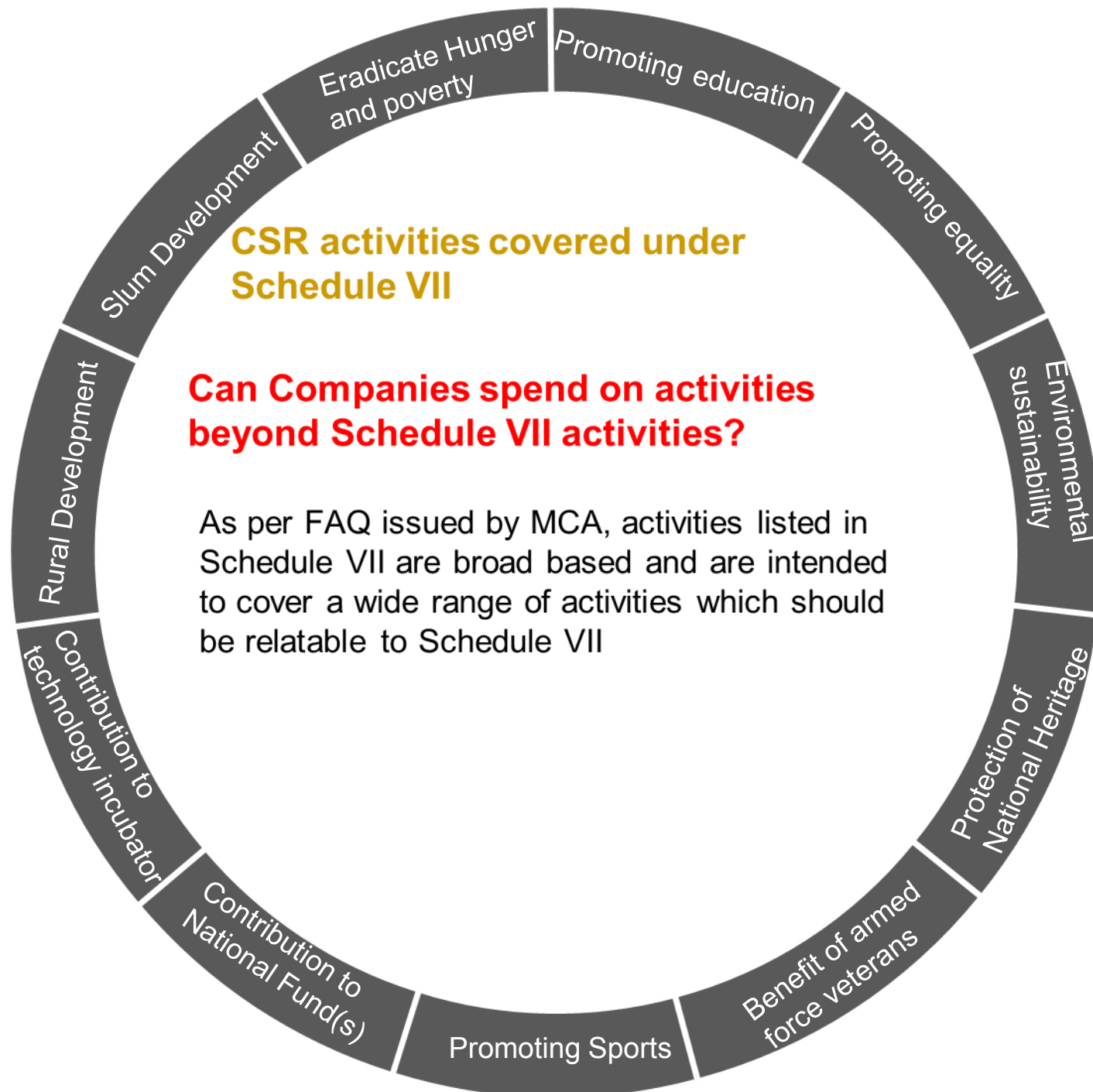
Upload on website

Ensure activities done



Board of Directors

2% of average net profits of three immediately preceding financial year



Actions proposed to be taken against non-compliances related to disclosure

The ministry had served show-cause notices to 1,018 defaulting entities for non compliances during FY 14-15

Penal actions to be initiated against top 160 firms Failing to comply CSR in FY 14-15

For FY 2014-2015, 254 companies are facing prosecutions for violations in reporting & companies could not justify nil or inadequate spends.

Section 134(8) provides for imposing a minimum fine of INR 50,000 and the amount may go up to INR 25 lakh for certain violations

Computation of Net Profit

Section 198 of the Companies Act, 2013
Credit shall be given for bounties & subsidies received from any Government or on their behalf
Credit shall not be given for:
<ul style="list-style-type: none">• Premium on shares/ debentures of the Co. [except investment co.]
<ul style="list-style-type: none">• Profit on sale of forfeited shares
<ul style="list-style-type: none">• Profits of capital nature including profits from the sale of undertaking of Co.
<ul style="list-style-type: none">• Capital profit [only if sold above cost] from sale of immovable property or fixed assets [other than co. in business of buying & selling of property]. Same will also apply to capital loss
<ul style="list-style-type: none">• Any change in carrying amount of an asset or liability recognized in equity reserves incl. FVTPL
<ul style="list-style-type: none">• Any amount representing unrealized gains, notional gains or revaluation of assets

Computation of Net Profit [continued]

Section 198 of the Companies Act, 2013

Normal routine expenses allowed including

- compensation or damages paid on account of breach / legal liability
- depreciation as per Section 123
- bad-debts
- write-off of assets

Brought-forward loss from last year as computed under section 198 is also to be reduced while computing current year profit as per Section 198

Amounts not allowed as expense

- Provisions for doubtful assets
- Income taxes / deferred tax

Qualifying Criteria

Qualifying criteria u/s 135(1) for Indian company – ‘net profit’	
Net profit before tax as per financials prepared under the Companies Act, 2013	XX
Less - Any profit arising from any overseas branch whether operated as a separate company or otherwise	(x)
Less - Any dividend received from other companies in India complying with CSR provisions	(x)
Net profit before tax for deciding the CSR criteria	X

Note - ‘Net profit’ for foreign company as per section 198 of the Companies Act, 2013.

Computation of CSR spend u/s 135(5) is 2% of average net profit as per section 198 (**BEFORE TAX**). Further the above two deduction of profit from overseas branch and dividend from other companies in India complying with CSR provision should also be reduced for calculating CSR to be spent.

Questions on computation

Accumulated losses of period earlier than three years

- Loss of period prior to three years not allowed to be set-off
- Loss within last 3 years to be included for computing average net profit

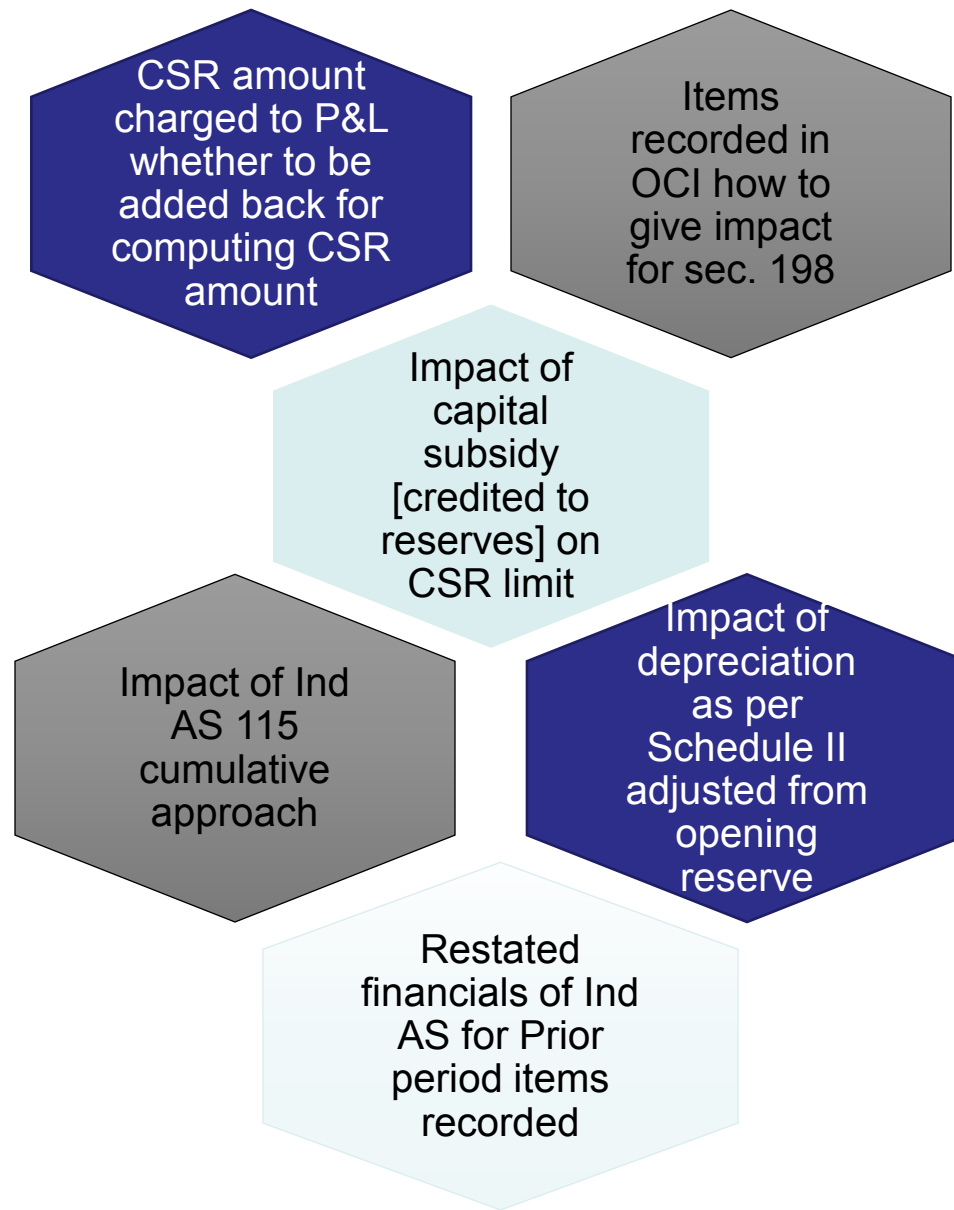
Dividend income from Indian Company

- Excluded from profit to calculate CSR spend if that company is complying with CSR provision

Whether profit / loss of overseas branch to be included for CSR spend

- Income earned outside India to be excluded from profit to calculate CSR spend

UNANSWERED QUESTIONS ???.....



QUESTIONS ON CSR ACCOUNTING – GN & FAQ

Accounting treatment for unspent amount

- No provision required unless there is contractual commitment (provision only to the extent of CSR activity work completed)

Accounting for excess amount spent

- Prepaid expenses cannot be accounted

Grant received

- CSR expenditure to be net of grant received

Functional classification of CSR expenditure

- CSR amount to be shown as separate line item in statement of P&L

Supply of company's goods or service for CSR

- Principles of AS 2 to be followed and recorded as CSR expenses when goods / services are delivered [View given in GN is contrary to FAQ issued by MCA]

CARVE OUT FROM CSR SPENDING

Activities that benefit only the employees or their families.

Could the intent of the legislation have been to mean activities undertaken 'primarily' to benefit the employees?

Activities that are carried out as a pre condition for setting business, or as a part of contractual / legal obligation (mining license related obligations)

Not Considered as
CSR Expenditure

One of the events like marathons and sponsorships of television programmes will not be considered as CSR

Amount spent outside India [ex. Kathmandu earth quake]

FEW THOUGHTS

Should unspent amount be transferred to central CSR Fund [like IEPF]?

LEGAL vs SPIRIT

- Misuse of admin overhead limit of 5%
- Sponsorship vs advertisements

Unevenly spread of CSR spending – Quarterly results may get impacted

CSR incurred in normal course of business whether allowed ?

CSR whether mandatory or voluntary [principle of 'comply or explain'] – no penalty if explained in directors report

FOOD FOR THOUGHT

Whether CSR Audit is required ?

- Escrow account for utilization of funds which are contributed by the company
- Diversion of CSR funds to other company / promoters through trust

Practical difficulty in spending CSR

- High market prices of land / properties
- Yearly CSR limit is not sufficient for company's CSR policy say constructing building for poor's
- CSR activity beyond Schedule VII

Structuring

- CSR payments are structured for claiming expenses / deductions under income tax
- Create LLP / firm to avoid CSR obligation

Few Clarifications from MCA

What tax benefits can be availed under CSR?

- No specific tax exemptions have been extended to CSR per se. However benefit under section 80G / section 35 as applicable would be available

Whether excess CSR spend can be c/f to next year to offset 2% requirement?

- No. It cannot be carried forward to subsequent years.

Can the unspent amount be carried forward to next year?

- The board is free to decide on the same.

Few Clarifications from MCA

Whether provisions of CSR are applicable to Section 8 Companies?

- No exemption has been granted to section 8 Companies.

Can contribution in kind be monetized?

- No. Company needs to spend.

