General Circular No. 01/2016

No. 05/19/2015- CSR
Government of India
Ministry of Corporate Affairs

5th Floor, 'A' Wing,
Shastri Bhawan, Dr. R. P. Marg
New Delhi - 110 001
Dated: 12th January, 2016

To,

All Regional Director,
All Registrar of Companies,
All Stakeholders

Subject: - Frequently Asked Questions (FAQs) with regard to Corporate Social Responsibility under section 135 of the Companies Act, 2013.

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Sir,

Section 135 of the Companies Act, 2013, Schedule VII of the Act and Companies CSR Policy Rules, 2014 read with General Circular dated 18.06.2014 issued by the Ministry of Corporate Affairs, provide the broad contour within which eligible Companies are required to formulate their CSR policies including activities to be undertaken and implement the same in the right *earnest. While complying with the Corporate Social Responsibility (CSR) provisions of the Act,* Board of the eligible companies are empowered to appraise and approve their CSR policy including CSR projects or programmes or activities to be undertaken. In this connection, Ministry has been receiving several queries and references seeking further clarifications on various issues relating to CSR provision of the Act.

2. In continuation to this Ministry's General Circular dated 18th June, 2014 and 17th September, 2014, a set of FAQs along with response of the Ministry is provided for facilitating effective implementation of CSR :

FREQUENTLY ASKED QUESTIONS ON CORPORATE SOCIAL RESPOSIBITITIES

Sl. No.	FAQs
1.	**Whether CSR provisions of the Companies Act, 2013 is applicable to all companies?**
	CSR provisions of the Companies Act 2013 is applicable to every company registered under the Companies Act 2013 and any other previous Companies law having • net worth of rupees five hundred crore or more, or • turnover of rupees one thousand crore or more or • a net profit of rupees five crore or more during any financial year
2.	**What is meaning of 'any financial year' mentioned above?**
	" Any Financial year" referred under Sub- Section (1) of Section 135 of the Act read with Rule 3(2) of Companies CSR Rule, 2014 implies any of the three preceding financial years **(refer General Circular No. 21/2014, dated: 18.06.2014)**
3.	**Whether CSR expenditure of a company can be claimed as a business expenditure?**
	The amount spent by a company towards CSR cannot be claimed as business expenditure. The Finance Act, 2014 provides that any expenditure incurred by an assessee on the activities relating to Corporate Social Responsibility referred to in section 135 of the Companies Act, 2013 shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession.
4.	**Whether the 'average net profit' criteria for section 135(5) is Net profit before tax or Net profit after tax?**
	Computation of net profit for section 135 is as per section 198 of the Companies Act, 2013 which is primarily PROFIT BEFORE TAX (PBT).
5.	**Can the CSR expenditure be spent on the activities beyond Schedule VII?**
	General Circular No. 21/2014 dated June18, 2014 of MCA has clarified that the statutory provision and provisions of CSR Rules, 2014, is to ensure that activities undertaken in pursuance of the CSR policy must be relatable to Schedule VII of the Companies Act, 2013. The entries in the said Schedule VII must be interpreted

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	liberally so as to capture the essence of the subjects enumerated in the said Schedule. The items enlisted in the Schedule VII of the Act, are broad-based and are intended to cover a wide range of activities. The General Circular also provides an illustrative list of activities that can be covered under CSR. In a similar way many more can be covered. It is for the Board of the company to take a call on this.
6.	**What tax benefits can be availed under CSR?**
	No specific tax exemptions have been extended to CSR expenditure per se. The finance Act, 2014 also clarifies that expenditure on CSR does not form part of business expenditure. While no specific tax exemption has been extended to expenditure incurred on CSR, spending on several activities like contributions to Prime Minister's Relief Fund, scientific research, rural development projects, skill development projects, agricultural extension projects, etc., which find place in Schedule VII, already enjoy exemptions under different sections of the Income Tax Act, 1961.
7.	**Which activities would not qualify as CSR?**
	• The CSR projects or programs or activities that benefit only the employees of the company and their families. • One-off events such as marathons/ awards/ charitable contribution/ advertisement/sponsorships of TV programmes etc. • Expenses incurred by companies for the fulfillment of any other Act/ Statute of regulations (such as Labour Laws, Land Acquisition Act, 2013, Apprentice Act, 1961 etc.) • Contribution of any amount directly or indirectly to any political party. • Activities undertaken by the company in pursuance of its normal course of business. • The project or programmes or activities undertaken outside India.
8.	**Whether a holding or subsidiary of a company which fulfils the criteria under section 135(1) has to comply with section 135, even if the holding and subsidiary itself does not fulfill the criteria.**
	Holding or subsidiary of a company does not have to comply with section 135(1) unless the holding or subsidiary itself fulfills the criteria.

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9.	**Whether provisions of CSR are applicable on Section 8 Company, if it fulfills the criteria of section 135(1) of the Act.**
	Section 135 of the Act reads **" Every company……."**, i.e. no specific exemption is given to section 8 companies with regard to applicability of section 135, hence section 8 companies are required to follow CSR provisions
10.	**Can contribution of money to a trust/Society/Section 8 Companies by a company be treated as CSR expenditure of the company?**
	General Circular No. 21/2014 of MCA dated June 18, 2014 clarifies that Contribution to Corpus of a Trust/ Society/ Section 8 companies etc. will qualify as CSR expenditure as long as : (a) the Trust/ Society/ Section 8 company etc. is created exclusively for undertaking CSR activities or (b) where the corpus is created exclusively for a purpose directly relatable to a subject covered in Schedule VII of the Act.
11.	**Whether display of CSR policy of a company on website of the company is mandatory or not?**
	As per section 135(4) the Board of Directors of the company shall, after taking into account the recommendations of CSR Committee, approve the CSR Policy for the company and disclose contents of such policy in its report and the same shall be displayed on the company's website, if any **(refer Rule 8 & 9 of CSR Policy, Rules 2014).**
12.	**Whether reporting of CSR is mandatory in Board's Report?**
	The Board's Report of a company qualifying under section 135(1) pertaining to a financial year commencing on or after the 1st day of April, 2014 shall include an annual report on CSR containing particulars specified in Annexure. **(refer Rule 9 of CSR Policy, Rules 2014).**
13.	**Whether it is mandatory for Foreign Company to give report on CSR activity?**
	In case of a foreign company, the balance sheet filed under sub-clause (b) of sub-section (1) of section 381 shall contain an Annexure regarding report on CSR.
14.	**Whether contribution towards disaster relief qualifies as CSR or not?**
	(May please refer point no. 7 to the annexure to General Circular dated 18.06.2014 issued by Ministry of Corporate Affairs).

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15.	**Whether contribution in kind can be monetized to be shown as CSR expenditure?**
	Section 135 prescribes "....shall ensure that company **spends....**".The company has to spend the amount.
16.	**If a company spends in excess of 2% of its average net profit of three preceding years on CSR in a particular year, can the excess amount spent be carried forward to the next year and be offset against the required 2% CSR expenditure of the next year?**
	Any excess amount spent (i.e., more than 2% as specified in Section 135) cannot be carried forward to the subsequent years and adjusted against that year's CSR expenditure.
17.	**Can the unspent amount from out of the minimum required CSR expenditure be carried forward to the next year?**
	The Board is free to decide whether any unspent amount from out of the minimum required CSR expenditure is to be carried forward to the next year. However, the carried forward amount should be over and above the next year's CSR allocation equivalent to at least 2% of the average net profit of the company of the immediately preceding three years.
18.	**What is the role of Government in monitoring implementation of CSR by companies under the provision of the Companies Act, 2013?**
	The main thrust and spirit of the law is not to monitor but to generate conducive environment for enabling the corporates to conduct themselves in a socially responsible manner, while contributing towards human development goals of the country. The existing legal provisions like mandatory disclosures, accountability of the CSR Committee and the Board, provisions for audit of the accounts of the company etc., provide sufficient safeguards in this regard. Government has no role to play in monitoring implementation of CSR by companies
19.	**Whether government is proposing to establish any mechanism for third parties to monitor the quality and efficacy of CSR expenditure as well as to have an impact assessment of CSR by Companies?**
	Government has no role to play in engaging external experts for monitoring the quality and efficacy of CSR expenditure of companies. Boards / CSR Committees are fully competent to engage third parties to have an impact assessment of its CSR programme to validate compliance of the CSR provisions of the law.

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20.	**Can CSR funds be utilized to fund Government Scheme?**
	The objective of this provision is indeed to involve the corporates in discharging their social responsibility with their innovative ideas and management skills and with greater efficiency and better outcomes. Therefore, CSR should not be interpreted as a source of financing the resource gaps in Government Scheme. Use of corporate innovations and management skills in the delivery of 'public goods' is at the core of CSR implementation by the companies. In-principle, CSR fund of companies should not be used as a source of funding Government Schemes. CSR projects should have a larger multiplier effect than that under the Government schemes. However, under CSR provision of the Act and rules made thereunder, the Board of the eligible company is competent to take decision on supplementing any Government Scheme provided the scheme permits corporates participation and all provisions of Section 135 of the Act and rules thereunder are compiled by the company.
21.	**Who is the appropriate authority for approving and implementation of the CSR programmes /projects of a Company? What is Government's role in this regard?**
	Government has no role to play in this regard. Section 135 of the Act, Schedule VII and Companies CSR Policy Rules, 2014 read with General Circular dated 18.06.2014 issued by the Ministry of Corporate Affairs, provide the broad contour within which eligible companies are required to formulate their CSR policies including activities to be undertaken and implement the same in the right earnest. Therefore, all CSR programmes / projects should be approved by the Boards on the recommendations of their CSR Committees. Changes, if any, in the programme / project should also be undertaken only with the approval of the Committee / Board.
22.	**How can companies with small CSR funds take up CSR activities in a project / programme mode?**
	A well designed CSR project or programme can be managed with even small fund. Further, there is a provision in the CSR Policy Rules, 2014 that such companies can combine their CSR programs with other similar companies by way of pooling their CSR resources. **(refer rule 4 in Companies (CSR Policy) Rules, 2014).**

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23.	**Whether involvement of employees of the company in CSR project / programmes of a company can be monetized and accounted for under the head of 'CSR expenditure'?**
	Contribution and involvement of employees in CSR activities of the company will no doubt generate interest / pride in CSR work and promote transformation from Corporate Social Responsibility (CSR) as an obligation to Socially Responsible Corporate (SRC) in all aspects of their functioning. Companies therefore, should be encouraged to involve their employees in CSR activities. **However monetization of pro bono services of employees would not be counted towards CSR expenditure.**

3. This issues with the approval of Competent Authority.

Yours faithfully,

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1. E-Governance Cell and Web contents Officer to upload on the website of this Ministry.