Overview on Key Statutory Laws for NGOs (Income Tax, FCRA, CSR)

> You can read the information below in over 15 languages! Simply use the translation tool in the top-left corner of the screen to select your preferred language, including □□□□□□□ , □□□□□ , □□□□□□□ , □□□□□□ , □□□□□ , □□□□□□ , □□□□□ , □□□□□□□□ , □□□□□□ , □□□□□ , □□□□□□ , □□□□□□□□□ , □□□□□ , □□□□□□ , and اُردُو.

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Income Tax Law

Types of entities that can register as charitable institutions in India

For charitable activity, the following entities can be constituted:

1. Society
2. Trust
3. Not for profit Company

While above entities have separate incorporation laws, the various laws apply uniformly for all above type of entities

Definition of Charitable purpose in Income Tax

Section 2(15) "charitable purpose" includes

- Relief of the poor,
- Education,
- Yoga,
- Medical relief,
- Preservation of environment (including watersheds, forests and wildlife) and
- Preservation of monuments or places or objects of artistic or historic interest, and
- The advancement of any other object of general public utility:
    - Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves carrying on trade, commerce, business, service for a cess, fee or any other consideration unless—
        - such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and
        - the aggregate receipts from such activities during the previous year do not exceed
          twenty per cent of the total receipts.

Types of registration/approval of charitable institutions under IT Act

1. **1.10(23C)** (approval category merged with 12A)
2. **12A, 12AB** (earlier 12AA now deleted)
3. **10(46)** - a body notified by Central/State Govt
4. **80G** Approval for tax deductions to donors for Donations
5. **S 35** - approved institutions for scientific research etc

New regime of income tax registration for charitable organisations wef 1.4.2021

Re-registration/approval of existing charitable entities u/s 10(23C), 12A,35 and 80G approval for a period of 5 years, thereafter renewal once every 5/10 years.

Perpetual registration abolished.

Department wants to have database and better control/monitoring on charitable institutions which has been fragmented and decentralised until now.

Types of Approvals:

1. Re-registration/Revalidation of existing registered entities-5 years
2. Registration for Unregistered entities
3. Provisional registration for new entitites-3 years
4. Provisional to Normal registration for new entities- Total period 5 years
5. Modification of objects clause for 12A entities(within 30 days)
6. If registered/approved both under 10(23C) and 12A, then retain one, the other becomes inoperative
7. Renewal of registration after 5 years

Renewal of 12AB registration and 80G approval of existing registered entities

- Renewal (Form 10AB) 6 months before expiry of 5 years and after due inquiry process
- Most 12AB and 80G registration have been issued upto AY 26-27. Som renewal application in 10AB have to be filed by 30th Sep 2025 separately for 12AB and 80G.
- Renewal will be in Form 10AD for both 12AB and 80G.
- In Finance Act 2025, Small NGOs i.e. where income is less than Rs. 5 cr in previous 2 years preceding the year in which renewal application is made will get 12AB registration for 10 years instead of 5 years.
- Not applicable for 80G approval and for provisional registration, registration by unregistered institutions which remains as 5 years.

- Applicable from 1.4.2025

Department’s power to cancel registration

Power to cancel registration for Specified Violations i.e.

- spent income for other than object
- business income not incidental and no separate books
- private religious purpose, particular religious community/caste
- violation of other laws which affect achievement of objectives
- benefits u/s 13 (not reasonable)
- section 11(5) non compliance
- conditions not complied specified in registration certificate (Form 10AC).

> *Reference by AO to CIT/PCIT who shall pass order within 6 months from quarter in which notice was issued.*

Accreted Income or Exit Tax-Section 115TD of IT Act (1.6.2016)

1. Accreted income is excess of fair market value of assets over total liabilities of Trust. Accreted income is taxed at MMR
2. Conditions when 115TD triggered:
   - 12AB registration cancelled
   - Modification of objects not applied for regn/not in line with condition of registration and application rejected
   - Merged into an entity not with similar objects and not registered under 12AB
   - failure to transfer assets upon dissolution to another 12AB/10(23C) entity within 12 months
   - Newly added: non registration, non renewal, non conversion of provisional to regular registration wef 1.10.24

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> *Merger of charities with same/similar objects-new section 12AC specifying situations of merger when accreted tax will not be applicable effective 1.4.2025.*

Anonymous donation-Section 115BBC of IT Act

1. For charitable trust, if name and address of donor is not known, it is anonymous donation.
2. Not applicable to Religious Truss or charitable cum religious trust except where the donation is for an educational or medical institution
3. Tax payable 30%. Threshold: Rs.1 lakhs or 5% of total donation received whichever is higher.

Statement of Section 80G donation

- 80G provisions: Cash donation upto Rs.2k permitted, not in kind and only through banking channels. No anonymous donation permitted u/s 80G.
- 80G deduction-100%/50% with or without qualifying limit i.e. subject to 10% of adjusted Gross Taxable income. Donation to charitable institutions falls under 50% with qualifying limit.
- 80GGA deduction-100% for donation for scientific research and rural development projects
- Form 10BD-Statement of Donation provided approved under 80G
  - Donation type: a. Corpus b. Specific c. Others
  - UIN of donor-PAN, Aadhar. If PAN / Aadhaar is not available then either the passport No. /Election photo identity / Driving License/ Ration Card/ Tax Payer identification Number where the person resides outside India.
  - Mode of receipt-cash, kind, electronic and cheque, others
  - File by 31st May for each FY. Fee and Penalty for delayed filing
  - Revision can be made

Section 80G approval can be applied even if charitable status benefit taken which was not allowed earlier- effective 1.10.2024

Section 80G-Receipt/certificate of donation

Form 10BE Submission Guidelines

- Due by 31st May for the preceding financial year
- Associated with the donor's UIN
- Penalties apply for late submission
- Generate and download receipt for donations from web portal after filing Form 10BD Provide the donor with system-generated Form 10BE for 80G benefit claim

Code of Taxation for Charitable Institutions

Chapter III-Incomes which do not form part of total income:

1. Section 11: Income from property held under trust for charitable or religious purposes.
2. Section 12: Income of trusts or institutions from voluntary contributions for charitable and religious purpose.
   - Section 12A – Conditions for applicability of sections 11 and 12
   - Section 12AA – Procedure for Registration-repealed
   - Section 12AB – Procedure for Registration under new regime
3. Section 13: Section 11 not to apply in certain cases.

Section 11: Income from property held for charitable or religiouspurposes.

Section 11(1): the following income shall not be included in the total income of the previous year of the person in receipt of the income—

- Income derived from property held under trust wholly for charitable or religious purposes, to the extent such income is applied to such purposes in India; and to the extent to which the income so accumulated or set apart is not in excess of fifteen per cent of the income from such property;

- Income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution and provided it is deployed in Section 11(5) modes of investment.

Deemed Application-1 year

As per clause (2) of Explanation to section 11(1):

- If, in the previous year, the income applied to charitable or religious purposes in India falls short of 85% of the income from property held under trust by any amount—
  - for the reason that the whole or any part of the income has not been received during that year, or
  - for any other reason,
- Then at the option of the person in receipt of the income (such option to be exercised before the expiry of the time allowed under section 139 (1) for furnishing the return of income) in form -9A be deemed to be income applied to such purposes during the previous year in which the income was derived.
- Inter charity donation permitted

> *Note: If DA amount is not utilized in the next year then the amount will be taxable income.*

Accumulation-5 years

As per section 11(2):
If, in the previous year, the income applied to charitable or religious purposes in India falls short of 85% of the income derived during that year from property held under trust, but is accumulated or set apart for application to such purposes in India, such income shall not be included in the total income of the previous year provided the following conditions are complied with, namely:—

- such person furnishes a statement in the prescribed form (Form 10) and in the prescribed manner (Online) to the Assessing Officer, stating the purpose and period for which the income is being accumulated or set apart which shall in no case exceed five years (not applied amount taxable in 5th year alone);

- the money so accumulated or set apart is invested or deposited in the forms or modes specified in sub-section (5) and utilised for the purpose for which accumulated
- Not transferred to an entity covered under Section 12A of the Act
- Form 10 is furnished on or before the due date specified under section 139 (1) for furnishing the return of income for the previous year.
- Repurposing of accumulation can be permitted by the Department.

Disallowance of Cash/bearer Payments

Section 40(A)(3) provides that “Where the assessee incurs any expenditure in respect of which a payment or aggregate of
payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft or use of electronic clearing system through a bank account [or through such other electronic mode as may be prescribed], exceeds Ten Thousand Rupees, no deduction shall be allowed in respect of such expenditure”.

Note:

- The expenditure as disallowed above, will be taxed @ 30%
- The cash payments made by staffs and reimbursed by organisation shall also be treated as cash payment
- Disclose non-compliances in ITR, if same noticed by Assessing Office during Income Tax Assessment, additional penalty and interest may also be levied.
- Exceptions in Rule 60D

Disallowance for Non Deduction of Tax at Source

Section 40(a)(ia) provides that 'Where the assessee fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-B then the amount equal to 30% of expenditure shall not be allowed at the time of computation of
Income’

Note:

- The expenditure as disallowed above, will be taxed @ 30%
- Disclose non-compliances in ITR, if same noticed by Assessing Office during Income Tax Assessment, additional penalty and interest may also be levied.

Section 12A

Conditions for Applicability of Section 11 & 12

The provisions of section 11 and section 12 shall not apply in relation to the income of any trust or institution unless organization is registered under section 12AB

Books of accounts of the organization have been maintained and audited by the Chartered Accountant

Organization has furnished the return of income for the previous year in accordance with the provisions of sub-section (4A) of section 139, within the time allowed under that section.

Section 13 of Income Tax

Section 13(1): Section 11 not to apply when

- Trust for private religious purposes which does not ensure for the benefit of the public.
- Trust for charitable purposes or a charitable institution created or established after the commencement of this Act, any income thereof if the trust or institution is created or established for the benefit of any particular religious community or caste.
- If any part of income of trust ensures directly or indirectly for the benefit of any person referred to in sub-section (3).
- If any part of such income or any property of the trust or the institution (whenever created or established) is during the previous year used or applied, directly or indirectly for the benefit of any person referred to in sub-section (3).
- Non compliance of Section 11(5)-permitted modes of investment

Section 13(6): The exemption under section 11 or section 12 shall not be denied in relation to any income, other than the income referred to in sub-section (2) of section 12, by reason only that such

trust has provided educational or medical facilities to persons referred to in sub section 3.

S. 115BBC-Tax @30% on denied income for 13(1)© and 13(1(d) violations. 2. Penalty for providing unreasonable benefits to specified persons- s 271AAE penalty equal to amount of benefit in first year and twice for subsequent year

Section 13(3): List of persons

a. the author of the trust or the founder of the institution.

b. any person who has made a substantial contribution to the trust or institution, that is to say, any person whose total contribution up to the end of the relevant previous year exceeds fifty thousand rupees; increased to Rs.1 lakhs in that PY and aggregate Rs.10 lakhs during lifetime of institution by Finance Act 2025

c. where such author, founder or person is a Hindu undivided family, a member of the family;

cc. any trustee of the trust or manager (by whatever name called) of the institution;

d. any relative of any such author, founder, person, member, trustee or manager as aforesaid;

e. any concern in which any of the persons referred to in clauses (a), (b), (c), (cc) and (d) has a substantial interest. "relative", in relation to an individual, means—

a. spouse of the individual;
b. brother or sister of the individual;
c. brother or sister of the spouse of the individual;
d.any lineal ascendant or descendant of the individual;
e. any lineal ascendant or descendant of the spouse of the individual;
f. spouse of a person referred to in sub-clause (b), sub-clause (c), sub-clause (d) or sub-clause(e) g. any lineal descendant of a brother or sister of either the individual or of the spouse of the individual

Section 13(2): The income or the property of a trust deemed to have been used or applied for the benefit of a person referred to in 13(3)

- If any part of the income or property of the trust or institution is, or continues to be, lent to any person referred to in sub-section (3) for any period during the previous year without either adequate security or adequate interest or both.
- if any land, building or other property of the trust or institution is, or continues to be, made available for the use of any person referred to in sub-section (3), for any period during the previous year without charging adequate rent or other compensation;
- if any amount is paid by way of salary, allowance or otherwise during the previous year to any person referred to in sub-section (3) out of the resources of the trust or institution for services rendered by that person to such trust or institution and the amount so paid is in excess of what may be reasonably paid for such services;
- if the services of the trust or institution are made available to any person referred to in sub-section
  (3) during the previous year without adequate remuneration or other compensation;
- if any share, security or other property is purchased by or on behalf of the trust or institution from any person referred to in sub-section (3) during the previous year for consideration which is more than adequate;
- if any share, security or other property is sold by or on behalf of the trust or institution to any person referred to in sub-section (3) during the previous year for consideration which is less than adequate
- if any income or property of the trust or institution is diverted during the previous year in favor of any person referred to in sub-section (3)

Objective of TDS

1. Regular Inflow of Revenue for Government
2. Checking of Tax Evasion
3. Widening of Tax Base

Tax deducted at source(TDS) and Tax Collected at source (TCS)

- TDS deducted from income • Deducted by payer • Imposed when payment crosses threshold
- TDS return-24Q/26Q
- TCS is collected from sale • Collected by seller • Collected on specific goods under section 206C
- TDS return-27EQ

TDS Sections

- Section 192 (Salary)
- Section 194 C (Contractual Payment)
- Section 194 J (Fees for Professional & Technical Payment)
- Section 194 I (Rent)

192 – TDS on Salary

- Deduct at rate of Income Tax computed on the basis of rates in force
- Rates in force for person other than Senior Citizens

Income Tax Slab	Tax Rate
Up to ₹2,50,000*	Nil
₹2,50,001 to ₹5,00,000	5% of total income exceeding ₹2,50,000
₹5,00,001 to ₹10,00,000	₹12,500 + 20% of total income exceeding ₹5,00,000
Above ₹10,00,000	₹1,12,500 + 30% of total income exceeding ₹10,00,000

- **New Tax Regime**
- **Rates in force:**
- Any individual opting to be taxed under the new tax regime from FY 2020-21 onwards
  No exemptions and deductions available such as HRA, most Chapter VI-A deduction (80C, 80D), Interest on housing loan etc. Standard deduction and 80CCD(2) allowed.

Income Tax Slab FY 25-26	Tax Rate
Up to Rs 4 lakh	Nil
Rs 4 lakh to Rs 8 lakh	5%
Rs 8 lakh to Rs 12 lakh	10%
Rs 12 lakh to Rs 16 lakh	15%
Rs 16 lakh to Rs 20 lakh	20%
Rs 20 lakhs to Rs 24 lakhs	25%
Rs 24 lakh and above	30%

194 C – Payments to Contractors

Tax is to be deducted at source:

- On the invoice value excluding the value of material, if such value is mentioned separately in the invoice; or
- On the whole of the invoice value, if the value of the material is not mentioned separately in the invoice.

TDS Rate:

- 1% where payment is to an individual / HUF
- 2% where recipient is any other person

Limit:

- If the credit or payment in pursuance of the single contract does not exceed Rs. 30,000 in FY no deduction shall be made at source.
- However, if the aggregate of all amount paid / credited or likely to be credited exceeds in F.Y. Rs. 1,00,000 then tax at source is to be deducted.

Section 194 C includes:

- Advertisement

- Broadcasting and telecasting including production of programmes for such broadcasting and telecasting
- Catering
- Manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer
- Engagement of manpower on contract
- Carriage of goods or passengers by any mode of transport other than by railways – NO TDS if PAN is provided and vehicles up to 10

194 J – TDS on Fees for Professional or Technical Services

Threshold Exemption Limit:

In Finance Act, increased to Rs. 50,000 in a FY

Particulars	TDS Rate
Professional Fees	10%
Technical Fees	2%
Payment to call center operator (Domestic Co. only)	2%

Professional services means services rendered by a person in the course of carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or advertising or such other profession notified by the Board for the purposes of section 44AA or of this section.

Fees for technical services means any consideration (including any lump sum consideration) for the rendering of any managerial (running or management of business), technical (technical expertise) or consultancy (advisory) services (including the provision of services of technical or other personnel) but does not include consideration for any construction, assembly, mining or like project undertaken by the recipient or which would be income chargeable under the head “Salaries”.

194 I – Rent

Particulars	Rate of TDS
Renting of machinery / plant / equipment	2%
Renting of land or building (including factory building) or land appurtenant to a building (including factory building) or furniture or fittings	10%

In Finance Act 2025, increased to Rs. 6 lakh in aggregate and not more than Rs. 50k per month

Section 195

- Payment made to non-resident Indian is taxable for applicable income like fee for technical services, royalty, dividend etc. subject to checking DTAA with that country
- No threshold
- Section defines Indian resident – stay in India for min 182 days in a FY or min 60 days in a FY and min 365 days in past 4 FYs. If not, Section 185 applies
- Declaration on information of foreign payments and TDS – Form 15CA (remittance less than Rs. 5 lakhs) and/or 15CB (Certificate by CA for more than Rs. 5 lakhs and check on DTAA) with Department and provided to bank for remittance
- Report in TDS return Form 27Q

FCRA

"foreign contribution" means donation, delivery or transfer (directly or through another person) by any foreign source (i) of any article (not FC if gift for personal use not exceed Rs. 1 lakh in market value),(ii) of any currency, whether Indian or foreign (iii) of any security as defined in section 2 (h) of SCRA, 1956

Explanation to S.2 - Any amount received by way of fee (including fees charged by an educational institution in India from foreign student) or towards cost in lieu of goods or services rendered by such person in the ordinary course of his business, trade or commerce within/outside

India or any contribution received from an agent of a foreign source towards such fee/cost shall not be FC.

Deemed FC -interest, rent, pass-on now prohibited also FC.

Foreign Hospitality

- **Foreign Hospitality** means any offer, not being a purely casual one, made in cash or kind by a foreign source for providing a person with the costs of travel to any foreign country or with free boarding, lodging, transport or medical treatment.
- **Required for:** (a) Members of a Legislature b) office bearers of political parties c) Judges d) Government servants, Public Servants e) Employees of any corporation or any other body owned or controlled by the Government.
- There are specified exclusions also.
- Application made online ordinarily two weeks before the proposed date of onward journey.
- Emergency medical aid required during travel, report within 60 days of return unless amount is not exceeding Rs.1 lakhs.

"person" includes -

- an individual;
- a Hindu undivided family;
- an association;
- a company registered under section 25/8 of the Companies Act, 1956/2013 **"Person"** receive foreign contribution subject to following conditions:- a) must have a definite cultural, economic, educational, religious or social Programme (CEERS) b) must obtain FCRA registration/prior permission from Central Government c) must not be prohibited under Section 3 of FCRA, 2010.

  Person does not include:

  (a) only statutory body wholly owned by Govt (Jan 2020) which must mandatorily get its accounts audited by CAG

  (b) Govt of India and foreign Govt transactions (Section 51).

Broadly 3 category of persons: **Prohibited, Regulated and Not-regulated**.

Prohibited person

- candidate for election;
- Correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper;
- Public Servant, Judge, Government servant or employee of any corporation/body controlled or owned by the Government;
- Member of any legislature;
- Political party or office bearer thereof;
- organization of a political nature as may be specified under sub-section (1) of Section 5
- company engaged in the production or broadcast of audio/audio visual news or current affairs programs
- Correspondent or columnist, cartoonist, editor, owner of the association or company referred to in point
- Individuals or associations who have been prohibited from receiving foreign contribution.
- Public servant included in prohibited category in 2020
- Prohibited from receiving FC but can be on the Board.

Foreign source includes:

(i) Government/agency of foreign Government; (ii) international agency (excluding UN, IBRD, IMF or agency Central Government may notify (list of 117 entities as per portal); (iii) a foreign company; (iv) a corporation, not being a foreign company, incorporated in a foreign country (v) a multi-national corporation (vi) an Indian company with >50% of share capital held by: a. foreign Government; b. foreign citizens; c.corporations incorporated in a foreign country; d. trusts, societies or other associations of individuals (whether incorporated or not) in a foreign country; e. foreign company; [provided that such company shall not be a foreign source (FEMA compliant)-Finance Act 2016] (vii) a trade union in a foreign country (viii) a foreign trust/foundation mainly financed by a foreign country; (ix) a society, club or other association or individuals formed or registered outside India; (x) a foreign citizen

- Very important to know that FC is from foreign source, should have adequate documentation.
- NRI is not a foreign source but OCI/PIO/Indian acquired foreign citizenship is.

Administrative expenses

The following shall constitute administrative expenses:- (i) salaries, wages, travel expenses or any remuneration realised by the Members of the Executive Committee or Governing Council of the person; (ii) all expenses towards hiring of personnel for management of the activities of the person and salaries, wages or any kind of remuneration paid, including cost of travel, to such personnel; (iii) all expenses related to consumables like electricity and water charges, telephone charges, postal charges, repairs to premise(s) from where the organisation or Association is functioning, stationery and printing charges, transport and travel charges by the Members of the Executive Committee or Governing Council and expenditure on office equipment; (iv) cost of accounting for and administering funds; (v) expenses towards running and maintenance of vehicles; (vi) cost of writing and filing reports; (vii) legal and professional charges; and (viii) rent of premises, repairs to premises and expenses on other utilities: Provided that the expenditure incurred on salaries or remuneration of personnel engaged in training or for collection or analysis of field data of an association primarily engaged in research or training shall not be counted towards administrative expenses: Provided further that the expenses incurred directly in furtherance of the stated objectives of the welfare oriented organisation shall be excluded from the administrative expenses such as salaries to doctors of hospital, salaries to teachers of school etc.

FCRA Architecture for regulated entities

- **Registration:** Registration, Prior Permission
- **Regulation:** bank accounts-3 tier to operate FC, separate books to account for receipt and utilisation, AR and Declaration, Intimation of various kinds of changes
- **Restriction:** ceiling on Admin cost, prohibition on speculative activity, prohibition on FC transfer to another person, use of FC only for defined purpose as per 5 limbs
- **Consequences:** suspension, cancellation, prosecution, penalty

Reporting Forms

- **FC-1:** Gift of articles in kind, securities
- **FC-2:** Approval for foreign hospitality
- **FC-3A to C:** Registration, Prior Permission and Renewal
- **FC-4:** Annual Return
- **FC 6A-6E:** Change in Name, Address, Objects, Bank, Board Members

- **FC 7:** Surrender of registration

Major reasons for rejection of registration/renewal

- No activity, defunct, claimed activities not verified or field visit shows no activity in past 2-3 years
- Key functionary convicted/proceeding in progress
- Form incomplete/information concealed
- No response to clarification sought
- Office bearers not available at the address provided
- Organisation not existing at the given address
- Registration already cancelled
- Diversion of FC/anti development work/malicious protest
- Affiliation with radical/terrorist entities
- Adverse inputs during field inquiry
- Affect social/religious harmony or forced religious conversion
- Registration conditions-Rs. 15 lakhs spend on object in last 3 AFS and not in existence for 3 years

Rejection of Renewal application

- No FC spend in last 5 years
- Non filing of FC4 in any of last 6 FYs
- Violation of Act & Rules-20% admin exp, discrepancy in FC4, not utilised FC for purpose, FC 6A-6E violation,not filing audited FC financials with FC 4, FC funds transfer to non FC bank, inter charity donation, mixing of FC and local funds

CSR Law

S.135 of Companies Act, 2013- Corporate Social Responsibility (CSR)

1. Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board

consisting of three or more directors, at least one independent director.

2. The Board's report under section 134 shall disclose the composition of the Corporate Social Responsibility Committee.
3. The Corporate Social Responsibility Committee shall, —
   (a) formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII;
   (b) recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and
   (c) monitor the Corporate Social Responsibility Policy of the company from time to time.
4. The Board of every company referred to in sub-section (1) shall, - (a) after taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose contents of such Policy in its report and also place it on the company's website and (b) ensure that the activities in CSR Policy of the company are undertaken by the company.
5. The Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy. CSR is from Profits, cannot be claimed as business expenditure, therefore no tax benefit as clarified by MCA but courts have granted 80G benefit for CSR spends. Provided that the company shall give preference to the local area and areas around it where it operates, for spending the CSR amount. Provided further that if the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount.

Section 135 of Companies Act-changes effective Jan 2021

- Paradigm shift in CSR regime-Spend or explain to Mandatory.
- If a company fails to spend required CSR amount in any financial year:
  a. The unspent amount is required to be transferred to any fund specified in Schedule VII, within a period of six months of the expiry of the financial year (in the case there is no ongoing project).
  b. The unspent amount is to be transferred to a special account to be opened by the company in a scheduled bank to be called the unspent CSR account within 30 days from the end of the financial year (in the case of an ongoing project). Such amount shall be

spent on CSR activities within three financial years failing which the unspent amount is required to be transferred to any fund specified in Schedule VII, within 30 days.
- **Introduction of penal provisions:** Penalty of twice the unspent CSR or INR 1 crore, whichever is less may be imposed on the company, and penalty of 1/10th of unspent CSR or INR 2 lakh, whichever is less may be imposed on all officers in default.

Definition of CSR Activities permitted in Schedule VII under Section 135 of Companies Act 2013.
Exclusion

- activities undertaken in pursuance of normal course of business of the company;
- contribution of any amount directly or indirectly to any political party under section 182 of the Act;
- activities benefitting employees of the company as per Code on Wages (apprentices not included)
- activities supported by the companies on sponsorship basis for deriving marketing benefits for its products or services;
- activities carried out for fulfilment of any other statutory obligations under any law in force in India.

> **Note:** corpus donation, kind contribution, activities outside India except training of sports person is not CSR.

Modes for undertaking CSR

CSR activities can now be undertaken by the company itself or through a. Section 8 company/registered public trust/registered society-12A and 80G registration under Income-tax Act, 1961 established by the company, either singly or along with any other company, or b. Section 8 company/registered trust/registered society established by the government; or c. Any entity established under an Act of Parliament or a state legislature; or d. Section 8 company/registered public trust/registered society, (with 12A and 80G registration under Income-tax Act, 1961) having an established track record of at least three years in undertaking similar activities.

- Companies may now engage international organisations for designing, monitoring and evaluating the CSR projects and for capacity building of their personnel for CSR. Notified

by CG under this Act.

- Administrative overheads have been defined and capped to 5% of total CSR expenditure. Admin OH means any expenditure for general management and administration for CSR function but designing, implementation, monitoring and evaluation of CSR projects will not be part of admin overheads.

CSR Committee

- CSR Committee mandatory if CSR spend is more than Rs. 50 lakhs in a year or there is unutilised CSR fund otherwise discharged by BOD.
- The CSR Committee shall formulate and recommend to the Board, an annual action plan in pursuance of its CSR policy, which shall include the following, namely: a. the list of CSR projects or programmes that are approved to be undertaken in areas or subjects specified in Schedule VII of the Act; b. the manner of execution of such projects/programmes as specified in rule 4; c. the modalities of utilization of funds and implementation schedules for the projects d. monitoring and reporting mechanism for the projects or programmes; and e. details of need and impact assessment, if any, for the projects undertaken by the company:
- Annual Report format on CSR activities from 1.4.2020 (Annexure II) to be appended to the company AR - unspent, impact asstt. Admin OH, capital assets, location of CSR projects etc.

Visibility and UC by CFO

- **Display of CSR activities on company website.** The Board of Directors of the Company shall mandatorily disclose the composition of the CSR Committee, and CSR Policy and Projects approved by the Board on their website, if any, for public access.
- UC by CFO of the company that the CSR funds have been spent as per AAP not the CSR Committee.

Impact assessment

- **Rule 8:** Companies having an average CSR obligation of INR 10 crore or more in three immediately preceding financial years will be required to do impact assessment, through an independent agency.
- CSR projects having outlays of INR 1 crore or more. Completed not less than one year before undertaking the impact study.

- Ceiling 2% or Rs. 50 lakhs per FY whichever is higher.
- Cost to be budgeted in the year of undertaking impact assessment.

CSR, ESG and Sustainability overlap

- **Sustainability:** The outcome achieved by balancing the social, environmental and economic impacts of business. It is the process that ensures that business goals are pursued without compromising any of the three elements (source: NGRBC).
- Sustainability is the umbrella for ESG (BRSR) and CSR, both are ways business demonstrate commitment to sustainable business practices.
- CSR is the starting point of ESG.
- CSR strategy can be refined to fit into ESG (BRSR) metrics.
- BRSR lends credibility to CSR by quantifying it.

Reporting compliance for corporates on Sustainability

- Form CSR 2
- Annual Action Plan (AAP)
- Annual CSR Report (Annexure II) appended to Board Report
- Business Responsibility Report (BRR)-discontinued
- Business Responsibility and Sustainability Report (BRSR)
- BRSR Core-July 2023- subset of BRSR requiring mandatory disclosure on select key performance indicators on ESG like upstream and downstream value chain partners with reporting by 150 companies from 23-24 to all by 26-27 and guidelines for assurance providers.
- Introduced in Feb 2022 effective 20-21.
- Applicable to companies covered under 135(1).
- **e-CSR 2 information:** (capture most details that we have covered in section 135 and required in Rules). It includes details of triggers, spend on ongoing and other than ongoing projects, unspent CSR amount, set off, assets created, impact assessment.
- Filed within 30 days of holding of AGM as addendum to AOC 4.

Journey of ESG (BRSR) in India

- **2011:** MCA issued the National Voluntary Guidelines (NVGs) on Social, Environmental and Economic Responsibilities of Business.
- **2012:** SEBI mandated the top 100 companies (extended to 500 companies) by market cap submit BRR to report compliance with NVGs.
- **2017:** SEBI recommended Integrated Reporting for BRR-together on financial and sustainable matters in single reporting.
- **2018:** MCA issued national Guidelines on Responsible Business Conduct (NGRBC) to improve on NVGs.
- **2021:** SEBI introduced improved BRRF requiring in form of BRSR applicable to top 1000 companies by m-cap from 22-23.

9 Principles in NGRBC

1. **Principle 1: Ethical Business Conduct** - Businesses should conduct and govern themselves with integrity and in a manner that is ethical, transparent and accountable.
2. **Principle 2: Product Responsibility** - Businesses should provide goods and service in a manner that is sustainable and safe.
3. **Principle 3: Employee Welfare** - Businesses should respect and promote the well-being of all employees, including those in their value chains.
4. **Principle 4: Stakeholder engagement** - Businesses should respect the interests of and be responsive to all its stakeholders.
5. **Principle 5: Human Rights** - Businesses should respect and promote human rights.
6. **Principle 6: Environmental Responsibility** - Businesses should respect and make efforts to protect and restore the environment.
7. **Principle 7: Public Policy Engagement** - Businesses, when engaging in influencing public and regulatory policy, should do so in a manner that is responsible and transparent.
8. **Principle 8: Inclusive Growth** - Businesses should promote inclusive growth and equitable development.
9. **Principle 9: Consumer engagement** - Businesses should engage with and provide value to their consumers in a responsible manner.

BRSR

- Each principle of NGRBC has core elements which enhance the operationalisation and objectivity of the principles.
- BRSR is part of SEBI's Listing Obligation and Disclosure Regulations (LODR).
- **BRSR format:**
  - General information
  - Management & Policy disclosures
  - Principle wise performance disclosure-essential indicators and leadership indicators
- Voluntary BRSR permitted.

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