

## KEY AMENDMENTS AND DISCLOSURES FOR CSR AND SECTION 185 & 186



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Ministry of Corporate Affairs (MCA) have increased the reporting requirements in the financial statements for listed as well as unlisted Companies manifold over last few years. Over the last year there has been significant changes in reporting requirement for expenditure incurred on account of Corporate Social Responsibility (CSR). Also there has been observation that disclosure requirement for S. 185 / 186 are not in accordance with the requirement of law. Accordingly, this article intends to summarise the amendment related to CSR and revisit the requirement related to S. 185 for Financial Statement for FY 20-21.

### 1. CORPORATE SOCIAL RESPONSIBILITY

#### 1.1 APPLICABILITY OF CORPORATE SOCIAL RESPONSIBILITY

Every company having:

- A. net worth of Rs. 500 crore + or
- B. turnover of Rs. 100 crore + or
- C. Net Profit of Rs. 5 crore +

during immediately preceding financial year, including a foreign company having its branch office or any projects in India and fulfils the conditions mentioned above.

The MCA issued a Notification on January 22, 2021, amending the Companies (Corporate Social Responsibility Policy) Rules, 2014. General Circular No.1/2021 dated 13<sup>th</sup> January, 2021 for clarification on spending for awareness and public outreach for COVID-19. Clarification on August 2, 2021.

#### 1.2 Key Amendments brought in by the Rules are as follows:

##### 1.2.1. Governance and compliance changes:

- The Board of directors are required to ensure that the CSR activities are undertaken by the company itself or through others are registered with the Central Government with effect from 1 April 2021;
- Filing of form CSR-1 electronically with the Registrar by the entity which is to be verified by CA/CS/Cost Accountant in practice;
- Responsibility of the board to ensure that the funds disbursed are utilised for the purpose approved by it and CFO / person responsible is required to certify the same.

**1.2.2. Activities not to be considered as CSR activities:**

1. research and development activities undertaken in normal course of business;
2. training activity for Indian sports personnel undertaken by the company outside India;
3. contribution of any amount directly or indirectly to any political party under section 182 of the Act;
4. activities of giving sponsorship for marketing benefits for company's products or services;
5. activities for fulfillment statutory obligations under any law in force in India;
6. Spending for vaccination for employees;

**1.2.3. Activities bought within the ambit of CSR activities:**

1. Research & development activity in normal course of business for new vaccine, drugs and medical devices related to COVID-19 from financial year 2020-21 to 2022-23 subject to following conditions:
  - activities to be in collaboration with any of the institutes or organisations
  - details of activity to be separate disclosed in Annual report on CSR
2. Creating Awareness, campaigns including public outreach campaign, programs relating to promotion of health, sanitization, education and disaster management;
3. Spending for vaccination for family members of employees;
4. Any training activity for Indian sports personnel representing at State or Union territory or national level or India at international level is to be considered;
5. activities benefitting employees of the company as per Code of Wages, 2019;

**1.2.4. Expenditure, surplus, excess spending and unspent amounts for CSR**

- Any surplus arising out of the CSR activities shall not form part of the business profit of a company and
- shall be ploughed back into the same project or shall be transferred to the Unspent CSR Account and spent in
- pursuance of CSR policy and annual action plan of the company or transfer such surplus amount to a Fund
- specified in Schedule VII, within a period of six months of the expiry of the financial year.

***Understanding spending and Ongoing project and other than ongoing project*****Ongoing project**

For any amount pending to be spent for an ongoing project, the company is required to transfer such funds within 30 days from the end of financial year to a special account to be opened in a scheduled bank with name Unspent Corporate Social Responsibility account and the funds are to be utilised for CSR spending within three financial years from the date of transfer. If there is unspent amount post three years the same is to be transferred to specified fund within 30 days from the completion of the third financial year.

### Other than ongoing project

The remaining unspent amount for any activity other than an ongoing project the company is required to transfer the unspent funds any specified fund within a period of six months from the end of the financial year. Hence a provision for the liability for the amounts to be transferred is required to be made in the financial statements which gives us the understanding that there is a change in measurement and recognition of CSR spending for the year.

### 1.3 Disclosures:

#### 1.3.1. Suggestive presentation in financial Statements of a private limited company for CSR:

- i. From the perspective of better financial reporting and in line with the requirements of Schedule III in this regard, it is recommended that all expenditure on CSR activities, that qualify to be recognised as expense should be recognised as a separate line item as 'CSR expenditure' in the statement of profit and loss. Further, the relevant note should disclose the break-up of various heads of expenses included in the line item 'CSR expenditure'.
- ii. The notes to accounts relating to CSR expenditure should also contain the following:
  - a) Gross amount required to be spent by the company during the year
  - b) Amount spent during the year on:

Sr.No.	Particulars	F.Y. 2020-21			F.Y. 2019-20		
		Paid in Cash	Yet to be paid in Cash	Total	Paid in Cash	Yet to be paid in Cash	Total
(i)	Construction / acquisition of any asset						
(ii)	On purposes other than (i) above						

The above disclosure, to the extent relevant, may also be made in the notes to the cash flow statement, where applicable.

- c) Details of related party transactions, e.g., contribution to a trust controlled by the company in relation to CSR expenditure as per Accounting Standard (AS) 18, Related Party Disclosures.
- d) A movement in provision during the year is to be presented in following suggestive format:

Particulars	2020-21 Amount	2019-20 Amount
Opening provision		
Addition during the year		
Utilised during the year		
Closing provision		

## e) Amount earmarked for ongoing project

Particulars	F.Y. 2020-21			F.Y. 2019-20		
	With company	In separate CSR unspent a/c	Total	With company	In separate CSR unspent a/c	Total
Opening balance						
Amount required to be spent during the						
Transfer to separate CSR Unspent a/c						
Amount spent during the year						
Closing balance						

## f) Details of excess amount spent

Particulars	2020-21 Amount	2019-20 Amount
Opening balance		
Amount required to be spent during the year		
Amount spent during the year		
Closing balance		

- 1.3.2.** The composition of the CSR Committee, and CSR Policy and Projects approved by the Board is to be provided on the website.
- 1.3.3.** The Board's report of the company is to present an annual report on CSR providing the details in separate Annexure I and II.

The following are the details required to be presented in Board report:

- i. Brief outline on CSR Policy of the Company.
- ii. Composition of CSR Committee.
- iii. To provide Web-link of the website where Composition of CSR committee, CSR Policy and CSR projects approved by the board.
- iv. To provide the details of Impact assessment of CSR projects carried out.

***Understanding:***

Company having obligation of Rs. 10 crore and more in three preceding financial years will have to appoint an independent agency which will undertake impact assessment of the CSR projects which have completed one year or more and are having outlays of one crore rupees or more before undertaking impact study.

- v. Details of the amount available for set off and amount required for set off for the financial year.

***Understanding:***

If a Company spends in excess of the requirement of the act then such excess will be available for set off upto next three financial years subject to conditions:

- The surplus, if any, arising out of CSR activities is not to be included
- The board is required to pass a resolution for the same

- vi. Average net profits of the company as per Section 135(5).

- vii. Following information is required to be given:

Sr.No.	Particulars	Amount
a.	Two percent of average net profit of the company as per section 135(5)	
b.	Surplus arising out of the CSR projects or programmes or activities of the previous financial years	
c.	Amount required to be set off for the financial year, if any	
d.	Total CSR obligation for the financial year (a+b+c)	

- viii. CSR amount spent or unspent for projects or other than projects:
  - a) CSR amount spent or unspent for the financial year
  - b) Details of CSR amount spent against ongoing projects for the financial year
  - c) Details of CSR amount spent against other than ongoing projects for the financial year
  - d) Amount spent in Administrative Overheads
  - e) Amount spent on Impact Assessment, if applicable
  - f) Total amount spent for the Financial Year
  - g) Excess amount for set off, if any
- ix. CSR amount Unspent and spent for preceding year:
  - a) Details of Unspent CSR amount for the preceding three financial years:
  - b) Details of CSR amount spent in the financial year for ongoing projects of the preceding financial year(s):

## **2 SECTION 185 AND 186 OF COMPANIES ACT, 2013**

Over the years we have seen there have been governance issues relating to loans given by the companies to directors, interested parties of the directors etc. There are few exemptions given to private limited companies subject to certain conditions.

The full text of the Section 185 has been replaced by the Company (Amendment) Act, 2017. The intent behind bringing the amendment in Companies Act, 2013 is to strengthen the corporate governance, to protect the funds of the company and to help improve ease of doing business in the country.

Section 185 provides restrictions on the company for giving loans to directors including guarantees or any security in connection with any loans. The section has widely covered directors, entities where directors are interested, related parties of directors etc.

Relative for above section shall cover members of HUF, Husband, wife, Father, Mother, Son, Son's wife, Daughter, Daughter's husband, Brother and Sister

An explicit non-applicability of the section is provided for follows:

- for loans given by holding company including guarantees or any security provided by a holding company in connection with any loans made to its wholly owned subsidiary.
- Any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company.

### **Issue:**

Loans given by one company to another with a definite interest rate and repayment clause. However, the receiving company is facing financial crises and is unable to pay even interest. Whether the loan giving company should recognise interest income on such loans?

**Let us look at the disclosures required in financial statements for compliances in relation to Section 185 and 186:**

i. Suggestive format for additional disclosure:

The details of loans, guarantees and investments under section 186 of the Companies Act, 2013 read with the Companies (Meetings of Board and its Powers) rules, 2014 are as follows:

- (i) Details of investment made are given in Notes \_\_\_ and \_\_\_\_\_ of financial statements.  
 (ii) The company has given loan to the below mentioned companies for their business purpose.

Sr. No.	Name of Entity	As at 31 March 2021	As at 31 March, 2020
		-	-

Against the name of entity reference may be drawn to note number of Long term loans and advances and/or short term loans and advances.

**Comments:**The company shall disclose the full particulars of the loans given, investment made or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security. (Ref.: GN 8.7.6)

- (iii) The company has furnished guarantees for below mentioned companies for their business purpose.

Sr. No.	Name of Entity	As at 31 March 2021	As at 31 March, 2020
		-	-

Against the name of entity reference may be drawn to note number of Contingent liabilities.

Conclusion: It can be witness that government is day by day moving forward to make CSR a mandatory spending along with plans of the corporates for future spending and compelled to provide disclosure in financial statements. It can be understood that regulatory has made mandatory of disclosure for loans, investments, guarantees for better corporate governance and transparency.

