



The Chamber of Tax Consultants

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April 3, 2020

To,
Mr. Shobhit Srivastava
Ministry of Corporate Affairs
Deputy Director,
Shastri Bhawan, Rajendra Prasad Road,
New Delhi - 110 001.

Dear Sir,

**Re: Comments on the draft Companies (Corporate Social Responsibility Policy)
Amendment Rules, 2020**

The Chamber of Tax Consultants (CTC), Mumbai was established in 1926. CTC is one of the oldest voluntary non-profit making organizations in Mumbai formed with the object of educating and updating its members on Tax and other Laws. It has robust membership strength of about 4000 professionals, comprising Advocates, Chartered Accountants and Tax Practitioners. The Chamber also has created a niche with the Government and other regulatory agencies, where representations by the Chamber are received with all seriousness and continues this commitment since more than 90 years now.

This is with reference to the draft Companies (Corporate Social Responsibility Policy) Amendment Rules, 2020. Below are our comments for your kind consideration.

1. **Proposed Rule 2(1)(g) - Definition of “Net Profit”:** There is no clarity in the definition as to whether it is pre-tax or post-tax. The definition should be specifying as Post Tax.
2. **Proposed Rule 2(1)(h) - Definition of “On-Going Project”:** The Timeline fixed for completing the project is three years- excluding the financial in which it was commenced. Certain projects which have larger reach often take a longer time. Spenders must be given adequate freedom to select and monitor the causes and projects they select to support. Insisting on completion within three years puts unnecessary burden on them. Further, there may be projects that may get temporarily stalled for various reasons including



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government approvals – if the fund has been provided it would be unfair to insist on closure within 3 years. Hence no time period should be kept, but if a project crosses 3 years the reporting requirement can be increased – alternately, need this time line to be extended to seven years excluding the financial year in which it was commenced.

For example: A hospital project may take five years. As long as the project is not stalled it is fine. A project may be stalled for various reasons beyond the donors control, force majeure like COVID, land approval not coming through, a Public Interest Litigation filed, non-availability of balance funding where a donor is only a part sponsor.

3. **Proposed Rule 2(1)(i)(c) – Activities undertaken in the normal course of business :**

As per the proposed amendment, CSR activities shall not include, activities undertaken in pursuance of normal course of business of the company. An exception should be made out for activities undertaken in the normal course of business. For eg

- Pharmaceutical company providing medicine at free of cost to the people at large or to the hospital.
- Hospital providing facilities to the treatment of Patient.

4. **Proposed Rule 4(1):** Currently CSR activities can be undertaken by Section 8 Company, a registered trust or a registered society. However, the proposed amendment states that CSR activities can be carried by Section 8 Company, any entity established under an Act of Parliament or a State legislature.

This means an entity or a body corporate formed either by a Special Act of Parliament or under a Central or State Act. The new definition is not very clear as compared to the previous definition and is more complicated and restricted.

As provided an entity may be established under any State Legislature. However, in case State does not have any laws then such entity cannot implement CSR Activity. Hence, it is represented that in case any State does not have any specific law and the entity is



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registered under Section 12AA of Income-tax Act or Institutions registered under FCRA then such entity should be allowed to carry CSR activities. A lot of NGOs which operate as Public Charitable Trusts have long standing records and experience in project implementation as well as the ability to offer a larger reach. It would be unfair to exclude them from participating in putting CSR funds to optimal use. Conditions may be put on selecting of such NGOs – such as evidence of filings done and a corpus of a particular amount or registration history – but thereafter CSR spenders must be given freedom to select implementation agencies. Instead of restricting their freedom, one may select to increase reporting if money is spent through another agency.

Further registration of entities covered under clause (a) or clause (b) are required to file the e-form CSR-1 with the Registrar along with prescribed fees. The same should be done away with since such entities are already registered under an Act of Parliament or State Legislature. This creates red tapism and hindrance to the object of promoting CSR activities. It should be sufficient that such entities spent the amount on the CSR activities. Importance should be given to activities rather than controlling such activities.

5. **Proposed Rule 4(1):** There is no clarification on the track record of the implementing agencies (Section 8 companies), it means that newly registered section 8 companies after submitting CSR Form 1 will become eligible for implementation of CSR projects.
6. **Proposed Rule 4(3):** A company can engage International Organization for implementation of CSR project with prior approval of Central Government. However, this seems ambiguous as per proposed Rule 4(1) a CSR project can either be implemented by company itself, or by Section 8 Company or an entity registered under Act of Parliament or a State legislature. Or should international organization register under Section 8 of the Companies Act to become eligible?
7. **Proposed Rule 4(2):** Addition to the proposed rule for accounting treatment for such CSR activities:



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The amount of CSR funds should be transferred to the special fund created for that and money should be kept in the bank account maintained separately for the same. Further any interest earned shall also be credited to the said fund and any amount utilized shall also be debited to the said fund account. The unspent balance will be reflected in the said separate fund account.

8. **Proposed Rule 4(3): Creation or Acquisition of assets :**

The CSR amount may be spent by a company for creation or acquisition of assets which shall only be held by a company established under section 8 of the Act having charitable objects or a public authority. It is suggested that not only Section 8 companies but similar benefits can also be given to entities registered under state legislature as well or any other charitable entities.

9. It is provided in **Proviso to Proposed Rule 7(3) that** “..Any asset created by a company prior to the commencement of Companies (CSR Policy) Amendment Rules, 2020, shall within a period of One hundred and eighty days from such commencement comply with the requirement of this rule...”

Amendment may be required under Income-tax Act that on such transfer no taxable event arises either in the hands of company or entity.

10. **Proviso to Proposed Rule 7(1) Administrative overheads:** Administrative overheads need to be defined. Further the upper cap of administrative amount should be 10% instead of 5%. Correspondingly if the company is undertaking impact assessment then share of the administrative expenditure should be suitably increased.

11. **Existing Rule 3:** "every company including its holding company or Subsidiary company and...."

a. As such CSR is applicable independently to every company.



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- b. Does this mean that clubbing of turnover / Net profit / Net worth is required? Hence reference to holding / subsidiary company to be removed.
- c. Further while computing netprofit, dividend distribution by other companies irrespective of applicability of section 135 should be excluded. It is difficult to find out whether such dividend distributing company is within the ambit of CSR or not.
- d. Profit earned by foreign branch of Indian company is excluded. For all other purposes it is included, hence clarity on the same shall be required.

It is our earnest representation that corporates are discharging social responsibilities under CSR – they must be given the freedom to select the cause as well as implementing agencies. Putting of too much restriction on them makes the entire exercise burdensome. One may increase reporting requirements and put in checks and balances if the need is felt. Due to paucity of available information, corporates with smaller CSR budgets find it difficult to find long terms sustainable projects with larger reach and often have to select implementing agencies like Rotary International or Lions or regional clubs or accredited NGO Charitable trusts and they should be given the freedom to do so – so long as money is spent on the cause and they take responsibility to collect the information from the implementing agency and to monitor the use of funds for the selected cause.

Thanking You,

Sincerely,

For The Chambers of Tax Consultants

Sd/-

VIPUL CHOKSI

President

Sd/-

MAHENDRA SANGHVI

Chairman – Laws and Representation Committee