

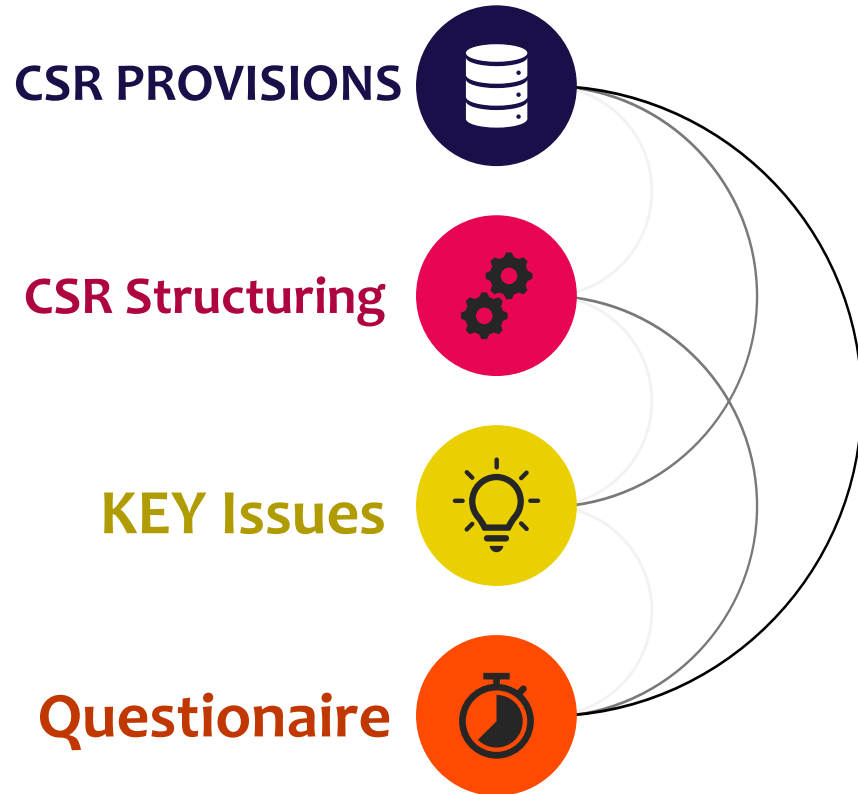


CSR Project Structuring and Key Issues

CA Amit Agrawal

24 December 2024





Key CSR Provisions

01



Applicability

- Turnover – Rs.1,000 crore or more; or
- Net worth – Rs.500 crore or more; or
- Profit – Rs.5 crore or more
(immediately preceding financial year)

02



Expenditure Limit

- Minimum 2% of average net profit of immediately 3 preceding Fys
- No maximum limit. It is discretion of Company

03



CSR Implementation

- Rule 4 – Company itself, implementation agency or joint implementation with one or more companies

04



CSR Activity

- Negative list of activity defined which are excluded from CSR activity
- Schedule VII

05



CSR Policy

- CSR committee & roles responsibility
- Formulation of CSR policy and BOD approval
- Objective & Content of CSR Policy

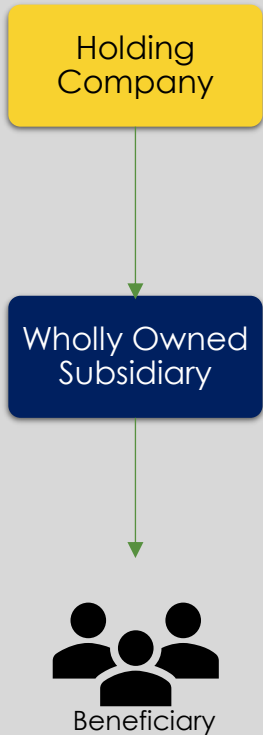
06



CSR Spending

- Actual Spending
- Unspent CSR amount
- Excess CSR spending

Case Study



Mechanism:

- XYZ Limited is WOS subsidiary of B Ltd.
- XYZ Limited does not fulfill criteria prescribed u/s 135(1)
- B Ltd. is covered within criteria of Section 135(1)
- Will it be mandatory for XYZ Ltd. to spend on CSR by virtue of CSR rules ?

View:

- CSR regulation is to be seen qua the Company
- MCA FAQs on CSR 1.2



CSR Project Road Map



Selection of Project

- Objective – CSR activity definition + CSR policy
- Geographical Area – Local area vs thrust area
- Beneficiaries of CSR Project
- Project budget & cost

Implementation

- Selection of how project to be executed (Directly Implementation Agency or Partnership)
- Minimum benchmark parameters for execution
- Track record & experience
- No conflict of interest or political background
- Due diligence

Monitoring & Evaluation

- Frequency of spending review
- Whether site visit required
- Evaluating minimum qualitative & quantitative parameters
- Evaluation & monitoring team role
- Project report & MIS

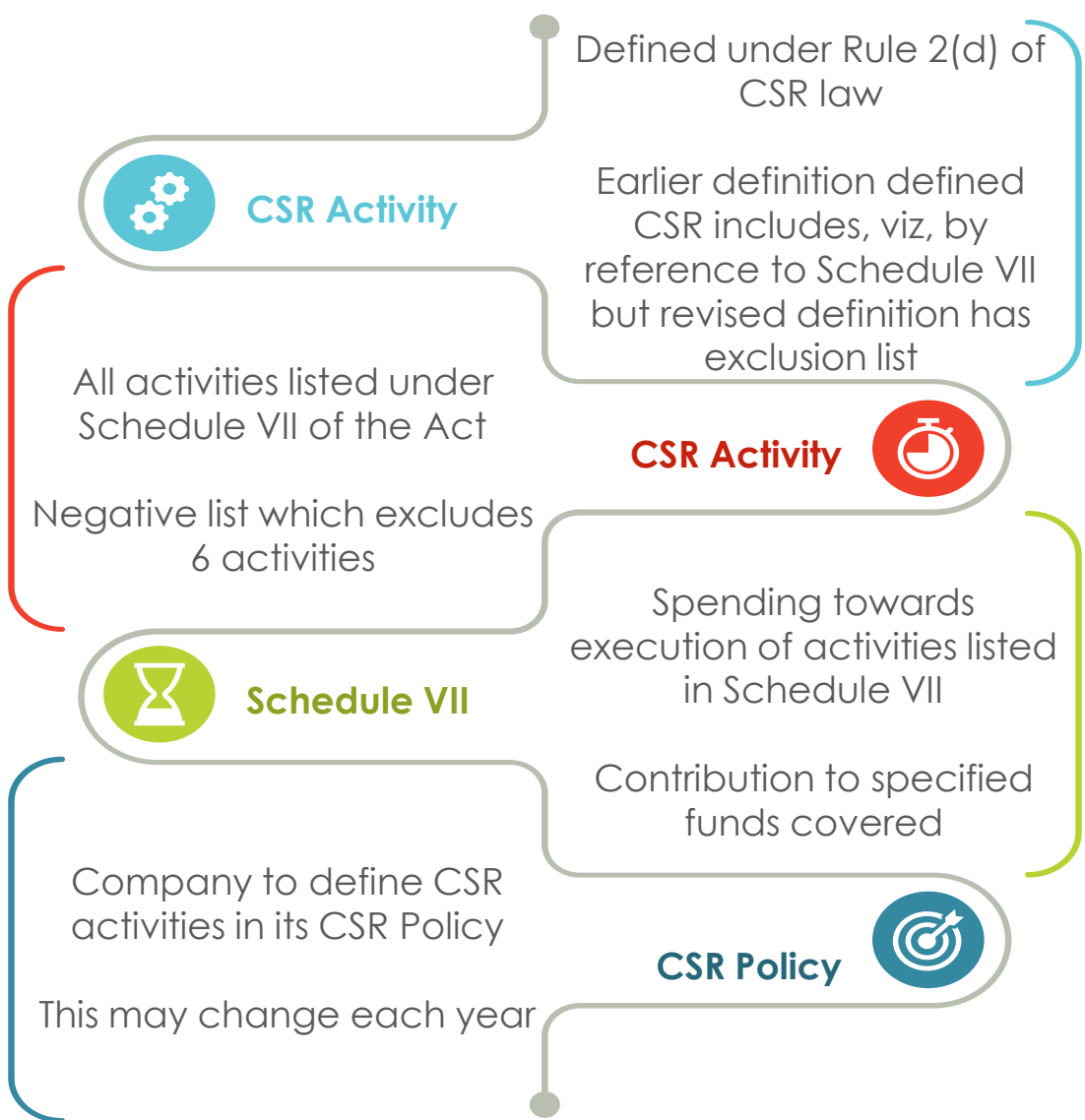
Impact Assessment

- Whether impact assessment required
- Selection of project for impact assessment & Independent body
- Key impact analysis report
- Project re-analysis based on impact analysis

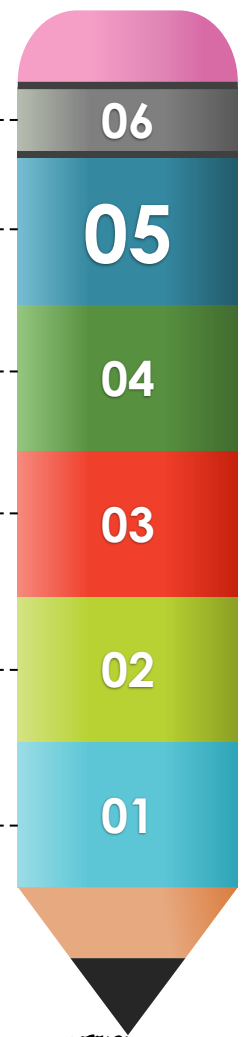
Other Aspects

- CSR Committee formation & roles responsibility defining
- Annual CSR Policy formation & approval
- Role & responsibility of board
- Periodic review of CSR spending & Policy & deciding changes if any required in projects, budget, location, etc.

CSR Activity



- Normal Course of Business
 - Activity Outside India
 - Contribution to political party
 - Benefiting Employees
 - Sponsorship Activities
 - Statutory fulfilment
- Obligation



Case Study – Normal Course of Business

Mechanism:

- ABC Ltd. is organizing preventive health check camp or awareness program exclusively for its dealers, customers, vendors and business associates
- Whether the said activity is CSR ?



View:

- Activity exclusively for persons associated with business of company shall fall under negative list - “normal course of business”.
- Not considered as CSR

Alternative

- If aforesaid health camp or awareness program is organized for public in large wherein dealers, customers, vendors and business associates may also be benefited
- View 1 – 100% amount eligible for CSR as it is for entire public in large
- View 2 – Calculate prorated amount of spending excluding exposure of normal course of business.

Things to be remembered

- Activity undertaken in normal course of business is excluded from CSR
- Normal course of business refers to things which are routine in nature for business like sale, purchase, etc.
- It refers to usual course and routine of business activities.
- Carve-out for companies engaged in research and development activity of new vaccine, drugs and medical devices in their normal course of business.

Problem Statement

- Whether free distribution of free samples to customers can be considered as CSR activity ?
- This activity fall under ‘normal course of business’ and hence may not be considered as CSR activity.

Case Study – Sponsorship Activity

Company



Mechanism:

- Company is engaged in accounting consulting business.
- Company affixed logo on drinking water bottle
- The said bottle is distributed to needy person through implementation agency
- Whether the said activity is CSR ?

View:

- Mere affixing of logo is not sponsorship
- There is no intention of deriving marketing benefit for Company's product or services
- MCA FAQ No. 4.3 – Circular No 14/2021 dated 25 August 2021

Marathon

Award Show

TV Program

Whether such activity is CSR Activity ?

Sponsorship Activity

- Any activity with an aim of deriving marketing benefits for Company's product or services is covered under Sponsorship Activity
- Company's are generally encouraged to undertake CSR activity through project rather than one-off event.
- Primary purpose should not be deriving marketing benefit, however, brand building as collateral is permissible.

Case Study – Benefit to Employee / Statutory Obligation

XYZ Ltd.

Employee's / Family

Mechanism

Project designed for benefit of Public not solely for employee's or family members. But what if employee's or their family members get benefited out of such project ?

For e.g. Health Camp / Food distribution / Eye Camp / Scholarship

Key Aspect :

- As per draft CSR rule released for public comments - 25% of CSR projects can be for employee's or family members.
- The new CSR law notified in Jan 2021, is without above provision.
- As per new law CSR project benefit can't be availed by employee's or family.
- CSR expense to be calculated on prorata basis.

Employee Definition

- Employee as per Section 2(k) of Code of Wages Act, 2019
- Apprentice - Excluded
- Contract Labour - Included

Problem Statement

- Employee deputed by the group companies not on payroll of Company be beneficiary of CSR Project ?

Company



Apprentice

Mechanism

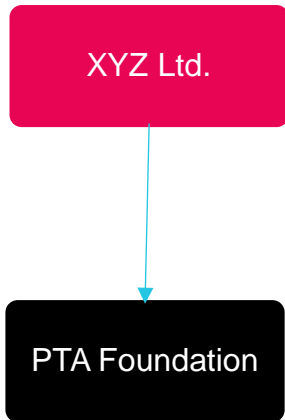
Company pays stipend to the apprentice to meet its statutory obligation

Company pays stipend to apprentice but claim it as CSR

Key Aspect :

- Payment of stipend to Apprentice for meeting statutory obligation is not CSR
- Payment to apprentice which is not in normal course of business and not for meeting statutory obligation can be considered as CSR expense
- For e.g. National Skill Development Program
- Consumption of apprentice post apprenticeship within organization

Case Study – Schedule VII



Mechanism

PTA Foundation is NGO formed for cleaning Ganga river ?

XYZ Ltd. contributed to PTA foundation corpus fund for cleaning Ganga river

Key Aspect :

- As per Schedule VII – clause (iv) “contribution to the clean Ganga Fund set-up by the Central Government for rejuvenation of river Ganga”
- Schedule VII provides very specific funds for contribution which are admissible as CSR. Mere contribution to any other fund not prescribed under Schedule VII can’t be termed as CSR spending.

List of Funds prescribed in Schedule VII

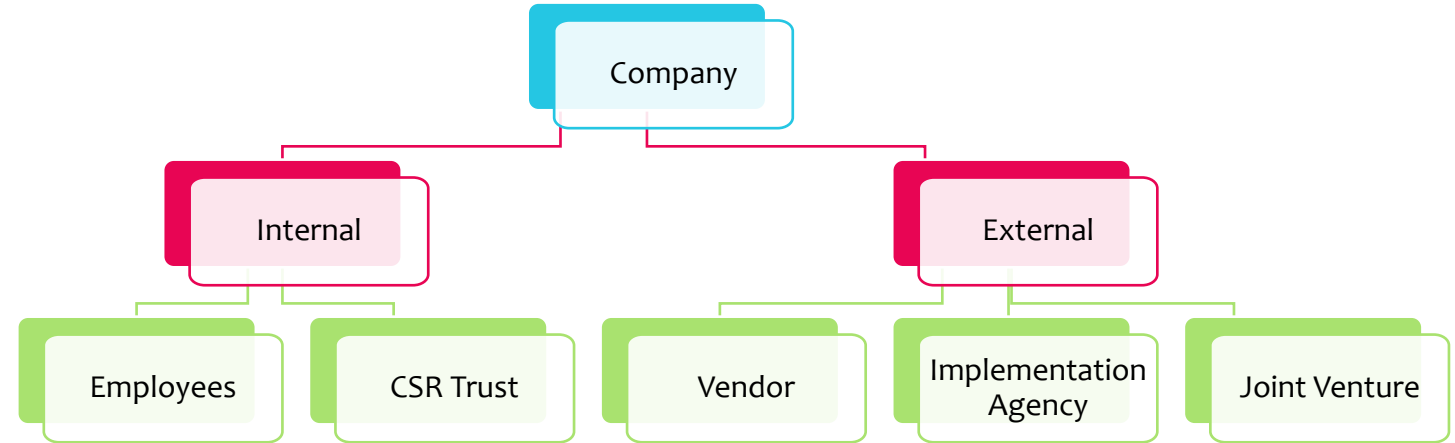
- Contribution to
 - a) Swatch Bharat Kosh;
 - b) Clean Ganga Fund;
 - c) Prime Minister’s National Relief Fund (PMNRF);
 - d) Prime Minister’s Citizen Assistance and Relief in Emergency Situations Fund (PM Cares Fund);Any other fund set-up by the Central Government and notified by the MCA, for socio-economic development and relief and welfare of scheduled castes, the scheduled Tribes, other backward classes, minorities and women.
- Funds whether formed by Central or state Government should also be evaluated as per Schedule VII.
- Contributions to public funded Universities. It does not cover private funded universities. Few specific universities prescribed under Schedule VII

FAQ No. 3.16 – Circular No. 14/2021 dated 25 August 2021 –

Act does not recognize any contribution to any other fund which is not specially mentioned in Schedule VII, as an admissible CSR expenditure.

Implementation of CSR

- Rule 4 provides of carrying CSR activities either by
 - Company itself; or
 - Specified implementation agencies; or
 - joint implementation with one or more companies
- Type of agencies defined under Rule 4(1)
 - **Captives** – Section 8 Company, registered public trust or registered society – registered u/s 12A & 80G of the Income-tax Act
 - **Government Agencies** – Section 8 Company, registered trust or registered society
 - **Statutory bodies** – Entity established under an Act of parliament or state legislature
 - **Public agencies** - Section 8 Company, registered trust or registered society - registered u/s 12A & 80G of the Income-tax Act and having established track record of atleast 3 years in undertaking similar activities



Mandatory registration for Implementation Agency

- MCA registration – CSR 1
- Income tax registration u/s 12A and 80G
- Local Trust Act

Rule 4(3) of CSR Rules

- Company may engage international organization for designing, monitoring and evaluation of CSR project
- It cannot implement project

New Law Restrictions

- Post new CSR law below entities are not allowed to Act as implementation agency:
 - Private Trust
 - Company other than Section 8 Company
 - Unregistered Public trust
 - Trust whose registration is not renewed u/s 12A & 80G as per new provisions

Case Study



Tree Plantation

- Company is proposing to plant trees roadside across Jaipur city
- CSR Activity – covered under Schedule VII clause (iv)

Road Safety Training & Helmet distribution

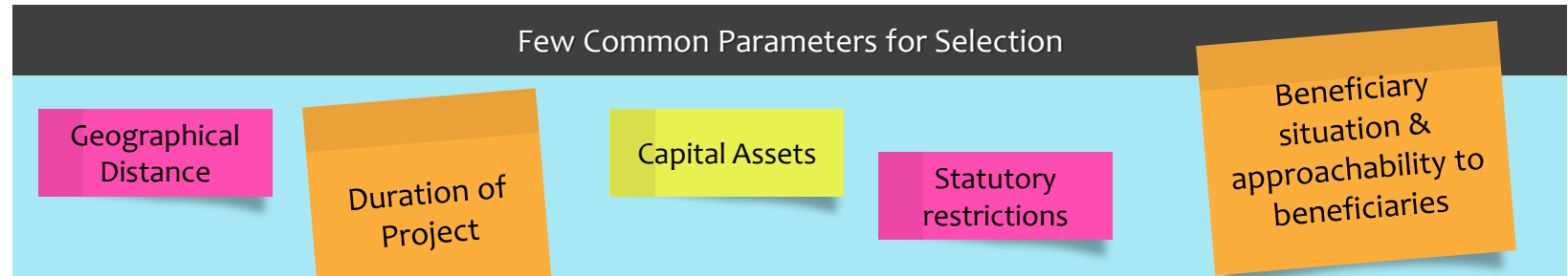
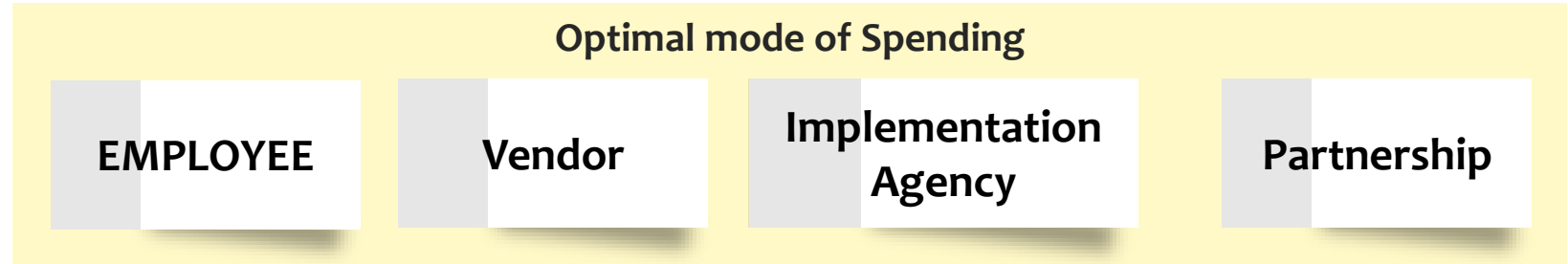
- Arrange workshops for public awareness on road safety & distribute helmets
- CSR Activity – covered under Schedule VII clause (i) & (ii)

School Infrastructure

- Repair & maintenance of school infra including building toilets
- CSR Activity – covered under Schedule VII clause (iv)

Mode of Spending

- Whether above activity is covered under CSR activity definition ?
- How can Company implement the above projects during the year ?



Appropriate Implementation Partner Selection



Importance

- Selection of appropriate implementation agency is required for successful and effective execution of project
- Beneficiaries may not be benefited out of CSR project. Funds can remain unspent. Fraudulent activity can take place.

Track Record

Well established track record of 3 years or more in executed similar project

Conflict of Interest

No conflict of interest with employee. No direct benefit to employee or family

Geo Location

Availability of implementation agency at required geographical location

Independence

No association directly or indirectly with political party

Statutory Registration

Rule 4(1) compliance
Registration u/s 12A / 80G & CSR 1 with MCA

Other Aspects

Reputation of implementation Agency,
Any regulatory penalty or statutory non-compliance

Case Study

Issue:

- ABC Foundation is executing CSR project for XYZ Ltd.
- During the year under consideration Section 12A / 80G registration of trust expired and failed to renew
- Whether ABC foundation is allowed to act as IA for XYZ Ltd.

Issue:

- ABC Foundation is executing CSR project for XYZ Ltd.
- During the year under consideration Mr. A son of XYZ Ltd.'s director joined as trustee in ABC Foundation
- Whether ABC foundation is allowed to act as IA for XYZ Ltd.

Issue:

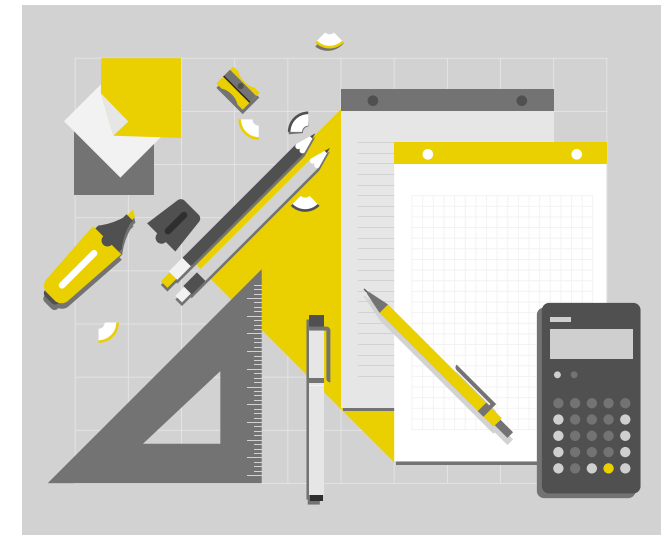
- ABC Foundation is formed for benefit of any particular religious community or cast
- Whether ABC foundation is allowed to act as IA for XYZ Ltd.

Issue:

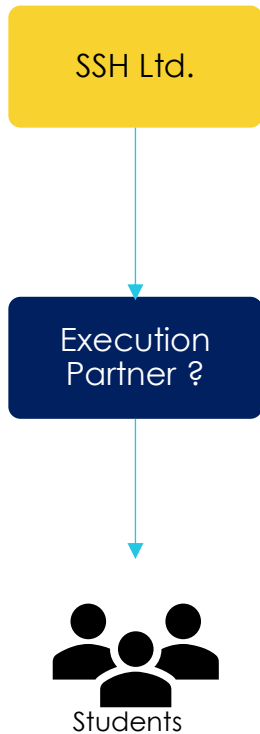
- ABC Foundation is executing CSR project for XYZ Ltd.
- It has valid registration u/s 12A / 80G & CSR 1
- Trust failed to obtain registration under local trust Act
- Whether ABC foundation is allowed to act as IA for XYZ Ltd.

Issue:

- ABC Foundation is executing CSR project for XYZ Ltd.
- During the year under consideration its file was selected for Income-tax scrutiny
- Due to non-compliance under tax law, its registration was cancelled
- Whether ABC foundation is allowed to act as IA for XYZ Ltd.



Case Study



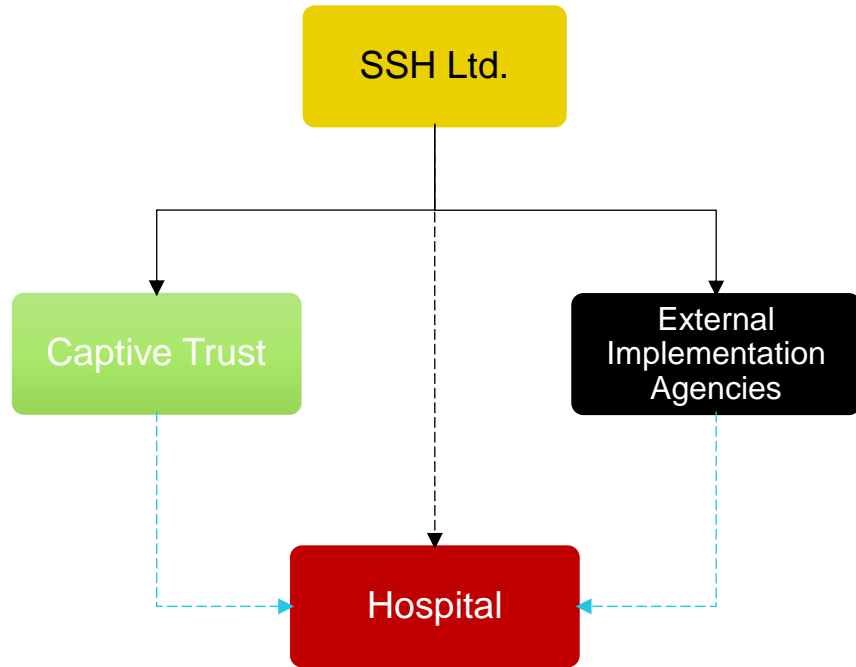
Issue:

- SSH Ltd. is proposing to spend funds into a CSR project – Scholarship to Students
- In order to execute the said project SSH Ltd. is proposing to select appropriate vendor or IA
- Whether ABC Foundation can act as IA for the said project ?

Analysis

- Section 13(10) of the Income-tax Act, 1961 restricts deduction of contribution or donation to any person.
- The word “person” is very wide and includes individuals. Hence, assistance to individual such as scholarship, medical assistance, etc. is covered and disallowed in the hands of trust.
- Considering the same, ABC Foundation should not act as IA for the scholarship program.
- SSH Ltd. should avoid hiring any trust as IA for the said project.
- It should directly distribute the scholarship to the students.

Case Study



Issue:

- SSH Ltd. is proposing to donate laboratory machine to hospitals.
- What are options available to SSH Ltd. For executing the said project.

Analysis

- As per Rule 7(4) of CSR Rules provides that Company may spent for creation or acquisition of capital assets, which shall be held by –
 - A Company established u/s 8 of the Act or Registered public trust or registered society having charitable objects and CSR Registration; or
 - Beneficiaries of said CSR project, in the form of self-helping groups, collectives, entities; or
 - A public authority

Eligible Entity I

- Company registered u/s 8 or registered public trust or society
- Charitable object
- Have registration u/s 12A & 80G along with CSR 1

Eligible Entity II

- Beneficiaries of CSR Project
- Self-helping group
- Collectives
- Entities

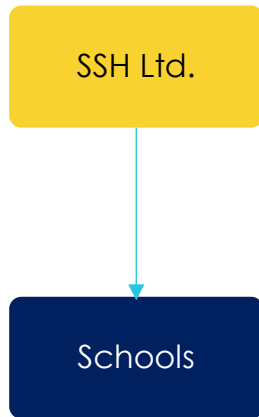
Eligible Entity III

- A public authority

Reporting in FS:

Separate disclosure in FS notes

Case Study



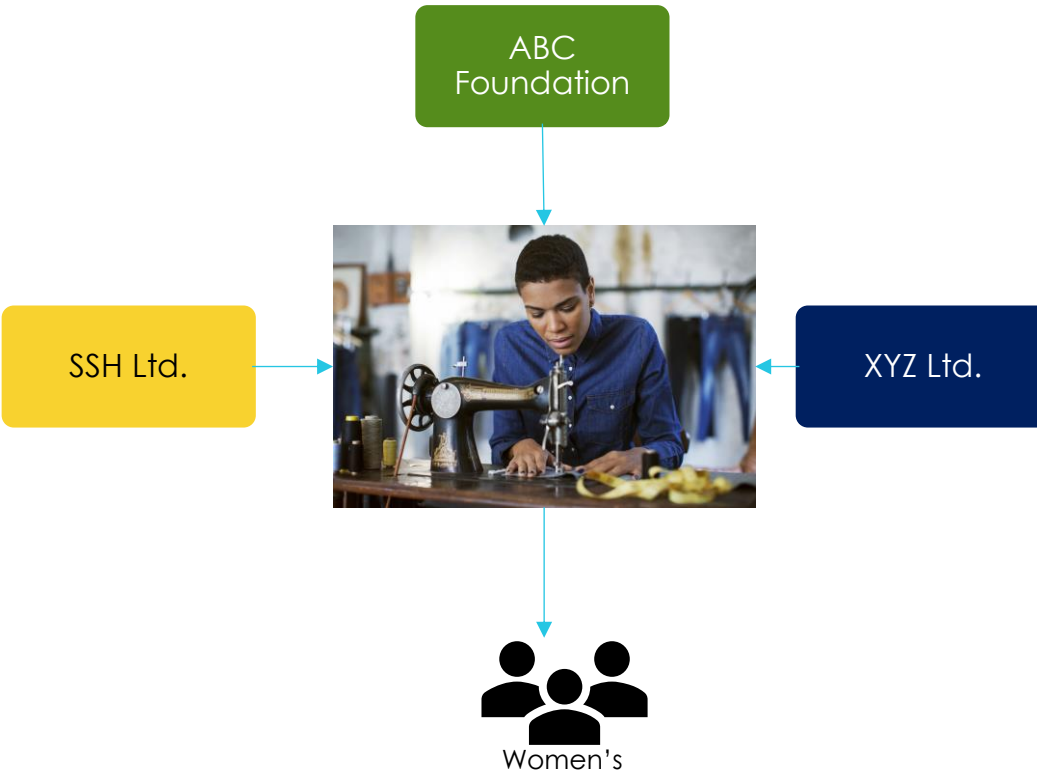
Issue:

- There are almost 200 laptops in the books of SSH Ltd. wherein useful life of laptops have expired. The residual value of these laptops is around Rs.10 lakhs.
- The Company is proposing to give these laptops to 3 schools.
- Whether SSH Ltd. is allowed to claim Rs.10 lakhs as CSR expense.

Analysis

- Section 135(5) of the Company act provides that the board of every company shall ensure that **the Company spends**.
- MCA FAQs no. 3.12 that CSR contribution cannot be in kind and monetized.
- Giving laptops to the schools does not result into actual spending. It is contribution in kind which is not permissible CSR expenditure.
- Alternative possible option is to get the laptops refurbished and purchase the same by spending funds and thereafter give the same to schools.

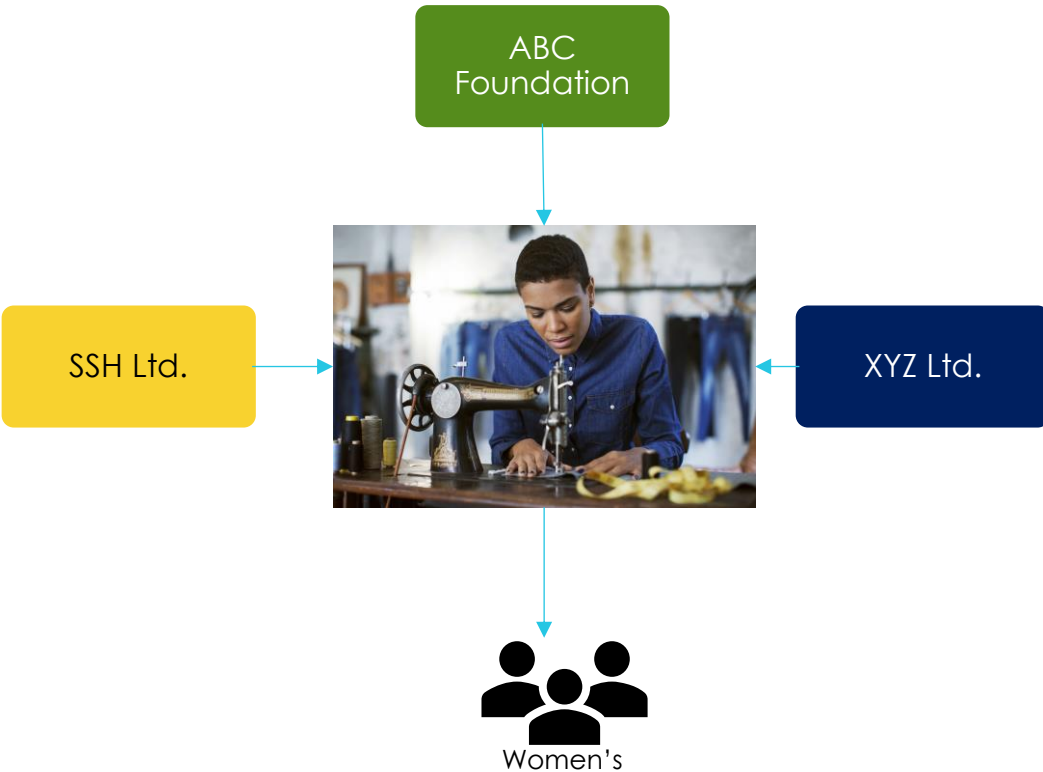
Case Study



- SSH Ltd. And XYZ Ltd. Has entered into a partnership agreement for executing a CSR project.

- **Name of Project :** Rural Women Empowerment
- **Objective of Project :** Enable rural women's to become self dependent and upgrade living standard
- **Geographical Location:** Rural areas of Rajasthan (near to Jaipur) & Gujarat (near to Ahmedabad)
- **Budget :** Estimated cost Rs.2 crore
 - Capex – Machine cost to be incurred by XYZ Ltd.
 - Opex – Operating cost of project to be incurred by SSH Ltd.
- **Project duration :** 2 years in 2 phases
 - Phase 1 – 300 Women’s to be benefited in areas near Jaipur
 - Phase 2 - 300 Women’s to be benefited in areas near Ahmedabad
- **Implementation Agency:** The project shall be overall implemented and executed by an NGO having experience of of almost 5 years in executing similar project and have presence across the state of Rajasthan & Gujarat.

Case Study



- SSH Ltd. And XYZ Ltd. Has entered into a partnership agreement for executing a CSR project.

- **Implementation Process:**
 - Organizing small camp in villages for selecting beneficiaries for the project
 - Finalization of list of beneficiaries as per defined parameters
 - Machines shall be contributed in project by XYZ Ltd. whereas opex cost to be paid to ABC Foundation by SSH Ltd.
 - Handing over Machines to the beneficiaries along with accessories
 - ABC foundation to organize training to the selected beneficiaries:
 - Operating of Machine
 - Techniques of stitching
 - Various Embroidery techniques, etc.
- **Monitoring & Evaluation:**
 - ABC Foundation to submit periodic reports, MIS and documents to XYZ Ltd. & SSH Ltd.
 - At the end of each phase or year end whichever is earlier submit UC
 - SSH Ltd. & XYZ Ltd. to monitor the project, conduct site visit, etc.
- **Impact Assessment:** SSH Ltd. & XYZ Ltd. to carry out impact assessment of Project including key challenges of socio – economic addressed

CSR Implementation Agreement

Object of Project

- Object of project should be captured in detail
- Nexus of object of project with definition with CSR Activity or Schedule VII or SDG's should be defined
- Primary and secondary object of project should be specially bifurcated in the agreement

Fund Utilization Period

- Period within which funds are to be utilized by IA's to be defined in MOU.
- This period should be mandatorily defined in MOU to mitigate exposure of unspent amount at year end
- Long term project phases should be defined in MOU

Refund of Unspent Fund

- There should be provision for refund in MOU so that at the year end unspent amount of funds can be recovered from IA's and deposited into separate bank account.

Sub-contracting of Project

- Sub-contracting of project by IA should be restricted in order to have control over quality and accurate execution of project

Linking of Fund Payment with UC

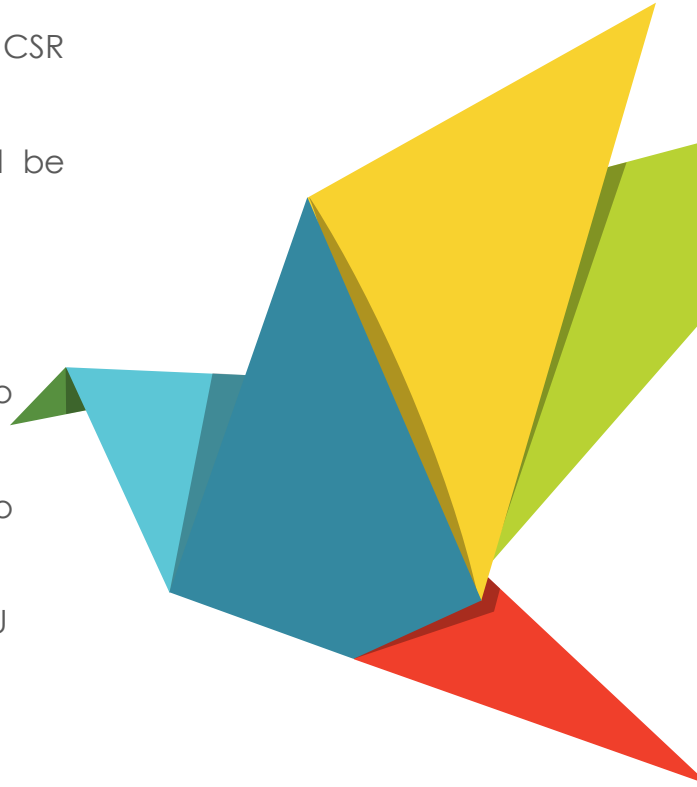
- Trenches of payment of funds should be linked to utilization / outcome of Project
- Once Project for one trench of fund is closed UC should be submitted and next trench of fund should be issued post that
- Rather than 100% advance , payment should be released in trenches

Penalty Clause in MOU

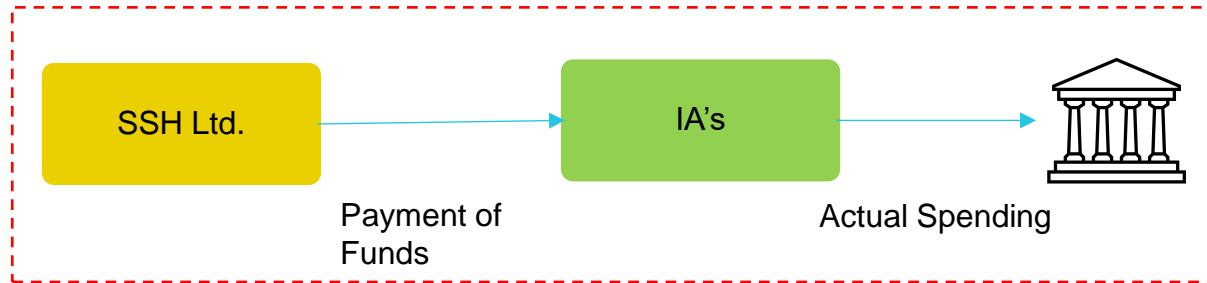
- Penalty clause for non spending of funds or non-completion of project within the stipulated time by IA's should be added in MOU
- There should be very clear factoring of this aspect in MOU to safeguard Company from risk of funds remaining unspent

MOU Execution

- MOU's are executed on letter head of Company or on blank paper.
- MOU should be ideally executed on Rs.500 stamp paper in order to make it enforceable.



Utilization Certificate



ICAI Guidelines on Utilization Certificate

- As per ICAI Guidance Note on Audit of CSR Expenses, Companies should obtain Chartered Accountant's / Auditor's Report on utilization of funds if CSR is done through a third Party.
- Further as per ICAI advisory committee's suggestion, wherever Company undertakes the CSR activity through third party / NGO, it is advised that an Independent Practitioner's Report on Utilization of such CSR Funds should be given by third party / NGO to Company

CFO Certification on UC

- CFO is mandatorily required to certify utilisation of funds from FY 2020-21 onwards. It is onus on CFO to certify & present before board.

Current Status

Vendor are issuing UC's without considering the change in law.

Mere one pager UC with declaration of amount of spending in 2 to 3 line is not appropriate UC

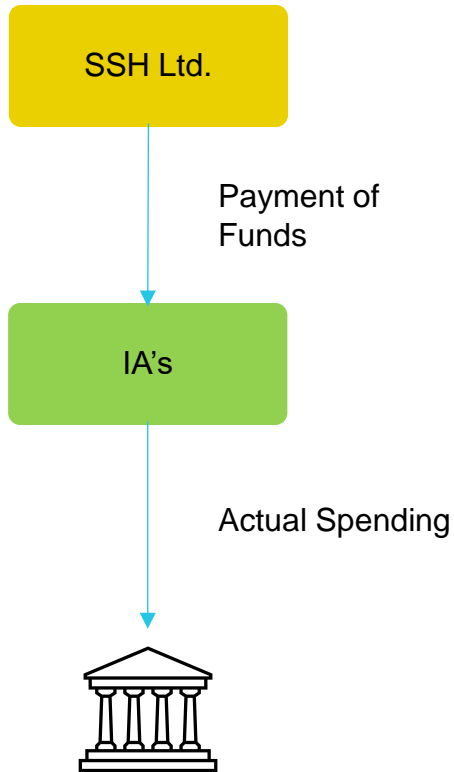
Timing of UC in MOU

Most of the MOU entered with IA's provide for issuance of UC at the year end in one go which is not correct now considering the amendment

For each project, UC should be issued within 30 days from the date of completion of project or on POCCM basis.

- UC is issued by IA's on its own letter head which is not correct for the independence of the project.
- UC issued by CA's are also not as per ICAI format.
- DIN should be quoted by CA mandatorily on UC's

TDS on CSR Spending



Particular	Amount
Gross Payment	20,00,000
TDS @ 1%	20,000
Net Payment	19,80,000

Issue:

Whether TDS is to be deducted where payments are being made to external agencies for availing contractual/professional services from such agencies registered u/s 12A of the Act ?

View 1: No TDS required to be deducted

- As per view 1, no TDS is required to be deducted on payment to be made to IA's for contract / professional services.
- This view is based on logic that the income of such IA's is exempt u/s 11 due to which no tax should be attracted – Entire contribution / grant received towards CSR is exempt in the hands of IA

View 2: TDS required to be deducted

- TDS should be deducted on payment to be made to IA's for contract / professional services.
- Section 194C & 194J are transaction- based taxing sections wherein language provides as under:
 - 194C - any sum to any resident for carrying out work contract
 - 194J – Paying to a resident any sum by way of a) fee for professional services or b) fee for technical services, etc.
- The said sections are attracted if sum is paid either towards work contract or professional fee / technical services.
- The section does not use word “any income”. There is no specific exclusion for IA's having registration u/s 12A.
- Section 194I – Any income by way of rent – This section is attracted based on chargeability of income in the hands of recipient.

Alternative option – IA's to furnish lower withholding or Nil withholding certificates u/s 197

Disclosure of TDS amount should be made by IA's on payment receipt & UC's

Administrative Overhead



Administrative Overhead ceiling

- Rule 7(1) of CSR Rules provide that administrative overhead for management of CSR activities shall not exceed
 - 5% of total CSR expenditure for the FY.



Administrative Overhead Definition

- Rule 2(1)(b) of The Rules
- Expenditure incurred by Company for general management & administration of CSR functions
- But does not include expenses directly incurred for designing, implementation, monitoring & evaluation of particular CSR program



Administrative expenses incurred by IA

- The above administrative expenses is only directly incurred by the Company
- Administrative cost incurred by implementing agencies on the management of CSR activities are not covered under the said threshold.

Particulars	Amount	Narrative
Salary	2,00,000	Cost of person responsible for overall monitoring of CSR spending and accounts
Training cost of Employees	1,00,000	Cost incurred for training employees to monitor projects & CSR compliance
Rental of HO premises	1,00,000	
Office supplies	50,000	
Legal & Professional Exp.	1,00,000	This include audit expenses, tax audit, tax filings, etc.
Travelling Expenses	1,00,000	Cost of travel incurred for various projects
Branding Expenses	2,00,000	Cost of printing logo of Company while executing projects
Involvement of Employees	20,00,000	

Impact Assessment Cost:

- Administrative overhead does not include impact assessment cost within ceiling of 5%
- Impact assessment cost can be 2% of total CSR expenditure for that FY or Rs.50 lakhs (whichever is higher)



Thank You