MOORE STEPHENS SINGHI

News Letter – December 2015

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Inside

PREAMBLE

The Companies Act, 2013 has made it mandatory to certain companies to follow the CSR guidelines by inserting a new section, i.e., Section 135 in the Act. In exercise of the powers conferred under clause (o) and clause (q) of sub-section 3 of Section 134 read with Section 135 and sub-sections (1) and (2) of Section 469 of the Companies Act, 2013 the Central Government hereby makes the Rules namely “Company (Corporate Social Responsibility Policy) Rules, 2014”. The rules shall come into force on the 1st day of April, 2014 as notified through publication in the official gazette on 27th February, 2014 and shall be applicable from the financial year 2014-15.

DEFINITION

CSR has also been defined by Ministry of Corporate Affairs vide Rule 2 (c) of Companies (Corporate Social Responsibility Policy) Rules, 2014 as:

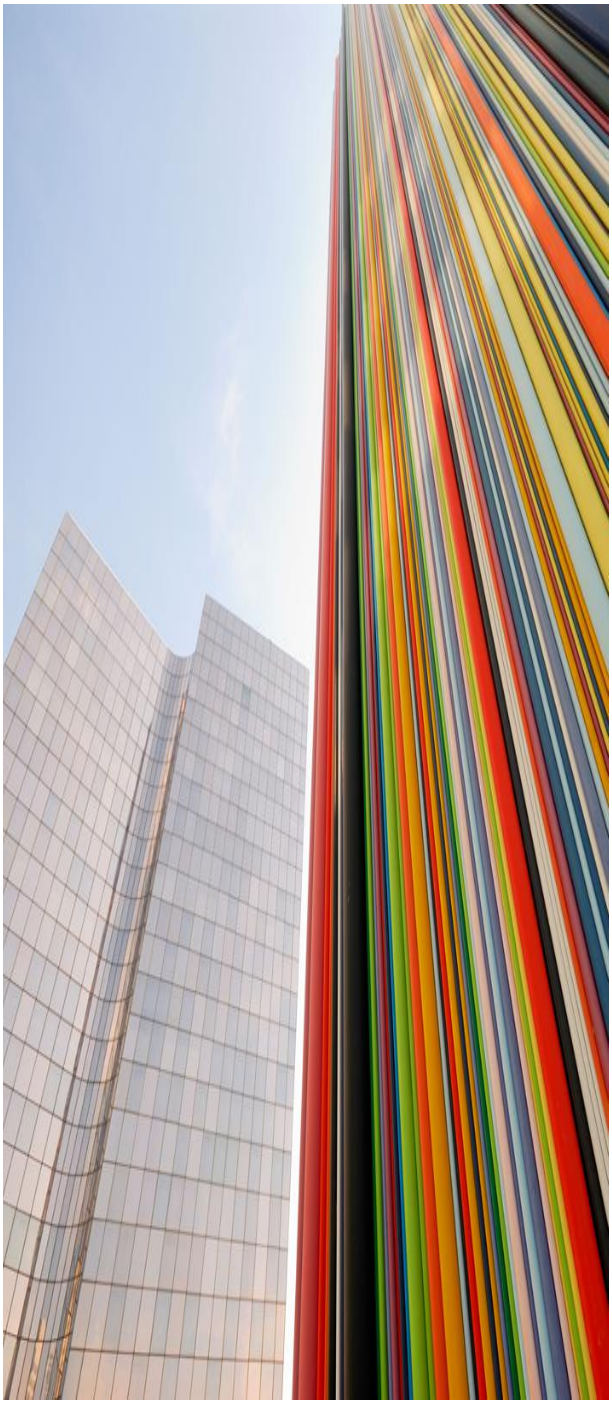
“CSR means and includes but is not limited to:-

- Projects or programs relating to activities specified in Schedule VII of the Act;
- Projects or programs relating to activities undertaken by the Board of Directors in pursuance of recommendations of the CSR Committee of the Board as per the declared CSR Policy of the Company subject to the condition that such policy will cover subjects enumerated in Schedule VII of the Act.”

APPLICABILITY OF SECTION 135

Every company satisfying any of the following conditions during any financial year shall constitute a Corporate Social Responsibility (CSR) Committee comprising of minimum three Directors of which at least one should be independent:

- ❖ Net Worth of Rs. 500 crores or more; or
- ❖ Turnover of Rs. 1,000 crores or more; or
- ❖ Net Profit of Rs. 5 crores or more



EXEMPTION TO THE CSR COMMITTEE

- Unlisted public company, which is not required to have an Independent Director pursuant to section 149 (4) of the Act, shall not be required to have such director on the committee;
- Private limited company with two directors shall form the committee with such directors only;
- For a foreign company CSR committee shall have at least two Directors of which one shall be as specified in 380 (1) (d) of the Act and one director shall be nominated by the foreign company

CSR - SPEND

Minimum of two percent of the average net profits of the company made during the three immediately preceding financial years

- For the first year of reporting of CSR, Net Profit shall mean average of the annual net profit for the three preceding financial years ending on or before 31.03.2014
- The company shall give preference to the local area and areas around where it operates for spending the amount for CSR
- If the amount as calculated above is not spent, the reason for the same is to be specified in the Directors' Report

A Company may decide to undertake its CSR activities approved by the CSR Committee with a view to discharge its CSR obligation as arising U/s 135 in any of the three ways, its accounting shall be as follows:

	Way of Spending	Accounting
1	Making a Contribution to Funds as specified in Schedule VII	Needs to be treated as expenditure immediately and charged to Statement of Profit & Loss.
2	Through a registered Trust or Society	Needs to be treated as expenditure immediately and charged to Statement of Profit & Loss.
3	Expenditure incurred on own	i. If the spending is in the nature of creation of asset e.g. School, it needs to be observed that whether the control is with the company or not, if the control exists disclosed it as an asset and no fulfilment of CSR obligation, if not then charged to statement of profit & loss. ii. If the CSR activities is conducted through the services rendered in normal course of business or through its production then the valuation of the same should be as per AS-2 and charged off to Statement of Profit & loss. iii. Salary and other allowances paid to employees involved directly in executing the CSR activities of the company can also be treated as part of the CSR obligation.

No provision is required to be created for the unspent amount of CSR obligation rather only a disclosure of the same is to be given in the Directors' Report. However, if there is an obligation through a contractual agreement relevant provision for the same needs to be created.

If any income or surplus is generated during the execution of CSR activities, the same shall not form part of the business income of the company and rather the company shall recognize it as liability towards CSR obligation

DISCLOSURE

All the expenditure incurred by the company should be disclosed as a separate line item in Statement of Profit & Loss (through note – "Other Expenses") with detailed breakup various heads under which the expenditure has been incurred should be given in the explanatory note of the same.

LOAN TO DIRECTORS – **SEC.185 OF COMPANIES ACT, 2013**

PREAMBLE

- Applicable from: 12th September, 2013
- Corresponding to Section 295 Of Companies Act, 1956
- Applicable to Private Limited Companies also

RESTRICTION

No Company shall directly or indirectly advance any loan, including any loan represented by a book debt, to any of its Directors or to any other person in whom the Director is interested, or give any guarantee or provide any security in connection with loan taken by Director or such other person.

Thus, a Company (hereinafter referred to as 'Lending Company') cannot advance a loan to:

- Any Director;

- Any Director of Holding company of the Lending Company;

- Any Partner or Relative of any such Directors mentioned above;

- Any Firm in which any such Director or Relative is partner;

-Any Private Company of which any such Director of Lending Company is a Director or Member;

- Any Body Corporate (i.e. Company or LLP) at a general meeting of which not less than 25% of total voting power may be exercised individually or jointly by any such Director/(s) of Lending company;

- Any Body Corporate, the Board of Directors of which is controlled by the any Director(s) of Lending Company

EXEMPTIONS/RELAXATIONS

The aforesaid restrictions are not applicable to:

- Giving of any loan to the Managing or Whole-time Director –

(i) as a part of the conditions of service extended by the company to all its employees;

(ii) pursuant to any scheme approved by members vide special resolution.

- A Company which provides loans in the ordinary course of its business and interest in respect of such loans is charged at a rate not less than Bank rate declared by RBI.

As per the amendment dated **26th May, 2015**, the following are added to the above mentioned exceptions:

- Loans made or guarantee given or security provided by the holding company to its wholly owned subsidiary; or
- Guarantee given or security provided by the holding company in respect of loan made by the bank or financial institutions to its subsidiaries.

Provided the loans made above are utilized by a subsidiary for its principal business activity.

The Notification dated **5th June, 2015** provides that Section 185 shall not apply to a private company satisfying all of the following conditions:

- No body corporate shall have invested any money in the share capital of the company; and
- The borrowings of the company from banks, financial institutions or any body corporate shall not exceed twice the amount of paid-up share capital or INR 500 million – whichever is lower; and
- There shall be no subsisting defaults in repayment of such borrowings at the time of making transaction.

INCOME COMPUTATION & DISCLOSURE STANDARDS (Effective from 1st April 2015)

The Central Board of Direct Taxes vide its Notification No: 33/2015 dated 31st March 2015 notified 10 Income Computation and Disclosure Standards (‘ICDS’) which is to be followed by all assessees at the time of computation of income chargeable to tax under the head “Profit and Gains of Business or Profession” or “Income from other sources”.

Section 145(2) of the Income tax Act, 1961 empowers Central Government to issue Accounting Standards for computation of Income. Earlier in 1996, the Central Government had notified only two accounting standards i.e., ‘Disclosure of Accounting Policies’ & ‘Disclosure of Prior Period Items and Extraordinary Items and Changes in Accounting Policies’. During December 2010, the Central Government constituted a committee to draft ICDS. Thereafter, in October 2012, the Committee issued draft of 14 tax accounting standards for public comments. Finally, on revision, now 10 ICDS have been notified for compliance by all taxpayers following mercantile system of accounting.

EXECUTIVE SUMMARY

These ICDS now supersede the two standards notified in 1996 and the same is effective from 1st April, 2015 i.e., tax year 2015-16 (Assessment Year 2016-17).

ICDS Number	Name of the ICDS
I	Accounting Policies
II	Valuation of Inventories
III	Construction Contracts
IV	Revenue Recognition
V	Tangible Fixed Assets
VI	Effects of Changes in Foreign Exchange Rates
VII	Government Grants
VIII	Securities
IX	Borrowing Costs
X	Provisions, Contingent Liabilities & Contingent Assets

SIGNIFICANT DEVIATIONS

A summary of significant deviations in ICDS VI to ICDS X from the existing Accounting Standards is as follows:

ICDS VI (Effects of Change in Foreign Exchange rates)

- **Exchange Differences on translation of non-integral foreign operations**

  All resulting exchange differences shall be recognized as income or as expenses in that previous year.

  AS-11 stipulates that exchange differences on translation of non-integral foreign operations should be recognition in the Foreign Currency Translation Reserve. But ICDS provide for charging to Profit & Loss.

- **Recognition of Exchange Difference arising on settlement of monetary item**

  Exchange Difference in respect of monetary items, exchange differences arising on the settlement thereof or on conversion thereof at last day of the previous year shall be recognized as income or as expense in that previous year

ICDS VII (Government Grants)

- Government grants should either be treated as revenue receipt or should be reduced from the cost of fixed assets based on the purpose for which such grant or subsidy is given
- Recognition of Government grants shall not be postponed beyond the date of actual receipt

ICDS VIII (Securities)

- ICDS only deals with securities held as stock in trade
- Securities should be valued at lower of cost or net realizable value (NRV). Comparison of cost and NRV shall be done category-wise (and not for each individual security), for which securities shall be classified into the following categories: (a) Shares (b) Debt securities (c) Convertible securities (d) Any other securities not covered above
- Unlisted Securities to be valued at cost
- In case of acquisition of securities in exchange for issue of shares or other securities or in exchange for another asset, fair value of shares or securities acquired shall be recorded as actual cost of the securities

ICDS IX (Borrowing Cost)

- Borrowing cost will not include exchange differences arising from foreign currency borrowings
- As against the criterion of substantial period of time for classifying any asset (whether fixed asset or inventory) as qualifying asset under ICAI AS-16, ICDS retains substantial period condition (i.e. 12 months) only for qualifying assets in the nature of inventory. Thus, ICDS requires capitalisation of borrowing costs for other tangible and intangible assets even if they do not require substantial period for completion
- Capitalisation of specific borrowing cost shall commence from date of borrowing
- A normative pro-ration formula is provided for capitalizing borrowing costs relating to general borrowings. ICDS also provides specific rules for capitalisation in respect of: (a.) Assets acquired and put to use during same tax year and (b.) Assets awaiting capitalization brought forward from earlier year and put to use during the relevant tax year
- Income on temporary investments of borrowed funds cannot be reduced from borrowing costs eligible for capitalization in ICDS
- Condition of suspension of capitalization during interruption of active development is not there in ICDS.

ICDS X (Provisions, Contingent Liabilities and Contingent Assets)

- A provision can be recognized when it is “reasonably certain” that an outflow of economic resources will be required to settle an obligation.
- A contingent asset can be recognized when the realization of related income is “reasonably certain”.

Our Touch **Points**

KOLKATA	1B Old Post Office Street Emerald House, 4th Floor, Kolkata - 700 001 Ph. No: +91 (33) 2248 4573 / 4577 / 7530 services@singhico.com
NEW DELHI	402-403, Pragati House 47-48, Nehru Place, New Delhi - 110 019 Ph. No: +91 (11) 2629 3986/87 services@singhico.com
MUMBAI	B2 402B, Marathon Innova 4th Floor, Off Ganpatrao Kadam Marg Lower Parel, Mumbai - 400 013 Ph. No: +91 (22) 6662 5537 / 8 services@singhico.com
CHENNAI	Unit-11-D, 11th Floor, Ega Trade Centre, 809, Poonamallee High Road, Kilpauk Chennai - 600 010 Ph. No: +91 (44) 4291 8459 services@singhico.com
BENGALURU	2nd Main Gandhi Nagar Bangalore - 560 009 Ph. No: +91 (80) 2228 1573 services@singhico.com
HYDERABAD	5-4-187/3 & 4 Soham Mansion 2nd Floor, M. G. Road Secunderabad - 500 003 Ph. No.: +91 (712) 6641111 services@singhico.com
NAGPUR	1st Floor, VCA Complex, Civil Lines Nagpur - 440001 Ph. No.: +91 (40) 27542635 services@singhico.com