



FAQs

From the AMCHAM RoundTable on CSR Amendments 2021 - Impact Assessments

21st June 2021



FAQs on:

- Covid related Qs
- Impact Assessments
- CSR Form
- Unspent amount



Covid Related Questions

Do free vaccination drives conducted for employees, extended workforce and their families qualify under CSR spend?

No, by legal definition CSR excludes activities benefitting employees (and their family members) of the company as defined in section 2 of the Code on Wages, 2019. The MCA has not made an exception to this rule for vaccinating employees yet.

In cases when the employees succumb to COVID, can a corporate support their family under CSR? Considering since the employees passing, an employee-employer relationship may no longer exist.

Such support cannot be classified as CSR since the support has been extended due to an employee-employer relationship that once existed.



Given the increased role of the Board under CSR laws, what is the best approach to manage fast paced CSR projects such as COVID relief matters which require efficient and quick decision making?

The preferred way of managing time-sensitive COVID relief work is to setup a task force of 4 or 5 people cutting across various vertical projects. On the operational front, the NGOs that are implementing the project will have to be proactive, given their last mile connectivity. Further, corporates may deploy funds to existing partners as drawing a new RFP will take time.

It is very crucial that the donor and the donee work on a mutual trust basis for efficient delivery of the program. Additionally, the NGOs must strive to assist the corporate in being compliant with statutory documentation. This will allow the Board some leeway from getting involved in daily project work and can rely on the trusted NGOs to furnish the compliance documentation in a timely manner.

Impact Assessment

For projects under scope that were started or completed after Jan 22, 2021; is the impact assessment applicable a year (i.e., Jan 2022) after completion? Accordingly, will it be reported in the Directors report of 2022?

Yes, that is correct. IA must be done for only those projects that have been completed for more than one year. The IA report completed in a FY must be annexed to the CSR report furnished in the Annual Report of that particular FY. However, to clarify, IA need not be completed immediately after one year of completion of the project, as different projects may have an impact which may be assessable after a longer duration.



Can amount in Unspent CSR A/c be used for COVID relief work?

Any amount in the Unspent CSR A/c must be spent by the company in pursuance of its obligation towards the CSR Policy within a period of three financial years from the date of such transfer, failing which, the company must transfer the same to a Fund. If the CSR Policy of the company permits Covid relief work, then with requisite internal approvals, it may be possible to utilise the amount for Covid relief work.

Please provide clarity on prescribed duration of the ongoing projects. What are the implications of such a condition for longer-term CSR projects that companies take up, or have already taken up?

The CSR Rules state that companies can undertake CSR projects with a duration limit of 3 financial years, excluding the year in which the project was commenced. Any past or future projects that exceed this timeline must be split into consecutive projects of such prescribed duration.

Impact Assessment (contd)



If a corporation has completed multiple CSR projects of budget over INR 1 Crore and the said projects are eligible for impact assessment, how will the company then carry out impact assessment for all its partners given there is a cap of INR 50 lakhs in a FY for impact assessment?

Budget for conducting the impact assessment in a FY is either (a) 5% of the total CSR expenditure in that FY, or (b) INR 50 lakh, whichever is less. In case multiple projects are due assessment in a FY and the budget is limited to INR 50 Lakhs, the corporation will have to prioritise the impact assessment reporting. Since the reporting can be done anytime post a year of project commencement and the projects can last up to 1+3 years, the prioritisation can be for projects that are estimated to have been impactful post one year of completion or are aligned with the thematic areas prioritized by the company. The annual action plan for the FY can include this prioritisation.



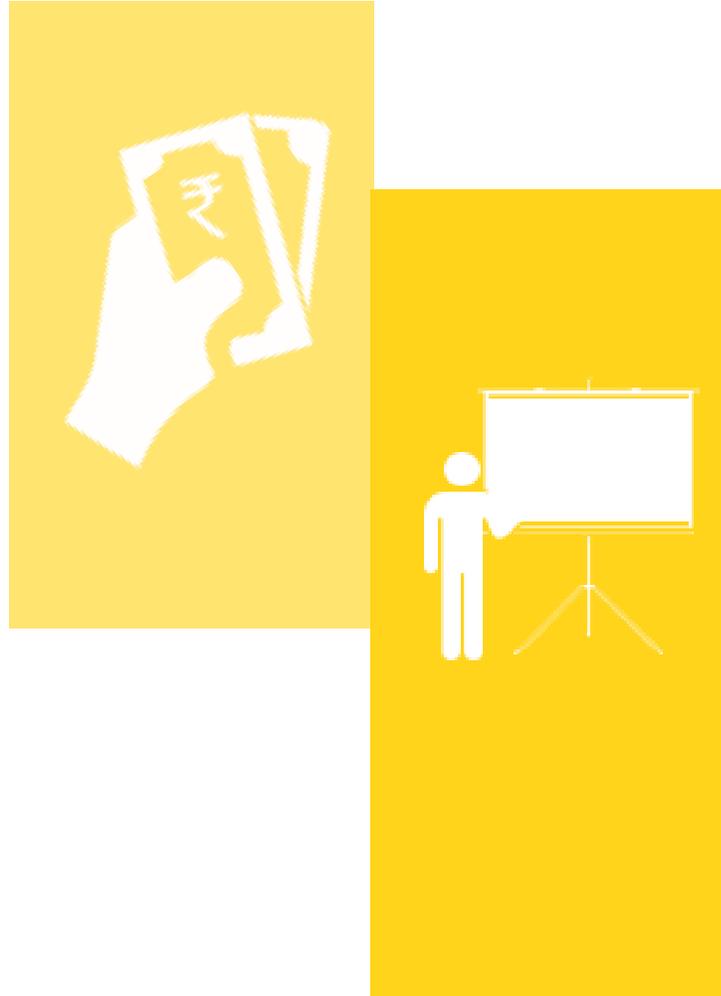
A CSR watershed project which was initially planned for 3 years suffered a 6-month gap between the first and second year of implementation due to COVID. In such a case, would the project period be still bound by the 3+1-year duration limit?

There is no provision under law to govern such a case situation. As a best practice, a board resolution must be passed acknowledging – (a) the delay in project timelines and the reasons for it, (b) the adequate remedial steps to correct the delay, and (c) the split of the single project into multiple consecutive projects if the timelines are expected to exceed the 1+3 FYs time period. Further, if the NGO is working with district collectors or other government servants, it may seek a letter of support from the authorities to show the intent of completing the project effectively.

CSR Form

What activities can be included under the Administrative Overheads, i.e. 5% of total CSR expenditure in a FY? Can activities such as travel and branding for the project be included?

“Administrative overheads” means the expenses incurred by the company for ‘general management and administration’ of CSR functions in the company. These are mostly expenses that are not directly related to designing, implementation, monitoring, and evaluation of a particular CSR project. Therefore, a “travel expense” will be excluded from Admin Overheads if it is directly related to any of the listed above activities undertaken for a CSR project. Using the same logic, since “branding” is not related to any of the listed project activities, it will be covered under Admin Overheads.



In a tri-party agreement among a donor, a leading implementing agency and a apex partner and implementation agency(a trust) Is it mandatory for the Trust to have a registered CSR number as per new amendments?

It states any entity which is to receive CSR money, then the entity should have form CSR 1. If there are service providers which provide service to technically achieve some objective of that money, they need not to have it, wherever the grant is going, they need to have form CSR 1. It is suggested that any NGO that receives money through the value chain has CSR registration unless they provide advisory services to technically achieve project objectives.

Unspent Amount

If CSR grant to an implementation agency is not used in the same FY owing to COVID related delays, can the donation be treated as an expense in the FY it was donated?

A corporate is considered to have met its CSR obligation of “spending” CSR amount when it transfers the CSR amount to the NGO for a specific CSR project. Since the Companies Act cannot govern NGOs but only corporates, utilization by the NGO is not governed under CSR law. However, the corporate is statutorily obligated under CSR law to ensure utilization of the amount and hence needs to compel the NGO to utilize the transferred amount through a contractual arrangement. If the NGO fails to meet its contractual obligation of utilizing the transferred amount in the same FY, it may be treated as violation of the terms of the grant agreement. Hence, in such a case, the corporate can take following recourses: (a) ask the NGO to return the amount and the same will be treated as Unspent CSR amount to be treated as per law; or (b) ask the NGO to remedy the lapse and rework the contract accordingly; or (c) pursue legal remedies against violation of the grant contract.



What can you do with savings that are a result of project efficiency? For example: salary costs – Rs 100 allotted but NGO was able to get resources for Rs 90, so Rs 10 is unutilized. So does it mean the company underspent by Rs 10? Any savings arising from the project grant amount may be ploughed back into the project or depending on the terms of grant agreement and internal approvals, may be utilized in pursuance of the CSR Policy. Needless to say, a company must ensure that it meets its obligation of CSR spend for the year and spends/ utilizes such savings for CSR.

Any surplus arising out of the CSR activities must be ploughed back into the same project or be transferred to the Unspent CSR A/c 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.

Unspent Amount (contd)

In cases when a corporate has transferred the entire project amount to the NGO upfront, will it be considered amount “spent” and “utilized” from the perspective of the corporate?

Yes, any upfront CSR grant made by a corporate to the NGO for a specific CSR project will be considered to have met the CSR obligation of “spending” and “utilization”. However, it is inferred from the intent of law that the corporate is also obligated to ensure and monitor that the NGO utilizes the amount as per the terms of the grant agreement in case of an upfront payment. Any deviation in utilization timelines under the grant agreement must be dealt with in accordance with the three recourses explained in the previous answer.





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Thank You

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