**Link Address:**

**https://www.google.com/aclk?sa=l&ai=DChcSEwjd-7q1nqfzAhVOW2AKHYo\_DWwYABAAGgJ0bQ&ae=2&sig=AOD64\_0glS11Vo9xoU3Xe3zy9O6AnhF31A&q&adurl&ved=2ahUKEwicu7G1nqfzAhVs4nMBHQP5D7YQ0Qx6BAgCEAE**

**New amendments to the CSR Act: All you need to know**

The amendments to the CSR Rules have officially been passed by the Government of India. Here's a comprehensive list of their implications on corporates and nonprofits.

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The Government of India notified amendments to the[Companies (Corporate Social Responsibility) Rules, 2014](http://egazette.nic.in/WriteReadData/2021/224640.pdf) and [Section 135 of the Companies Act, 2013](https://www.mca.gov.in/SearchableActs/Section135.htm) on January 22nd, 2021, which means that these are now effective.

**Impact on corporates**

**1. Eligible CSR spends**

The following activities cannot be included as part of a company’s eligible CSR spend:

* Activities which are undertaken in the normal course of business of a company, or those benefitting only its employees.
* Political contributions.
* Sponsorship activities.
* Fulfilment of statutory obligations and activities undertaken outside India (except for training of sports personnel representing a state or country at the national or international level).

**Activities that can now be included as CSR:**

* **COVID-19-related activity in the normal course of business:** This covers companies undertaking research and development into vaccines, medical devices, and drugs related to COVID-19, even if such activity is in their normal course of business. This exemption is allowed up to the financial year 2022-2023. However, the company must make separate disclosures in their annual report and must undertake such research and development in collaboration with an institute specified in [Schedule VII of the act](http://www.mca.gov.in/SearchableActs/Schedule7.htm).
* **Acquisition or creation of a capital asset provided that it is not owned by the company:** The asset created using CSR funds must be owned either by the organisation supported, or the people served by the project (for instance, collectives such as self-help groups), or by a public authority.

**Administrative overheads**

While the term administrative overheads has not been listed exhaustively, the amendment defines it as expenses incurred for ‘general management and administration’ of CSR functions in a company.

With this notification, it now excludes “…expenses directly incurred for the designing, implementation, monitoring, and evaluation of a particular Corporate SocialResponsibility project or programme…”. This means that these expenses can now be considered as part of the programme itself, thereby allowing for greater allocation of resources for these activities. However, the cap on administrative costs of five percent of CSR expenditure remains.

**2. Treatment of unspent, excess, or surplus CSR amounts**

**Unspent CSR funds**

Any unspent CSR funds remaining at the end of a financial year should be transferred in any of the following ways:

* **Transfer to an Unspent CSR Account:** Any unspent amount from an ongoing project should be transferred within 30 days of the end of the financial year, to the specifically designated ‘Unspent Corporate Social Responsibility Account’ to be opened by the company. These amounts should be spent within the next three financial years, in accordance with the company’s CSR policy. If these amounts remain unspent even after the three-year period, then they should be transferred, within 30 days of the end of the third financial year, to any fund specified in Schedule VII of the act (such as the [PM National Relief Fund](https://pmnrf.gov.in/en/), [PM CARES Fund](https://www.pmcares.gov.in/en/), [Disaster Management Fund](http://www.ndrf.gov.in/), [Clean Ganga Fund](https://nmcg.nic.in/cleangangafund/index.html), and so on).
* **Transfer to a Schedule VII fund:**If the funds are unallocated to any CSR project, then such unspent amount shall be transferred, within six months of the end of the financial year, to any fund specified in Schedule VII of the act.

There is a new requirement for mandatory impact assessment of CSR projects. | Picture courtesy: Ayesha Marfatia/Canva

**Surplus CSR funds**

If any surplus arises out of the CSR activities, it must be:

* Spent on the same project which gave rise to the surplus, or
* Transferred to the Unspent CSR Account of the company, or
* Transferred to a fund as specified in Schedule VII of the act.

**Excess CSR spends**

If a company has spent amounts more than the mandatory two percent on CSR, the company can set off such excess amounts against the CSR spends in the next three financial years. The board of directors however, needs to pass a resolution for this. It’s important to note that such excess amounts cannot include the surplus arising out of CSR activities. For instance, if any interest is earned out of the assets acquired through the CSR funds, such interest would be treated as a surplus, but cannot be set off from the CSR budget of the following year.

**3. Impact assessment**

There is a **new requirement for mandatory impact assessment** of CSR projects.

* This requirement applies to companies that have an average CSR spend of INR 10 crore or more in the past three financial years.
* It must be conducted for all CSR projects that have budgets of INR 1 crore and more; and have been completed one year prior to undertaking the impact assessment.
* An ‘independent’ agency must be appointed to undertake the impact assessment. The costs of such an agency cannot exceed INR 50 lakh or five percent of the total CSR spend for that financial year (whichever is lower).

**4. Governance and transparency**

* **Mandatory disclosures on the website:** If a company has a website, it is mandatorily required to disclose the composition of the CSR committee, its CSR policy, and the projects approved by the board.
* **CSR committee:** This committee must formulate an annual action plan for CSR spends, which lists the CSR projects, implementation and monitoring schedules, and details of impact assessment (if applicable). However, if a company’s CSR spend is less than INR 50 lakh it is not required to create a CSR committee. The board of directors will perform the functions of the committee in such a case.
* **CSR policy:** A company’s CSR policy must include further details of its CSR philosophy, its guiding principles for selecting projects, implementation and monitoring of activities, as well as the formulation of the annual action plan.
* **Annual disclosures:** These are now more detailed, requiring information on the CSR committee’s composition, its meetings, amounts transferred to the Unspent CSR Account or to a fund specified in Schedule VII, and the capital assets that have been created, acquired, or transferred. Additionally, the rules now require the company’s Chief Financial Officer (or equivalent) to certify that the CSR funds have been disbursed and utilised in the manner approved by the board of directors. Details of the impact assessments undertaken, specific disclosures of the amounts incurred towards administrative overheads, and any other information on CSR projects—whether they are new projects or ongoing projects—should be included.
* **Monetary penalties for non-compliance:** Departing from the previous philosophy of ‘name and shame’, the amendments have introduced monetary penalties for the company and every officer in default for non-compliance. A defaulting company is now liable for the lesser of INR 1 crore or twice the amount that should have been transferred to the Unspent CSR Account or the Schedule VII specified fund. Additionally, a defaulting officer is now liable for the lesser of INR 2 lakh, or one-tenth the amount that should have been transferred to the ‘Unspent CSR Account’ or the Schedule VII specified fund.

**5. Support from ‘international organisations’**

For the first time, CSR rules have allowed international organisations to assist and play a role in the CSR ecosystem. The rules define an ‘international organisation’ as one that is notified under the [United Nations (Privileges and Immunities) Act, 1947](http://www.mea.gov.in/Uploads/PublicationDocs/142_1947-The-United-Nations-Privileges-And-Immunities-Act-1947.pdf). This covers entities such as the [International Labour Organization](https://www.ilo.org/global/lang--en/index.htm), the [World Health Organization](https://www.who.int/), the [Food and Agriculture Organization of the World Bank](http://www.fao.org/home/en/), the [United Nations Educational, Scientific and Cultural Organization](https://en.unesco.org/) (UNESCO), and the [International Monetary Fund](https://www.imf.org/en/Home), among others.

The rules permit companies to appoint an international organisation for designing, and monitoring and evaluation of CSR projects or programmes as per its policy, as well as for building the capacity of their own CSR teams. However, the costs or fees paid to such entities may be subject to the cap of five percent on administrative overheads, if it relates to the general management and administration of CSR functions in a company. (This might be the case if the international organisation is providing capacity building services.)

**Impact on nonprofits**

**1. Eligibility of implementing organisations**

In the draft amendments to the CSR Rules published in March 2020, the government had proposed to only designate Section 8 companies as those that could implement programmes for CSR. However, this proposal has been dropped. Registered public trusts and societies are now also eligible to be appointed for this purpose.

The following entities are now **allowed to raise CSR funds**:

A Section 8 company, a registered public trust, or a registered society, each of which is registered under [Section 12A](https://tax2win.in/guide/section-12a-of-income-tax-act) and [80G of the Income Tax Act, 1961](https://cleartax.in/s/donation-under-section-80g-and-80gga). These entities can be:

* Established by the company undertaking CSR activities itself
* Independent organisations with an established track record of at least three years in undertaking similar programmes or projects

In the case of the above two categories, registration under Section 12A and 80G of the Income Tax Act is mandatory.

Also eligible are any entities established by the Central or State Government, or those established under an Act of Parliament or a state legislature. In the case of these two categories, registration under Section 12A and Section 80G is not required.

**2. Mandatory registration of CSR implementing organisations**

With effect from April 1st, 2021, every entity listed above is required to mandatorily register itself with the [Ministry of Corporate Affairs](http://www.mca.gov.in/) (MCA). Such entities are required to apply in the prescribed form (providing details of their legal entity, directors, trustees, and so on) and thereafter obtain a unique CSR registration number. Going forward, this unique number must be quoted on the annual report of companies who have appointed such agencies. This requirement does not impact projects already approved prior to April 1st, 2021.

*An earlier version of this article incorrectly stated that funds in an ‘Unspent Corporate Social Responsibility Account’ that remain unspent beyond a three-year period should be transferred within six months of the end of the financial year to any fund specified in Schedule VII. The article was corrected on July 20th, 2021.*

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**Know more**

* Read the [official notification](http://egazette.nic.in/WriteReadData/2021/224640.pdf) of the amendments to the Companies (Corporate Social Responsibility) Rules, 2014 and Section 135 of the Companies Act, 2013.
* Watch [this webinar](https://www.youtube.com/watch?v=7BU3cetYGW0) to learn more about the implications of the recent amendments.

**Do more**

* If you work at a corporate, look into: 1) Strengthening CSR-related reporting and MIS systems to ensure accurate reporting to the board/senior management; 2) Verifying CSR-related expenditure, starting from administrative overheads, surplus, setting-off excess CSR spends of one year, and so on; 3) Shortlisting and taking on board impact assessment agencies upfront.