

FAQs on CSR Compliance & Readiness

In light of the recently passed Companies (CSR Policy) Amendment Rules, 2021, Sattva hosted a webinar to reflect upon overall compliance level of nonprofits with the new Rules and their institutional readiness to receive CSR funds from the corporates. During the webinar, the expert panel addressed the legislative philosophy guiding the recent changes to the CSR laws and touched upon the challenges faced by small-scale nonprofits in meeting statutory compliances.

With the hope to address some of the common challenges and queries raised by the audience during the discussion, Sattva has consolidated a list of following FAQs addressing case situations.

Click [here](#) to access the recording of the webinar and [here](#) for the presentation. Sattva has also built a [CSR compliance self assessment tool](#) to help map your organization's overall level of CSR readiness, and understand the next steps of compliance. Reach out to us at partnernetwork@sattva.co.in with any questions and for information on future engagements.

Statutory and Legal Compliance

MCA and CSR-1

1. How do we comply with and register for the CSR-1 form under the MCA?

The CSR-1 form kit can be downloaded from the official website of the MCA. The kit offers the form and the detailed information and instructions for filling the form with MCA on its official portal. On submission of the form, the portal will generate the assigned CSR-1 registration number.

The unique CSR-1 registration number is like a license that is a prerequisite for any organization looking to undertake CSR projects.

Others

1. What is section 135 (7) and how can NGOs be compliant with this provision?

Section 135(7) of the Companies Act 2013 is a penal provision prescribing the penalties to be borne by the company and its concerned officers in failing to comply with the provisions of Section 135(5) and (6) that are concerned with disbursement of CSR Funds.

NGOs can adopt the financial best practices mentioned in this document to support the corporate donor in meeting its disbursement related compliance obligations.

Registrations and Declarations

1. Can NGOs access CSR funding without having FCRA?

It is not mandatory to have FCRA in order to access CSR funding. FCRA registration is required when foreign funds are received by an NGO. Since FCRA regulations add a further layer of financial and governance scrutiny on the functioning of the NGOs, a lot of corporations do check for FCRA compliances to ensure CSR readiness of the implementing agency.

2. Does an NGO need to be registered with an accrediting body?

No, it is not mandatory for NGOs to be registered with an accrediting body. However, being registered with NGO Darpan, GuideStar, or CAF is helpful since it is required by many CSRs.

Financial and Accounting Compliance

Administrative Costs

1. Does the clause on 5% limit on administrative overheads as introduced by the 2021 CSR Amendments apply to NGOs?

No. The clause on 5% limit on administrative overheads apply to corporates, and not NGOs.

2. Is there any limit on administrative expenses and what is the standard practice? Can an NGO spend the majority of its CSR Grant on Salaries of Program staff and Admin staff?

No, as explained in Answer 1, there is no limit on utilization of CSR funds by the NGOs to meet their administrative expenses.

However, if the CSR funds qualify as “foreign funds” under the FCRA, 2010 then only 20% of such foreign funds can be utilized by the NGO to meet its administrative expenses.

The standard practice at the proposal stage can be -

a) Charge 10% flat indirect & admin OH in proportion to the direct cost budgeted, or

b) When providing break-up for indirect and admin OH, then the overall cost should not go beyond 12-15% of the entire budget - of which admin cost can be capped at 5% of the entire budget. It is at the discretion of the donor to cap the indirect and admin OH in the budget.

Reimbursements Expenditures

1. Where do we book reimbursements expenditures?

Reimbursement expenses are the expenses which are spent by any employee / person associated with the project, and later on claimed back from the organisation / project. It is a general practise for most organisations to process the reimbursement claim of an employee along with their salary to avoid multiple payout processes. These reimbursements are sometimes presumed to be salary expense as they are paid with the salary and thus the wrong head is selected for booking this kind of expense. One must keep in mind the nature of expenditure being reimbursed (e.g. travel reimbursement fits under the travel head, snacks, stationary reimbursements for team meetings fit under their respective budget heads). Avoid interchange of heads just because it is an unaccounted reimbursement.

Try to keep elbow room in the cost sheet so that you don't have to go back to the donor for adjustments.

GST

1. Is GST applicable to NGOs?

GST is not applicable to NGOs in relation to the grant/donation received from the donor. However, NGOs involved in activities such as renting of immovable properties, sale of goods, or academic training have to obtain registration under GST and ensure that all compliances pertaining to the GST Act are undertaken.

NGOs must ensure that all the vendors engaging with them are GST compliant. This will strengthen their vendor onboarding mechanism.

2. What are best practices for avoiding auditing complications with regard to GST?

Conduct due diligence on your service contractors/ vendors when hiring them. Make sure they are GST registered and confirm on the GST portal whether the service provider has been compliant in terms of making regular filings. While preparing the contract, factor in GST and TDS deduction so that the vendor does not charge you GST post the contract in case it isn't mentioned in the contract.

Tax Deductions, Receipts and 80G

1. Can a regular 80-G receipt be issued for grants received under CSR?

Yes, a standard 80G receipt has to be issued for the CSR grant received. Eventually the donor will claim the CSR expense by way of deduction under 80G of the Income Tax Act when the donor files its Income Tax return.

2. Due to the new Income Tax Website we were not able to renew 12AB & 80G registration which a lot of CSR companies are asking for. Although the date has been extended to 31st Aug, has any representation been done on behalf of NGOs to the Income Tax dept?

This is a common practical challenge faced by most nonprofits in the country at the moment. The income tax portal was revamped in mid June. The NGOs that made the application on the old portal are awaiting the certificates from the tax department. However, applicants on the new updated portal have faced issues registering the digital signatures, filing appeal forms, etc.. Given the severe backlog of applications, it is expected that the government will further extend the deadline to register with the new portal.

3. Is Section 35AC for getting 100% tax deduction available even now?

No, 31-03-2017 was the last date for availing this benefit. Please refer to the subsequent 35AC cancellation notice for your reference.

4. How can NGOs apply for 100% deduction for donors in 80G?

You can apply for the certificate basis the Income Tax Act 1961.

5. 12AB and 80G certificates have to be renewed but the form has not been released. How will this impact CSR partnerships going forward?

Most NGOs have applied online on the income tax portal for the registration under 12AB and 80G, however certificates are not issued by the department. Renewed 12AB and 80G certificates will be required for pre and post financial due diligence stage from the donor auditor, and non compliance will render the NGO ineligible to receive any CSR funds.

Unspent Funds

1. What should be done with unspent funds before the end of the financial year?

Only corporations need to address statutory requirements concerning treatment of their own unspent CSR Obligation in a financial year. Any CSR amount that is disbursed by the company as a grant to an implementing agency is considered as “spent” by the company. Therefore, nonprofits or implementing agencies are not concerned with any amount pending to be spent by the company from its remaining CSR obligation.

At the end of the financial year, corporates have to transfer any such unspent or non-disbursed CSR Obligation to a designated Unspent CSR A/c. If such an amount has been allocated to an ongoing project already, then it is to be disbursed to that project within 3 years from the date of transfer. Whereas, in case such an amount was not allocated to any ongoing project by the date of transfer, then such an amount must necessarily be donated by the company to any of the Central funds mentioned in the Schedule VII of the Companies Act, 2013.

2. How should NGOs allocate the funds to a project?

If it can be allocated to a project, classify it as an ongoing project with board approval before March 31st. You have 1-3 years to spend it. There is an annexure “reporting table” under which annual expenditure needs to be mentioned.

3. What if the outcome of our project is achieved and NGOs still have unspent funds and time to allocate them?

As per Rule 7 of the amended CSR Rules, any surplus arising out of the CSR activities shall not form part of the business profit of a company and shall be ploughed back into the same project or shall be transferred to the Unspent CSR Account 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.

4. What if NGOs aren't able to allocate the funds before March 31st?

If you haven't been able to allocate the unspent funds, you must put it into a schedule 7 fund so that the government can spend it.

5. How should NGOs account for unspent funds on our balance sheet?

The funds will be carried forward to the next year through the liability side of the balance sheet. Make sure to provide utilisation certificates for any spent amount, however small.

80G and Receipts

1. How should we account for CSR grants received previous year for work to be done next year? What are the regulations regarding accounting of project

management charges? Can a regular 80-G receipt issued for grants received under CSR?

Unspent balance of a specific project must be carried forward in the Balance sheet as a liability. While there is no statutory regulation on PM charges, there has to be logical reasoning on a certain % charged as PM charges at the proposal stage. Yes, regular 80G receipts with all necessary details to be printed on it.

The only way to carry forward funds in a Trust balance sheet is to book it as an unspent liability, for trust any funds received is a grant on income side, if unspent at the end of the year is transferred to liability as they are liable to spend it in next year.

2. Is there any specific mandate of days on providing the receipt to the donor?

Standard practise is to provide the receipts within 7 days of receipt of funds - It's more of an administrative task thus sending the receipt in a timely manner is advisable.

Others

1. What documents should be given to a company when they donate funds to an NGO via CSR? Does form 10BD need to be submitted individually for each donation or multiple donations can be clubbed in a form? Is there a timeline/periodicity of submission of form 10BD to IT authorities?

Multiple donations can be filed in a single form, but it is advisable to file it based on the type of donations received. For instance, if a single form is filed and all the donation particulars are given in the form and the user is not able to identify which are the types of donations, then it may call upon for more questions and scrutiny. Thus it would be better to file it separately and stating the type of donation received with multiple donations of the same type in a single form.

2. Should funds received through CSR partnerships be booked as donations?

The donor would specify the usage of the funds provided by way of an agreement / MOU to the NGO. Donors will expect an 80G receipt which can be claimed as a tax deduction. Thus funds received through CSR partnerships can be booked as donations.

3. How do we bridge the gap between CSR compliance and Income Tax law deadlines as the finance team work is based on IT laws predominantly.

It is true that the Income Tax Act predominantly governs the NFPO activities. The CSR compliances, from the donor perspective must be given timely importance since they will need correct project expenditure partner wise to report in their annual report whose due date would be much before the trust finalises its accounting books. A clear distinction between the donor requirements and government based statutory requirements needs to

be assessed by the organisation.

4. Is a separate bank account needed for each CSR project?

It is not a compulsion to open a separate bank account. If the donor insists, then you may open a separate bank account for their project considering the project commitment runs over a number of years.

Planning and Reporting

1. Is impact valuation or third party impact audit essential compliance for NGOs?

As per the 2021 Amendments, it is mandatory for every company having average CSR obligation of ten crore rupees or more in the three immediately preceding financial years, to undertake impact assessment through an independent agency, of their CSR projects having - (a) outlays of one crore rupees or more, and (b) been completed for more than 1 year.

2. Is Impact assessment always a service or a donation can be received for doing it?

It's a service. It's an expense for the donor, not the NGO.

3. How can small NGOs best prepare to carry out planning and reporting?

- Create a compliance calendar with deadlines for statutory requirements that you can use to check in with your team and donor
- Assign a SPOC for due diligence to streamline the process
- In your budgeting, give unit breakups and justify every line item. It helps facilitate donor's audit too. You can approach the donor to approve changes but be strict with your team to stick to the budget.
- Provide supporting documents like bills. Adding brief notes will strengthen your organization's credibility during auditing.
- CSR is aligning to an annual planning cycle. NGOs should break projects into annual planning to make compliance and reporting easier.

4. Is providing a utilization certificate to the donor a donor requirement or a statutory requirement?

Utilization certificates are supporting documents required by donors to showcase their statutory compliance. Thus such certificates are a donor requirement. In most of the government aided projects, utilisation certificate is a requirement basis as per the C&AG guidelines as well. Thus, the NGOs have made a standard practice to provide UC to all their donors from time to time.

5. Can we make changes to the utilization certificate?

The utilization certificate must be accurate and project numbers that cannot be changed once set. Provide unaudited, quarterly utilization certificates (that the CFO/CEO/Program manager can sign) and annual audited one (statutory auditor along with CEO/CFO should sign) to the donor by 15-20 April. No ad hoc changes should be made to the certificate.