

# SIMPLIFIED GUIDE TO CSR TAX IMPLICATIONS



Presentation by CA Siddharth Saraf

# WHAT WE WILL TALK ABOUT

The Companies Act in 2013 requires big companies to spend 2% of their profits on Corporate Social Responsibility (CSR). This affects their taxes, and they have different options for spending the CSR funds. Direct spending is no longer fully tax deductible, but donations to NGOs or Foundations for CSR projects can get a 50% tax deduction. There are also tax implications for services provided as part of CSR.



# SEC. 37 - OTHER BUSINESS EXP.

- In the past, companies could deduct 100% of their Corporate Social Responsibility (CSR) expenses under section 37 of the Income Tax Act, showing that these expenses were business-driven and not just altruistic. However, the introduction of mandatory CSR requirements under section 135 of the Companies Act 2013 changed the situation.
- As of the financial year 2014-15, section 37 was modified, stating that expenses incurred as mandatory CSR under section 135 would no longer be eligible for deduction under section 37. This change creates challenges for CSR managers, as direct CSR spending is no longer deductible. Even outsourcing CSR management or paying the salaries of company staff dedicated to CSR activities might face disallowance from a tax perspective.



# DEDUCTION U/S 80G

Section 80G of the Income Tax Act allows companies to receive tax benefits for donations made to NGOs or Foundations for CSR projects. The company can claim a 50% tax deduction for such donations. This can include a corpus donation under section 135 of the Companies Act, but the company needs to ensure that the income from the corpus is used for activities listed in Schedule VII.

If the NGO/Foundation's activities align with Schedule VII, it's straightforward. If not, the company can create an endowment fund for a specific eligible Schedule VII purpose.



# IS TDS APPLICABLE ON CSR EXPENDITURE ?

## WHEN COMPANY EXECUTES THE CSR ACTIVITIES ON ITS OWN

When a company independently carries out CSR activities, any CSR expenses subject to TDS regulations must adhere to these provisions. The requirement for TDS is not waived solely based on the expenditure being related to CSR activities. The necessity to deduct income tax or TDS for CSR expenses hinges on the specific nature of the activity for which the payment is made, such as professional services (194J) or contractual services (194-C).

## DONATION OR GRANT

When making a donation or offering a grant to an NGO or Foundation, the option of establishing a grant agreement is available. Generally, TDS is not a consideration in such situations. Nonetheless, it is essential that the recipient possesses a valid 12A or 10(23)(c) approval.

## SERVICE ARRANGEMENT

When the payment is made for delivering services either to the company directly or to beneficiaries designated by the company, it triggers the application of TDS.



# BEST VIABLE OPTION ?

In our previous discussion, we established that TDS (Tax Deducted at Source) is applicable to CSR expenditures whether a company opts to execute the activities on its own or through a service agreement.

Given these considerations, the remaining viable approach is through **grant or donation**. In the next slide, we will delve into the meaning of grant, shedding light on their implications and benefits for corporate social responsibility initiatives.

**Companies need to understand that according to the Finance Act 2014, CSR expenses can't be considered as regular business costs under section 37 of the Income Tax Act, 1961. However, any CSR spending allowed for deduction under sections (like under 80G) is acceptable. Thus if companies enter into commercial CSR contracts or agreements with NGOs, they won't gain tax advantages, as such expenses can't be deducted as business costs. Instead, if they make grant agreements and provide funds through grants they can enjoy a fifty percent tax deduction u/s 80G.**



# DIFFERENCE B/W GRANT AND DONATION

Let's talk about what a "grant" means. Both companies and NGOs should understand this. A grant is like a special gift given for a specific purpose, with certain rules on how it can be used. For example, it could be given to educate farmers about irrigation, and the NGO getting the grant has to follow the rules set by the giver.

A "donation" is also a kind of gift, but it's more open, not restricted to specific rules.

A grant is a restricted gift, with conditions set by the giver and agreed upon by the NGO in a grant agreement. There are conditions to meet before the NGO gets the gift, like spending it according to certain limits and providing reports. But just having a grant agreement doesn't mean it's a professional service contract or a consultancy contract that needs TDS or GST compliance.



# IMPORTANT CONSIDERATIONS FOR NGO'S ENTERING IN SERVICE CONTRACTS WITH COMPANIES

NGOs primarily operate with a charitable mission rather than for commercial gains. An NGO registered under section 12AA enjoys tax exemption and is acknowledged by the Income Tax department as an entity dedicated to 'charitable purposes.'

The challenge lies in demonstrating that an NGO is indeed offering charitable services when receiving Corporate Social Responsibility (CSR) funds from companies, as opposed to engaging in commercial activities.

**To address this, we strongly recommend that companies and NGOs formalize their collaboration through 'grant agreements,' treating NGOs as valued 'CSR program partners,' as opposed to resorting to vendor agreements and viewing NGOs as mere service contractors.**

NGOs need to be careful when they sign contracts with companies to provide services like consulting or professional work. If the company deducts TDS (tax) for such services under section 194J, the NGO is seen as a business operator for these services. **This could lead to problems with their tax exemption status under section 12AA and might also force them to register under GST if the income from these services goes over Rs. 20 lakhs in a year.**



# THANKS FOR YOUR TIME!

## REACH OUT FOR ANY QUESTIONS.



**EMAIL ADDRESS**  
siddharth.saraf@sarkk.co.in

**CONTACT NO.**  
+91 940-722-0255

