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CSR TIMES

Quarterly Newsletter of The KLS IMER CSR Advisory Cell

THIS ISSUE CSR Happenings • Eye On CSR • FAQs On CSR • Legal Angle

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Eye on CSR - CSR Trends that will dominate 2019

Research indicates that 2019 onwards is going to be a very impactful year for CSR with increasing focus on corporate citizenship. Various verticals like employee engagement and training, community participation and feedback from the market are all going to be aligned to support CSR activities.

1. Increasing use of Artificial Intelligence to help data flow and calculations based on which decisions can be made.
2. More demand for professionally trained CSR practitioners – people holding academic qualifications in CSR/Sustainability will be in demand.
3. CSR focus will not just be on organisations but supply chains and vendors will be monitored.
4. Focus will increase not just on ethical products but on eco-friendly reusable packaging.
5. The 17 SDGs (Sustainable Development Goals) released by the UN in 2015 will continue to be in focus.
6. Transpotation of people and products will be on the focus because it is directly linked to climate change – low carbon footprints, eco-friendly fuel will be sought after options.
7. The millennials (those born in the late 1990s and earl 2000) are entering the workforce now and this tech savvy generation prefer flexibility and greater transparency at the workplace. They are less likely to buy products from companies which have a poor reputation in terms of CSR.

In the next issue we will discuss the 17 Sustainable Development Goals.

Dr. Kirti Shivakumar

"When the wind blows there are those that build walls and then there are those that build windmills."

SOME FAQs on CSR

1. Average net profit' criterion for section 135(5) – does it mean net profit before tax or net profit after tax?

   MCA has clarified that computation of net profits for section 135 is as per section 198 of the Companies Act, which primarily considers profit before taxes. Explanation to section 135(5) itself states that "average net profit" shall be calculated in accordance with section 198 of the Companies Act. In terms of section 198(5)(a) of the Companies Act, in computing net profits, income-tax and super-tax payable by the company under the Act shall not be deducted. Therefore, the net profit criterion in section 135(5) is net profit before taxes.

2. How can companies with small CSR funds take up CSR activities in a project/ program mode?

   Companies can combine their CSR programs with other similar companies by pooling their CSR resources. As per Rule 4 of the CSR Rules, a company may collaborate with other companies for undertaking projects or for CSR activities in such a manner that the CSR committees of the relevant companies are in a position to report separately on such projects in accordance with the prescribed Rules

3. Whether CSR expenditure of a company can be claimed as a business expenditure?

   CSR cannot be claimed as a business expenditure, because the standing committee on Finance way back in 2014 itself had declared that it does not want Finance Ministry to subsidize the CSR of private sector corporates, granting CSR as business expenditure amounts to Government forgoing 1/3 of the Tax thereon.

EXPERT OPINION

The act says that at least 2% of average net profit of 3 immediately preceding financial years should be spent on CSR activities every year. How should net profit be computed?

Our expert Mr. S.R. Deshpande says “profit before tax (PBT) and not the profit after tax (PAT) arrived at in the statement on profit and loss would be the figure for working on the 2 per cent amount for CSR spending, of course there are 'n' number of adjustments to be made to the PBT.”

Dr. Samina :- - "The income tax or super tax payable by the company under the Income Tax Act shall not be deducted while calculating the Net Profit. (Sec 198 (5)). But having said that, any special tax notified by the Central Government for abnormal profits by the company or any tax imposed on the company for special reasons under special circumstances by the Central Government shall be deducted before calculating the net profit. (Sec 198(4)(d) and (e))"

CSR HAPPENINGS

Corporate affairs secretary Injeti Srinivas allayed concerns that the government wants to appropriate unspent CSR funds to finance its own welfare programmes. According to a report in the Economic Times “The panel - headed by corporate affairs secretary Injeti Srinivas has suggested that the government classify offences under CSR provisions as civil breaches, attracting monetary fines.” The government was working towards the implementation of a high-level committee’s report on corporate social responsibility that suggested that violations be treated as civil offences liable to monetary penalties.

The Government has already announced that it would not implement the sections of the just-amended Companies Act section which had specifically prescribes jail terms for CSR violations. This provision had irked and angered the industry, who raised objections regarding the same. The Finance Minister Ms. Sitharaman had assured the industry of reviewing the provision.

The government has now clarified that amended corporate social responsibility (CSR) laws are with prospective effect and companies have time until July 2024 to use accumulated CSR funds in projects of their choice -- an assurance that should bring relief to corporate entities and executives confronting punishment for violation of the guidelines.

source : //economictimes.indiatimes.com/articleshow/70728650. cms?utm_source= contentofinterest & utm _ medium =text&utm _ campaign=cppst

https://csrbox.org/India_CSR_news_Companies-have-time-till-2024-to-use-CSR-fund_442

THE COMPANIES (AMENDMENT) ACT, 2019 – REGULATION OR OVER REGULATION?

The Companies (Amendment) Bill, 2019 was passed by the *Rajya Sabha* on the 30th day of July, 2019 and has become the Companies (Amendment) Act, 2019 after the Bill received the Assent of President on 31st July 2019. Earlier the Amendment Bill, 2019 was passed by Lok Sabha on the 26th day of July, 2019. Under the Companies Act, 2013, if companies, which have to provide for Corporate Social Responsibility(CSR) , do not fully spent the funds, they must disclose the reasons for non-spending in their annual report. But now, under the Companies (Amendment) Act, 2019, any unspent annual CSR funds must be transferred to one of the funds under Schedule VII of the Act (e.g., PM Relief Fund) within six months of the financial year. However, if the CSR funds are committed to certain ongoing projects, then the unspent funds will have to be transferred to an Unspent CSR Account within 30 days of the end of the financial year, and spent within three years. Any funds remaining unspent after three years will have to be transferred to one of the funds under Schedule VII of the Act. Any violation may attract a fine between Rs 50,000 and Rs 25, 00,000 and every defaulting officer may be punished with imprisonment of up to three years or fine between Rs 50,000 and Rs 25, 00,000, or both. The Amendment Act, 2019 gives the power to the Regional Director to compound (settle) offences with a penalty of up to 25 lakh rupees, which was 5 lakhs previously. Another key amendment is aimed at de clogging the National Company Law Tribunals (NCLTs) through the shifting of routine matters, including change in financial year for a company and conversion off a public company to a private company, from the NCLT to the Central Government, Sixteen minor offences have been re-categorized as civil defaults, more clarity with respect to certain powers of the National Financial Reporting Authority (NFRA) is given and the Registrar of Companies (ROC) is empowered to take strict action against those companies which are not working as per the law. Registrar can remove the name of the company from the Register of companies if it is not carrying on the operation as per the company law.

The industry experts are frowning upon the new amendments as they feel this ‘over-regulation’ may not go down well with the industry and that the government may enforce its agenda through CSR obligations of corporate. They feel that equating unspent amount to a criminal offence is a harsh step. The industry seems a bit anxious with the imposition of penalty for non-compliance with CSR provisions. But, we need to see the positive aspects of the amendments as well. Like, while passing the Bill in the Lok Sabha, the Finance Minister, Smt. Nirmala Sitharaman said that the Bill was being brought in to “ensure more accountability and better enforcement to strengthen corporate governance norms and compliance management in the corporate sector”. The amendments are only to sharpen focus and make it far more effective,” Allaying the industry concerns, the Finance Minister has said in a press note on 23rd August 2019, that the Amendment relating to the penalty will be reconsidered and the CSR violations will be treated as Civil Liability. But the concern is, as the Amendment Act is already published in the Official Gazette and is in force from 31st July 2019, so to bring a change in this, we would need another Amendment Bill to be passed by the legislature or an ordinance by the Government, so that the action is reversed, which of course will take its own time.

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