

A large, lush green tree with a thick trunk and a wide, rounded canopy stands in a vibrant green field. The sky above is a clear blue with scattered white clouds. The overall scene is bright and natural.

# **Corporate Social Responsibility (CSR) under the Companies Act 2013**

**CA Milan Mody**

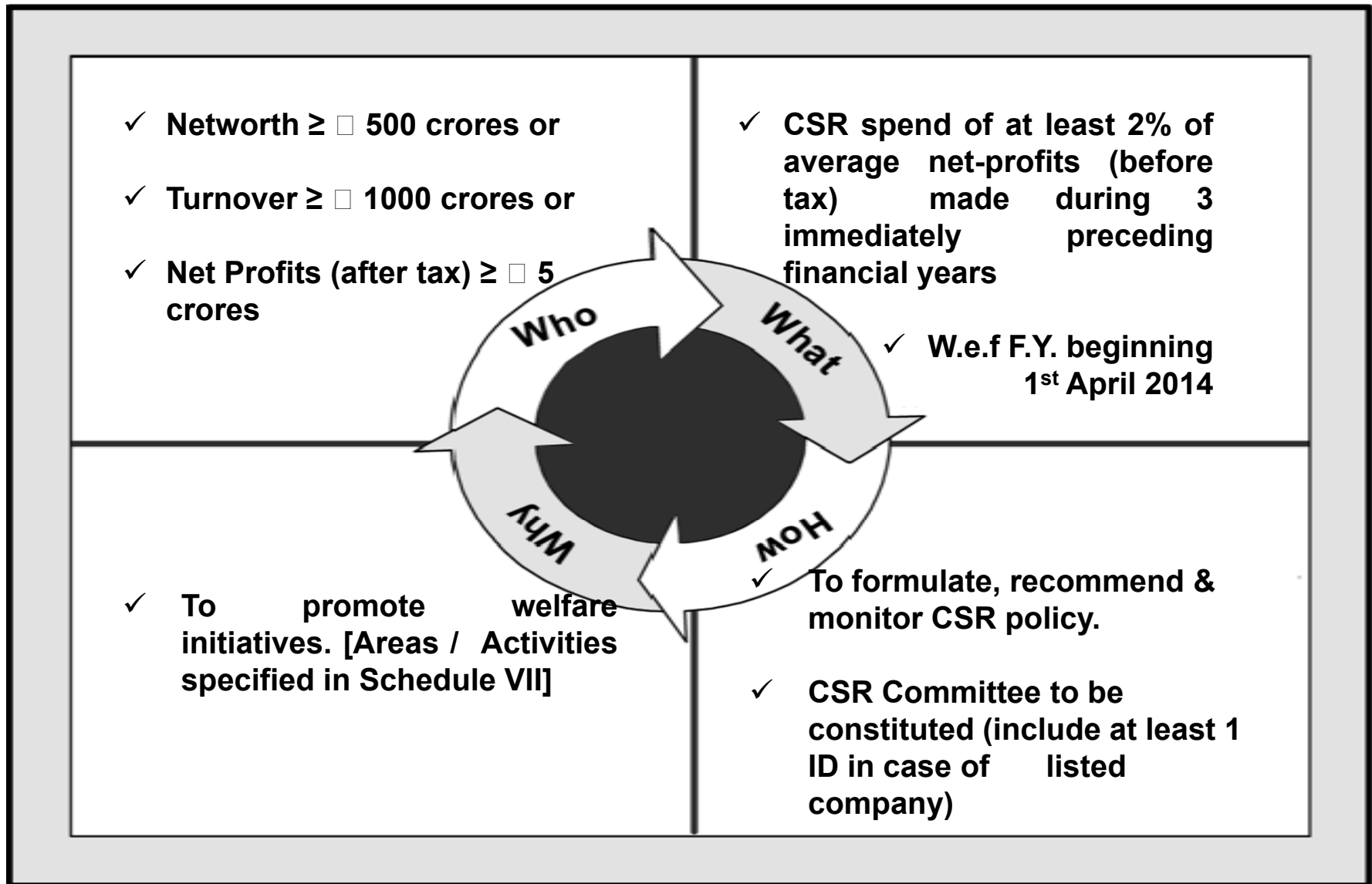
**13<sup>th</sup> December 2015**

**KNOWLEDGE THAT MATTERS. EXPERIENCE THAT COUNTS.**

## **What are we covering today**

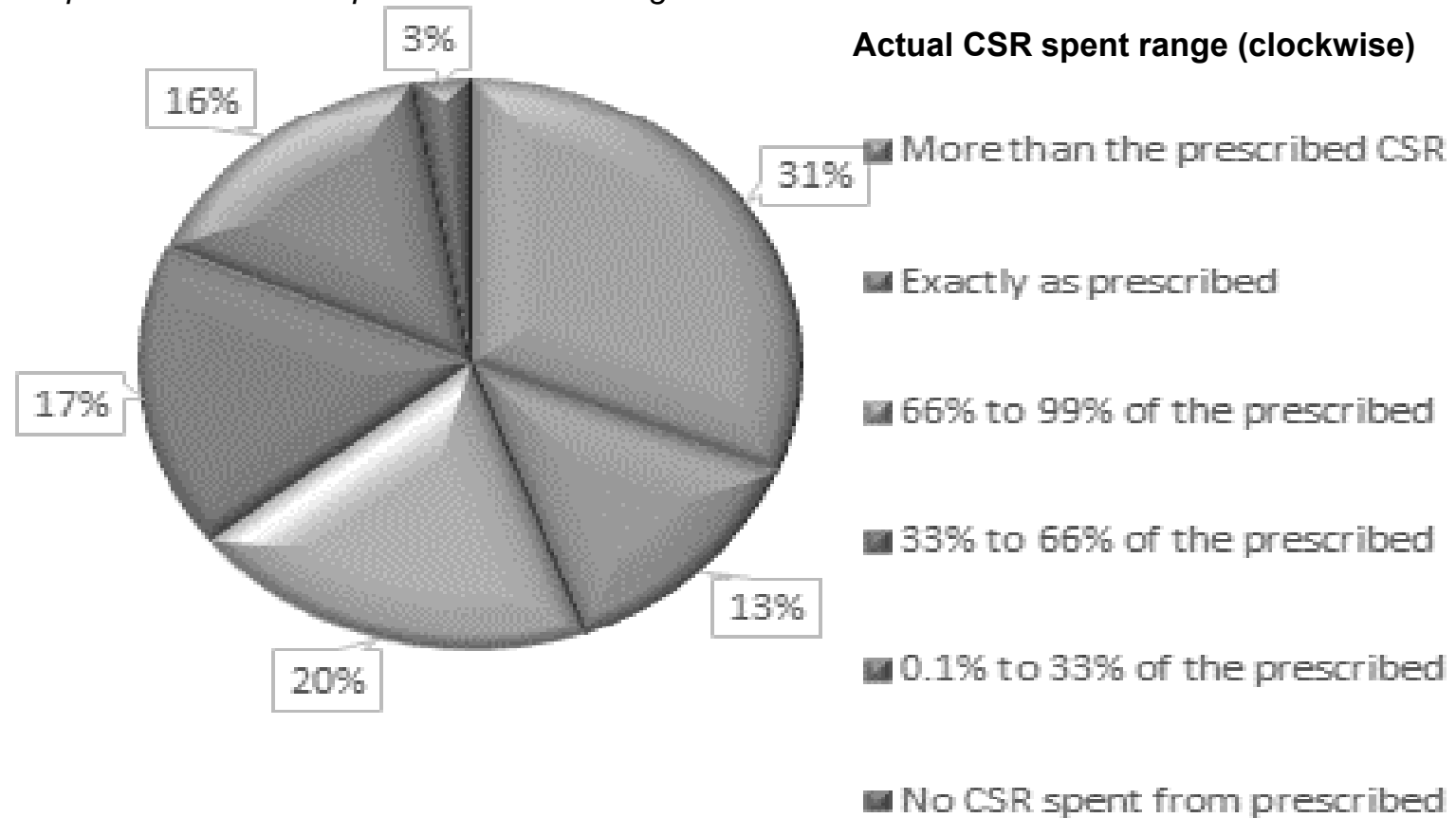
- Overview
- Computation
- Accounting
- Disclosures
- Analysis
- Conclusion

# OVERVIEW

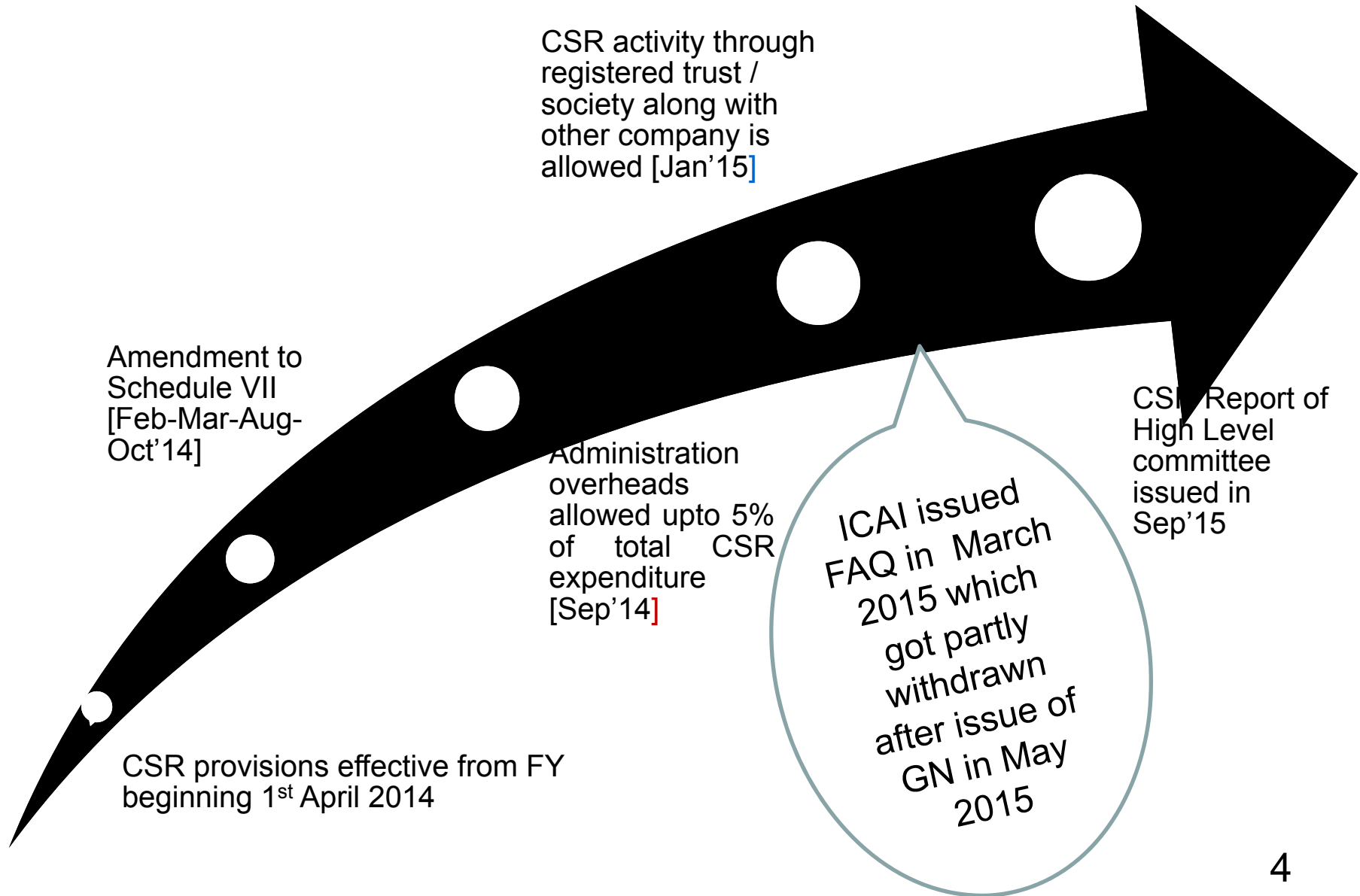


## FACTS AND FIGURES – EYE OPENER ACTUAL CSR SPENT [250 BSE COMPANIES]

These 250 companies had total prescribed CSR requirement of ₹ 7,040 crore in FY 2014-15 against actual CSR spent of ₹ 5,563 crore (almost 50% of the estimated CSR budget). *Almost one third of companies spent more than the prescribed CSR budget*



# CSR JOURNEY



# **COMPUTATION OF CSR AMOUNT**

## QUALIFYING CRITERIA VS COMPUTATION OF CSR

Qualifying criteria u/s 135(1) for Indian company – ‘net profit’	
Net profit ( <u>our view ‘AFTER TAX’</u> ) as per financials prepared under the Companies Act, 2013 / 1956	XX
Less - Any profit arising from any overseas branch whether operated as a separate company or otherwise	(x)
Less - Any dividend received from other companies in India complying with CSR provisions	(x)
Net profit ( <u>our view ‘AFTER TAX’</u> ) for deciding the CSR criteria	X

Note - ‘Net profit’ for foreign company as per section 198 of the Companies Act, 2013.

Computation of CSR spend u/s 135(5) is 2% of average net profit as per section 198 (**BEFORE TAX**). Further the above two deduction of profit from overseas branch and dividend from other companies in India complying with CSR provision should also be reduced for calculating CSR to be spent.

As per report of the High Level Committee, it is considered necessary to issue clarification regarding the definition of Net Profit under section 135(1) and 135(5).

## COMPUTATION OF CSR [illustrative]

Description	Amounts
Profit after tax as per books	XXX
<b>Add:</b>	
Income Tax	X
Loss on sale of items of a capital nature including sale undertakings	X
Provision for doubtful debts / advances (reversal thereof)	X
<b>Less:</b>	
Profits of a capital nature including profit from the sale of the undertaking	(x)
Profit on sale of fixed assets to the extent it is more than the original cost	(x)
Adjustment for fair value measurements directly effected in reserves	(x)
<b>Profit under section 198 of Companies Act 2013</b>	<b>XX</b>
<b>Less</b> profit arising from any overseas branch*	<b>(x)</b>
<b>Less</b> dividend received from other companies in India complying with CSR provisions*	<b>(x)</b>
<b>Profit for computing CSR spent</b>	<b>X</b>

\* Our view supported by FAQ



## QUESTIONS on COMPUTATION of CSR

Accumulated losses of period earlier than three years

- Loss of period prior to three years not allowed to be set-off
- Loss within last 3 years to be included for computing average net profit

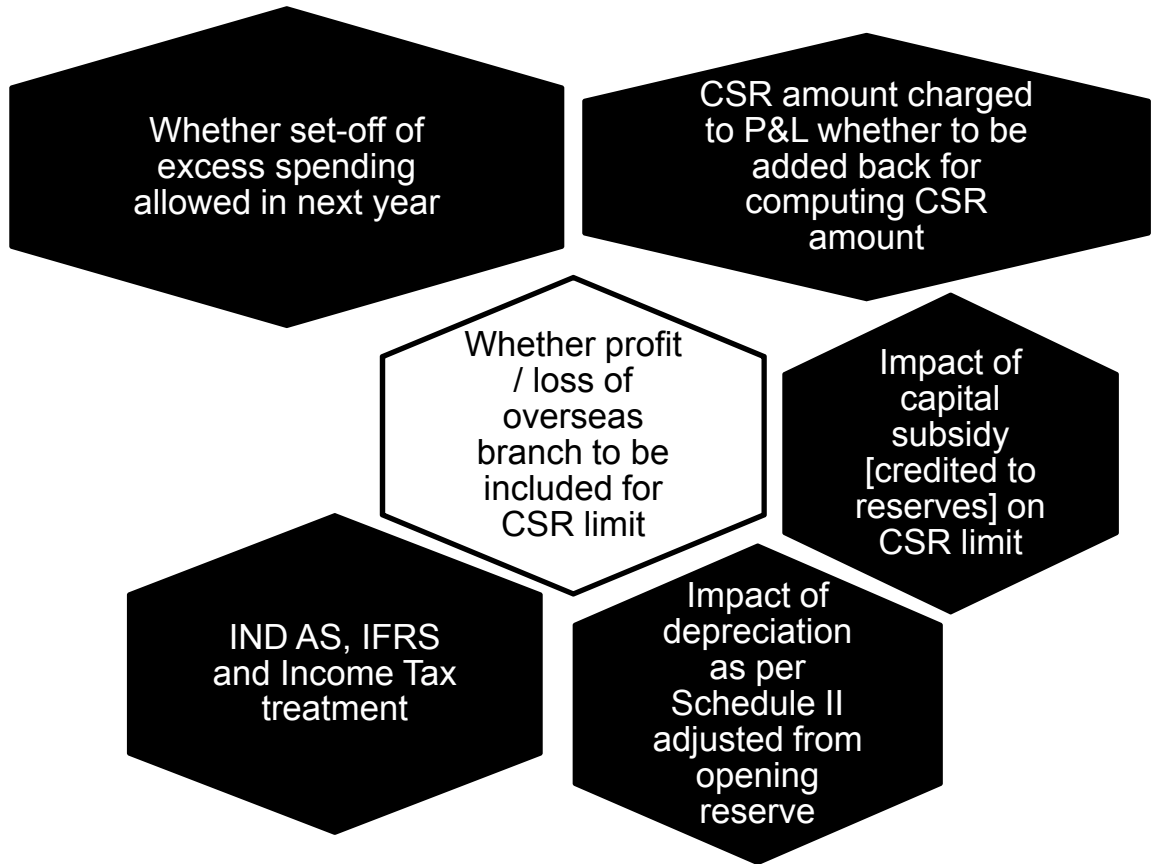
Dividend from Indian Company

- Excluded from profit to calculate CSR spend if that company is complying with CSR provision

Whether profit / loss of overseas branch to be included for CSR spend

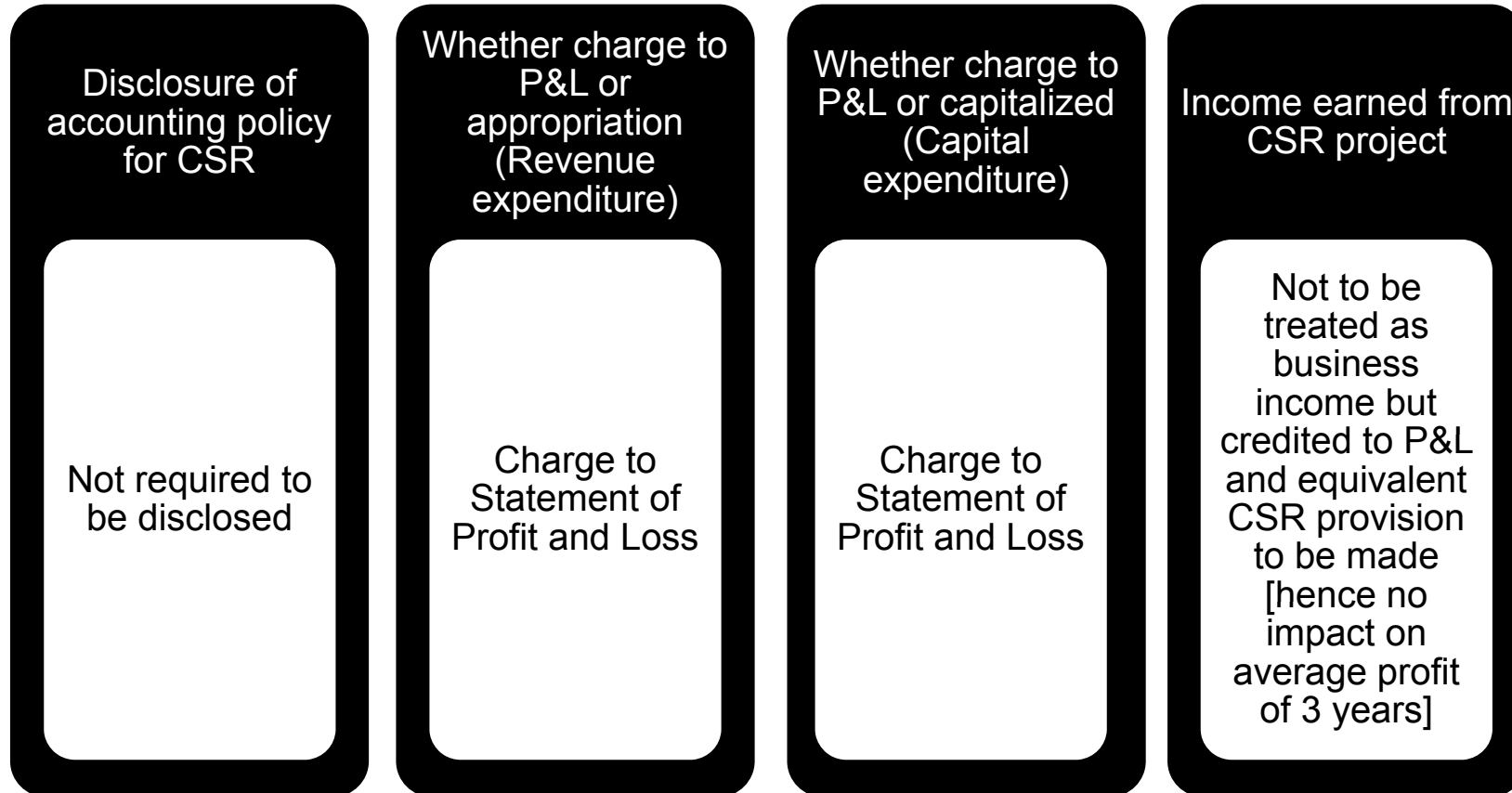
- Income earned outside India to be excluded from profit to calculate CSR spent

# UNANSWERED QUESTIONS ???.....



# **ACCOUNTING OF CSR EXPENDITURE**

## RECOGNITION OF CSR EXPENDITURE AND INCOME



## QUESTIONS ON CSR ACCOUNTING

### Accounting treatment for unspent amount

- No provision required unless there is contractual commitment (provision only to the extent of CSR activity work completed)

### Accounting for excess amount spent

- Prepaid expenses cannot be accounted

### Grant received

- CSR expenditure to be net of grant received

### Functional classification of CSR expenditure

- CSR amount to be shown as separate line item in statement of P&L [this is contrary to Schedule II]

### Supply of company's goods or service for CSR

- Principles of AS 2 to be followed and recorded as CSR expenses when goods / services are delivered

**FEW THOUGHTS .....**

**Should unspent amount be transferred to central CSR Fund [like IEPF**

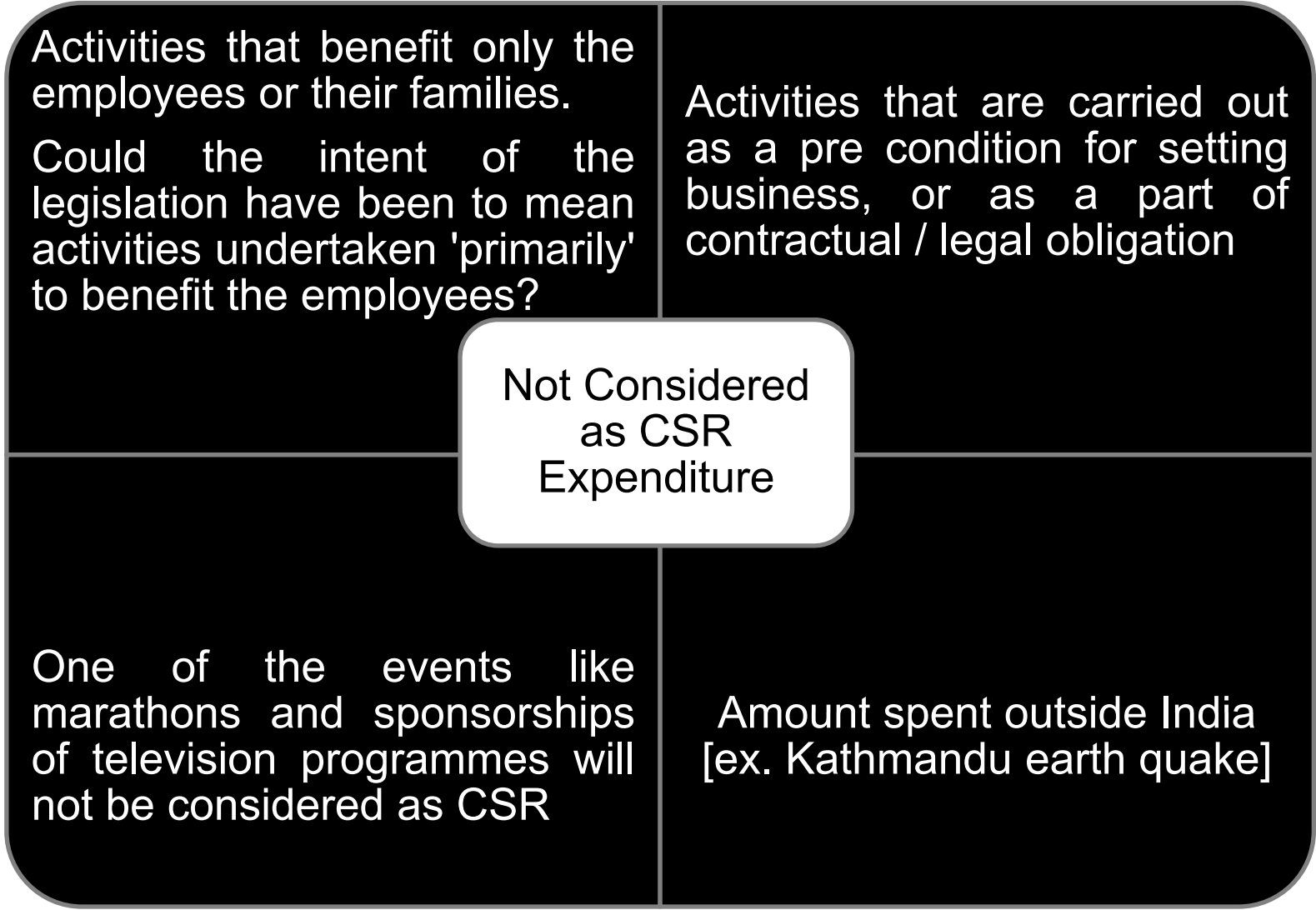
**LEGAL vs SPIRIT**  
- Misuse of admin overhead limit of 5%  
- Sponsorship vs advertisements

Unevenly spread of CSR spending – Quarterly results may get impacted

CSR incurred in normal course of business whether allowed ?

CSR whether mandatory or voluntary [principle of comply or explain] – no penalty if explained in directors report

## CARVE OUT FROM CSR SPENDING



# **DISCLOSURES**



## DISCLOSURES AS PER LAW

- Annual report of CSR to be included in Board Report
  - A brief outline of the company's CSR policy including web link
  - Composition of CSR committee
  - Average net profit of the company for last 3 years for the purpose of computation of CSR
  - Prescribed CSR expenditure
  - Details of CSR spent during the financial year
  - Reasons for unspent amount
  - Declaration that CSR policy is complied
- Disclosure of CSR policy on company's website (if any)
- Business responsibility report [for listed companies] includes snapshot of CSR
- Failure to report the reasons for not spending would attract penalty u/s 134(8) on the company of maximum INR 25 lakh and probable imprisonment of officer which may extend to 3 years

## OTHER DISCLOSURES

Income earned on CSR project whether classified as 'other income' or other operating income'

GN is silent on the above treatment

Our view - Other income

Short fall in CSR due to excess spending in previous year

Our view - Directors report can include this reason for unspent amount

Break up nature of CSR expenses

Relevant note should disclose the break-up of various heads of expenses included in the line item 'CSR expenditure

## OTHER DISCLOSURES (Contd.)

Additional disclosure  
required as per GN

Gross amount  
required to be spent  
during the year

Amount spent during  
the year on  
construction /  
acquisition of any  
asset and other  
expenses

Amount paid in cash  
and closing liability.

Related party disclosure.

To include details of  
CSR contribution to  
a trust controlled by  
the KMP of the  
company

Disclosure of closing liability  
in balance sheet

Bifurcate into current  
/ non-current liability  
and movement of  
provision should also  
be disclosed in  
notes.

## FOOD FOR THOUGHT ....

### Whether CSR Audit is required ?

- Escrow account for utilization of funds which are contributed by the company
- Diversion of CSR funds to other company / promoters through trust

### Practical difficulty in spending CSR

- Market prices of land are high in Mumbai
- Yearly CSR limit is not sufficient for company's CSR policy say constructing building for poor's
- CSR activity beyond Schedule VII (L&T)

### Structuring

- CSR payments are structured for claiming expenses / deductions under income tax
- Create LLP / firm to avoid CSR obligation

# **ANALYSIS FROM LISTED COMPANIES**

## UNIQUE CSR



### Nyaya Bharti

- In deserving cases, it will help the under trails by paying the bail and surety amounts
- Led by retired Chief Justice AS Anand, legal support AZB and Partners



### E-Spousing

- Revolutionary projects undertaken-widow remarriages in UP
- Espousing dowryless marriages



### E-Choupal

- Link directly with rural farmers via the Internet for procurement of agriculture and aquaculture products

## **CSR AMOUNT NOT DEBITED TO P&L BUT APPROPRIATED AS PER FAQ – [THIS FAQ WAS WITHDRAWN SUBSEQUENTLY]**

### **Bharti Airtel Limited & Bharti Infratel Limited**


- “As per Indian GAAP results given in Clause 41 “Pursuant to the guidance issued by The ICAI, during the quarter, ‘FAQ on the provisions of CSR under Section 135 of the Companies Act 2013 and Rules thereon’, the Company, during the quarter, has changed its accounting policy to account for CSR expenditure as appropriation to the statement of profit & loss instead of charging it to the statement of profit & loss, with retrospective effect from April 1, 2014.

### **Gruh Finance Limited**

- As per the clarification issued by the ICAI, CSR expenses have been appropriated from the current year’s profits.

**EPS not adjusted for CSR amount appropriated**


## REASON GIVEN FOR UNSPENT AMOUNT

 100% unspent

- Initial year of CSR
- In process of evaluating various focus areas and consulting organizations in the area of education, health, sanitation, etc

 23% unspent

Some of the large programmes such as providing hygienic sanitation facilities for girl students in schools across the country are multi-year projects

 45.8% unspent

- Setting the foundation of various programs at a small scale, getting feedback and then putting an enhanced sustainable model

 98% unspent

- During the year, the Company did not come across any project which reflected its CSR activities



## To Conclude....

- Sachin Pilot said private companies, while maximizing their growth, also have responsibility towards society besides equitable and sustainable growth of the country
- Is it a boon to society or tax !!!! Mr. Ratan Tata recently said compulsory spending was like a tax, however Sudha Murthy chairperson of Infosys Foundation positively responded back that CSR spend is a boon.
- CSR activities will also create job opportunities
- Corporate Debate will continue !!! on voluntary vs mandatory CSR spent and concern on levy of penalty leviable on unspent amount.
- Last but not the least it has opened a wide area for CSR consultancy including for CAs!

