CSR Contributions to Technology Incubators

Frequently Asked Questions

December 2020

socialsector@nishithdesai.com
Contents

1. GENERAL BACKGROUND ON THE EXPANSION OF SCHEDULE VII OF THE CSR PROVISIONS 01
   Expansion of Schedule VII 01

2. FAQs – CORPORATE SOCIAL RESPONSIBILITY AND TECHNOLOGY BUSINESS INCUBATORS 04

Q1. What kind of incubators are eligible for receiving CSR funding? 04
Q2. Is there a distinction between for-profit and non-profit incubators with respect to CSR? 04
Q3. Is there a specific procedure to be followed to fund eligible incubators? 04
Q4. Should supporting TBI's be a part of our CSR Policy? Can we proceed without Board approval? 05
Q5. Should the Incubator be in the same locality as the corporate office for them to spend CSR funds? 05
Q6. Is there a restriction on certain activities which can be funded via CSR? 05
Q7. Is the CSR funding to incubators eligible for tax exemptions (80G, etc)? 06
Q8. What documentary proof is required from an incubator for the CSR donation? 07
Q9. Is there a certificate that will be required to report our CSR contribution to TBI? 07
Q10. What are the various methods of payment of CSR to incubators? 07
Q11. Can I specify the preferred utilization of the CSR funds to the incubator? How can this be achieved? Is there any recourse if funds are not spent or not spent on agreed activities? 07
Q12. Is a utilization certificate from the incubator necessary and sufficient? 07
Q13. What should the CSR agreement between my company and the incubator include? 07
Q15. Is there any audit/certification requirement for CSR funding to incubators? 08
Q16. How can incubators utilize the fund received through CSR funding? 08
Q17. Can CSR be contributed in kind to an incubator? How will it be valued (if it’s company’s own products (ex: cisco routers) versus items purchased on behalf of the incubator (computers, desks, etc)? 08
Q18. Will donations in the Financial Year (FY) count as CSR if the program/utilization of the funds by the incubator will be in the next FY? 08
Q19. Are administrative expenses and overheads of the incubator covered under CSR? How does this interact with the 5% cap on admin expenses? 08
Q20. What happens if there are unspent funds with the incubators? 08
Q21. Can I donate goods directly to an incubator or need a Sec 8/trust intermediary? 08
Q22. Can companies combine their resources to fund technologies? 08
Q23. Can specific start-ups being incubated at an eligible incubator be funded via CSR? 09
Q24. If the incubator or start-ups are engaged in a similar/broad domain of technology/business similar to my company’s business, would the donation come under CSR or fall under the ordinary business clause? 09
Q25. Can a company that has sponsored CSR Grants to Startups through an incubator, further commercialize the product developed by the startup? 09
Q26. Can a company take equity position in the startup to which it has provided seed support through CSR? 09
Q27. Can CSR funds be donated to virtual incubation programs? 09
Q28. Can I provide enough funds for a multiple year program to the incubator and count the relevant portion against CSR each year? 09
1. General Background on the expansion of Schedule VII of the CSR provisions

Per Section 135 of the Companies Act, 2013 (“CSR provisions”), every company with net worth of INR 500 crore, or turnover of INR 1000 crore or more or net profit of 5 crore or more is mandated to spend 2% of average net profit of the preceding three (3) years on corporate social responsibilities/CSR activities.

Since the time CSR provisions were first introduced, the list of CSR activities enumerated under Schedule VII of the Companies Act have been amended by the government from time to time. Most of the items enumerated under Schedule VII since its inception has been framed around activities pertaining to social welfare and charitable activities with key focus on eradicating extreme hunger and poverty, promotion of education, gender equality and empowering women, reducing child mortality, improving maternal health, ensuring environmental sustainability and protection of national heritage amongst others.

For instance, the pre-amended item (ix) under Schedule VII of the Companies Act pertained to contributions and funds that could be made to technology incubators located within academic institutions.

Expansion of Schedule VII

Vide recent amendments¹, item (ix) of Schedule VII has been expanded to include as follows:

1. Incubators funded by the Central Government or State Government or any agency or
2. Public Sector Undertakings ("PSUs") of Central Government or State Government, and
3. Public funded universities such as Indian Institute of Technology (IITs), National Laboratories and
4. Autonomous Bodies which have been established under the auspices of Indian Council of Agricultural Research (ICAR), Indian Council of Medical Research (ICMR), council of Scientific and Industrial Research (CSIR) Department of Economic Research (DAE), Defense Research and Development Organization (DRDO), Department of Science and Technology (DST), Ministry of Electronics and Information Technology.

Further, the incubators, agencies, PSUs, universities and autonomous bodies should primarily be engaged in conducting research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGs).

Additionally, firms engaged in “research and development activity of new vaccine, drugs and medical devices in their normal course of business” are now also eligible for CSR benefits.

Any company engaged in research and development (R&D) activity of new vaccine, drugs and medical devices in their normal course of business may undertake research and development activity of new vaccine, drugs and medical devices related to COVID-19 for financial years 2020-21, 2021-22 and 2022-23 subject to the conditions that, such research and development activities shall be carried out in collaboration with any of the institutes or organisations mentioned in item (ix) of Schedule VII to the Companies Act and the details of such activity shall be disclosed separately in the Annual Report on CSR included in the Board’s Report.²

Since the commencement of the CSR provisions, India Inc. has cumulatively spent close to 7B$ on legally mandated CSR activities under the provisions of the Companies Act. The spending for listed companies on CSR accounted for 2/3rd of the entire available CSR pool while unlisted companies accounted for the remaining part.

For instance, since the inception of CSR provisions, CSR expenditure by Bombay Stock Exchange (BSE)

¹. Notification G.S.R. 776(E) dated 11th October amending clause No. ix under Schedule VII of the Companies Act
². G.S.R.526(E) dated August 24, 2020
and National Stock Exchange (NSE) listed companies have witnessed a steady expenditure growth in percentage points. However, CSR expenditure were still more directed towards charitable activities like education, health, vocational training with few items under Schedule VII getting more precedence over others. While education and vocational training have traditionally been more preferred, CSR expenditure towards sanitation, yoga, disaster relief, sports and community development etc. have also seen a steady rise.

However, contributions or funds received by technology incubators under CSR provisions has now started to receive much traction. At closer look at India’s budgetary norms indicate that government's spending on R&D in terms of percentage of GDP has largely been stagnant at 0.7% which pales in comparison to industrialized economies across the globe.

Private sector has traditionally lacked behind public sector in terms of investments or support in R&D in India. However, there has been a growing concern that without private sector’s increased participation, R&D in the field of science and technology, medicine, engineering might not entirely take-off.

Vide recent CSR amendments, it can be seen that the focus of the government has shifted from solely promoting welfare projects to research in technology, medicine and other sectors. The recent initiative seems to also be aimed at increasing collaborative research of private companies in conjunction with publicly funded institutions. Additionally, it would “open up a substantial corpus of funds for state-sponsored incubators and start-ups currently being mentored” by them in not only technological sector as contemplated by the previous norms but also in a variety of sectors now. Increased funding in research is expected to lead to technological advancement and propel the growth of start-up ecosystem in India.

While a few companies have made contributions into government-affiliated technology business incubation (“TBIs”) centres as part of their CSR mandate in the past, time is right to allow more public-private participation in R&D. And with the recent amendments, the scope and potential impact of private participation in R&D using CSR funds certainly looks encouraging.

The amendment is a step in the right direction, and particularly in recognizing private sector’s role in spurring innovation in the field of science & technology and allied areas. Increased private participation in R&D will certainly spur growth in the economy. It is quite obvious that the government is aiming to streamline the processes which contribute to economic growth, and by allowing CSR contributions towards market-led R&D, the government seems to acknowledge the endogenous growth theory which lays emphasis on R&D and improvements in human capital accumulation as important determinants in shaping up long-term economic growth.

India Investment Grid

Invest India’s ‘Corporate Social Responsibility Projects Repository’ on the India Investment Grid (IIG) is an effort to list potential CSR projects at a central level on a single platform for companies and their implementation partners to assess where their CSR funds would be most impactful across India. Currently, the portal has over 650+ projects across eight diverse domains. The CSR repository on IIG has a dedicated section for projects from technology incubators. Currently, there are 107 projects from 37 technology incubators.

The India Investment Grid (“IIG”) is an online portal developed by the Government of India to showcase investment opportunities (Government and Private) in India to a global investor community resulting in ease of sourcing capital, obtaining the latest technology and realizing partnerships. IIG currently has over 14,000 investors on-board who are actively looking for investment opportunities in India and has registered over 1.4 million page views.

SAHYOG, the Social Impact Initiative of Invest India, endeavours to ensure that the Invest India team is an active, positive contributor to society. By undertaking philanthropic projects that aim at creating awareness about social issues and impact at the grass-root level, we ensure that Invest India remains a socially conscious organisation. The team has endeavoured
to create a separate CSR projects repository on the India Investment Grid platform to facilitate the identification of investible projects in various domains such as education & skill development, healthcare, social welfare, environment conservation, and technology incubators. Currently, the CSR Network is a repository of 750+ projects across 10 different sustainable development goals from more than 15 states in India. This will enable increased compliance and channeling of CSR funding into projects with potential for national impact.

Further, to reduce the ambiguity around permitted projects from technology incubators, some broad buckets of activities have been identified:

- Infrastructure & Facilities: Incubators can list and solicit funding for projects to upgrade or create physical and IT infrastructure. This can also include procurement of equipment, tools and software
- Programs & Partnerships: Incubators can seek CSR support for general program management costs, knowledge building programs for staff and incubatees and other events/ programs/ partnerships consistent with CSR activities mentioned in Schedule VII of the Companies Act
- Technology De-risking: Support for providing material and financial resources to incubatees for starting up, scaling, field trials, pilot orders and other business activities.

The CSR repository on IIG has a dedicated section for projects from technology incubators. Currently, there are 107 projects from 37 technology incubators. The platform has received maximum projects from West Bengal (22), followed by Tamil Nadu (19), Maharashtra (17) along with 8 other states and one Union Territory. The various categories in which the projects require funding are Infrastructure and Facilities that require funding 35% of the funding, followed by programs and partnerships with 33% of funding requirement and 31% for technology de-risking. The CSR projects repository on IIG intends to expand collaboration pathways for technology incubators and corporates, both foreign and domestic, to help meet the country’s Sustainable Development Goals (SDG) targets. Further, it will provide an opportunity for corporates to diversify their CSR portfolios with projects that would directly help in boosting the innovation ecosystem and give a fillip to start-ups and employment in India.

Another positive outcome that could be expected from the expanding corporate linkages with the research and academic ecosystem in the country would be an increase in the share of corporate funding for research which has been stagnant at only 30% of the total R&D spending in the country.

Allowing CSR funding for technology incubators and research aimed at promoting SDGs is a bold step undertaken by the government. By creating a separate section on IIG for CSR projects, Invest India has ensured that projects with capacity for national impact can be easily discovered by corporates looking to fund such projects in the country.
2. FAQs – Corporate Social Responsibility and Technology Business Incubators

Q1. What kind of incubators are eligible for receiving CSR funding?

A: Clause (ix)(a) of Schedule VII of the Companies Act necessitates contribution to be provided to incubators in the field of science, technology, engineering and medicine, funded by the Central or the State Government or Public Sector Undertaking or any agency of the Central/State Government.

Moreover, clause (ix)(b) of Schedule VII of the Companies Act also allows CSR contributions to public funded universities engaged in conducted research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals.

Q2. Is there a distinction between for-profit and non-profit incubators with respect to CSR?

A: While the provision under Schedule VII provides for incubators and does not make any such distinction, it is important to note that currently CSR contributions can only be made to non-profit organizations/NGOs or such similar entities or incubators, as the case may be.

Q3. Is there a specific procedure to be followed to fund eligible incubators?

A: As enshrined under Section 135 of the Companies Act, the procedure to be followed remains the same as general CSR contributions:

- **CSR Committee:** The Company must constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors.\(^5\)

- **Duties of CSR Committee:** It shall formulate a CSR Policy in compliance to Schedule VII of the Companies Act. Additionally, it shall recommend the expenditure to be incurred on carrying out such CSR activities, and lastly, monitor the CSR policy of the company occasionally.\(^6\)

  - **Board Approval:** The Company’s board is responsible to approve its CSR policy after considering the CSR committee’s recommendations on the same.\(^7\)

  - **Reporting Requirements:** The board’s report must an annual report on CSR containing particulars stipulated in the Annexure of the Companies (Corporate Social Responsibility) Rules, 2014. The company is also obligated to publish the contents of such policy on its website, if any, in the manner prescribed therein.\(^8\)

  - **Failure of compliance:** If the company fails to spend such amount on CSR activities as inscribed in its CSR policy, the board shall be responsible to specify the reasons for non-compliance. Further, any amount that remains unspent shall be transferred, within a period of 30 days, into a special account opened in any scheduled bank for that particular financial year. This account shall be tagged as the “Unspent Corporate Social Responsibility Account” and the company must spend the money available in this account on the CSR activities mentioned in its CSR policy within a span of 3 years. Failure to spend such an amount would oblige the company to transfer the sum to a Fund specified in Schedule VII, within 30 days from the date of completion of the third financial year. [Section 135(6)]

---

5. Section 135(1) of the Companies Act

6. Section 135(3)

7. Section 135(4)(a) of the Companies Act

8. Rule 8 of the Companies (Corporate Social Responsibility) Rules, 2014
Q4. Should supporting TBI’s be a part of our CSR Policy? Can we proceed without Board approval?

A: Yes, it should be. Supporting TBI’s should fall within the scope of activities under Schedule VII of the Companies Act. As stipulated under Section 135 of the Companies Act, the CSR Committee should devise the CSR Policy of the Company and present it to the Board. For the funds to qualify as CSR, it must be contributed towards only those activities stipulated in the CSR Policy which are in conformity with activities enshrined under Schedule VII of the Companies Act.

Moreover, Section 135(4)(a) of the Companies Act underscores the responsibility of the Company’s Board to approve its CSR policy after considering the CSR committee’s recommendations on the same. Therefore, it is incumbent upon the Board to approve before executing the CSR policy.

Q5. Should the Incubator be in the same locality as the corporate office for them to spend CSR funds?

A: There is no specific requirement under the Companies Act to strictly adhere to geographic proximity for the purposes of carrying out CSR activities by CSR contributing companies. However, it has been provided under Section 135(5) of the Companies Act that to spend the amount marked for CSR activities, preference should be provided to local areas and areas where it operates.

Q6. Is there a restriction on certain activities which can be funded via CSR?

A: Yes, only activities that are provided for under Schedule VII are to be funded by CSR, namely:

i. Eradicating hunger, poverty and malnutrition, promoting health care including preventive health care and sanitation including contribution to the Swach Bharat Kosh set-up by the Central Government for the promotion of sanitation and making available safe drinking water.

ii. Promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly and the differently abled and livelihood enhancement projects.

iii. Promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups.

iv. Ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agroforestry, conservation of natural resources and maintaining quality of soil, air and water including contribution to the Clean Ganga Fund set-up by the Central Government for rejuvenation of river Ganga.

v. Protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional art and handicrafts;

vi. Measures for the benefit of armed forces veterans, war widows and their dependents;

vii. Training to promote rural sports, nationally recognised sports, paralympic sports and olympic sports;

viii. Contribution to the prime minister’s national relief fund or any other fund set up by the central govt. for socio economic development and relief and welfare of the schedule caste, tribes, other backward classes, minorities and women;

ix. Contribution to incubators funded by Central Government or State Government or any agency or Public Sector Undertaking of Central Government or State Government, and contributions to public funded Universities, Indian Institute of Technology (IITs), National Laboratories and Autonomous Bodies.
9. Rural development projects

10. Slum area development.

11. Disaster management, including relief, rehabilitation and reconstruction activities

Q7. Is the CSR funding to incubators eligible for tax exemptions (80G, etc)?

A: Before the commencement of the CSR provision in the Companies Act, voluntary CSR activities such as building or establishing colleges, or supporting public welfare programs were allowed as a tax deductible deductions where a nexus with the business were established and were incurred wholly and exclusively for the purpose of such business.

However, as CSR expenses are essentially philanthropic in nature and not always borne out as business expenses, it was clarified that CSR expenses would not be eligible for deduction under Section 37 of the ITA. In fact, Explanation 2 to section 37(1) of the ITA was inserted vide the Finance Act, 2014 which states that expenditure incurred on CSR activities in furtherance of Section 135 of the Companies Act shall not be deemed to be an expenditure for the purposes of business and shall not accordingly be allowed as deduction under Section 37(1) of the ITA.9

Thus, CSR expenditure incurred in furtherance of Section 135 of the Companies Act is not allowed to be claimed as a tax deductible expenditure. However, CSR expenditure, which is of the nature described under sections 30 to 36 of the ITA is allowable as a deduction. For example, CSR expenditure laid out or expended on scientific research related to the business of the CSR contributing company is considered as a deductible expense under section 35(1)(x) and 35(1)(iv) respectively.

9. *CSR expenditure, being an application of income, is not incurred wholly and exclusively for the purposes of carrying on business. As the application of income is not allowed as deduction for the purposes of computing taxable income of a company, amount spent on CSR cannot be allowed as deduction for computing the taxable income of the company. Moreover, the objective of CSR is to share burden of the Government in providing social services by companies having net worth/turnover/profit above a threshold. If such expenses are allowed as tax deduction, this would result in subsidizing of around one-third of such expenses by the Government by way of tax expenditure.*

The existing provisions of section 37(1) of the Act provide that deduction for any expenditure, which is not mentioned specifically in section 30 to section 36 of the Act, shall be allowed if the same is incurred wholly and exclusively for the purposes of carrying on business or profession. As the CSR expenditure (being an application of income) is not incurred for the purposes of carrying on business, such expenditures cannot be allowed under the existing provisions of section 37 of the Income-tax Act. Therefore, in order to provide certainty on this issue, it is proposed to clarify that for the purposes of section 37(1) any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 shall not be deemed to have been incurred for the purpose of business and hence shall not be allowed as deduction under section 37. However, the CSR expenditure which is of the nature described in section 30 to section 36 of the Act shall be allowed as deduction under these sections subject to fulfillment of conditions, if any, specified therein."
Furthermore, due to the ongoing Covid-19 pandemic, the Central Government had provided various relaxations and measures on CSR contributions to the PM CARES Fund and such contributions are allowed as deductible CSR expenditure under section 80G of the IT Act. Thus, it can be argued that the legislative intent of the statute is to allow permissible deductions under section 80G, even if such contributions qualify as CSR expenditure under Section 135 of the Companies Act.

Q8. What documentary proof is required from an incubator for the CSR donation?

A: General documents required for CSR include:

1. Description and Aims and Goals of Agency to be issued by government bodies
2. List of Board Members or Trustees
3. Income Tax Exemption Certificates
4. Certificate of Registration
5. Details of contributions from other Government agencies
6. Details of projects—past and ongoing
7. PAN Card
8. Annual Reports including Auditor’s reports
9. Specific CSR Project Details

Q9. Is there a certificate that will be required to report our CSR contribution to TBI?

A: There is no specific requirement to obtain a certificate under the law to report CSR contribution to Tech Incubators. As deputed in the Companies (Corporate Social Responsibility Policy Rules), 2014, it should be included in the Annual Report prepared by the Corporate Social Responsibility Committee of the Board under Section 135 of the Companies Act, 2013 (“Companies Act”).

Q10. What are the various methods of payment of CSR to incubators?

A: The CSR payment must be made as a “spending” therefore disbursements in the form of actual contributions/donations can be made.

Q11. Can I specify the preferred utilization of the CSR funds to the incubator? How can this be achieved? Is there any recourse if funds are not spent or not spent on agreed activities?

A: This can be provided for in the CSR Agreement itself. The Agreement should also provide for a resolution of disputes clause, which provides for the appropriate authority to adjudicate and decide upon such issues.

Q12. Is a utilization certificate from the incubator necessary and sufficient?

A: Utilization certificate is not mandated under the law, but is a document issued as a good general practice.

Q13. What should the CSR agreement between my company and the incubator include?

A: The CSR Agreement should include general Contractual terms such as Agreement between parties, instructions, approval, termination, conditions for non-performance, obligations of both parties, disclosures, intellectual property rights assignment (if any), requisition of funds, kind of disbursement and details of the CSR project to be undertaken.

Q14. Can I request an impact report of my CSR funds? Is it mandated?

A: It is not a mandate under the law but an impact report is essential to relevance and impact of a...
company’s CSR projects, therefore it should be requested.

Q15. Is there any audit/certification requirement for CSR funding to incubators?

A: There is no audit requirement as per law, audit reports are generally carried out as per general business practices.

Q16. How can incubators utilize the fund received through CSR funding?

A: Incubators can utilize funds received through CSR funding by way of implementing projects in relevant technology area, social innovation and/or fund the technology incubation programs at those TBIs.

Q17. Can CSR be contributed in kind to an incubator? How will it be valued (if it's company's own products (ex: cisco routers) versus items purchased on behalf of the incubator (computers, desks, etc)?

A: CSR contributions in kind is not allowed. Section 135 prescribes "....shall ensure that company spends....". The company has to spend the amount, and thus any in-kind donation should not be allowed as a valid CSR expenditure.

Q18. Will donations in the Financial Year (FY) count as CSR if the program/utilization of the funds by the incubator will be in the next FY?

A: For the purposes of CSR compliance, contributions made by the CSR contributing is accounted for on a Year-to-Year basis. Thus, if CSR contributions are made for the FY 2020-21, the same should be spent by the incubator towards that purpose in that financial year.

Q19. Are administrative expenses and overheads of the incubator covered under CSR? How does this interact with the 5% cap on admin expenses?

A: 5% admin expenses is uniform across all classes of CSR recipients, which includes incubation centres as well. For the purposes of computing applicable admin expenses covered under CSR, currently no separate class of recipient organization has been carved out which is allowed to expend more than 5% on admin expenses.

Q20. What happens if there are unspent funds with the incubators?

A: Several companies have group-wide channelizing agencies where all the group companies transfer a lump-sum amount to the trust or other implementing agencies, which in turn, spend the amount to defined CSR activities as per Schedule VII. In this regard, the question that arises is whether as per the latest amendment which requires companies to transfer unspent CSR into escrow account/PM National Relief Fund, be applicable for implementing agencies or trusts/society incorporated for the purpose of CSR. In case of Trust/society/Section 8 companies incorporated for undertaking CSR activities by the Company or the group as a whole is nothing but a conduit for channelizing CSR contributions. This means that transferring funds to the trust/society is nothing but parking of CSR funds with a trust/society/section 8 company whether at own level or group level and still having full control over the money. However, going by the intent of law, it definitely does not intend simply to earmark the requisite amount towards CSR in a trust or society but to actually utilize it towards the objects as mentioned in Schedule VII. In case the Company executes its CSR expenditure through an in-house trust/society/section 8 company and any amount remains unspent during the year, the same shall be required to be transferred to unspent CSR account/fund as the case maybe.

Q21. Can I donate goods directly to an incubator or need a Sec 8/trust intermediary?

A: Donation in kind, either directly or through an intermediary, should not qualify as a permissible CSR expenditure.

Q22. Can companies combine their resources to fund technologies?

A: Companies may collaborate with other companies for undertaking projects or
programs or CSR activities in such a manner that the CSR Committee of respective companies are in a position to report separately on such projects or programs in accordance with the rules. Further, combining resources to fund technologies should also be done via the non-profit route, either through one’s own non-profit foundation or through an independent non-profit. Additionally, a consortium of corporates can together fund an incubator centre via the non-profit route.

Q23. Can specific start-ups being incubated at an eligible incubator be funded via CSR?

A: Clause (ix) of Schedule VII of the Companies Act lists the incubators eligible to be funded via CSR. However, this provision does not entitle an incubatee, incubated at these incubators, to receive direct contributions from the CSR contributing company.

Q24. If the incubator or start-ups are engaged in a similar/broad domain of technology/business similar to my company’s business, would the donation come under CSR or fall under the ordinary business clause?

A: As long as they can qualify the requirement of being funded by the State or Central Government and engaged in research in the fields of science, technology, engineering and medicine, it should qualify under CSR.

Q25. Can a company that has sponsored CSR Grants to Startups through an incubator, further commercialize the product developed by the startup?

A: While that may be possible, the commercialization aspect should remain de-hyphenated from CSR aspect. That is, CSR grant to an incubator should be a separate distinguishable/distinct event under Section 135 of the Companies Act. Further, such contributions should not be tied-in or be intrinsically linked to potential commercialization of a product. Any potential commercialization is a business decision which should be taken independent of the CSR arrangement that the CSR sponsor may have with the incubator.

Q26. Can a company take equity position in the startup to which it has provided seed support through CSR?

A: Equity position through CSR contribution is not permitted.

Q27. Can CSR funds be donated to virtual incubation programs?

A: Contributions are allowed towards incubators funded by Central Government or State Government or any agency or Public Sector Undertaking of Central Government or State Government engaged in conducting research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGs). The law does not provide for whether the incubator should be physical or virtual. Such contributions can be made as long as it is funded by the Central or State Government and engaged in conducting research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGs). The aim of the law should be to facilitate such a process, regardless of the mode of the process.

Q28. Can I provide enough funds for a multiple year program to the incubator and count the relevant portion against CSR each year?

A: No, any excess amount spent towards CSR shall not be carried forward and adjusted against CSR of the next or subsequent years.
About NDA

We are an India Centric Global law firm (www.nishithdesai.com) with four offices in India and the only law firm with license to practice Indian law from our Munich, Singapore, Palo Alto and New York offices. We are a firm of specialists and the go-to firm for companies that want to conduct business in India, navigate its complex business regulations and grow. Over 70% of our clients are foreign multinationals and over 84.5% are repeat clients.

Our reputation is well regarded for handling complex high value transactions and cross border litigation; that prestige extends to engaging and mentoring the start-up community that we passionately support and encourage. We also enjoy global recognition for our research with an ability to anticipate and address challenges from a strategic, legal and tax perspective in an integrated way. In fact, the framework and standards for the Asset Management industry within India was pioneered by us in the early 1990s, and we continue remain respected industry experts.

We are a research based law firm and have just set up a first-of-its kind IOT-driven Blue Sky Thinking & Research Campus named Imaginarium AliGunjan (near Mumbai, India), dedicated to exploring the future of law & society. We are consistently ranked at the top as Asia's most innovative law practice by Financial Times. NDA is renowned for its advanced predictive legal practice and constantly conducts original research into emerging areas of the law such as Blockchain, Artificial Intelligence, Designer Babies, Flying Cars, Autonomous vehicles, IOT, AI & Robotics, Medical Devices, Genetic Engineering amongst others and enjoy high credibility in respect of our independent research and assist number of ministries in their policy and regulatory work.

The safety and security of our client's information and confidentiality is of paramount importance to us. To this end, we are hugely invested in the latest security systems and technology of military grade. We are a socially conscious law firm and do extensive pro-bono and public policy work. We have significant diversity with female employees in the range of about 49% and many in leadership positions.

Globally, impact investment markets have been shown to thrive in jurisdictions where the Government is supportive. NDA has taken several steps over the past two decades for the creation of a favorable impact investment ecosystem including policy measures such as making representations on behalf of the Impact Investors Council to the CSR committee set up the Ministry of Corporate Affairs. We have also presented our book chapter on “Enabling Impact Investment Ecosystem and Improving CSR Targeting” at the invitation of the University of Lund at a conference for tax sustainability in Sweden which was attended by leading experts around the world. However, while the current state of laws in India is less than desirable, we wish to share our excitement and the tremendous opportunities that exist even within the current system. Using our expertise, NDA has assisted several investors in setting up social impact funds, including social venture funds and category II Alternate Investment Funds for Social Alpha, Omnivore, and several impact funds for Lok Capital. NDA is also helping the Global Steering Group for Impact Investments in launching outcome based funds in India, namely the India Education Outcomes Fund (IEOF) which is a USD 1 billion fund aimed at improving the quality of K-12 education in government schools. We have also assisted Bridge International Academies, which is focused on low cost schooling, with their India entry and operations. We are also advising large US based Foundations on pioneering equity plays into the impact investment space in India.

Invest India

Invest India is the National investment promotion and facilitation Agency for India, under the Department for Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce and Industry, Government of India. Invest India serves as the first point of reference for investors. With Investment promotion and facilitation as our core mandate, our team consists of the domain and functional experts that provide sector and state-specific inputs, and hand-holding support to investors through the entire investment cycle, from pre-investment decision-making to after-care. **Invest India houses Start-up India**, which is a flagship initiative of the Government of India intended to build a strong ecosystem for nurturing innovation and entrepreneurship to drive sustainable economic growth and generate large scale employment opportunities.

**SAHYOG, the Social Impact Initiative of Invest India**, endeavours to ensure that the Invest India team is an active, positive contributor to society. By undertaking philanthropic projects that aim at creating awareness about social issues and impact at the grass-root level, we ensure that Invest India remains a socially conscious organisation.

Acknowledging that most CSR activities are conducted at the grass-root level in India, which are often unorganized and difficult to manoeuvre, the team has created the CSR Network, a network that connects investors to CSR investible projects under the various Sustainable Development Goals identified by the Government of India. Through the assistance of state governments and other governmental organizations, this portal has created a repository of 750+ projects across 10 different sustainable development goals from more than 15 states in India.

Please contact social.impact@investindia.org.in for any assistance or queries.
Accolades

A brief chronicle our firm's global acclaim for its achievements and prowess through the years –

- **Benchmark Litigation Asia-Pacific**: Tier 1 for Government & Regulatory and Tax 2020, 2019, 2018
- **AsiaLaw Asia-Pacific Guide 2020**: Tier 1 (Outstanding) for TMT, Labour & Employment, Private Equity, Regulatory and Tax
- **FT Innovative Lawyers Asia Pacific 2019 Awards**: NDA ranked 2nd in the Most Innovative Law Firm category (Asia-Pacific Headquartered)
- **Who’s Who Legal 2019**: Nishith Desai, Corporate Tax and Private Funds – Thought Leader Vikram Shroff, HR and Employment Law- Global Thought Leader Vaibhav Parikh, Data Practices - Thought Leader (India) Dr. Milind Antani, Pharma & Healthcare – only Indian Lawyer to be recognized for 'Life sciences-Regulatory,' for 5 years consecutively
- **Merger Market 2018**: Fastest growing M&A Law Firm in India
- **Asia Mena Counsel’s In-House Community Firms Survey 2018**: The only Indian Firm recognized for Life Sciences
- **IDEX Legal Awards 2015**: Nishith Desai Associates won the “M&A Deal of the year”, “Best Dispute Management lawyer”, “Best Use of Innovation and Technology in a law firm” and “Best Dispute Management Firm”
Please see the last page of this paper for the most recent research papers by our experts.

Disclaimer

This report and the information that it contains is provided for general information purposes only. It has been prepared as a work of legal research only and does not represent legal advice in respect of the laws of the India. It does not purport to be complete nor to apply to any particular factual or legal circumstances. It does not constitute and must not be relied or acted upon as legal advice or create an attorney-client relationship with any person or entity. Neither Nishith Desai Associates nor Invest India accepts responsibility for losses that may arise from reliance upon the information contained in this FAQ or any inaccuracies herein, including changes in the law since the research was finalized. Legal advice should be obtained from legal counsel qualified in the relevant jurisdiction(s) when dealing with specific circumstances. Neither Nishith Desai Associates nor any other contributor to this FAQ is holding itself, himself or herself out as being qualified to provide legal advice in respect of any jurisdiction as a result of his or her participation in or contribution to this Report.

Contact

For any help or assistance please email us on ndacconnect@nishithdesai.com
or visit us at www.nishithdesai.com
The following research papers and much more are available on our Knowledge Site: www.nishithdesai.com

**NDA Insights**

<table>
<thead>
<tr>
<th>TITLE</th>
<th>TYPE</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Delhi Tribunal: Hitachi Singapore's Liaison Office in India is a Permanent Establishment, Scope of Exclusion Under Singapore Treaty Restrictive</td>
<td>Tax</td>
<td>November 2019</td>
</tr>
<tr>
<td>CBDT issues clarification around availment of additional depreciation and MAT credit for companies availing lower rate of tax</td>
<td>Tax</td>
<td>October 2019</td>
</tr>
<tr>
<td>Bombay High Court quashes 197 order rejecting Mauritius tax treaty benefits</td>
<td>Tax</td>
<td>May 2019</td>
</tr>
<tr>
<td>Investment Arbitration &amp; India – 2019 Year in review</td>
<td>Dispute</td>
<td>January 2020</td>
</tr>
<tr>
<td>Changing landscape of confidentiality in international arbitration</td>
<td>Dispute</td>
<td>January 2020</td>
</tr>
<tr>
<td>The Arbitration and Conciliation Amendment Act, 2019 – A new dawn or sinking into a morass?</td>
<td>Dispute</td>
<td>January 2020</td>
</tr>
<tr>
<td>Why, how, and to what extent AI could enter the decision-making boardroom?</td>
<td>TMT</td>
<td>January 2020</td>
</tr>
<tr>
<td>Privacy in India - Wheels in motion for an epic 2020</td>
<td>TMT</td>
<td>December 2019</td>
</tr>
<tr>
<td>Court orders Global Take Down of Content Uploaded from India</td>
<td>TMT</td>
<td>November 2019</td>
</tr>
<tr>
<td>Graveyard Shift in India: Employers in Bangalore / Karnataka Permitted to Engage Women Employees at Night in Factories</td>
<td>HR</td>
<td>December 2019</td>
</tr>
<tr>
<td>India’s Provident Fund law: proposed amendments and new circular helps employers see light at the tunnel’s end</td>
<td>HR</td>
<td>August 2019</td>
</tr>
<tr>
<td>Crèche Facility By Employers in India: Rules Notified for Bangalore</td>
<td>HR</td>
<td>August 2019</td>
</tr>
<tr>
<td>Pharma Year-End Wrap: Signs of exciting times ahead?</td>
<td>Pharma</td>
<td>December 2019</td>
</tr>
<tr>
<td>Medical Device Revamp: Regulatory Pathway or Regulatory Maze?</td>
<td>Pharma</td>
<td>November 2019</td>
</tr>
<tr>
<td>Prohibition of E-Cigarettes: End of ENDS?</td>
<td>Pharma</td>
<td>September 2019</td>
</tr>
</tbody>
</table>
Research @ NDA

Research is the DNA of NDA. In early 1980s, our firm emerged from an extensive, and then pioneering, research by Nishith M. Desai on the taxation of cross-border transactions. The research book written by him provided the foundation for our international tax practice. Since then, we have relied upon research to be the cornerstone of our practice development. Today, research is fully ingrained in the firm’s culture.

Our dedication to research has been instrumental in creating thought leadership in various areas of law and public policy. Through research, we develop intellectual capital and leverage it actively for both our clients and the development of our associates. We use research to discover new thinking, approaches, skills and reflections on jurisprudence, and ultimately deliver superior value to our clients. Over time, we have embedded a culture and built processes of learning through research that give us a robust edge in providing best quality advices and services to our clients, to our fraternity and to the community at large.

Every member of the firm is required to participate in research activities. The seeds of research are typically sown in hour-long continuing education sessions conducted every day as the first thing in the morning. Free interactions in these sessions help associates identify new legal, regulatory, technological and business trends that require intellectual investigation from the legal and tax perspectives. Then, one or few associates take up an emerging trend or issue under the guidance of seniors and put it through our “Anticipate-Prepare-Deliver” research model.

As the first step, they would conduct a capsule research, which involves a quick analysis of readily available secondary data. Often such basic research provides valuable insights and creates broader understanding of the issue for the involved associates, who in turn would disseminate it to other associates through tacit and explicit knowledge exchange processes. For us, knowledge sharing is as important an attribute as knowledge acquisition.

When the issue requires further investigation, we develop an extensive research paper. Often we collect our own primary data when we feel the issue demands going deep to the root or when we find gaps in secondary data. In some cases, we have even taken up multi-year research projects to investigate every aspect of the topic and build unparallel mastery. Our TMT practice, IP practice, Pharma & Healthcare/Med-Tech and Medical Device, practice and energy sector practice have emerged from such projects. Research in essence graduates to Knowledge, and finally to Intellectual Property.

Over the years, we have produced some outstanding research papers, articles, webinars and talks. Almost on daily basis, we analyze and offer our perspective on latest legal developments through our regular “Hotlines”, which go out to our clients and fraternity. These Hotlines provide immediate awareness and quick reference, and have been eagerly received. We also provide expanded commentary on issues through detailed articles for publication in newspapers and periodicals for dissemination to wider audience. Our Lab Reports dissect and analyze a published, distinctive legal transaction using multiple lenses and offer various perspectives, including some even overlooked by the executors of the transaction. We regularly write extensive research articles and disseminate them through our website. Our research has also contributed to public policy discourse, helped state and central governments in drafting statutes, and provided regulators with much needed comparative research for rule making. Our discourses on Taxation of eCommerce, Arbitration, and Direct Tax Code have been widely acknowledged. Although we invest heavily in terms of time and expenses in our research activities, we are happy to provide unlimited access to our research to our clients and the community for greater good.

As we continue to grow through our research-based approach, we now have established an exclusive four-acre, state-of-the-art research center, just a 45-minute ferry ride from Mumbai but in the middle of verdant hills of reclusive Alibaug Raigadh district. Imaginarium AliGunjan is a platform for creative thinking; an apolitical eco-system that connects multi-disciplinary threads of ideas, innovation and imagination. Designed to inspire ‘blue sky’ thinking, research, exploration and synthesis, reflections and communication, it aims to bring in wholeness – that leads to answers to the biggest challenges of our time and beyond. It seeks to be a bridge that connects the futuristic advancements of diverse disciplines. It offers a space, both virtually and literally, for integration and synthesis of knowhow and innovation from various streams and serves as a dais to internationally renowned professionals to share their expertise and experience with our associates and select clients.

We would love to hear your suggestions on our research reports. Please feel free to contact us at research@nishithdesai.com