



Confederation of Indian Industry

## **Monetary assistance and other support provided by employer to employees for COVID-19 care related expenses and support provided by entities to State Governments, bodies/ hospitals – Request for exemption / provision of deduction for such support**

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### **Background**

The taxpayers truly commend the Government for the support provided by it to vulnerable sections of the society, hit hard by COVID-19 pandemic. The second COVID-19 wave has unfortunately been even more distressing, resulting in higher human loss. In such dire times, all stakeholders have stepped forward to provide every possible support to the people affected by the pandemic.

The corporate sector too has extended itself in many ways such as by making available medical oxygen, oxygen concentrators, ventilators, ambulances, setting-up COVID care centres, free meals to patients, accommodation in hotels to frontline workers and health care service providers, etc. These initiatives have been taken either by way of discharge of corporate social responsibility obligation or even otherwise, as a business necessity considering the crisis existing in the country.

Besides contributing to the society at large, businesses have been actively taking care of their employees across all levels, and their immediate family members, to protect lives and livelihoods. Given the stretched resources and lack of options, individuals have had to seek medical care in all kinds of facilities – approved or unapproved by the Income Tax Department. In many cases, because of non-availability of hospitals, individuals have had to set up health care units at home; procure life-saving medicines / devices such as Oxygen concentrators etc.

### **Support provided by employers to employees**

The unexpected expenditure for self and impacted family members, has put severe financial pressure on the individuals. To support them, employer(s) have stepped in to provide financial support to employees by way of reimbursement of the following COVID-19 care related expenses actually incurred by the employee for self and for his / her immediate family/ household:

- (a) Home care expenses like home ICU expenses, doctor consultation, nursing expenses, pathological tests, X-rays/ CT-Scan, MRI etc.;
- (b) Expenses for purchase of masks/ sanitizers/ PPE kits/ gloves/ oximeters/ fumigation at home;
- (c) Oxygen supplies and devices such as the concentrator, ventilators, nebuliser, oximeters, thermometers – purchase / rental costs;
- (d) Medicines;
- (e) Vaccines;
- (f) Co-pay amount as part of medical insurance claim during COVID-19 hospitalization (i.e. 20% to 30% of hospital bill is required to be paid by the employee under cashless or reimbursement scheme);
- (g) Free meals to COVID-19 impacted employees and their family members;
- (h) Quarantine facilities in hotels;
- (i) Any other medical expenses incurred for COVID-19 care;

Reimbursement by the employer for COVID-19 care related expenses as listed above is providing timely and much needed financial support to help employees cope with this crisis.

Employers may also give monetary assistance and other support for COVID-19 care related expenses by way of:

- (a) Interest free loans;
- (b) Providing medical equipment such as oxygen concentrators, oxygen cylinders, oximeters, etc, which are owned or hired by the employer, for use by the employees.

In the unfortunate event of death of employees due to COVID-19, the employers are providing ex-gratia compensation to legal heirs as a financial support either by way of lumpsum payment or spread over few years as cash payments or support in kind such as school fee, etc..

The financial support is extended not only by employers but also by other persons closely associated with the individual like other employees of the same company or employees of group companies or customers or vendors of employer or even employees of customers or vendors of employer. Even friends and relatives (not covered by definition of 'relative' applicable for section 56(2)(x) of the Income Tax Act, 1961 (the Act)) step in with financial support during such crisis situation.

## **Tax implications of support provided to employees**

The initiative of the employers/other persons to provide monetary assistance and other support to the employees to meet COVID care related expenses could result in unintended tax burden on the employees, as under the current provisions of the Act such monetary assistance and other support by the employer is taxable in the hands of the employees or in hands of family members.

The currently available exemption from tax, for medical expenditure paid for the employee, by the employer, under proviso to section 17(2) of the Act is very restrictive since it merely covers premium paid for health insurance policy, hospitalisation expenses at employer's own hospital or expenditure incurred on specified ailments at hospitals approved by the Income tax Department. The norms for exemption for reimbursement of hospitalisation expenses are also very rigid. For example, home isolation treatment does not qualify for exemption; there is minimum requirement of surgery or hospitalisation for at least 3 continuous days; the coverage of approved hospitals qualifying for exemption is very small. Hence, there is greater likelihood of medical expenses incurred or reimbursed by the employer being regarded as taxable perquisite in the hands of the employee.

The following paras bring out the additional tax implication for the individual employee if any support is extended to him/her:

- a) **Loan:** If the employer provides monetary assistance in the form of loan, the notional interest is liable to tax in the hands of the employees. An exemption is available only if the total loan amount does not exceed INR 20,000 or if the loan is provided for medical treatment of specified diseases requiring surgical operation or hospitalization for at least three continuous days. Although respiratory system diseases are covered in the list of specified diseases, the condition for exemption is linked with surgical operation or hospitalization for at least three continuous days. Thus, any loan provided for home care expenses is not covered under the above exemption.
- b) **Gifts:** Gifts from the employer which exceed INR 5,000 or more per financial year are taxable in the hands of the employees.
- c) **Medical equipment:** Even if the employer provides medical equipment (which is owned or hired by the employer) to the employee for usage, 10% of the actual cost or rental charges paid by the employer, is taxable in the hands of the employees.
- d) **Ex-gratia payments:** In case of ex-gratia payments to legal heirs to deceased employees, the CBDT had in the past issued a Circular no. 573 dated 21 August 1990 clarifying that a lump sum payment made gratuitously or by way of

compensation or otherwise, to the widow or other legal heirs of an employee, who dies while still in active service is not taxable as income.

It is necessary to reiterate that the above referred Circular is valid and binding even under current law. This is because doubts have been expressed in certain quarters on the validity of the Circular in the light of subsequent insertion of provisions like section 56(2)(v)/(vi)/(vii) and currently applicable section 56(2)(x). Section 56(2)(x) is an anti-abuse provision which taxes receipt of money in excess of Rs. 50,000 without consideration in the hands of the recipient barring certain exceptions. Surely, it cannot be Government's intention to tax COVID-19 related financial support provided by employer to family of deceased employee either by way of lumpsum amount or recurring amount for a specified period. It is necessary to provide such clarification on non-applicability of section 56(2)(x) not only in context of receipts from employers but also from other persons who are not relatives as defined in section 56(2)(x).

Considering the sharp increase in the cases of ex-gratia payments during this pandemic, CBDT may issue a clarificatory circular in this regard and provide the certainty to the taxpayers, i.e. legal heirs of deceased employees.

CBDT may also exercise powers vested in it under clause (XI) of proviso to section 56(2)(x) to notify monetary receipts received from employer or other persons to relieve financial hardship caused by the death of the employee. It may be noted that any unexplained cash credits can be taxed in the hands of the recipient under section 68 at higher rate of 60% under section 115BBE. Also, cash receipt in excess of Rs. 2 lakhs is prohibited by section 269ST and can be penalised under section 271DA. Hence, there are sufficient safeguards to protect the interests of Revenue. If necessary, the recipient may be required to obtain declaration from the payer in form which may be prescribed by CBDT giving full particulars of identity, PAN, Aadhar (if applicable), mode of payment (which may be mandated by non-cash mode only), etc. The return forms may also be modified to require the recipients to furnish these details.

Thus, the monetary assistance and other support provided by the employer and other persons for COVID-19 care related expenses, as envisaged above, will result in tax in the hands of the recipient employees.

### **Support provided by entities**

Besides providing various reliefs to its employees on account of COVID-19, a large number of entities have also come forward to help state governments, bodies/hospitals by providing and creating the required resources to treat COVID-19 patients.

In these times of need, corporate and non-corporate entities stand in solidarity with the efforts of the government to overcome the second wave of pandemic that is impacting millions of lives. Despite the fact that such entities are going through immense financial difficulties amidst the lockdown and slow economic growth, entities have come forth in every manner to support the government and are not only making cash contribution to the 'Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund' (PM CARES Fund) but also taking various other steps like:

- (a) Donation of goods such as oxygen cylinders, oxygen concentrators and other material for COVID-19 treatment to hospitals and public institutions;
- (b) Donation of ICU beds, which are fully equipped with ventilators, to hospitals;
- (c) Donation of supplies such as test kits, medications, ventilators and personal protective gear for frontline workers;
- (d) Organisation of vaccination drives and associated activities;
- (e) Working in collaboration with international organisations to help people understand as to when they should visit a hospital for medical aid.

### **Tax implications in the hands of entities**

The following paras bring out the tax implications in respect of the support provided by entities:

- a) **Allowability of expenditure under section 37 of the Act:** The Ministry of Corporate Affairs (MCA) *vide* General Circular no. 10/2020 dated 23 March 2020 has clarified that spending of CSR funds for various activities related to COVID-19, such as preventive health care and sanitation and disaster management, is an eligible CSR activity.

Presently, as per Explanation 2 to section 37(1) of the Act, any expenditure on the activities relating to CSR is not allowed deduction as it is not deemed to be an expenditure incurred for the purpose of the business or profession.

Further, expenditure on activities related to COVID-19 which is undertaken by non-corporate entities is also likely to be treated as an expenditure which is not incurred for the purpose of the business or profession and accordingly would not be allowed as a deduction under section 37 of the Act.

- b) **Deduction under section 80G:** *Vide* Press Information Bureau dated 28 March 2020, the donations made to PM CARES Fund are exempted from income tax under section 80G of the Act.

Presently, in view of Explanation 5 to section 80G of the Act, donations made in kind are not treated as an allowed deduction under the said section.

c) **Contributions through trusts may face disallowance under section 40A(9):**

The employers may also prefer to extend COVID-19 care assistance by making contributions to employee welfare trusts which administer such benefits through representatives of employees. However, any such contributions face disallowance under section 40A(9) of the Act in the hands of the employer. Section 40A(9) is also an anti-abuse provision to curb practice of claiming tax deduction by making contributions to employee welfare trusts and routing them back to the employer as loans or deposits. However, there is no provision to grant deduction to the employer when the contribution is actually used for bonafide employee welfare purposes.

Such COVID-19 assistance extended by employers by making contributions to employee welfare trusts should not be disallowed under section 40A(9) where the contributions are actually spent for above referred purposes.

### **CII submission**

The present circumstances merit special consideration as the Government needs the support of all stakeholders to augment its resources in its war against COVID-19.

**Given the unprecedented, extraordinary circumstances and genuine hardship faced by the employees and their immediate family members, it is submitted that tax relief may be provided to the individuals by providing an exemption from income-tax on:**

- (a) Direct incurrence or reimbursement by the employer of COVID-19 care related expenses (including cost of vaccination and payment/ reimbursement of COVID-19 hospitalisation expenses which are either in excess of or not covered under organisation's group Medclaim policy applicable to employees and eligible family members);
- (b) Interest free loans provided by the employer for financial hardship due to COVID-19;
- (c) Medical equipment provided by the employer for the use of the employee and his family members.
- (d) Financial support or support in kind for spouse/ surviving heirs of the deceased employee.

The effective cost of the tax relief being sought would be nominal as the expenses incurred by the employees will result in additional taxable income of the service providers / manufacturers of healthcare equipment / pharmaceutical companies.

- (e) CBDT may either issue a clarificatory Circular reiterating the validity of past Circular No. 573 dated 21 August 1990 and/or exercise powers vested in it under clause (XI) of proviso to section 56(2)(x) to notify that monetary receipts received from employer or other persons shall not be taxable. This will remove unwarranted apprehension about taxation of receipts to relieve financial hardship caused by COVID-19.

**Similarly, it is submitted that tax relief may be provided to entities by providing the following tax treatment in respect of measures taken by entities:**

- (a) The amounts spent by entities on activities related to COVID-19 should be allowable under section 37 of the Act. Without prejudice to above, if the cost of equipment like oxygen concentrator is not to be allowed as revenue expenditure then depreciation on such equipment must be allowed under section 32 of the Act.
- (b) It is recommended that the fair market value of various in-kind contribution/ donation being made by entities, such as donating oxygen cylinders, oxygen concentrators, personal protective gear, etc. to ensure safety of people, doctors and healthcare workers should be allowed as deduction under section 80G of the Act.
- (c) COVID-19 assistance extended by employers by making contributions to employee welfare trusts should not be disallowed under section 40A(9) where the contributions are actually spent for above referred purposes. This can be clarified either by issuing a Circular and/or by making necessary legislative amendments.
- (d) The employer may be required to keep the COVID positive report of employee or family as back-up for verification by the Income Tax Department, to check possible misuse of the above-mentioned reliefs.

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