

Re: Monetary assistance and other support provided by the industry to the employees and society at large for COVID-19 care related expenses – Request for exemption from Income-tax in hands of recipients and business expense deduction for industry

1. The second wave of COVID-19 pandemic in India has been more severe and devastating than the first wave, affecting many more human lives and causing significant stress on the healthcare services. In the words of the Hon'ble Prime Minister, it is a storm which has shaken the nation.
2. Whilst both Central and State Governments are doing their best to tide over the crisis, the challenge is humongous, and all stakeholders have stepped forward to provide every possible support to the people affected by the pandemic. The corporate sector has remained committed to supporting the Government in this fight. It 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 situation existing in the country.
3. 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 hospital facilities, individuals have had to set up health care units at home; procure life-saving medicines / devices such as Oxygen concentrators etc. All this unexpected expenditure for self and impacted family members, has put severe financial pressure on the individuals. Further it may be noted that such cost is generally not covered by insurance even though the individuals may be insured

Taxation issues faced by employees & family members on COVID 19 assistance received from employers and other persons

4. In view of the hardships faced by 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:
 - (a) Home care expenses like home ICU expenses, doctor consultation, nursing expenses, pathological tests, X-rays/ CT-Scan, MRI etc;
 - (b) Oxygen supplies and devices such as the concentrator, ventilators, nebuliser – purchase / rental costs;
 - (c) Medicines;
 - (d) Vaccines;
 - (e) 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);
 - (f) Covid 19 hospitalization expenses which are not allowed under the insurance policy or exceeds the policy limit;
 - (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
5. 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.
 6. Employers have also given monetary assistance and other support for COVID-19 care related expenses by way of:
 - (a) Interest free loans; or
 - (b) Gifts in kind or in the form of money;
 - (c) Providing medical equipment such as oxygen concentrators, oxygen cylinders, oximeters, etc, which are owned or hired by the employer, for use by the employees.
 7. 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 a period. Financial assistance is also provided for education of children. Such support is provided to compensate for the loss of source of income.
 8. The financial support is extended not only by employers but also by other persons closely associated with the individual like superiors/colleagues 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 s.56(2)(x)) step in with financial support during such crisis situation.
 9. **However, the initiative of the employer or other persons, to supplement Government's efforts by providing monetary assistance and other support to the employees to meet COVID 19 care related expenses could result in unintended tax burden on the employees, as under the current provisions of the Income-tax Act, 1961, such monetary assistance and other support by the employer is taxable in the hands of the employees or in hands of family members.**
 10. The currently available exemption from tax, for medical expenditure paid for the employee, by the employer, under proviso to section 17(2) of the Income tax Act 1961, 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.
 11. 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 3 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 3 continuous days. Thus, any loan provided for home care expenses is not covered under the above exemption.
 12. Similarly, gifts from the employer which exceed INR 5,000 or more per financial year are taxable in the hands of the employees.

13. Even if the employer provides medical equipment (which is owned or hired by the employer) to the employee for use, 10% of the actual cost or rental charges paid by the employer, is taxable in the hands of the employees.
14. 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. However, with subsequent insertion of provisions like s.56(2)(v)/(vi)/(vii) and currently applicable s.56(2)(x), there are apprehensions in the minds of the taxpayers whether the Circular is still binding. S.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). The Chamber firmly believes that the ex-gratia lumpsum or periodical payments to legal heirs is not taxable under this provision. Surely, it cannot be Government's intent to tax such receipts which are made with the genuine intent of supporting COVID 19 impacted families of deceased employees who face financial hardship due to sudden loss of working family member. Any erroneous levy of tax u/s. 56(2)(x) will dilute the well-meaning support extended by the employer. The CBDT has taken power to notify cases to which this section shall not apply. Considering the sharp increase in the cases of ex-gratia payments during this pandemic, CBDT may either issue a clarificatory circular in this regard or notify it within clause (X) of proviso to s.56(2)(x) to provide certainty to the legal heirs of deceased employees and avoid any litigation in this regard.
15. Similar receipts for medical treatment or on death of employee from other persons who are not relatives as defined in s.56(2)(x) also require to be clarified as not taxable u/s. 56(2)(x) in the hands of the recipient.
16. If such clarification is not provided, the monetary assistance and other support provided by the employer and other persons for COVID -19 care related expenses, as envisaged above, may be erroneously taxed in the hands of the recipients and reduce the benefit available to the needy employees considerably.
17. 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. Furthermore, s.56(2)(x) originally intended as anti-abuse provision is unintentionally creating a hurdle for extending genuine support to Covid 19 impacted individuals. This is a fit case where CBDT can exercise powers vested in it under clause (XI) of proviso to s.56(2)(x) to notify class of persons and conditions subject to which s.56(2)(x) will not apply.

Taxation issues faced by industry on business deduction for COVID 19 expenditure incurred for society

18. Considering the need to build capacities for essential goods and services and additional infrastructure required for quick and emergency response to the COVID19 outbreak, many corporates have voluntarily come forward and joined hands with the Government for a collective action to fight the COVID19 crisis. For instance, businesses are complementing government endeavours in fighting the pandemic, by providing essential and life survival items such as medical oxygen, oxygen cylinders, tankers, oxygen concentrators, ventilators, Personal Protective Equipment (PPE) N 95 masks, hand sanitisers, various hygienic items, setting up facilities to combat COVID 19 in the hospitals, arranging free meals to patients, frontline workers, poor people, daily wage earners, and so on, to ensure that timely support reaches the needy.

19. Many taxpayers are extending commitment for contributing *inter-alia* the following:

Direct measures

- Diverting industrial oxygen for medical purposes by suspending industrial operations
 - Providing oxygen cylinders, tankers, concentrators, etc.
 - Equipment such as ventilators, respiratory systems for treating infected patients and personal protective equipment for medical personnel
 - Testing kits and masks for patients and health workers
 - Modular treatment facilities set up for infected patients
 - Free supplies of hygiene products like soaps, sanitizers, cleaners, etc
 - Manufacturing of Hygienic materials viz sanitisers and various hygienic products.
 - Packaging and Printing materials, who are directly providing packaging and logistic support to above products and equipments.
 - Arranging free meals to patients, frontline workers, poor people, daily wage earners
 - Providing hotel accommodation to frontline workers
 - Reimbursing vaccination cost or arranging vaccination drives by tie up with hospitals for employees or their family members, various business partners like suppliers, customers and their families or communities in and around office or manufacturing plants.
20. The above measures by industry, by leveraging on their expertise and infrastructure, actively supplement the government efforts in reaching out to the needy on time, thus contributing to provide relief to the people of the nation in times of complete disruption.
21. However, it must be recognised that these companies too are withstanding immense financial pressures in the current scenario. Despite current business challenges and demand sluggishness in the economy due to varying degrees of lockdown across the country, the industry has still come forward to support India's war against COVID 19. Therefore, it is imperative that the Government should provide all-out support to the efforts being undertaken by the private sector towards this cause
22. The above referred expenditure incurred by businesses may get classified as Corporate Social Responsibility (CSR) under section 135 of the Companies Act 2013 even if the company incurring such expenditure is not covered by s.135 of Cos Act or does not classify it as CSR in its financial statements. Hence, they run the risk of being disallowed under Explanation 2 to s.37(1) of Income tax Act which provides that any expenditure incurred by an assessee on the activities relating to CSR referred to in section 135 of the Cos Act 2013 shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession.
23. 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 u/s. 40A(9) of the Act in the hands of the employer.
24. S.40A(9) is 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.

Our request

25. Given the unprecedented, extraordinary circumstances and genuine hardship faced by the employees and their immediate family members, it is humbly 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 or by other persons of COVID-19 care related expenses (including cost of vaccination) ;
 - (b) Interest free loans provided by the employer for financial hardship due to COVID-19;
 - (c) Gifts in kind or in the form of money provided by the employer to cover COVID-19 care related expenses;
 - (d) Medical equipment provided by the employer for the use of the employee and his family members.
26. 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.
27. It is also requested that CBDT may either clarificatory Circular or exercise powers vested in it under clause (XI) of proviso to s.56(2)(x) to notify monetary receipts received from employer or other persons to relieve financial hardship caused by Covid 19. It may be noted that any unexplained cash credits can be taxed in the hands of the recipient u/s. 68 at higher rate of 60% u/s. 115BBE. Also, cash receipt in excess of Rs. 2 lakhs is prohibited by s.269ST and can be penalised u/s. 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.
28. It is further requested that such Covid 19 assistance extended by employers by making contributions to employee welfare trusts may not be disallowed u/s. 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.
29. Our Chamber has been representing since first COVID 19 wave to allow full deduction for any direct expenditure incurred towards combating COVID 19 crisis, while computing taxable income for the year in which such expenditure is incurred. We take this opportunity to reiterate our request to amend Sections 37/ Section 57 of the Act or issue of Circulars/notifications to allowing full deduction for all expenditure incurred for COVID19 as illustrated at para 21 above and as a special case permit companies to consider all expenses incurred related to COVID-19 as part of CSR expense and allowable as business deduction for tax. This will help to reduce the financial burden on the companies and encourage them to come forward and aid the Government in jointly combating with this pandemic.