

BOMBAY CHAMBER OF COMMERCE & INDUSTRY

INDIRECT TAXES

Representation on Covid-19 related facilities to employee

GOODS AND SERVICES TAX

Sl.	Particulars	Issues and Rationale	Recommendations
1.	<p>ITC claim in respect of various facilities provided to employees like:</p> <ul style="list-style-type: none"> • Vaccination • Oxygen concentrators • Quarantine facility (in own premises or in hotels) • Online doctor consultation 	<ul style="list-style-type: none"> • As per section 16(1) of the Central Goods and Services Tax Act, 2017 (CGST Act), every registered person shall be entitled to take credit of input tax charged on any supply of goods or services to him which are used or intended to be used in the course or furtherance of his business. • Further, section 17(5) of the CGST Act provides that ITC shall not be allowed in respect of certain goods and service even if same are used in the course or furtherance of business. <p>As per clause (b)(i), credit on health services is not allowed unless it is obligatory for an employer to provide the same to its employees under any law for the time being in force. Similarly, clause (g) restricts credit in respect of goods or services or both used for “Personal consumption”.</p> <ul style="list-style-type: none"> • Given that this is an unprecedented and extraordinary scenario, such expenses are a measure of commercial expediency to ensure that the employees can provide continuous services. The welfare, health and safety of the employees is ultimately important for the business of any organization. 	<p>It is suggested to clarify that ITC shall be eligible in respect of various expenses incurred by the employer to ensure well-being of the employee including vaccination, provision of oxygen concentrators, quarantine facility and online doctor consultation.</p> <p>Further, ITC should also be eligible where such expenditure is incurred for the family members of the employees.</p>

		<ul style="list-style-type: none"> • Further, such activities proactively undertaken by an organization helps in building the goodwill and reputation of the company, which indirectly contributes to its business growth. Also, incurrence of such expenditure is predominantly motivated by business exigency. • Expenditure incurred in respect of life saving supplies should be distinguished from expenditure of a routine nature which is intended for recreation, entertainment, or general betterment of the employees. • Further, in certain cases, such facilities are also made available by the employer to the family members of the employees. Health of family member has a direct impact on the mental health of employee and thus, providing such facilities to family members of the employee is in the course or furtherance of business. • Ministry of Health, Govt. of India has announced family members and dependents of workers can now also be covered under the COVID-19 inoculation drive at industrial and workplace vaccination centers. 	
2.	<p>Supply of such facilities free of cost to the employees</p>	<ul style="list-style-type: none"> • After procuring such goods / services as discussed above, the facilities are provided to the employees. In most of the instances, the employer is not recovering any amount from the employee for providing these facilities. In other words, these facilities are provided free of cost to the employees. • Government vide Press Release dated 10 July 2017 clarified as follows: 	<p>It should be clarified that COVID related common facilities provided by the employer to all the employees without any recovery (i.e. free of cost) should not be treated as supply under GST.</p>

		<p><i>“Another issue is the taxation of perquisites. It is pertinent to point out here that the services by an employee to the employer in the course of or in relation to his employment is outside the scope of GST (neither supply of goods nor supply of services). It follows therefrom that supply by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST. Further, the Input Tax Credit (ITC) Scheme under GST does not allow ITC of membership of a club, health and fitness centre [section 17 (5) (b) (ii)]. It follows, therefore, that if such services are provided free of charge to all the employees by the employer then the same will not be subjected to GST, provided appropriate GST was paid when procured by the employer. The same would hold true for free housing to the employees, when the same is provided in terms of the contract between the employer and employee and is part and parcel of the cost-to company (CTC).”</i></p> <ul style="list-style-type: none"> • Basis above, it can be deduced that if the employer provides common facility to all the employees as per its policy and does not make any recovery, the provision of facility will not be treated as a supply. • These facilities are on “take it or leave it” basis. Such facilities can either be owned by employer himself or made available by third party. • Thus, if the employer is supplying the facilities free of cost based on genuine need of the employees, as part of the company’s HR policy, it can be said that it is a common facility provided by the employer to all employees. As such, there is no supply by the employer to its employees. Hence, GST should not 	
--	--	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

		<p>be leviable on the facilities provided which are part and parcel of cost to company.</p> <p>Further, certain benefits that are provided as per company's HR policy can be construed as part of CTC.</p> <ul style="list-style-type: none"> • In absence of any supply, Entry 2 of Schedule 1, pertaining to supply of goods or services between related persons without consideration, shall also not apply. 	
3.	<p>Cost recovery from group companies</p>	<ul style="list-style-type: none"> • In large corporates, one of the group company incurs expenditure for the whole group and later shares the cost without any mark-up with other group companies (generally basis the number of employees using the facility). • Such entity is not generally engaged in providing support service to other group companies. It is merely for the sake of administrative convenience that the company enters into the contract on behalf of other companies. • For example, ABC group has 10 companies. Company 1 enters into an agreement with hospital to vaccinate all the employees of the group. The hospital raises invoice on Company 1 for vaccination and administration charges. Company 1 recovers the cost from balance 9 companies (basis the number of employees of the respective companies availing the facility). • It is relevant to note that vaccination is regulated product and therefore, the cost recovery cannot be treated as consideration against supply of vaccines by one company to another group company. 	<p>Clarification is sought to provide that cost recharges by one company (incurring the expenditure on behalf of the entire group) to other group companies should not be treated as consideration against any supply and thus, should not be taxed under GST.</p> <p>Further, full ITC should be allowed to the company in whose name the supplier has raised the invoice. In the given example, credit should be allowed to Company 1 irrespective of the fact that the cost is shared with the group companies.</p>

4.	<p>Cost reimbursement by parent company</p>	<ul style="list-style-type: none"> • In certain cases, the Indian or foreign parent reimburses to its subsidiary, the cost incurred by it on such facilities provided to employees. There is no service provided by the subsidiary to parent against such reimbursement and in absence of quid pro quo, it can be said that there is no supply of service between subsidiary and parent. • There is also an ambiguity with respect to credit eligibility in the hands of subsidiary where the cost is reimbursed by the parent company. 	<p>It should be clarified that in case the parent company reimburses the COVID related cost to subsidiary, the reimbursement should not be treated as consideration for any supply by the subsidiary to parent company.</p> <p>Further, the subsidiary should be eligible to claim input tax credit even in case the cost is reimbursed by the parent company.</p>
----	----------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------