CBDT notifies conditions for Covid-19 related tax exemptions

TAX EXEMPTION FOR SUM OF MONEY RECEIVED ON ACCOUNT OF COVID-19 RELATED ILLNESS

The Finance Act, 2022 had brought in an amendment applicable from A.Y 2020-21 and onwards for exemption of sum of money received on account of Covid-19 related illness as under;

Sum of Money	Payer	Recipient	Exemption
Medical Treatment Expenses in relation to COVID (of Recipient or his family member)	Any person	Any Individual	No limit and subject to conditions
Where cause of Death is related to COVID (should be paid within 12 months from the date of demise)	Employer	Family Members of the deceased employee	No limit
	Any Person	Family Members of the deceased person	Up to INR 10 Lakhs (in aggregate)

- Family Means

i. Spouse and children;

ii. Parents, brother, sister of the individual, wholly or mainly dependent on the individual

- Correspondingly, the medical treatment expenses in relation to COVID-19 reimbursed by the employer is not regarded as a taxable perquisite in the hands of employee.

Now the CBDT has rolled out the conditions for such above tax exemption vide Notification No. 90/2022, 91/2022 and 92/2022 dated 05/08/2022. These three notifications cover the sums received either from the employer or any other person for medical treatment of COVID-19 or related illness by the recipient for himself or his family member and also for the sum received by the family member on account of death due to COVID-19. These notifications are deemed to be effective from AY 2020-21 and subsequent AYs.

Notification No.91 & 92/2022, dated 05/08/2022

Section 56(2)(x) of the Income Tax Act, 1961 provides that where any person receives any sum of money, without consideration and such sum in aggregate exceeds Rs.50,000/-, then such aggregate amount is chargeable to tax under the head income from other sources. However, the above provision is not applicable for certain types of transaction. The Finance Act, 2022 had inserted two additional types of transaction in such exemption category as under;

1) Any sum of money received by an individual, from any person, in respect of any expenditure actually incurred by him on his medical treatment or treatment of any member of his family in respect of any illness related to COVID-19, shall not be considered as income of such person subject to fulfilment of the conditions prescribed by Central Government.

   The conditions for the above have been notified and the recipient is required to keep record of following documents;

   a. The COVID-19 positive report of the individual, or medical report if clinically determined to be COVID-19 positive through investigations by treating physician for a person so admitted; and
   b. All the necessary documents of medical diagnosis or treatment of the individual or family member due to COVID-19 or illness related to COVID-19 suffered within six months from the date of being determined as a COVID-19 positive.

   Further, the recipient individual shall be required to furnish a statement in Form No.1 in respect of amount received for expenditure incurred for any illness related to COVID-19, and such statement shall be furnished within 9 months from end of such financial year or 31/12/2022, whichever is later.

   The statement in Form No. 1 contains details and information such as Name, PAN, Address, details of diagnosis of being covid-19 positive, serial number of the medical report, amount of expenditure

incurred on the treatment of covid-19 illness and the Name/Address/PAN of the person from whom the amount has been received to the recipient.

2) Any sum of money received by the family member of a person who died due to COVID-19 related illness, the money so received shall not be considered as income of the family member subject to the conditions prescribed by Central Government and the payment is received within 12 months from the date of death of such person.

The conditions for the above have been notified as under;

The death of individual should be within **six month** from the date of testing positive from COVID-19 or from the date of being clinically determined as covid-19 case, for which sum of money has been received by the member of the family.

The recipient is required to keep record of following documents;

a. The COVID-19 positive report of the individual, or medical report if clinically determined to be COVID-19 positive through investigations in a hospital or an inpatient facility by a treating physician;
b. A medical report or death certificate issued by a medical practitioner or a Government civil registration office, in which it is stated that the death of the person is related to COVID-19

Further, the recipient is required to furnish a statement in Form A for sum of money received on death of such person, and such form shall be furnished to Assessing officer within 9 months from the end of such financial year or 31.12.2022, whichever is later.

The statement in Form A contains details and information such as Name, PAN, Address, relationship with the deceased person, details of diagnosis of being covid-19 positive, date of death and serial number of death certificate, amount received from the Employer / any other person and Name/Address/PAN of the person from whom the amount has been received to the recipient.

MONEY RECEIVED FROM EMPLOYER FOR INCURRING EXPENDITURE RELATED TO COVID-19 ILLNESS NOT TO BE CONSIDERED AS PERQUISITE IN THE HANDS OF EMPLOYEE

Amount received to the employee from the employer for expenditure actually incurred by the employee on his or any member of his family for medical treatment related to covid-19 illness shall not be considered as a perquisite subject to the conditions prescribed by Central Government.

Notification No. 90 /2022, dated 05-08-2022

Now, CBDT has notified the conditions which require the employee to submit the following documents to the employer;

a. The COVID-19 positive report of the individual, or medical report if clinically determined to be COVID-19 positive through investigations by treating physician for a person so admitted;
b. All necessary documents of medical diagnosis or treatment of the employee or his family member for COVID-19 or illness related to COVID-19 suffered within six months from the date of being determined as COVID-19 positive; and
c. A certification in respect of all expenditure incurred on the treatment of COVID-19 or illness related to COVID-19 of the employee or of any member of his family.

COMMENTS

In order to claim the exemption of sum of money received on account of Covid-19 related illness, the above conditions required to be followed by the taxpayer needs to be documented properly because even a slight negligence may invite such sum of money to be treated as income chargeable to tax in the hands of the recipient. Form No 1 and Form A may be submitted physically to the Jurisdictional Assessing Officer of the person who is required to file the form, as neither there is any requirement of filing such forms electronically, nor any such form is available on the Income Tax portal as on date.

22 August, 2022

Recent Clarification under GST

After a series of amendments by way notifications in the previous month, CBIC has now attempted to clarify GST applicability on certain activities and transactions vide circular No.177/09/2022 and 178/10/2022 dated 3rd August 2022. The clarifications appear to be directed towards an honest attempt to reduce litigation. Some of the relevant clarifications are summarized hereunder:

1. **GST applicability on liquidated damages, compensation and penalty arising out of breach of contract or other provision of law**

   Being the most litigative topic since pre-GST regime, many questions have been raised regarding the taxability of an activity or transactions as supply of service in relation to *"**Agreeing to the obligation, to refrain from an act or to tolerate an act or to do an act**"* as mentioned in para 5 (e) of Schedule II of CGST Act 2017.

   The underlying requirement for an activity to be taxable under the above category is that there has to be an express or implied agreement, oral or written, to do or abstain from doing something against payment of consideration for doing or abstaining from such act, ,

   Some of the important examples which require analysis with reference to the above are discussed hereunder -

   a) Liquidated Damages

   The compensation specified in a written contract for breach of non-performance of the contract or parties of the contract is referred to as liquidated damages.

   Normally a contract is entered for performance of obligation and payment of liquidated damages or compensation or penalty is merely a flow of money from the party who causes breach of contract to the party who suffers loss or damage due to breach. Liquidated damages occur as an unintentional event which both party intend to avoid but due to unforeseen events have to suffer the consequence as fixed in the main contract. It has been clarified on these grounds that the payments do not constitute consideration for a supply and are not taxable.

   The circular proceeds to lay down a principle for determining taxability under the service category of *"agreeing to the obligation, to refrain from an act or to tolerate an act or to do an act tolerate an act"* stating that if the payments constitute consideration for another independent contract envisaging tolerating an act or situation or refraining from doing an act or situation or simply doing an act then it would be a supply.

   Some instances mentioned in the circular which shall not be considered as supply are –

   1) Penalty paid by builder to buyer for delayed construction

   2) Forfeiture of Earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer.

The circular has further clarified that the following shall be taxable –

1) Late fees or penalty for failure or delayed payments of consideration
2) Forfeiture of consideration / deposit on account of non-performance by the recipient
3) Charges for pre-payment of loan
4) Penalty for early termination of lease

The clarification in respect of liquidated damages has certainly settled long running litigation.

b) Cheque Dishonor fine / Penalty

It has been clarified that cheque dishonor or penalty is not considered as consideration for any service as penalty is normally not imposed for tolerating an act or situation but is a fine or penalty for not tolerating and thereby deterring such an act.

c) Bond amount recovered from an employee leaving the employment before the agreed period.

The amount recovered by employer by way of notice pay recovery (I.e., premature leaving of employee before the minimum agreed period) is clarified to be not taxable as consideration since the employee does not receive anything in return against payment of such amounts. Also, the provision of forfeiture of salary or recovery of amount is mentioned in the contract to discourage non-serious candidate and not as consideration for tolerating an act.

d) Late payment surcharge or fee

The facility of accepting late payment with interest is clarified to be a composite supply because late payment or fee is naturally bundled with the main supply. Since it is naturally bundled with principal supply, it shall be taxable at the same rate as the principal supply.

2. Applicability of GST on application fee charged for entrance or the fee charged for issuance of eligibility certificate for admission or for issuance of migration certificate by educational institutions

As per Entry 66 of Notification No 12/2017 Central Tax (Rate), "*Service provided by an educational institution to its students, faculty, and staff"* are exempt**.** It has been clarified that the exemption is wide enough to cover the amount or fee charged for admission or entrance, or amount charged for issuance of eligibility and migration certificate by educational institution.

3. Whether GST is to be charged on transportation of empty containers returning from Nepal and Bhutan after delivery of transit cargo, to India?

As GST on Supply of service associated with transit cargo to Nepal and Bhutan was exempted w.e.f 29.09.2017, a question was now raised whether this exemption covers GST on transportation of empty containers returning from Nepal and Bhutan after delivery of Cargo. It has been clarified that the said service is exempted as this service is in association with transit cargo to Nepal and Bhutan

subject to mentioning of a unique alpha numeric code which can be used for tracking the movement of container.

4. **Situations in which corporate recipients are liable to pay GST on renting of motor vehicles designed to carry passengers.**

   The liability on the body corporate under reverse charge arises in case of services provided by non-body corporate by way of renting of motor vehicle designed to carry passengers. It has been clarified that where the body corporate hires the motor vehicle (for transport of employees etc.) for a period of time, during which the motor vehicle shall be at the disposal of the body corporate, the service would fall under SAC 9966 and liable to GST under RCM.

   However, where the body corporate avails the passenger transport service for specific journeys or voyages and does not take vehicle on rent for any particular period of time, the service would fall under SAC 9964 and the body corporate shall not be liable to pay GST on the same under RCM

5. **Whether hiring of vehicles by firms for transportation of their employees to and from work is exempt under Sr. No. 15(b) of Notification No. 12/2017-Central Tax (Rate) – transport of passengers by non-air conditioned contract carriage.**

   Usually when the contract carriage is hired by any firm for transportation of their employees, the manner of usage (route and schedule) would be decided by the service recipient rather than service provider.

   As stated in Exemption Entry no 15(b) of Notification 12/2017, it states that "*transport of passengers, with or without accompanied belongings, by non-air conditioned contract carriage, other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire*"

   It is clarified that 'charter or hire' which has been excluded from exemption is charter of motor vehicle for a specific period of time and the renter will define how and when the vehicle will be operated. Therefore, hiring of vehicles by firms for transportation of their employees to and from work is not exempted.

6. **Whether sale of land after levelling, laying down of drainage lines etc., is taxable under GST**

   It is clarified that developed land after levelling, laying of drainage land etc. is also a sale of land and therefore, outside the purview of GST. However, the services of levelling, laying down of drainage lines etc. received by the developer shall attract GST at applicable rates.

22 August, 2022