



President
Vipul K. Choksi

Hon. Jt. Secretaries
Ketan L. Vajani | Haresh P. Kenia

Vice President
Anish M. Thacker

Treasurer
Parag S. Ved

Imm. Past President
Hinesh R. Doshi

7th May, 2020

To,
Smt. Nirmala Sitharaman,
Hon'ble Finance Minister,
Ministry of Finance, North Block,
New Delhi – 110 001

Hon'ble Madam,

Sub: Allowability of CSR Expenditure for Covid-19 under the Income-tax Act, 1961

The Chamber of Tax Consultants, established in 1926, is one of the oldest non-profit organizations of tax practitioners of Mumbai, having Advocates, Chartered Accountants and Tax Practitioners as its members. Many senior tax professionals who regularly appear before ITAT, high courts and the Supreme Court are its Past Presidents. We have been making regular representations before various government authorities in the social and economic interests of the nation.

The Ministry of Corporate Affairs vide General Circular No. 10/2020 dated 23rd March 2020 has clarified that amounts spent on activities related to COVID-19 shall qualify as corporate social responsibility (“CSR”) expenditure. These funds may be spent for various activities related to COVID-19 under items nos. (i) and (xii) of Schedule VII of the Companies Act, 2013 relating to promotion of health care including preventive health care and sanitation, and disaster management.

In light of the outbreak of Covid-19 in India, many business entities have pledged their support to fight this disease alongside the Government of India ('GOI'). Their support has been towards various activities, for instance, the manufacture and distribution of sanitizers, production and distribution of PPE kits and masks and other expenditure on disaster management. Further, entities are incurring expenditure in the form of payments to employees/ contractors that are gratuitous and beyond contractual and done to support the GOI efforts of providing livelihood during COVID.

These business entities may opt to treat expenditure incurred on the above activities as CSR expenditure under Section 135 of the Companies Act, 2013. However, presently, such expenditure would not be a deductible expenditure while computing the income under the head “Profits and Gains of Business or Profession” under the Income-tax Act, 1961, due to a specific restriction in section 37 of the said Act.



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It may not be out of place to mention that due to the lockdown imposed across India to stop the spread of Covid-19, businesses have been forced to shut down and thus, have come to a standstill. Due to the lockdown, income earning capacity and cash flow position of several companies has been greatly affected and consequently, it is becoming even difficult for them to regularly pay wages to its workers/employees. The stoppage of business activities has been causing acute financial stress.

Despite of adverse business and economic situations prevailing worldwide, the business entities have lent their hands to support the Government of India with an objective to control and restrict the spread of Covid-19 in India by providing and making available necessary medical products such as sanitizers, masks, PPE kits and also, by providing funds to enterprises who are engaged in manufacture and production of these products.

Presently, Explanation 2 to Section 37(1) of the Income-tax Act, 1961 ('the Act') provides that any expenditure incurred relating to CSR activities shall not be deemed to be an expenditure relating to business or profession. Therefore, CSR expenditure for COVID-19 related activities shall not qualify as allowable expenditure while computing the taxable income.

Seen in light of the adverse economic scenarios, business outlook and financial crisis, CSR expenditure on promotion of health care activities so as to fight the COVID-19 pandemic is expenditure incurred towards discharge of socio-economic obligation which is an inherent duty of the business entities. These payments are for the betterment of society at large and in the public interest and as a result, improve the corporate image of the Companies.

Further, when the Business entities are facing difficult times in managing and saving, not only their businesses but also the jobs of their employees, an impetus in the nature of some tax benefit would certainly assist them. A "tax benefit" is always welcomed by the business entities and tax savings resulting therefrom, is utilised in making fresh investments leading to generation of employment opportunities. In the present scenario, if expenditure towards COVID-19 related activities is allowed as deductible expenditure under the Income-tax Act, 1961, then it would not only help the business entities in managing their businesses finances but also, it would promote and encourage more such business entities to come forward and assist the Government in fighting this worldwide pandemic.

The Ministry of Corporate Affairs has already declared that COVID-19 related expenditure would be treated as towards CSR activities. On same lines, the India Inc. is also expecting the Ministry of Finance to take necessary steps to ensure that these expenditures are also allowed as deduction while computing the taxable income.



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We would like to summarise and suggest as below:

“Expenditure incurred towards COVID 19 should be allowed as a deduction u/s 37 of the Act specifically and in case the same is treated as eligible CSR, a disallowance of the said expense should not be done under the second proviso to section 37 of the Act.”

We, at the Chamber of Tax Consultants, believe that the Government shall apply careful and considerate thought to the above representation. In case the relief is considered desirable from the outlook of the Government, the legislative route could be to issue a circular immediately to be followed up either by a suitable amendment to the Income-tax Act, 1961 or as part of an ordinance, as the Government may deem fit.

We hope and believe that this representation would be judiciously and carefully appraised in the social and economic interests of the country.

Thank You,

Yours faithfully,

For the Chamber of Tax Consultants

Sd/-

Sd/-

Sd/-

Vipul K. Choksi
President

Mahendra Sanghvi
Chairman
Law & Representation Committee

Apurva Shah
Co-Chairman