



COVID 19: Tax implications for Individuals and Corporates

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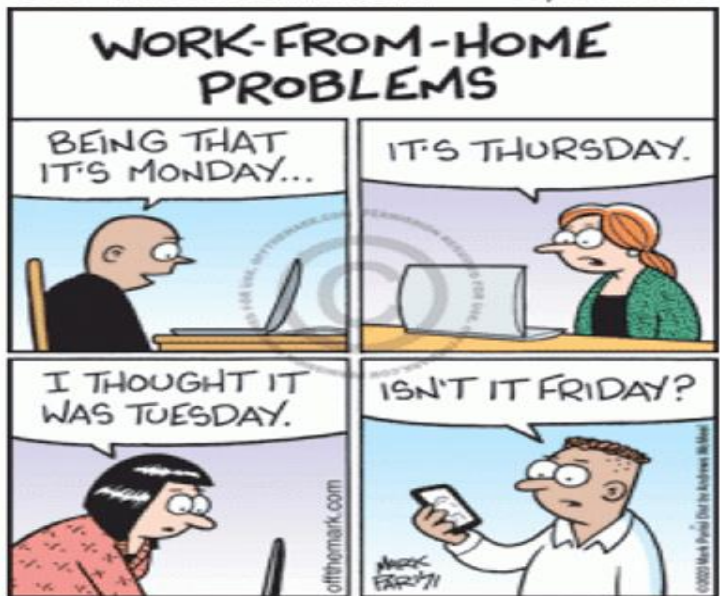
22nd October 2021

Background

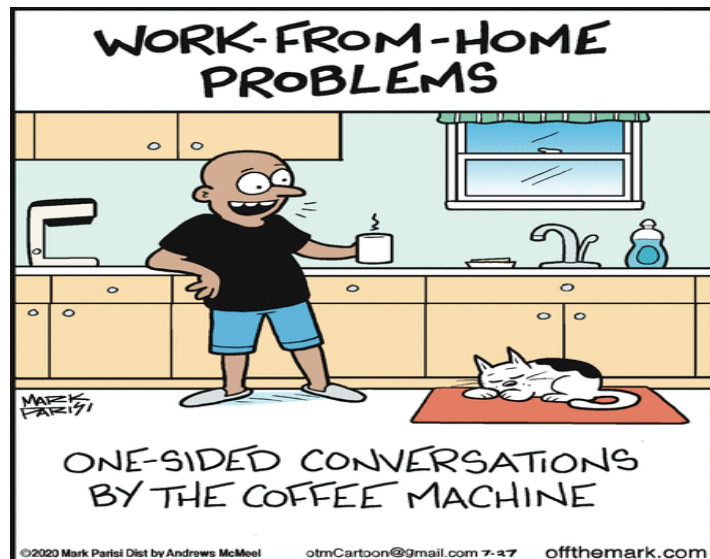
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- The COVID-19 pandemic forced companies to adopt to a work from home model
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- The pandemic caused several hardships and employers rose to the occasion to provide medical relief
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- Accelerated vaccination was seen as the only way to face the crisis
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- Technology & remote working enabled enterprises to carry on despite the situation
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- The WFH model has posed tax consequences for those individuals & for the businesses for which they work
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WFH Humor

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Individual Taxation

Tax exemption for financial aid/ ex-gratia received

CBDT Press release dt 25 June 2021



Nature of receipt	Received from employer	Received from any other person
Amount received by taxpayer for medical treatment of COVID-19 during FY 2019-20 and subsequent years	Fully exempt	Fully exempt
Ex-gratia received by the family members of a person on the death of the person due to COVID-19 during FY 2019-20 and subsequent years	Fully exempt	Exempt up to Rs. 10 lakh in aggregate

- Legislative amendments awaited to give effect to the tax exemption
- Retrospective in operation
- What happens to an intermediary who receives funds in trust for family member?

Taxability of ex-gratia received by family members of a deceased employee



• CBDT circular No.573 dated 21 August 1990 - Any lump sum payment whether 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 under the IT Act

• Anti-abuse provisions were later introduced, of which, current section 56(2)(x) provides for taxing of money in excess of Rs.50,000 received without consideration, in the recipient's hands

• Provisions of section 56(2) (x) will override Circular no. 573 of 1990?

• Possible to argue that such ex-gratia payment is for past services of employee and hence not taxable u/s 56(2) (x). However, **this view may be litigious**

• Gratuitous payment, made on a periodic basis, should also be exempted under the Press release dated 25 June 2021, as periodicity of the payment, does not make it chargeable (**Smt. Mahindro Devi, Karnal vs AO (ITA No.486/Del/2016)**)

• Tax authorities may however argue that the periodic payments are akin to family pension

Ex-gratia receipts in case of death **other than due to COVID**, would not be covered by the Press release dt 25 June 2021 & **may be taxed u/s 56(2)(x)**

- Employers may prefer to extend COVID care assistance by making contributions to employee welfare trusts which administer such benefits through representatives of employees. However, such contributions face disallowance u/s 40A(9) in the employer's hands.
- 10 (23 AAA) funds
- Section 40A(9) is an anti-abuse provision to discourage practice of claiming tax deduction by making contributions to employee welfare trusts & routing them back to the employer as loans/ deposits. However, there is no provision to grant deduction to the employer when the contribution is actually used for bonafide employee welfare purposes

Taxability of vaccination support received from the employer



Situation 1 - Reimbursement by employer of vaccination costs for employee & his family members

- Taxable perquisite?
- Can vaccination be regarded as 'medical treatment'?
- Whether exempt as per Press release dt 25 June 2021?

Situation 2 - Direct payment to hospitals by employer for vaccination to employee & his family members

- Taxable perquisite?
- Can vaccination be regarded as 'medical treatment'?
- Whether exempt as per Press release dt 25 June 2021?



Situation 3 – Vaccination at employer's premises

- Taxable perquisite?
- Can vaccination be regarded as 'medical treatment'?
- Whether exempt as per Press release dt 25 June 2021?

Situation 4 - Vaccination for contract employees/ housekeeping and security staff

- Taxable perquisite?

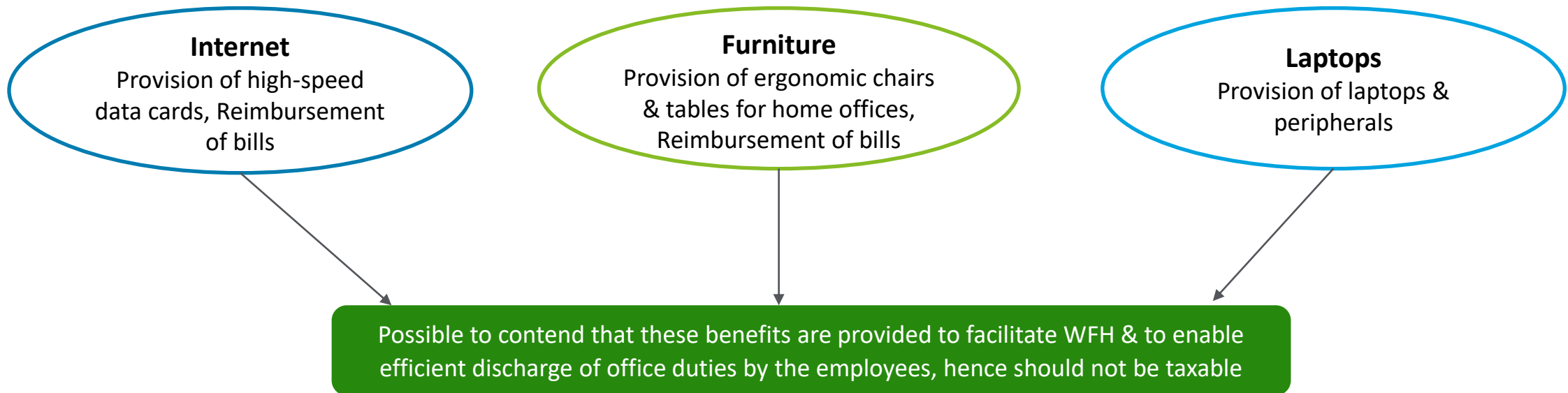
Taxability of other COVID-related support received from the employer



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- Will the Press release dt 25 June 2021 apply to:
 - Quarantine package i.e., daily reimbursement provided by the employer for isolation at hotel?
 - Free of cost medicines provided to employees and their family members?
 - Devices like oxygen concentrators, oximeters, etc. provided to employees & their family members on returnable basis?
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Benefits enhancing WFH

Internet, Furniture, Laptops



Reliance placed on the following rulings:

- *SAIPEM Spa [2001] 76 ITD 101 (Del ITAT)(SB)* - If the accommodation provided is ex necessitate to discharge the duty assigned, it cannot be termed as perquisite
- *Wipro Systems [2010] 188 Taxman 280 (Kar HC)* - Travel accessories paid to the employees cannot be treated as perquisites as the same is incidental to the work of the company

In the absence of specific exemption, tax authorities may treat it as a taxable perquisite

Corporate Taxation

Deductibility of COVID-related expenditure (1/3)



section 37(1) of the IT Act allows deduction of any expenditure, not being capital or personal expenditure, expended wholly and exclusively for the purposes of the business or profession, in computing business or professional income

“wholly and exclusively”

- The expression 'wholly & exclusively' does not denote 'necessarily'. It is for the assessee to decide whether any expenditure should be incurred for his business. Such expenses can be incurred voluntarily & without necessity - **Rajasthan Spinning & Weaving Mills Ltd. [2004] 137 Taxman 367 (Raj)**

“for the purposes of business”

- The expression 'for the purposes of the business' is essentially wider than the expression 'for the purpose of earning profits'. It covers not only the running of the business or its administration but also measures for the preservation of the business & protection of its assets and property. It may legitimately comprehend many other acts incidental to the carrying on of the business - **Birla Cotton Spg. & Wvg. Mills Ltd [1971] 82 ITR 166 (SC)**

“commercial expediency”

- Expenditure incurred not with a view to the direct & immediate benefit for purposes of commercial expediency & in order indirectly to facilitate the carrying on of the business is, therefore, expenditure laid out wholly and exclusively for the purposes of the trade - **Sree Meenakshi Mills Ltd. [1967] 63 ITR 207 (SC)**

Necessity of “carrying on business”

- Necessity of “carrying on of business” - As a result of COVID, some businesses may have permanently shut, and some may have shut temporarily. Deductibility of expenditure will depend on the facts of each case

Deductibility of COVID-related expenditure (2/3)



Employee related expenditure

- Vaccination cost for employees directly borne by/ reimbursed by the employer?
- Vaccination cost of families of the employees?
- COVID-related expenses (Doctors' fee, medicines, oxygen concentrators, etc.) incurred for employees?
- Salary paid to employees though they may not be working during the lockdown?
- Ex-gratia paid to employees or legal heirs?
- Compensation for termination of employment?

- Test of commercial expediency

- For welfare of the staff

- Ex-gratia paid to family/ legal heirs is deductible

Favorable rulings: **Calcutta Landing & Shipping Co Ltd [1967] 65 ITR 1(Cal)**, **Fairdeal Corp (P) Ltd [1977] 108 IT 280 (Bom)**, **Lucas Indian Service Ltd [1999] 239 ITR 429 (Mad)**

Adverse rulings: **N.Sirur & Co (P.) Ltd. [1977] 109 ITR 432 (Bom)**

- General Circular No. 15/2020 dated 10 April 2020 issued by MCA provides that salary/ wages which are contractual obligation would not be considered as towards CSR expenditure. However, If any ex-gratia payment is made to temporary / casual workers/ daily wage workers over & above the disbursement of wages, specifically for the purpose of fighting COVID 19, the same shall be admissible towards CSR expenditure as a onetime exception provided there is an explicit declaration to that effect by the Board of the company, which is duly certified by the statutory auditor
- Expenditure treated as CSR shall not be deductible u/s 37(1)

Deductibility of COVID-related expenditure (3/3)



Other expenditure

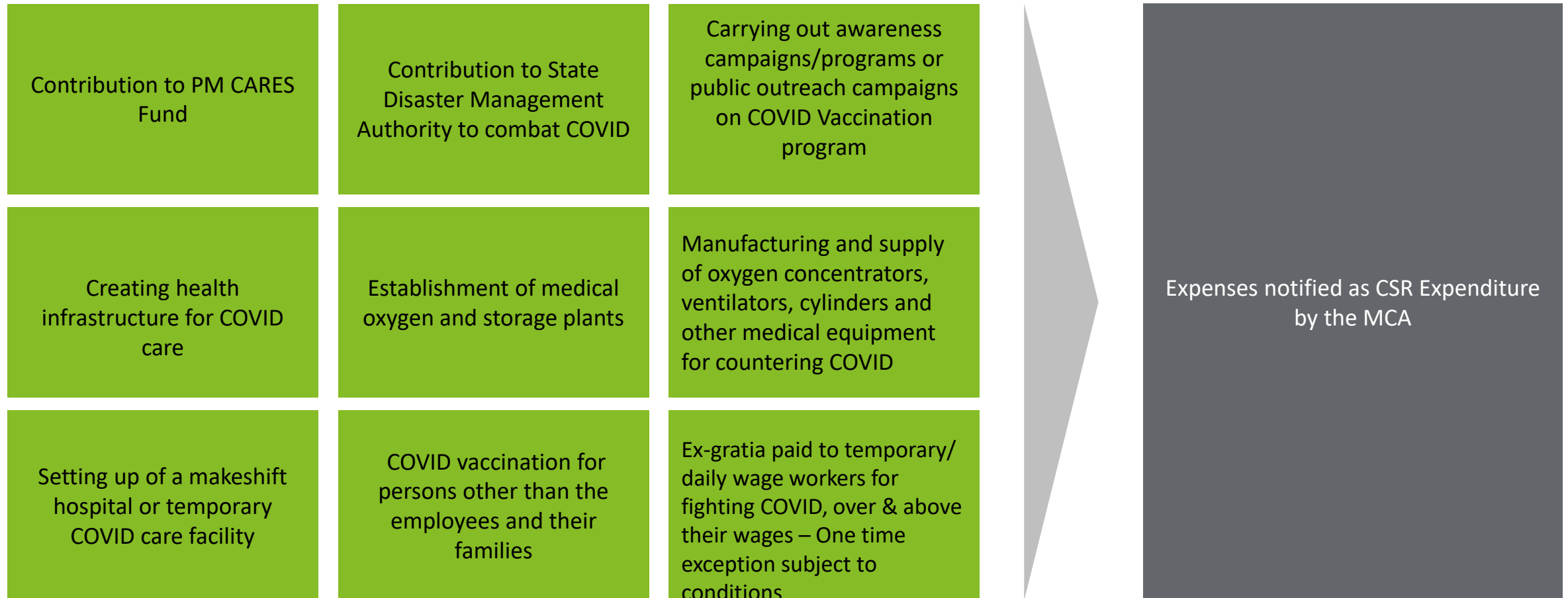
- Repairs & maintenance of assets during the lockdown?
- Depreciation?
- Diminution in the value of inventories?
- Damages for breach of contract?
- Contribution to Fund for COVID?

- Expenditure for preservation of business or protection of assets which does not provide enduring benefit
- Though assets were not actually used during the lockdown, the word 'used' includes passive use
- Whether depreciation allowable for assets acquired during the previous year but not "put to use" due to lockdown
- Inventory to be valued at lower of the cost or the net realizable value
- Deductibility would depend on whether the damages payable for breach of contract are on capital or revenue account
- Contribution to certain Funds (PM CARES, State Disaster Management Authority to combat COVID) qualify as CSR expenditure. Deduction under section 80 G or other sections vis a vis 37(1) JMS Mining vs Pr CIT 130 Taxmann.com 118 (Kolkatta ITAT)

COVID-related expenditure qualifying as CSR expenditure



Explanation to section 37(1) provides that any expenditure incurred for CSR activities referred to in section 135 of the Companies Act, 2013, shall be deemed not to be an expenditure for business purpose & shall hence not be deductible in computing business income



The ratio of expenditure not covered as CSR expenditure but incurred as a good corporate citizen should be governed by the decision of **Sri Venkata Satyanarayana Rice Mill Contractors (223 ITR 101) (SC)**