

## Ray of hope - Eligibility (Freedom) of ITC on Group Health Insurance Policy

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The COVID-19 pandemic has had created unprecedented challenges across the world in terms of health issues and allied complications. Given that pandemic impacted the last three years and continues to impact even today, cost of healthcare including various medical tests have risen considerably higher. Thus, it becomes imperative for all citizens to have health and life insurance cover. This will effectively cover them from the rising costs of healthcare.

Based on various judicial precedents, Article 21 of the Constitution of India indirectly covers “Right to health” as a part and parcel of “Right of life”, and therefore, Right to health can be construed as a fundamental human right.

At this juncture, it is important to highlight that Group health insurance is one of the key employee benefits provided by the employer in India. Medical insurance for employees is critical for more than just efficient day-to-day functioning. Employees who are emotionally and physically fit would be positively driven and efficient for running a successful business.

Group health insurance can also provide coverage to spouse, children, and family members. It covers pre-existing diseases and illnesses and offers maternity cover from day one which is unavailable with retail policies.

Under the GST Law, input tax credit (ITC) of GST paid on health insurance service taken for employees is not available as provided in Section 17(5) of the Central Goods and Services Tax Act, 2017. The ITC in respect of such goods or services or both shall be available only where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply, or where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

Thus, the present GST law does not allow ITC of GST paid on Group health insurance to the employers, if the same is not mandatory under any law. This raises a question as to why shouldn't ITC be made eligible if the employer is taking Group health insurance of its employees since employee health has become directly proportional to productivity of the organization?

Post the pandemic struck, the Indian government made it mandatory for all employers to provide Medisave policy for employees in India. As a part of the Consolidated Revised Guidelines for resuming workplace operations by the Ministry of Home Affairs, on 15th April 2020, the Insurance Regulatory and Development Authority of India (IRDAI) released an order (No. 40-3/2020-DM-I (A)) which states that all commercial and industrial establishments, offices, workplaces, etc. shall follow a Standard Operating Procedure (SOP).

The aforesaid SOP had insisted business organisations to take medical insurance compulsorily for its workers. Circular to the same effect was issued by IRDAI on 16th April 2020 wherein the regulator recommends insurers to offer comprehensive health insurance policies at an affordable cost for the

organizations.

Similarly, the proposed Code on Social Security, 2020, has an exhaustive coverage in relation to insurance for employees under the Employee State Insurance.

Notably, even as per Section 36(1)(ib) of the Income Tax Act, 1961, deduction is allowed for the premium paid by any mode other than cash by the employer to effect or keep in force an insurance on the health of the employees under the scheme framed by the General Insurance Corporation of India or any other approved insurer.

Harmonious reading of the above clearly infers that health of the employees is a fundamental right and an intrinsic part of conducting business. Moreover, as the Income Tax Law unambiguously considers this as a business expense the reason of this being treated otherwise under the GST Law seems to be unjust. Evidently, wages of the employees being valid business expenditure/operating cost also concludes that employees are business assets of the organisation and the health of employees is not only vital to themselves but also for the furtherance of business. Given that such expenditure is construed as business expense necessary for the efficient working of the business, GST paid on Group Medical Insurance taken by the employer for its employees should be made eligible under the GST Law. Considering that Union Budget 2023-24 is on its way, granting unconditional eligibility of ITC in this regard would be an immense relief to the industry at large.