Service Tax on Healthcare Service

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on 30 June 2010

Ever since the introduction of Service Tax in the year 1994, services in relation to healthcare have been largely spared from levy of service tax as any levy here would have led to an increase in its cost which would then have to be borne by the consumer. But the fact that the law makers had started thinking about the prospect of levying service tax on at least some types of services in relation to healthcare was evident last year when for the first time, service tax was levied on cosmetic and plastic surgery services with effect from 01.09.2009 with the specific condition that the levy would not extend to reconstructive surgeries or surgery undertaken to set right congenital defects or other abnormalities. In Budget 2010, the scope of services falling within service tax net has been widened with the introduction of levy on healthcare services provided by hospitals or nursing homes to employees of corporates as well as healthcare services provided under health insurance schemes. This has the potential to bring most of the reputed and well known hospitals / larger nursing homes under the service tax net where they provide services to employees of corporates or under insurance schemes where the payment is made by the corporate or the insurer. This would require the hospitals to register under service tax to collect and remit tax to the Government.

What is the concept of taxable service under this category?

A new clause (zzzzo) has been added in Section 65(105) of Chapter V of Finance Act 1994 as amended from time to time. This clause defines the concept of taxable service. Taxable service means any service provided or to be provided by any hospital, nursing home or multi specialty clinic in
(i) to an employee of any business entity, in relation to health check up or preventive care, where the payment for such check up or preventive care is made by such business entity directly to such hospital, nursing home or multi specialty clinic or
(ii) to a person covered by health insurance scheme, for any health check up or treatment, where the payment for such health check up or treatment is made by the insurance company directly to such hospital, nursing home or multi specialty clinic.

Through this amendment, the government seeks to tax healthcare services provided to employees of corporates where the payment for such services would be made by the corporate house rather than the employee. Similarly, where a
person is under a health insurance scheme offered by an insurer and the hospital or nursing home or multi specialty clinic provides healthcare services to such person for which the payment is made by the insurer, such services would also be liable to service tax. Readers may note that there are two clauses here which are not entirely the same. While the first clause seeks to deal with preventive care the second clause also includes treatment within its scope. The term ‘treatment’ indeed widens the scope of coverage of this category.

**Service provided to employees of a business entity**

In order for the service to fall under the first clause, the service should be in relation to routine health check up or preventive care. The service should also be provided to a person in his capacity as an employee of an organization which can be regarded as a business entity. Where the organization does not happen to be a business entity or where the individual concerned approaches the hospital or nursing home or multi specialty clinic in his own right without his employer involving in the same, the services even if classifiable as health check up or preventive care, would not in our view be liable to service tax.

The term ‘business entity’ can at times complicate issues as we may have an organization providing services for monetary consideration but existing without any profit motive. Whether such an organization could be regarded as a business entity? In our view, this should not be the case though some may take a contrary view.

Once again what is sought to be taxed is the service in relation to health check up or preventive care and surgeries performed to cure diseases would not fall within the purview of this clause.

Before we move forward, it would be pertinent for us to analyse the various terms involved here so that the exact scope of the definition can be appreciated. The term ‘business entity’ has been defined now u/s 65(19b) to include an association of persons, body of individuals, company or firm but not an individual. The usage of the term ‘business’ here could imply that the entity is to be carrying on its activities with a profit making motive.

**Services under health insurance scheme**

The scope of coverage under this clause could be wider than the first clause as the services here could be provided to any person and need not be an individual alone. Even services to organizations having health insurance coverage for all the employees within the said organization would be covered. The payment for such services would have to be made directly by the insurance company. Readers may note that service could be in relation to health check up or could even involve treatment. Moreover, the organization under this clause may or may not be a business entity as the terminology used is ‘person’ and not ‘business entity’. Even services to individuals would be covered if the same is covered by a health insurance policy and payment is made by the insurance company.

The definition does not elaborate on the nature of treatment involved. Would this involve surgeries as well? There could be two views in this regard. While one view would be the narrower one in favour of revenue which could regard the term to include surgeries other than plastic and cosmetic surgeries, the other view which we are inclined to follow could be the one to the contrary i.e. holding that the term ‘treatment’ would not include surgeries. This would be using the doctrine of Noscitur a sociis i.e. meaning of the word to be judged by the company it keeps as held by the Supreme Court in Rohit Pulp and Paper Mills Ltd Vs Collector of Central Excise (1990 (47) ELT 491 (SC)). Considering the fact that the words ‘health check up’ and ‘treatment’ have been used together, one can also hold that surgeries may not be sought to be covered there under.

Thus while cosmetic and plastic surgeries would continue to be classified under the service category of cosmetic or plastic surgery services, other surgeries namely those to cure ailments like for instance open heart surgeries, angioplasty etc should continue to be outside service tax net. The department however may not share this view and...
service providers are advised to exercise due caution in this regard. The inclusion or non-inclusion of invasive methods of treating patients is going to be one of the major issues under this category.

*Concept of 'hospital'*

The term ‘hospital’ has not been defined under service tax. Where words or expressions are not defined in statute, dictionary meaning may be referable as held by the Supreme Court in Star Paper Mills Ltd Vs Collector of Central Excise (1989 (43) ELT 178 (SC)). Going by this, if we refer Random House Webster's Dictionary, ‘hospital’ means an institution in which sick or injured persons are given medical or surgical treatment. There could even be a similar establishment for the care of animals.

*Issues*

**Whether cenvat credit of excise duty incurred on ambulance is available?**

It is interesting to note that cenvat credit of excise duties incurred on procurement of ambulances by hospitals is not available presently. This would require an amendment in the definition of capital goods in Rule 2(a) of Cenvat Credit Rules 2004. We hope this amendment is done at the earliest so that hospitals are not denied the credit that they rightfully deserve. The other capital goods used for providing the taxable services as well as input services for set up and running would however be available.

**Whether this category would cover treatment being given under homeopathy or ayurveda?**

Logically, treatment given under homeopathy or ayurveda should also be liable to service tax under this category as the second clause only talks about treatment and does not specify whether it is in terms of allopathy, homeopathy or ayurveda. It should however be given by a hospital or nursing home or a multi specialty clinic and covered under a health insurance scheme.

**What are the varieties of treatment sought to be covered?**

It would have been better if the law makers had given an illustrative list of the treatments sought to be covered under this category but this has not been the case. In the absence of anything specific, it would be safer to presume that almost all treatments to cure diseases or ailments would be covered under this category as long as the conditions of clause two are met.

**Whether cenvat credit of duty of excise incurred on drugs/medicines would be available?**

Yes. Where the medicines are used for providing taxable services under this category under either of the clauses, the said service provider/hospital, nursing home or multi specialty clinic would be in a position to claim cenvat credit as long as the service tax is paid on the gross amount charged for the service including the value of medicines sold. The service tax charged would not be a cost to the service receiver especially if it happens to be the employer as benefit of credit of service tax paid can be claimed by such service receiver where the service qualifies as an input service.

**Whether services provided by doctors are liable?**

Where the services classifiable under this category are provided by the doctors who happen to be individuals, the same would not be liable to service tax as the service provider has been defined to be hospital or nursing home or multi specialty clinic.

**Whether deputing of nurses at client's premises is liable to service tax?**

What is relevant here is the substance of the agreement the hospital has with the client which could be a business entity. If the substance of the agreement is one for providing nurse or doctor for undertaking health checkups or preventive care for employees of the entity, the classification of the service should be under this category. But where the essence of the agreement is for supply of nurses to the entity who would be under the supervision of another
doctor who may be either hired by the entity or employed by it, the classification could change and could even fall under the category of manpower recruitment or supply agency's services.

**Cenvat credits**
Where a hospital, nursing home or multi specialty clinic provides services in relation to healthcare taxable under this category as well as cosmetic or plastic surgery service for curing abnormalities or defects etc., the cenvat credit of service tax paid on input services would have to be segregated in terms of Rule 6 of Cenvat Credit Rules 2004. This is because while the former would be taxable, the latter would be exempt from service tax. This would require the service provider/hospital to maintain proper records showing the receipt of input services as well as inputs in the nature of medicines and utilization of the same for the purpose of providing the various services. Credit is to be claimed only where the input or input services are used for providing taxable services i.e. for instance the services taxable under this category.

As far as capital goods are concerned, the question of denying credit would arise only where the usage of the same is wholly for providing exempted services.

We have covered some of the issues which we felt could be involved under this category. More clarity can be expected in the coming months once the service category takes effect from 1\textsuperscript{st} of July 2010 and issues are highlighted by the service providers. We would advise the service providers to highlight genuine issues and seek clarifications from CBEC through the various associations so that the scope under the category is clarified at an earlier stage rather than at a later stage.

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