HEALTHCARE SECTOR
AN OVERVIEW

BDO IN INDIA
2023

Healthcare has become one of India's largest sectors, both in terms of revenue and employment. The industry encompasses various segments, including hospitals, medical devices, clinical trials, outsourcing, telemedicine, medical tourism, health insurance and medical equipment.

India's healthcare delivery system is categorised into two major sections - public and private. The public healthcare system, managed by the Government, primarily focuses on providing basic healthcare facilities through primary healthcare centres (PHCs) in rural areas and limited secondary and tertiary care institutions in key cities. The private sector plays a dominant role in delivering secondary, tertiary and quaternary care services, with a major presence in metros, Tier-I and Tier-II cities.

Growing incidence of lifestyle diseases, rising demand for affordable healthcare delivery systems due to increasing healthcare costs, technological advancements, the emergence of telemedicine, rapid health insurance penetration, and government initiatives like e-health, together with tax benefits and incentives, are driving the healthcare market in India. As a result, it is projected that the healthcare sector will reach a size of USD 188bn by 2030.

(Ref: https://www.investindia.gov.in/sector/healthcare)

India's competitive advantage lies in its large pool of well-trained medical professionals. India is also cost-competitive compared to its peers in Asia and Western countries. The cost of surgery in India is about one-tenth of that in the US or Western Europe. This affordability has led to significant growth in medical tourism, attracting patients from around the globe. Moreover, India has emerged as a hub for R&D activities for international players due to its relatively low cost of clinical research. The Government aims to develop India as a global healthcare hub with plans to increase public health expenditure to 2.5% of the country's GDP by 2025. *(Ref: Department for Promotion of Industry and Internal Trade (DPIIT), RNCOS Reports, Media Reports, Press Information Bureau (PIB), Union Budget 2022-23)*

KEY TAX CHALLENGES / ISSUES IN INDIA

Some of the key indirect tax challenges of the healthcare sector are enumerated as follows:

CHALLENGES UNDER INDIRECT TAX:

GST cost on procurements for healthcare service providers

Healthcare services provided by clinical establishments, authorised medical practitioners or paramedics are exempt from GST. As a result, healthcare service providers are unable to claim input tax credit of the GST paid on their inward procurements used in the provision of healthcare services. This leads to the inclusion of GST costs within the overall costs of providing healthcare services, resulting in increased healthcare costs for consumers. To address this issue, it is imperative for the tax authorities to classify healthcare services as a 'zero-rated supply'. This classification would enable the recovery of input tax on expenses incurred in delivering healthcare services, ultimately facilitating the provision of cost-effective healthcare services in India. This concept is followed in some countries in the world such as Dubai, wherein the supply of healthcare services is treated as zero-rated supply and can recover input tax on costs incurred in providing the healthcare services.

Levy of GST on common services within the distinct persons and asset transfers

- **Cross charge for common services**
  Common expenses incurred at the Head Office level may be cross-charged to various branches, which is subject to GST. However, the recipient entity is unable to claim input tax credit, resulting in the inclusion of GST costs in the overall cost of healthcare services provided by the entity. Another concern in this context is the valuation of such cross-charges. Rule 28 of the CGST Rules, 2017 states that for transactions between related or distinct persons (branches), any value can be considered as the value of supply as long as the recipient is eligible to avail of the entire input tax credit. However, for the healthcare sector, as the recipient is unable to claim input tax credit being engaged in exempt healthcare services, careful consideration should be given to determining the value of these services in line with the provisions of the CGST Rules, 2017.
- **GST on inter-branch transfer of assets**
  Healthcare service providers often need to relocate medical equipment and other assets based on their requirements. However, under the GST Law, inter-branch (inter-state) transfer of assets, including medical equipment, is considered a supply and is subject to GST. This provision creates a situation of double taxation for healthcare service providers. They are unable to claim input tax credit at the time of purchase, as they are engaged in exempt supply, and are also required to pay GST when transferring the assets. Unfortunately, this GST payment is not creditable for the recipient entity. Consequently, all GST costs are ultimately passed on to the cost of healthcare services, increasing the overall cost for consumers.

  A detailed analysis is required to be carried out by the companies on whether to treat these asset transfers as supplies. Furthermore, a representation before tax authorities may help in providing clarity on the position to be adopted, which will prevent the scenario of double taxation, thereby reducing the healthcare cost and making it affordable. The construction sector has already received an exemption for stock transfers of tools, rigs, cranes, etc., except further supply of such goods. These transfers are not considered supplies of goods under the GST Law, benefiting the construction sector. Similarly, providing a similar relaxation to the healthcare sector would help reduce the cost associated with asset transfers from one place to another.

No research and innovation-linked incentives for medical devices

The lack of incentives and grants for cost-intensive research, as well as the unavailability of GST exemption on raw materials procured for R&D purposes, contribute to the reliance on imported medical devices. The industry expects the Government to introduce research-linked incentive schemes to promote domestic manufacturing of medical devices and reduce import dependencies.

No benefits under Foreign Trade Policy to the service exporters

No benefit is provided under the Foreign Trade Policy, 2023 for services such as drug testing, clinical trials, medical tourism etc. Considering the growth prospects of the sector, the industry should represent to get benefits under Foreign Trade Policy, 2023 in respect of above services as well.

Room rent liable to GST

Effective from 18 July 2022, non-ICU hospital rooms with a room rent exceeding INR 5,000 per day per patient are subject to a 5% GST without any provision for input tax credit. The industry is grappling with the fact that such room rent is charged from the patients as a part of the composite supply of healthcare services. Patients visit hospitals primarily for healthcare treatment, with the stay being only an ancillary activity. Hence, the imposition of tax on such stays raises concerns.

Apart from the above, this change presents various challenges for healthcare providers. They will now have to bear the burden of GST without the ability to claim an input tax credit, leading to an increase in the overall cost of healthcare services. Other challenges would be to re-consider their existing practice of billing room rent as part of the packages offered by hospitals for treatment or services availed. Adjustments to accounting software and billing systems are also necessary to ensure GST compliance for transactions where room rent exceeds the prescribed threshold.

Exemption from registration

As per the recent amendment introduced vide Union Budget 2023, the Government has the authority to notify specific categories of individuals who may be exempted from obtaining registration under the GST Law, based on recommendations from the Council.

In cases where a healthcare entity operates in multiple states and holds registrations in different states, with one state where the entity is involved in both taxable and exempt supplies, and others where it is exclusively engaged in exempt supplies of goods or services, the industry can present a representation to the Government seeking exemption from the requirement of obtaining GST registration for each branch solely involved in making exempt supplies of goods or services or both.

GST implications on revenue-sharing arrangements

- **Provision of space by hospitals to other healthcare providers**

  There are situations where a hospital provides space to an external healthcare service provider for setting up and providing various healthcare services to the patients jointly with the hospital, of which the external provider may not have the necessary infrastructure or expertise in place. In such arrangements, the patient may be directly billed by the external healthcare service provider or by the hospital, with an agreed share of revenue transferred to the other party for their services. Taxability of such transactions poses challenges, as one could argue that the revenue received by the hospital is primarily derived from healthcare services and should either be exempt from GST or subject to taxation.

GST on services by Occupational Health Centres

Organisations worldwide are opting to get access to the services of healthcare companies right on their campuses, making it easy for employees to consult, get diagnosed and even avail treatment. These Occupational Health Centres (OHCs) help employees access quality medical care and wellness while at work. However, the taxability of services rendered by these OHCs raises arguments as to whether they can be deemed as services provided by clinical establishments, paramedics, or authorised medical practitioners, thereby qualifying for an exemption from GST.

GST Implications on various discount schemes

Hospitals often engage in promotional activities by offering subscriptions that grant consumers certain discounts when they avail of healthcare services. The taxability of such subscriptions is another area of concern, as it is unclear whether they should be treated as exempt healthcare services or as independent taxable supplies.

CHALLENGES UNDER DIRECT TAX:

Disallowance of deduction of expenses incurred in promotion

To promote their brand, pharmaceutical and other allied health sectors often provide gifts, cash or in-kind, travel facilities, hospitality, and monetary grants to medical practitioners and their professional associations. Section 37 of The Income-tax Act, 1961 (Act) states that deductions shall not be allowed for any expenditure incurred for any purpose that is an offence or prohibited by law. Furthermore, the Central Board of Direct Taxes (CBDT) has issued a circular clarifying that expenses incurred in providing the above benefits violate the provisions of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) and the same shall be disallowed as it is an expense prohibited by the law. This matter has also been subject to litigation in various courts.

Tax on remuneration to doctors

Companies that provide healthcare services are required to deduct tax at source under the act when they make payments to doctors, consultant doctors, and others. However, there is always a challenge as to whether payments made to doctors are liable to be withholding taxes under Section 192 (as salary) or 194J (as a fee for professional services) of the Act.

The determination of the applicable sections arises from analysing the respective contracts or arrangements that establish the relationship between the company and the doctor, whether it is that of an employer-employee or independent professional. This analysis helps in determining the obligation under the relevant section of the act.

Tax on benefits or perquisites:

Section 194R of the act provides that any benefit or perquisite received by a resident, whether convertible in money or not, arising from the exercise of business or profession, shall be liable to TDS under Section 194R of the Act at 10%. The CBDT (Central Board of Direct Taxes) has provided guidelines through circulars regarding this section, which clarify certain aspects such as expenses incurred for dealer's conferences and the provision of free samples to doctors. However, there are still various interpretation issues associated with Section 194R of the Act, and it is important to undertake careful evaluation and analysis to ensure compliance.

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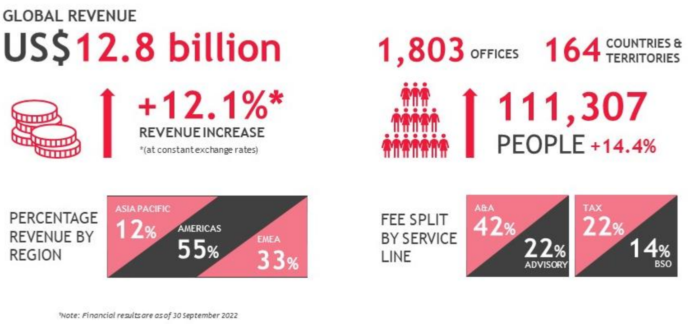

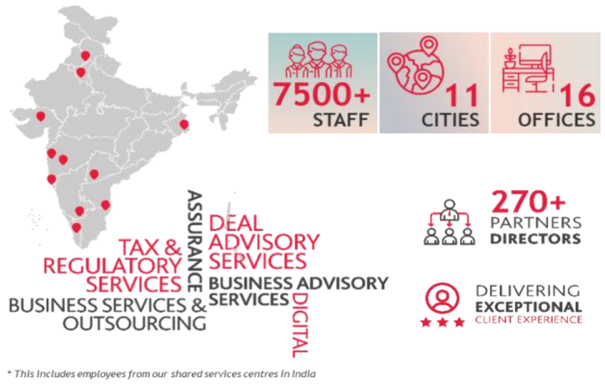

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