



Sales promotion by pharmaceutical companies

The road ahead

BACKGROUND

As an industry-wide practice, various pharmaceutical and allied healthcare sector industries typically provide incentives / freebies to medical practitioners. These include sponsorship of medical conferences, in-clinic medical equipments, stationery items, medical books and subscriptions to medical journals and databases, travel and accommodation facilities in connection with medical conferences, assistance in upgrading the medical infrastructure, et al.

Provision of such facilities, while resulting in indirect benefit to medical practitioners, deepens the quality of medical services and also results in spreading medical awareness and thereby bringing more and more population into the formal healthcare system. These incentives / freebies also provide for a brand recall value of the products. The Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 ('the MCI Regulations'), prohibits the medical practitioners from accepting certain specified benefits or support and imposes strict penalties and repercussions on medical practitioners for any violation of the MCI Regulations.

Allowability of expenditure incurred by the pharma

companies in providing the aforementioned benefits and support to medical practitioners has been a vexed issue with conflicting jurisprudence on both the sides. The Supreme Court in case of *Apex Laboratories Pvt. Ltd.*¹ has put the controversy to rest by deciding the issue in favour of the Revenue. The Finance Act, 2022 has also brought in a clarificatory amendment in section 37 of the Income-Tax Act, 1961 ('the Act') which disentitles a taxpayer to claim any expenditure if such expenditure violates any law or regulation by which the recipient is governed.

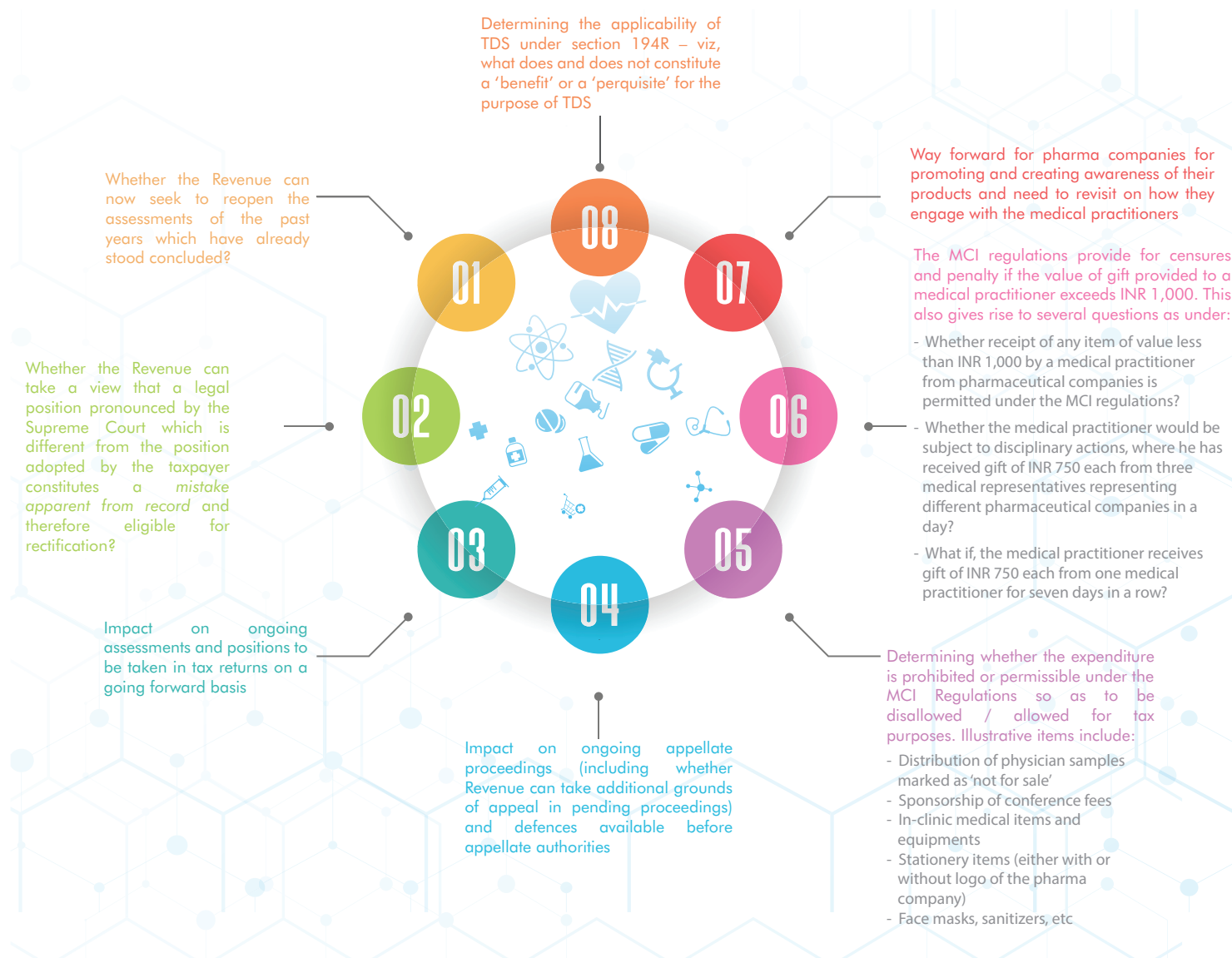
Furthermore, Finance Act, 2022 has also inserted a new section 194R requiring the payer to deduct the tax at 10% on the value of such benefit or perquisite which is been provided to the medical practitioners.

However, despite the judgement of the Supreme Court and the amendment made in Finance Act, 2022, there are still some issues which are open and can be explored further. Pharma companies will need to closely examine which of the payments and facilities provided to the medical practitioners would be hit by the MCI Regulations, the documentation required for defending the legitimate payments made in the past years and how the situation needs to evolve for the future. Few relevant issues and open areas are discussed below.

¹Special Leave Petition (Civil) No. 23207 of 2019

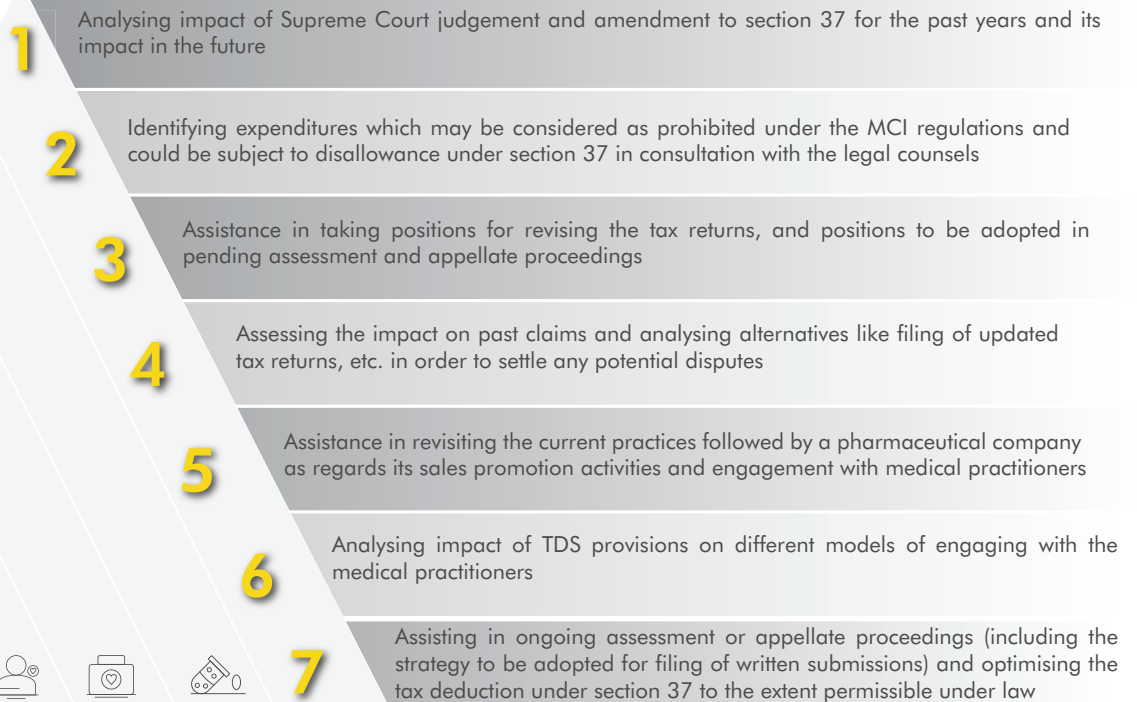
PRACTICAL ISSUES FOR CONSIDERATION

Given the judgement of the Supreme Court and the amendment in Finance Act, 2022, the following issues merit consideration in order to determine the eligibility for tax deduction on a going forward basis:



HOW CAN DHRUVA ASSIST?

At Dhruva, we have deep domain experience on the pharmaceutical industry and are working with many of the largest pharma companies for their tax and regulatory matters. We will be happy to partner with clients to help them navigate this important development with simplicity and ease.



CONCLUDING REMARKS

Pharmaceutical companies have worked closely with medical practitioners to promote and facilitate healthcare awareness which in a country like India has been historically very low. This has taken various forms, some of which may be legitimate and some that may not be so. Given that this has been an industry wide practice, companies will need to closely examine which of the freebies would be hit by the MCI Regulations, the documentation required for defending the legitimate payments made in past and how the situation needs to evolve in future.

For example, as discussed earlier, can provision of in-clinic items with company logo such as stationery items, face masks, sanitizers, etc. be regarded as permissible under the MCI Regulations? Whether gift of low value items (say, INR 1000 or less - which is the limit as prescribed under MCI regulations) is permissible? Whether sponsorship of conference fees for doctors is permissible under MCI regulations? Companies will need to iron out these issues and have a proper demarcation in place on what is permitted and otherwise as per the MCI regulations in order to secure their tax deduction to the extent permissible under the law. Companies will also need to suitably plan for provisions providing for deduction of tax at source.



ABOUT DHRUVA ADVISORS

Dhruva Advisors LLP is a tax and regulatory services firm, working with some of the largest multinational and Indian corporate groups. Its brings a unique blend of experience, having worked for the largest investors in India, advising on the largest transactions and on several of the largest litigation cases in the tax space. We also work closely with the Government on policy issues and with our clients on advocacy matters.

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- Strategic approach to complex problems
- In-depth, specialised and robust advice
- Strong track record of designing and implementing pioneering solutions
- Trailblazers in tax controversy management
- Long history of involvement in policy reform
- Technical depth and quality

We believe in thinking out of the box, handholding our clients in implementing complex solutions and working towards achieving results. We have offices in Mumbai, Ahmedabad, Bengaluru, Delhi, Kolkata, Pune, Dubai and Singapore. We advise clients across multiple sectors including financial services, IT and IT-enabled services (ITES), real estate and infrastructure, telecommunications, oil and gas, pharmaceuticals, chemicals, consumer goods, power, as well as media and entertainment.

Dhruva Advisors is a member of the WTS Alliance, a global network of selected firms represented in more than 100 countries worldwide.

Our recognitions

- Dhruva Advisors has been consistently recognised as the “India Tax Firm of the Year” at the ITR Asia Tax Awards in 2017, 2018, 2019, 2020 and 2021.
- Dhruva Advisors has also been recognised as the “India Disputes and Litigation Firm of the Year” at the ITR Asia Tax Awards 2018 and 2020.
- WTS Dhruva Consultants has been recognised as the “Best Newcomer Firm of the Year” at the ITR European Tax Awards 2020.
- Dhruva Advisors has been recognised as the “Best Newcomer Firm of the Year” at the ITR Asia Tax Awards 2016.
- Dhruva Advisors has been consistently recognised as a Tier 1 firm in India’s ‘General Corporate Tax’ and ‘Indirect Tax’ ranking tables as a part of ITR’s World Tax guide. The firm is also listed as a Tier 1 firm for India’s ‘Transfer Pricing’ ranking table in ITR’s World Transfer Pricing guide.



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