

3. Redesign of activities and initiatives to:
- Optimise cost-to-sales impact
 - Utilise the change to optimise marketing RoI and spend
 - Identify new methods of engagement to improve sales and competitive advantage
 - Drive system adoption to ensure channel compliance

Potential tax implications

- **Proposed amendment to section 37**
Expenses towards the benefit or perquisite, acceptance of which, violates any law

The deductibility of expenses incurred by pharmaceutical companies towards travel, hospitality, conference expenses, etc., of medical practitioners has been a litigious issue.

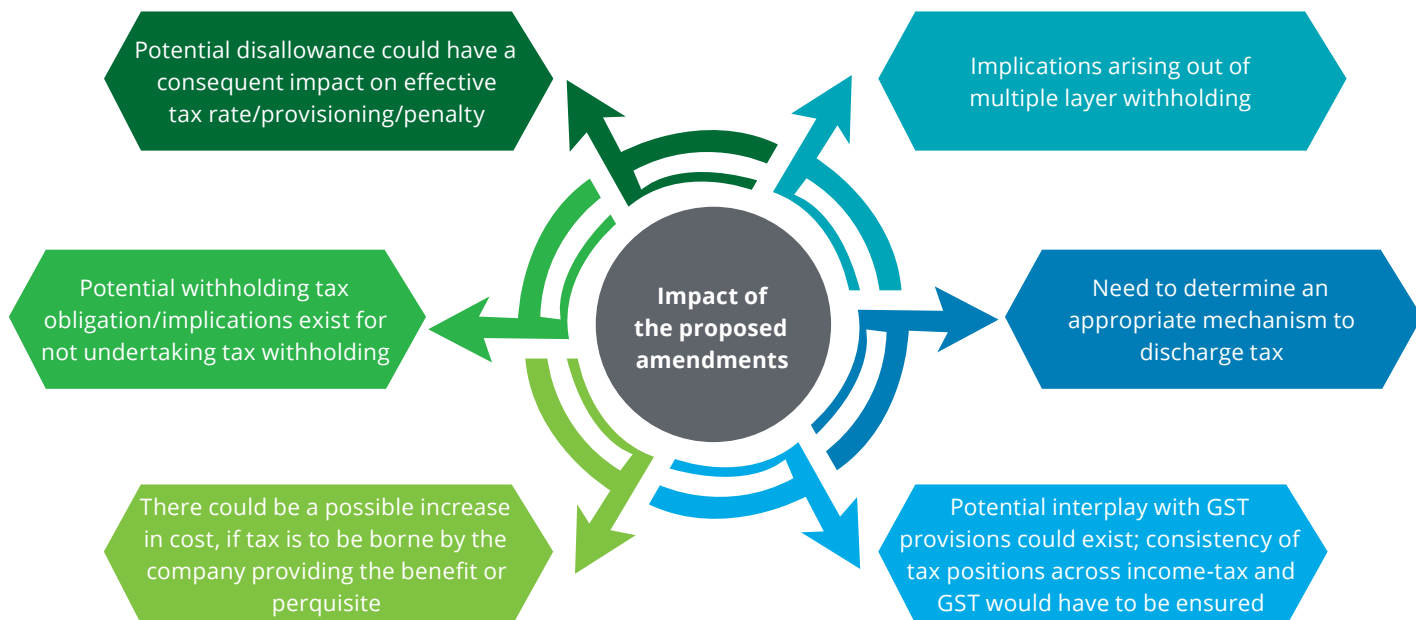
The Central Board of Direct Taxes had noted that regulations issued by the Indian Medical Council (IMC) prohibits medical practitioners from accepting any gifts or benefits (as prescribed) from the pharmaceutical and allied health sector industries. It issued a circular (no. 5 of 2012)

directing inadmissibility of expenses incurred in providing freebies to medical practitioners.

Tribunals have generally allowed the expenditure— primarily on the basis that IMC regulations apply to the medical professionals and not to pharmaceutical companies. However, the Supreme Court recently held that freebies provided to medical practitioners are prohibited by law and therefore, should not be allowed a deduction to the pharma companies providing such freebies.

- **Proposed introduction of section 194R**
 Provision of benefits or a perquisite exceeding INR 20,000 to a resident during a financial year (during business or profession) to be subject to withholding tax at the rate of 10 percent.

Where cash portion is inadequate to cover the withholding tax liability, the provider of the benefit or perquisite needs to ensure that the tax has been paid by the recipient of the benefit or perquisite.



Potential impact areas

The indicative spends which could potentially be impacted due to the above are:



Key areas for detailed examination, vis-à-vis deductibility and withholding tax obligation

- Nature and purpose of the expense
- Whether a benefit or a perquisite accrues to the recipient
- Law/regulations governing the recipient
- Documentation to substantiate the claim
- Valuation related aspects of non-monetary benefits
- Interplay with prevailing jurisprudence
- Interplay with other withholding tax provisions
- Impact of the recent Supreme Court judgement including the impact on historic litigation, especially where favorable decisions were upheld by lower appellate authorities, risk of re-opening of assessments, requirement of making tax payments and/or filing revised returns, etc.
- Impact from a governance perspective, including for alternative arrangements
- Audit provisioning
- Applicability: retrospective or prospective

Key areas for detailed examination, vis-à-vis GST

- Re-evaluation of character of such expense with guidelines
- Transactions regarded as indirect sales promotion could have GST implication

- Input tax credit restrictions for the company, in case the benefit is recognised as gifts
- Establishing a nexus of expenses with business operations of the company
- Benefit/perquisite TDS deduction under the proposed amendment would require a detailed evaluation on whether it qualifies as "supply" under GST law or not
- "Violation of law" to be considered for input tax credit availment
- Change in GST credit availment process for such expenses
- Assessments based on withholding tax (section 194R) data from business partners
- Impact on GST cost incurred for sales promotion expenses
- Presence of appropriate documentation to prepare from an audit-readiness perspective
- Impact on past input tax credit availed by company under prevailing jurisprudence
- Principles of Circular 105/24/2019 - GST (rescinded) could be made applicable for determining GST liability
- Assessment of additional GST cost, if any, in overall supply chain



Accounting considerations

From an accounting standpoint, it will be important to note the effect of this amendment on tax provisions, both current and deferred. Tax provisions and computations are a complex accounting and reporting area and will add an additional wrinkle to the process and layers of estimation and judgements.

This amendment may also trigger the requirement to identify and determine whether an uncertain tax position has been taken by an entity, which will need to be additionally factored into deferred tax computations.

The interpretation of these amendments by regulators in subsequent years and potential conflicts with the position

already applied by entities will have to be continuously monitored, and any change will have to be reflected in the financial statements with adequate disclosures.

Conclusion

Having regard to the impact of the Supreme Court judgment and budget proposals, it is important for the companies to be conscious of that, continuing with the current ways of working will entail additional tax and compliance costs. It is imperative that companies consider alternate business and working models aiming at effective business proposition while keeping in mind the corporate governance norms.



Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee (“DTTL”), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as “Deloitte Global”) does not provide services to clients. Please see www.deloitte.com/about for a more detailed description of DTTL and its member firms.

This material is prepared by Deloitte Touche Tohmatsu India LLP (DTTILLP). This material (including any information contained in it) is intended to provide general information on a particular subject(s) and is not an exhaustive treatment of such subject(s) or a substitute to obtaining professional services or advice. This material may contain information sourced from publicly available information or other third party sources. DTTILLP does not independently verify any such sources and is not responsible for any loss whatsoever caused due to reliance placed on information sourced from such sources. None of DTTILLP, Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the “Deloitte Network”) is, by means of this material, rendering any kind of investment, legal or other professional advice or services. You should seek specific advice of the relevant professional(s) for these kind of services. This material or information is not intended to be relied upon as the sole basis for any decision which may affect you or your business. Before making any decision or taking any action that might affect your personal finances or business, you should consult a qualified professional adviser.

No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person or entity by reason of access to, use of or reliance on, this material. By using this material or any information contained in it, the user accepts this entire notice and terms of use.