



TAX BULLETIN 06-09

PROMOTION MATERIALS AND BENEFITS GIVEN IN CASH AND IN KIND IN PHARMACEUTICAL SECTOR AND TAXATIONAL ASPECTS

Today, constantly changing consumption trends and increasingly intensified competition cause companies to find different marketing techniques. Turkish pharmaceutical sector is the one in which different methods for promotion and marketing are used. The aim of this article is to assess the situation of the firms operating in pharmaceutical industry, taking into consideration the requirements brought by the Ministry of Health and Tax laws

1. The Regulations of The Ministry of Health

The most important regulation in this matter by the Ministry of Health is the one about human medical products promotion and presentation activities which has been prepared in parallel with EU's 2001/83EC numbered directive and has been entered into force in 01.12.2003. The scope of promotional activities in the regulation is limited to:

- The presentation of medicinal products sold without prescription to society.
- The presentation of medicinal products sold with prescription to health profession members.
- Visits of medical products sale representatives to doctors and dentists.
- Sample products distribution
- The sponsorship of promotional meetings that health profession members participate in
- The sponsorship of scientific congresses health profession members attended and payments of travel and accommodation expenses of those attending.

In the regulation, health profession members have been identified as doctors, pharmacists and dentists. And the restrictions on the promotion for those are given in the article 9. Accordingly, this presentation style includes short product information and the last update).

On the printed promotional materials, the drug's commercial name, manufacturer, importer or registered owners name and address that one can apply when needed are given.

On the other hand, the principles of promotion for health profession members are organized in article 10.

The most important regulations in the aforementioned article are as follows.

- During the presentation to members of medical profession, benefits in cash or in kind can not be provided, offered and promised.
- Entertaining quests within the promotional activities should always be at a reasonable level and have secondary importance compared to the real purpose of the meeting and not include non-commercial staff.
- Any kind of presentation or service to health profession members through games of chance can not be performed.



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On the other hand , the Ministry controls the promotional activities and all kinds of materials and methods used in these presentations . As a result of these controls that can be made on complain or directly , inappropriate promotional activities in terms of the regulations's necessities or public health may be requested from the licensee to be stopped, canceled or corrected. And finally the Republic of Prosecution is informed.

2. Tax view on promotional activities.

-Health promotion materials in cash or in kind given to health profession members.

With the aim of increasing sales of medical products, some companies provide various benefits in cash or in kind (shopping checks, fuel checks, accommodation vouchers, home or Office furniture etc.) As it is understood from the previous section, when determining promotional strategies, companies in the pharmaceutical sector should first take into account whether the scope of their promotion activities are in line with the one introduced by the ministry.

Explanations in the previous section shows that promotional activities contrary to the regulation introduced by the Ministry of Health go into the classification of criminal acts. In this case, whether the payments relating to illegal promotional activities should be regarded as allowable or disallowable expenses is the first issue that one should discuss. Basically there can be said to be two views on this matter.

According to the first view, the case must be examined in the context of tax law first of all. Which expenses can be regarded as allowable or disallowable expenses specified clearly in the income and corporate tax laws.

There is not a provision regarding unacceptance of expenses arising from the acts prohibited by law.

According to the article 9 of the Turkish Tax Procedural Code, the fact that the incident giving rise to taxation is prohibited by law does not stop tax liability. Likewise, in order to accept an expense as allowable expense, there is no need for the expense to be not related with illegal acts.

The other opinion on this issue is that a payment contrary to law can not be accepted as an expense. According to the Turkish Income Law, an expense is deductible if it is related to the generation of income or the operation of a business. Deductible expense means expenses arising from the acts not prohibited by law .Furthermore, accepting an expense arisen from the acts prohibited by law as an allowable expense may mean encouraging those kinds of acts.

Regards to the subject in legal contemplation, it is stated in Council 4 and 13th Departments that ,illegal payments can not be taken into consideration as expense .

(Council of state , Department 4, 10.02.1970, No: 1968/4311, desicion No: 19701718, Council of state 13th department, 13.11.1979 and No:197911084 desicion No: 1979/3424).



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It is also stated that these kind of expenses are prohibited by law, and as they are not related to the obtaining and maintaining of the business, it is not possible to deduct them as expense.

Consequently, in kind and cash benefits to health profession members can be questioned according to the provisions of Ministry of Health.

Therefore, the expense record of promotion expenditure not identified and permitted in this regulation can be evaluated by tax inspectors as a matter open to discuss.

It should be stated that in recent years, judicial decisions regarding the issue aforementioned seem to gain stability in the way that prevents expense record.

On the other hand, in addition to expense record of the free kind benefits provided to health profession members, the situation of it towards KDV is also important.

The VAT positions of promotional products delivered free (samples and promotion materials) have been stated in the VAT General Communiqué numbered 50.

Promotional Materials:

Promotional products distributed to health profession members by the companies for promoting medical products is the most important promotion method used by companies.

The promotion materials; the books contains necessary information on human medicinal products booklets, brochures and printed materials such as film, slides, electronic media, such as visual and audio materials, pad, pen, pencil, calendar, tools that can be used during events within the modest limits, national and international publications such as reminders

It is clearly stated in Income Tax Act 40 /1 that while calculating the income of firm, these kind of materials should be written as expense within the context of general expenditure to be used for obtaining and maintaining of corporate income.

In terms of regulation and tax legislation there is not a regulation preventing these kind of expenditures to be written off .

On the other hand, it is said on the VAT General Communiqué numbered 50 that promotional materials are not subject to VAT with condition that;

- promotional materials distributed free should be suitable for commercial practices in terms of quantity and quality

- they should not be subject to resale by those who promotional materials are given



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However, in the event of kind benefits provided to health profession members are promotional goods contrary to the rules set in the article 6 of Ministry of Health regulations such as air conditioning, refrigerator, tv, video, VAT should be calculated over the mentioned goods and the value of the good including VAT should be taken into consideration as disallowable expense.

Samples:

In the regulation of free samples of medicinal products article 12, It is stated that these products are only given to doctors, pharmacists and dentists. (these products are specified as promotional materials in article 4 of relevant regulation of Ministry of Health)

Therefore, if the promotional materials delivered as samples are not in accordance with rules set in Communique numbered 50, then ,the value of mentioned goods plus VAT should be taken into consideration as expense.

-Congress and Organizations for Medical Product launches

Companies organize several organizations and meetings in order to promote medical products to representatives and health members. Such meetings are usually held in big hotels and require minimum a few days stay.

Representatives , health business members and their spouses and children can participate to this meetings.

Such promotional expenses should always be at a reasonable level according to relevant regulation of Ministry of Health and have secondary importance compared to the real purpose of the meeting and not include non-commercial staff such as spouses, children etc. With the limitations above, it is far from discuss that these kind of expenses are related to the generation of income or the operation of a business.



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