

Summary of Recommendations

With reference to Systemic issues relating to Pharmaceuticals Sector

1. CBDT may maintain the sector-wise data of assessees to which various tax incentives have been prescribed under the Act.

(Paragraph 2.3)

The Ministry stated (January 2015) that considering the large number of taxpayers availing various incentives under the Act, it may not be feasible to segregate/identify the data regarding various tax-incentives sector-wise in an accurate manner. The Ministry also stated that the data is mainly captured from the business code filled in the return by the assessees who are engaged in several businesses and there is possibility that the assessee may fill incorrect code. However, revision in the business code is under consideration.

Audit is of the view that the maintenance of sector wise data is necessary for tax planning and sector specific policy by the concerned Departments of Government of India. Hence, there is a need of evolving a system of sector wise data. For this purpose, DSIR and NPPA may be requested to capture PAN details to facilitate the linking with ITRs.

2. The Ministry may develop a mechanism so that the copy of Form 3CM/3CL duly approved by DSIR are invariably attached with the ITR. The Ministry may also prescribe the date of forwarding of approved Form 3CL by DSIR to DGIT (Exemptions) to precede the due date for filing the ITR.

(Paragraph 2.4)

The Ministry while explaining the system of approval of R&D expenditure by DSIR stated (January 2015) that the current scheme was designed in the pre computerised era and agreed to re-examine the issue.

Audit while agreeing with the reply of the Ministry, further suggested that approval of DSIR available with DGIT (Exemption) should be considered to be linked with ITR.

3. CBDT may consider issuing instructions to bring under the ambit of Section 194C of the Act such work contracts where the entire control of manufacturing process vests with the assessee companies.

(Paragraph 2.6)

The Ministry stated (January 2015) that implementation of C&AG suggestion would require legislative change in Section 194C as it is possible that some assessee may take advantage of the definition of work contract as defined in Section 194C. It further stated that a reference is being separately made to TPL Division for examination during budgetary exercise for 2015-16.

Audit is of the view that it is necessary to ensure that the Pharmaceutical Companies deduct the TDS on payments made to contract manufacturers. Ministry may, therefore decide to take appropriate decision to achieve this objective.

4. ITD may develop a mechanism to collect/receive information related to assessment available with other tax department and use it to deepen the tax base and bring the correct income to the tax-net. Alternatively the AIR in Form ER 4 should compulsory be called for from an assessee who is availing turnover based deductions under the provisions of the Act.

(Paragraph 2.9)

With reference to Compliance issues relating to Pharmaceuticals Sector

5. CBDT may issue instruction to clarify the nature of expenses to be treated as freebies including physician's samples. Further, a suitable mechanism may be devised for the assessee claiming deduction of such expenses, to provide details of expenses in the nature of freebies from the sales promotion expenses.

(Paragraphs 3.1.1-3.1.3)

The Ministry stated (January 2015) that what constitutes 'Freebies' is prescribed in guidelines of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, as amended on 10th December, 2009, and therefore, any alteration/addition/deletion in the said guidelines can only be effected by that body. The Ministry further stated (January 2015) that in each case issue is decided by the AO on its merits and remedial action is available with AOs. The Ministry further stated that making details of expenses in the nature of freebies in ITR will make it bulky.

Audit is of the view that the AOs are taking divergent views due to lack of clarity in the CBDT instructions in this regard therefore, the Ministry may take appropriate action so that AOs take consistent action in future.

6. CBDT may clearly specify the effective date of disallowance of expenses towards freebies to put the disputed and varied interpretations in this regard to rest.

(Paragraph 3.1.1)

The Ministry stated that the circular of CBDT dated 01 August 2012 was merely clarificatory in nature and AOs make any disallowance of freebies on the basis of existing/amended guidelines of MCI and no intervention is required on this issue.

Audit is of the view that absence of effective date in the circular may lead to divergent views of the AOs and finally lead to litigation. Therefore, the date from which the instructions of the CBDT will be effective should be specifically mentioned in every instruction/circulars i.e. prospective or retrospective.

7. The Ministry may introduce a standard form, to be filed either with return or with the assessment records, indicating allocation of all common expenses or weighted deductions alongwith the basis and working of such allocation.

(Paragraph 3.2.1)

The Ministry stated (January 2015) that this is a compliance issue and is to be dealt with on case to case basis. AOs are empowered to call for all such details during the scrutiny assessments.

Audit is, however, still of the view that there is a need to indicate the basis of allocation of common expenses in the assessment records.

8. The Ministry may adhere with the conditions of the DSIR in general and submission of audited accounts of the R&D facility with the return filed by the assessee in particular at the time of assessment to see the eligibility of R&D expenses and quantification thereof.

(Paragraph 3.2.5)

The Ministry stated (January 2015) that DSIR would be consulted for revision of the existing format of audit certificate for capturing information like allocation of expenses etc from the view point of Income-tax proceedings. The Ministry further stated (January 2015) that the feasibility of e-enabling the audit certificate for filing will also be examined by the ITD.