

Tax limitation in pharma marketing



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Pharma Poland News discusses tax deductibility in public and non-public pharma advertising, and ways to avoid problems arising from misallocation of marketing costs, with Tomasz Frontczak, Tax Manager with GlaxoSmithKline Pharmaceuticals, and Tomasz Ciszewski, Tax Manager in Ernst & Young's Pharmaceutical Sector Service Group.

Joanna Rybak, Pharma Poland News: Entrepreneurs operating in the pharmaceutical industry in Poland often complain about the severe restrictions on marketing and promoting medicinal products. What do they result from?

Tomasz Frontczak: On the whole, the restrictions on advertising of medicinal products are imposed by pharmaceutical law. Entrepreneurs who market and advertise medicinal products are obliged to meet the numerous conditions set down in pharmaceutical regulations. These conditions relate to aspects including the audiences of such advertising, the methods and channels that may be used to communicate it, and permissible advertising tools.

JR: What are the consequences of not meeting the conditions set down in pharmaceutical law for advertising medicinal products?

Tomasz Ciszewski: Marketing and advertising medicinal products without meeting all the conditions stipulated in pharmaceutical regulations has extensive negative consequences. First of all, entrepreneurs are exposed to the administrative and penal sanctions stipulated in pharmaceutical law. Additionally,

and extremely importantly from the financial perspective, failure to comply with these regulations has an adverse effect on the pharmaceutical companies' tax bill.

JR: Let's focus on the tax consequences. What do they result from?

TC: It should be remembered that pharmaceutical regulations on the advertising of medicinal products are closely linked to income tax law provisions on the tax deductibility of the costs incurred through advertising activities.

Under tax law, advertising activities are generally divided into two main groups: public advertising and non-public advertising. Public advertising costs are, as a rule, fully deductible for tax purposes, whereas those related to non-public advertising are tax deductible only up to the limits set out in tax law, i.e. up to 0.25% of the revenue. At the same time, in view of the specificity of the pharmaceutical business, a regulation has been introduced into pharmaceutical law under which the advertising of medicinal products generally qualifies as public advertising for the purposes of tax law. This means that all the costs incurred by activities classified as advertising of

medicinal products can be treated as fully deductible for tax purposes. However, and this fact is of the utmost importance, such treatment may be questioned by the tax authorities on the grounds that full tax deductibility is possible only when all the conditions stipulated in pharmaceutical law for advertising medicinal products are met. Although this argumentation could be potentially used by the tax authorities, in our opinion it is highly disputable and has no appropriate legal justification in tax regulations.

JR: So what could happen if these conditions are not met?

TF: From a tax perspective, disregarding these conditions could lead to lengthy disputes with the tax authorities. In the worst-case scenario, the tax authorities could even claim that the costs of advertising and marketing medicinal products are not actually borne for the purpose of the companies' normal business activity. In this case, the tax deductibility of these costs and the deductibility of the input VAT connected with them could be questioned.

It should, however, be remembered that these tax traps can very often be avoided by the pharmaceutical company taking certain steps.

JR: What steps are these?

TC: First of all, marketing and advertising planned and any already carried out should be analysed critically for compliance with pharmaceutical regulations.

An important issue is whether the main source of the risks connected with these activities arises from their inappropriate documentation or failure by the company to comply fully with pharmaceutical regulations.

TF: Our practice suggests that misunderstandings sometimes arise within the pharmaceutical company, between the marketing department, which is responsible for doing the advertising and the financial department, which processes and pays the tax on it. The marketing department is not always aware that documenting promotional activities correctly is crucial to their tax treatment!

Our experience shows that mapping available marketing activities is a good solution for many companies. This not only indicates exposed areas in the promotional policy pursued by the company to date, but also enables it to take greater advantage of its marketing potential.

Establishing and applying procedures to ensure that pharmaceutical companies' marketing/advertising activities do conform with pharmaceutical law would also prove a valuable step in the future.

JR: **Many thanks for your comments.**

TC: Thank you. In our view, this discussion shows that phar-

maceutical companies in Poland need to think more carefully about their promotional activities. They should place greater emphasis on adhering to pharmaceutical regulations on the advertising of medicinal products.

TF: There needs to be a greater awareness of the consequences of not meeting the conditions stipulated in pharmaceutical law among employees responsible for particular marketing activities and companies' management boards, as non-compliance with these regulations may expose both the companies and the individuals responsible to severe administrative and penal sanctions.