APPLICABILITY OF PROVISIONS OF NEWLY INSERTED SECTION 194 R w.e.f. 01.07.2022

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1. Finance Act 2022 had inserted section 194R in the Income-tax Act, 1961 for deduction of tax on benefit or perquisite provided to a resident in respect of business or profession w.e.f. 01.07.2022.

2. As per the provisions of sub-section (2) and (3) of the said section, CBDT has been given powers to issue guidelines for the purpose of removing the difficulties in connection with the provisions of said section 194R. CBDT has recently come out with Circular No.12 of 2022 dated 16.06.2022, whereby they have provided certain clarifications in respect of the issues arising out of the interpretation of section 194R.

3. Before we deal with the questions and answers mentioned in the above Circular, kindly note that the provisions of TDS u/s.194R are not applicable to individuals or HUFs, whose total sales, gross receipt or turnover did not exceed 1 crore rupees in the case of business or 50 lacs rupees in the case of profession during the financial year, preceding the financial year in which benefit or perquisite is provided. It means that if such individual or HUF do not have sales, turnover as mentioned above in F.Y. 2021-22, they will not be liable to make deduction u/s.194R in respect of benefits or perquisites provided by them for F.Y.2022-23.

4. Since the provisions of section 194R are going to have wider ramifications for persons engaged in the business activity and since the said provisions are applicable w.e.f. 01.07.2022, we are providing herewith salient features of the issues dealt with by the CBDT in the form of question-answer in the above Circular. Accordingly, the following clarifications emerge out of the reading of the above Circular.

   (i) It is not necessary for that deductor i.e. provider of benefit or perquisite to find out whether the recipient of such benefit or perquisite is liable to tax. Therefore, irrespective of the fact whether such benefit or perquisite is exempt in the hands of the recipient or the entire receipt of the recipient of benefit or perquisite is exempt, the deductor has to deduct the tax at the rate of 10% on the value or aggregate value of such benefit or perquisite.

(ii) It is not necessary that benefit or perquisite must be in kind, even benefit or perquisite in the form of cash is liable to TDS.

(iii) No tax is required to be deducted under section 194R of the Act on sales discount, cash discount and rebates allowed to customers.

(iv) If the seller of goods offers some items free with purchase of certain quantity, the same is not liable to TDS u/s.194R. However, when free samples are given, the value of the same is liable to TDS if it exceeds threshold limit of Rs.20,000/- in a year.

(v) TDS is required to be deducted in the following circumstances:

- When a person gives incentives (other than discount, rebate) in the form of cash or kind such as car, TV, computers, gold coin, mobile phone etc.
- When a person sponsors a trip for the recipient and his/her relatives upon achieving certain targets
- When a person provides free ticket for an event
- When a person gives medicine samples free to medical practitioners.

(vi) Even if such benefits or perquisites are used by the owner/ director/ employee of the recipient entity or their relatives who in their individual capacity may not be carrying on business or exercising a profession, TDS is required to be made by the provider of such benefit or perquisite to the recipient of such benefit or perquisite.

(vii) If free medicine sample is provided by a company to a doctor who is an employee of a hospital, TDS is required to be made by the company in respect of the value of free medicine sample provided to the hospital even if in substance, it is the Doctor who is using free medicine sample, and who is an employee of the hospital and not carrying on individual business or profession.

(viii) Similarly, tax is required to be deducted u/s.194R if the benefit or perquisite is provided to a Doctor, who is working as a consultant in the hospital.

(ix) The provisions of section 194R shall not apply if the benefit or perquisite is being provided to a Government entity, like Government hospital, not carrying on business or profession.

5. The valuation of benefit or perquisite would be based on fair market value of the benefit or perquisite except in following cases:-

   (i) The benefit/perquisite provider has purchased the benefit/perquisite before providing it to the recipient. In that case the purchase price shall be the value for such benefit/perquisite.

   (ii) The benefit/perquisite provider manufactures such items given as benefit/perquisite, then the price that it charges to its customers for such items shall be the value for such benefit/perquisite.

   It is further clarified that GST will not be included for the purposes of valuation of benefit or perquisite.

6. Many a times, a social media influencer is given a product of a manufacturing company so that he can use that product and make audio/video to speak about that product in social media. In such cases, if the product is returned to the supplier after using for the purpose of rendering service, it will not be treated as a benefit or perquisite. However, if the product is retained, it will be in the nature of benefit or perquisite and TDS is required to be made.

7. In the case of reimbursement of expenses incurred by a consultant for a company, if the invoice is in the name of the company and the consultant has made the payment, the reimbursement of such expenses will not be considered as benefit or perquisite. However, if the bill is in the name of the consultant and the same is reimbursed by the company, the same would be considered as benefit or perquisite liable to TDS.

8. The expenditure pertaining to dealer/business conference would not be considered as benefit/perquisite for the purposes of section 194R of the Act in a case where dealer/business conference is held with the prime object to educate dealers/customers about any of the following or similar aspects:

   (i) new product being launched
   (ii) discussion as to how the product is better than others
   (iii) obtaining orders from dealers/customers
   (iv) teaching sales techniques to dealers/customers
   (v) addressing queries of the dealers/customers
   (vi) reconciliation of accounts with dealers/customers

However, such conference must not be in the nature of incentives/benefits to select dealers/customers who have achieved particular targets.

9. In the following cases, the expenditure would be considered as benefit or perquisite:

(i) Expense attributable to leisure trip or leisure component, even if it is incidental to the dealer/business conference.

(ii) Expenditure incurred for family members accompanying the person attending dealer/business conference.

(iii) Expenditure on participants of dealer/business conference for days which are on account of prior stay or overstay beyond the dates of such conference.

10. If a person is providing benefit in kind to a recipient and tax is required to be deducted under section 194R of the Act, the person providing benefit is required to ensure that tax required to be deducted has been paid by the recipient. Such recipient would pay tax in the form of advance tax. In such case, tax deductor may rely on a declaration along with a copy of the advance tax payment challan provided by the recipient confirming that the required amount of TDS is deposited. This would be then required to be reported in TDS return along with challan number. Form No.26Q for this year has made necessary provisions for reporting such transactions.

In the alternative, an option is given to the benefit provider to gross up the amount of benefit with the required amount of TDS and pay the tax to the Government. In such case, in Form No.26Q, the benefit provider will need to show it as TDS on benefit provided.

11. The threshold limit of Rs.20,000/- for non-deduction of tax u/s.194R is applicable for the entire financial year. However, since the provisions of section 194R are effective from 01.07.2022, the amount of benefit or perquisite provided to a person for the period between 01.04.2022 to 30.06.2022 would be considered only for the purpose of finding out whether the threshold limit is exceeded. If the threshold limit is crossed prior to 01.07.2022, the amount of benefit or perquisite provided to such person from 01.07.2022 onwards would be liable to TDS in respect of the benefit or perquisite provided w.e.f. 01.07.2022.

The benefit or perquisite, which has been provided on or before 30.06.2022 would not be subjected to TDS under section 194R of the Act.

12. The reading of the above Circular and the answers given by CBDT in respect of several issues suggest that very heavy compliance burden is placed on the tax payers, to maintain record of such benefit or perquisite, particularly, in respect of business entities engaged in the business of fast moving consumer goods and pharmaceutical companies, and they will have to keep track of the benefit or perquisite provided by them very meticulously to see that there is no default in complying with the provisions of section 194R.

13. The Tax Auditors also will be required to grapple with the records maintained by the client to find out whether compliances are made as per provisions of section 194R read with above Circular.