

TAX DEDUCTION AT SOURCE FROM BENEFITS OR PERQUISITES

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A new Section 194R has been inserted in the Income tax Act by the Finance Act, 2022. It has come into force from 1st July, 2022. This Section provides that tax shall be deducted at source (TDS) at the rate of 10% of the aggregate value of any benefit or perquisite arising from business or profession if the aggregate value of such benefit or perquisite in a financial year exceeds Rs.20,000/-

2. The provisions of this Section are not applicable to an Individual or HUF whose Sales, Gross Receipts or Turnover does not exceed Rs.1 Cr. in the case of business or Rs.50 lakhs in the case of profession carried on by the assessee during the immediately preceding financial year. Thus, the section will apply to all Companies, Firms, LLP, Co-operative Societies etc. carrying on business or profession irrespective of the turnover limit. In this article the implications of this new provision for TDS are discussed.

3. In Para 137 of the Budget Speech of the finance minister, delivered on 1st February 2022, she has stated that ***“It has been noticed that as business promotion strategy, there is tendency on businesses to pass on benefits to their agents. Such benefits are taxable in the hands of the agents. In order to track such transactions, I propose to provide for tax deduction by person giving benefits, if the aggregate value of such benefit exceeds Rs.20,000/- during the financial year”***.

4. In the Memorandum explaining the provisions of the Finance Bill, 2022, it is clarified that Section 194R is added to cover cases where value of any benefit or perquisite arising from any business or profession is chargeable to tax under section 28(iv) of the Income tax Act. It is also provided that the Central Government shall issue guidelines to remove any difficulty that may arise in the implementation of this Section. Section 194R (3) provides that these Guidelines will be binding on the Income tax Authorities and also on the person providing such benefit or perquisite.

5. Section 28(iv) provides that “The value of any benefit or perquisite, whether convertible into money or not, arising during the course of the carrying on of any business or profession” shall be liable to tax. However, Section 28(iv) or 194R does not define the terms “Benefit” or “Perquisite”.

6. **CBDT GUIDELINES:**

CBDT has issued a Circular No: 12 of 2022 dated 16.6.2022. This Circular provides Guidelines for removal of difficulties arising from implementation of Section 194R. This Circular explains the transactions to which the TDS provisions of Section 194R apply. The Circular also clarifies that the section applies to the benefit or perquisite that may or may not be convertible into money but should arise from the business or profession carried on by a Resident. Further, the tax deductor is not required to check whether the amount of benefit or perquisite provided by him is taxable or not in the hands of the recipient under section 28(iv). Thus, Section 194R casts an obligation on the person responsible for providing any benefit or perquisite to a Resident to deduct tax at source at the rate of 10%. According to this circular this obligation for TDS applies in the following cases.

(i) The Section applies to any benefit or perquisite whether it is in cash or kind. This is evident from the first Proviso to Section 194R(1) which states that in case where the benefit or perquisite is wholly in kind or partly in cash and partly in kind but such part in cash is not sufficient to meet the liability of TDS, the tax deductor shall, before releasing the benefit or perquisite, ensure that the tax required to be deducted has been paid in respect of such benefit or perquisite. For this purpose, it is clarified that the person to whom benefit or perquisite is given in kind should be asked to deposit the TDS amount in the form of advance tax and the Tax Deductor should obtain Copy of Challan before releasing the benefit or perquisite in kind. It may be noted that this clarification by CBDT is contrary to the decision of the Supreme Court in the case of CIT v/s Mahindra and Mahindra Ltd 404 ITR 1 (SC). In this case it is held that Section 28(iv) does not apply to benefit or perquisite received in the form of money.

(ii) When the benefit or perquisite is in the form of a Capital Asset, the provisions of Section 194R will apply.

(iii) Sales Discounts, Cash Discounts or Rebates allowed to Customers from the listed price is a benefit to the customer. However, the circular states that if the provision for TDS is applied in such a case it will put the seller to difficulty. To remove such difficulty, it is clarified that no tax should be deducted in such a case.

(iv) Similar Concession is given in a case where the Seller offers two items free with purchase of 10 items. In such a case no tax is required to be deducted.

(v) However, it is clarified that the above concession shall not apply to following cases.

(a) Free Samples given to the customer.

(b) Incentive (other than discounts or rebates) given in the form of cash or in kind such as Car, TV, Computer, Gold Coin, Mobile Phone etc.

(c) Free Trip upon achieving certain targets given to the person or his/her relative.

(d) Free Ticket given for an event.

(e) Medicine Samples given free to a medical practitioner, whether he is employee of a Hospital or Practicing as a Consultant.

(Note: The above is only an illustrative list)

(vi) Any benefit or perquisite used by the owner/director/employee of the recipient entity or their relatives will be subject to this TDS provision. This will apply to use of assets of the entity for personal purposes of owner/director/employees or their relatives.

(vii) Section 194R is not applicable if any benefit or perquisite is given to a Government Entity, like Government Hospital, not carrying on business or profession. The Circular does not clarify whether such benefit or perquisite given to Charitable Institutions claiming exemption under sections 10(23C) or 11 will be outside the preview of Section 194R. Here a question will arise whether any benefit in the form of Donation in cash or kind to a Charitable Institution claiming exemption under the above sections will be subject to this TDS provision.

(viii) If the benefit or perquisite is provided in kind, the valuation of such benefit or perquisite will have to be made at the fair market value. However, if the item given as benefit or perquisite is purchased by the assessee, cost of the article purchased will be its value. If such item is manufactured by the assessee, the price charged to its other customers will be considered as its value. GST payable on such article will not be included in the value of the benefit or perquisite while deducting tax at source under section 194R.

(ix) If the product of a Manufacturing Entity is given to a Social Media Influencer who can make Audio/Video to speak about that product in Social Media, it will not be considered as a benefit or perquisite if the product is to be returned to the entity. However, if the product like car, mobile, outfit, cosmetics etc. is not to be returned to the Entity, it will be treated as a benefit or perquisite and TDS provision under section 194R will apply.

(x) Any expenditure which is the liability of a person carrying on business or profession is met by another entity, it will be treated as a benefit or perquisite to the person whose liability is met by the other entity. In other words, if a Chartered Accountant has agreed to render Consultancy Service to a Company for a fixed fee, any travel or other out of pocket expenses reimbursed to him by the Company over and above the mutually agreed Fee will be considered as benefit or perquisite and TDS provision under section 194R will apply. However, if the assignment is for a fixed fee plus travel and other out of pocket expenses, and the Bills for such expenses are obtained in the name of the Company, the reimbursement of such expenses will not attract the above TDS provision.

(xi) The expenditure pertaining to Dealers/Business Conference will not be considered as benefit or perquisite under section 194R if the primary object of such Conference is for (a) New Product being launched, (b) Discussion as to how the product is better than others, (c) Obtaining orders from Dealers/Customers, (d) Teaching Sales Techniques to Dealers/Customers, (e) Addressing queries of the Dealers/Customers, (f)

Reconciliation of accounts with Dealers/Customers and other similar matters. However, if such conference is in the nature of an incentive to select Dealers/Customers who have achieved particular targets, the expenditure will be considered as benefit or perquisite under section 194R. Further, expenses (a) for leisure trip, (b) for family members accompanying the dealer/customer or (c) for stay prior to or after such conference will be treated as benefit or perquisite under section 194R and TDS provisions will apply.

7. **GENERAL:**

From the above Circular it is evident that according to CBDT section 194R is not restricted to benefits and perquisites which are taxable under section 28(iv) as stated in the Memorandum explaining the provisions of the Finance Bill, 2022. According to CBDT, Section 194R applies to any benefit or perquisite which is taxable or not in the hands of the recipient. The Circular states that a transaction which attracts tax under section 41(1) will also be considered as benefit or perquisite. Another example given in the Circular is that of waiver of loan under one time settlement scheme. It is stated that this is also a case of benefit or perquisite. On this basis even the transactions covered under section 56(2)(x) will also be covered under section 194R. Therefore, if an entity carrying on business or profession sells a movable or immovable asset to a person at a price below the fair market value, as provided in section 56(2) (X), the difference between the fair market value and the sale price which is taxable under section 56(2)(X) will be subject to TDS provision under section 194R.

The provisions of section 194R putting obligation on the assessee to deduct tax from the value of the benefit or perquisite provided to third party has put an additional compliance burden on the assessees. Thus, every person engaged in businesses or profession will have to be careful while entering into any transaction with a third party and he will have to first ascertain whether the tax is required to be deducted under section 194R. In case of non-compliance with this provision, he will have to face many penal consequences such as payment of such tax and Interest, Penalty for non-deduction of tax and in some cases also face prosecution. Even Chartered Accountants conducting Tax Audit under Section 44AB will have to verify and report whether the entity under audit has correctly deducted tax or not under the above section. Some Chambers and Tax Consultants have represented to the Finance Minister that the above CBDT Circular goes beyond the provisions of Section 194R and the legislative intent and requires reconsideration. Let us hope that the Finance Minister favorably reconsiders the above matter.