

## Summary of Guidelines for TDS under section 194R

### Background

Section 194R was introduced by the Finance Act, 2022 and is applicable w.e.f. 1<sup>st</sup> July 2022. The section mandates withholding of tax on benefit or perquisite provided to a resident arising from business or exercise of profession. The section provides a rate of 10% if the aggregate value of such benefit or perquisite during the financial year exceeds INR 20,000.

This provision applies to **all taxpayers other than an individual or HUF, whose total sales, gross receipts or turnover does not exceed INR 1 crore in case of business or INR 50 lakh in case of profession**, during the FY immediately preceding the FY in which such benefit or perquisite, as the case may be, is provided by such person.

The section also provides that the CBDT may issue guidelines for the removal of difficulty in giving effect to the said section, with the prior approval of the Government. It is also provided that these guidelines shall be binding both on the tax-payer and the tax department. Consequent to this provision, the CBDT issued Circular 12/2022 dated 16<sup>th</sup> June 2022 providing certain guidelines on implementation and applicability of the said section as enumerated herein below:

### Guidelines in CBDT Circular

- There is no requirement to check whether the benefit or perquisite is taxable in the hands of the recipient in order to trigger TDS under section 194R.
- All types of benefits or perquisites arising to the recipient of the benefit from business or exercise of profession are covered – whether in cash, or in kind or partly in cash and partly in kind.
- TDS under section 194R would apply even if the benefit or perquisite is in the form of a capital asset provided. The Circular also provides certain transactions such as principal loan waived by bank under one time settlement scheme, value of rent-free accommodation provided to directors, etc. would also be covered within the ambit of section 194R.
- While sales discount, cash discount or rebates are also benefits or perquisites, no TDS is required to be deducted on such transactions under section 194R as it represents lesser realization of sale price.
- TDS under section 194R would apply on benefits or perquisites provided by the seller in the form of cash or kind such as car, TV, gold coin, mobile phone, etc., a trip sponsored for recipient and his/her relatives upon achieving targets, free tickets for an event, free samples, or free medicine samples to medical practitioners.
- Though the benefits or perquisites may ultimately be used by the owner/director/employee of the recipient entity or their relatives, the tax is required to be deducted in the name of recipient entity. The recipient entity would have to consequentially withhold tax under section 192 while passing the benefit or perquisite to its employees. However, if the benefits or perquisites is ultimately used by consultant of a recipient entity; in such a situation, recipient entity can direct the entity providing such benefit to deduct TDS under section 194R against the PAN of the consultant instead of deducting tax against the PAN of recipient entity.
- 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.

- The benefit or the perquisite is required to be valued at the Fair Market Value (GST component not to be included) except for the following cases:
  - If the payer has purchased the benefit/perquisite before providing it to the recipient, then purchase price shall be considered as the value.
  - If the payer manufactures such items given as benefit/perquisite, then the price that it charges to its customers for such items shall be the value.
- Section 194R would apply if a social media influencer is given a product like car, mobile, outfit, cosmetics etc. of a manufacturing company to use for making audio/video if he retains the product. However, if the same is returned after using it for rendering the service, then it will not be treated as a benefit or a perquisite.
- In the case of reimbursement of out-of-pocket expenses, the benefit or perquisite depends on whether the expense is the liability of a person carrying out business or exercising profession and which is met by the other person receiving service.
- In the illustration given in the Circular, in case the invoice for the out-of-pocket expense, incurred in the course of rendering service, is in the name of the service provider then reimbursement of such expenditure by the service recipient is a benefit or perquisite covered under section 194R. Further, the illustration also provides that if the invoice for out-of-pocket expense is obtained in the name of service recipient, then, the amount reimbursed by service recipient, will not be covered under section 194R.
- Expenditure pertaining to dealer/business conference held with the prime objective of educating the dealers/customers about a new product launched, discussion on how the product is better than others, obtaining orders from them, teaching sales techniques, addressing queries, reconciliation of accounts, or about other similar aspects will not be considered as a benefit or a perquisite for the purpose of section 194R provided they are not in the nature of incentives/benefits to select dealers/customers who have achieved particular targets.

However, the Circular provides that expenses attributable to leisure component (even if incidental to the dealer/business conference) or incurred for family members accompanying the person attending the conference, or expense on participants for days which are on account of prior stay or overstay would be considered as a perquisite or a benefit for the purpose of section 194R.

- Where the payer provides the benefit/perquisite in kind or partly in kind (and cash is not sufficient to meet TDS) then the person responsible for providing such benefit can rely on a declaration from the recipient along with a copy of advance tax payment challan provided by the recipient confirming that the tax required to be deducted on the benefit/perquisite has been deposited. This would be then required to be reported in TDS return along with challan number. Due changes have been made to Form 26Q
- Alternatively, as an option it is also provided that the person providing benefit may deduct the tax under section 194R of the Act and pay to the Government. The tax borne by said person should also be considered as a benefit or perquisite. This would result in multiple grossing up.
- It has been clarified that since the threshold of INR 20,000 for triggering TDS under section 194R is with respect to the FY, the benefit or perquisite which has been provided between 1<sup>st</sup> April 2022 and 30<sup>th</sup> June 2022, while not subject to TDS, would be considered for computing the threshold.

## CNK Comments

- *Section 194R was enacted to track receipts which are taxable under section 28(iv). However, the CBDT Circular has gone beyond that.*
- *As the Circular has been issued under section 194R(2) as guidelines, the same would be binding on the tax authorities as well as taxpayers, unlike other Circulars which are binding only on the tax authorities.*
- *While implementing the provisions of the Circular may practically be difficult, any position taken contrary to the Circular would lead to unnecessary litigation. Therefore, while one may take a view that certain transactions specified in the Circular would not constitute benefit or perquisite, it may be advisable for the taxpayer to deduct TDS as provided in the Circular to avoid litigation and possible disallowance.*
- *Implementation of the Circular may lead to certain challenges such as dual rates of TDS where a given transaction falls within the ambit of a particular section having different withholding tax rate, but being in the nature of benefit or perquisite is also subject to 10% under section 194R. In such a situation one could withhold tax under the section where the withholding tax rate is higher.*
- *In respect of transactions not covered in the Circular, one would need to evaluate whether such a transaction is resulting in a benefit or perquisite arising from business or exercise of a profession.*
- *Some transactions may require a detailed exercise to decide whether section 194R is attracted given the judicial precedents in interpretation of the term 'any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession.'*
- *In the case of conferences, it would be advisable to maintain adequate documentation such as detailed agenda, etc. to determine the value of leisure component.*

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