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NEWSFLASH
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Summary of Guidelines for TDS under section 194R

Background

Section 194R was introduced by the Finance Act, 2022 and is applicable w.e.f. 1st July 2022. The section mandates withholding of tax on benefit or perquisite provided to a resident arising from business or exercise of profession carried on by that resident. The section provides for deduction of tax at a rate of 10% if the aggregate value of such benefit or perquisite during the financial year (FY) 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 on both, the taxpayer and the tax department.

Consequent to this provision, the CBDT issued Circular 12/2022 dated 16th June 2022 providing certain guidelines for the implementation and applicability of the section. Recently, the CBDT issued Circular 18/2022 dated 13th September 2022 providing further clarifications in form of guidelines on various issues raised by the stakeholders as listed below:

Guidelines/Clarifications in CBDT Circular 18/2022

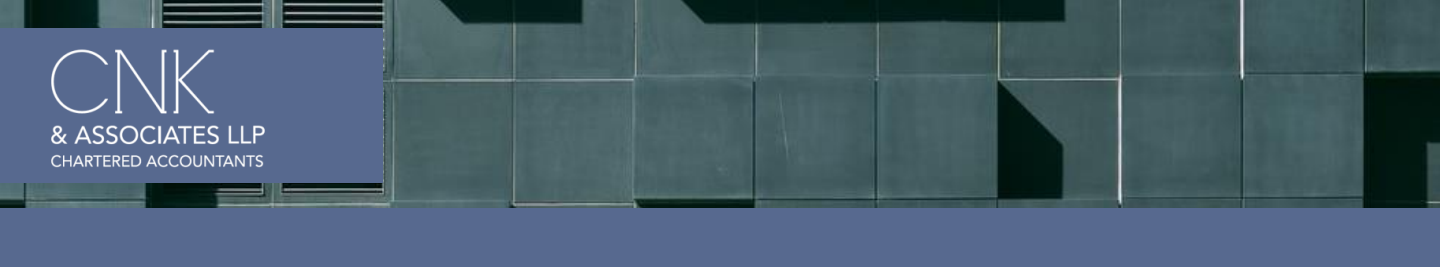
- CBDT has clarified that the circular is only for implementation of Section 194R and does not affect taxability in the hands of the recipient which continues to be governed by the relevant provisions of the Act.
- TDS under section 194R would not apply on one-time loan settlement/waiver of loan granted on reaching settlement with the borrowers by Public Financials Institution; Scheduled Bank; Cooperative bank; State Financial Corporation; State Industrial Investment Corporation; NBFC; public company engaged in providing long term finance for construction/purchase of houses for residential purpose; or Asset Reconstruction Companies.
- The amount which is reimbursed to a "pure agent" (as defined under GST Valuation Rules, 2017 and satisfying the conditions stipulated in those rules) by the service recipient would not be treated as benefit/perquisite for the purpose of section 194R of the Act.

- A "pure agent" needs to satisfy the following conditions for exclusion of reimbursement from the value of supply :
    1. the supplier acts as a pure agent of the recipient of the supply, when he makes payment to the third party on authorization by such recipient;
    2. the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice; and
    3. the supplies procured from third party as pure agent are in addition to the services he supplies on his own account.
- There would be no further TDS liability under section 194R if reimbursement/out of pocket expenses are already a part of consideration in the bill on which tax is deducted under relevant provisions of the Act, other than section 194R, in accordance with the Circular No 715 dated 8th August 1995.
- It is not necessary to invite all dealers in a dealer/business conference for the expenses to be not considered as perquisite/benefit u/s 194R of the Act.
- A day immediately prior to actual start date of conference and a day immediately following the actual end date of conference would not be considered as benefit/perquisite.
- In case of dealer/business conference, to remove practical difficulties of identifying benefit/perquisite to actual recipient due to the fact that it is a group activity and reasonable allocation not being possible, it has been clarified that the payer will not be considered as assessee in default if the expense representing such benefit/perquisite is suo-moto not claimed in the return of income.
- If TDS is deducted u/s 194R on receipt of capital asset, the value at which such benefit is included as income in the return of income of the recipient may be considered for computing depreciation on such asset.
- TDS u/s 194R would not apply on bonus/rights issue by a company in which the public are substantially interested, where bonus shares are issued/right shares are offered to all shareholders by the company.

CNK COMMENTS

- *Similar to the earlier circular, this circular would be binding on the tax authorities as well as taxpayers.*
- *This circular, while granting benefit to banks & NBFCs in respect of one-time settlement, has given rise to further confusion in interpretation of the term 'benefit or perquisite arising from business or the exercise of a profession'.*
- *With respect to TDS deducted under other sections, while the principle laid down suggests that so long as TDS is deducted under a particular section, TDS u/s 194R would not apply. However, the example given in this circular is for TDS u/s 194J for professional fees, which is also subject to TDS @ 10%. This may result in unnecessary litigation where TDS is deducted at a lesser rate instead of 10%.*

- *The clarification that deductor will not be considered as an assessee in default if no expense claimed as deduction, while beneficial, would not have any impact as no deductor would like to forego the claim of deduction.*
- *In respect of bonus/rights issue, the circular seems to have missed the point that in most cases, a bonus/rights issue, even if considered as a benefit or a perquisite, is not arising from business or the exercise of a profession and hence, provisions of section 194R should not apply in first place.*
- *Further, in respect of bonus/right shares, the circular provides benefit only for company in which public are substantially interested. In the case of private companies, the principle of bonus/right issue is the same but leaves the door open for litigation as such companies are not included.*
- *As highlighted earlier, this circular raises more questions than 'removing difficulties' and one needs to evaluate in detail before undertaking any transaction.*



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