

## Tax deduction on perquisites or benefits received



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- Under the new provision, CBDT guidelines are binding on taxpayers too

For salaried employees, benefits or perquisites received from the employer have always been taxable as salaries, and subjected to tax deduction at source (TDS). Similarly, a benefit or perquisite derived by a business or profession was also taxable. However, till this year's budget, there was no requirement for the provider to deduct TDS on the value of such benefit or perquisite.

The scope of TDS has been extended from 1st July 2022 by this budget to apply to such benefits or perquisites provided to a person carrying on business or profession by a person carrying on a business or profession with turnover above ₹1 crore or ₹50 lakh respectively, by insertion of a new provision.

While at first glance it seemed that the objective of the new provision was to subject such benefits received by a business or profession also to TDS, the subsequent guidelines indicate the broad sweep of the new provision. Further, normally, a circular issued by the CBDT is only binding on the tax authorities and not on taxpayers, who are free to take a different legal view from that expressed in the circular. Under the new provision, the guidelines issued by the CBDT are binding on taxpayers as well.

The first set of guidelines issued in June 2022 clarified that once benefits are provided to a person carrying on a business or profession exceeding ₹20,000 a year, TDS has to be deducted by the provider, without checking whether such benefit or perquisite is taxable or not. Further, while only benefits or perquisites received in kind are taxable, the guidelines require TDS even where the benefit or perquisite is a monetary payment. Fortunately, sales discount, cash discount and rebates allowed to customers on sales, as well as schemes such as "buy one, get one free" have been excluded from the TDS purview.

Free medical samples provided to hospitals or doctors are subject to TDS, though the doctor or hospital would already effectively be paying tax on this, as the fees charged to patients to whom such medicines were given would be reflected as income, while medicine cost claimed as

deduction would be nil. Products given to social media influencers would also attract this TDS. Reimbursement of out-of-pocket expenses are also subject to such TDS (unless falling under the pure agent category under GST), though effectively such receipts may already be subject to tax. Benefits provided through dealer conferences would also be taxed, to the extent of the benefit provided, which has been clarified in the guidelines.

Fortunately, it has been clarified that issue of bonus or rights shares by a listed company would not be subject to TDS. Unfortunately, this clarification has been restricted to such issues by a listed company or its subsidiary. As held by the Supreme Court in many cases, a bonus or rights issue does not result in any benefit to the shareholder, as there is a corresponding fall in the value of his existing shareholding. So, even for unlisted companies, the same logic should follow.

It is unfortunate that the scope of TDS is being made so wide, with significant ambiguity. The fact of whether a benefit is provided or not highly subjective, and is likely to invite substantial litigation. Businesses would be spending substantial time and effort in seeking to identify all cases where these provisions apply, and may yet miss out on identifying some, with consequent penalties and interest. In most cases, such benefits were already effectively suffering and being offered to tax, and TDS on these merely increases the compliance burden on the deductors.

Further, there seems to be no rationale for seeking to apply TDS provisions to non-taxable benefits, other than the float obtained by the Government in collecting tax and refunding it after a year or so. If the objective of TDS is to check tax evasion, collection of information through the Annual Information Returns, which are collated into the taxpayer-wise Annual Information Statements and Tax Information Statements is highly effective in checking non-disclosure of income by taxpayers.

Besides, while deducting TDS, the deductor is really acting as an agent of the Government. The provisions of TDS need to be crystal clear, as no deductor would wish to attract litigation on account of carrying out this thankless burden of tax collection. Such wide-ranging and subjective provisions should not form part of TDS law, the net of which is already so wide.

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