

# SECTION 194R: TDS ON BENEFIT OR PERQUISITE

Finance Act 2022 inserted a new section 194R in the Income Tax Act, 1961, with effect from 1st July 2022.

Summary of Section 194R is as under:-

## Person Responsible to Deduct Tax

- Any person responsible for providing to a resident, any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession, by such resident.

## Rate of TDS

- TDS @10% of the value of such benefit or perquisite, before providing such benefit or perquisite.

- Where the benefit or perquisite is wholly in kind or partly in cash and partly in kind and cash part is not sufficient to meet the liability of TDS in respect of whole of such benefit or perquisite, then the person providing such benefit or perquisite shall, before releasing

the benefit or perquisite, ensure that tax required to be deducted has been paid in respect of the benefit or perquisite

## Exemption

- Not applicable where aggregate value of such benefit or perquisite is less than Tupees Twenty thousand (INR 20,000), during the financial year.

- Not applicable to an Individual/Hindu undivided family (HUF) deductor, whose total sales / gross receipts / gross turnover from business, does not exceed Rupees One crore (INR 1,00,00,000), or from profession does not exceed Rupees Fifty lakhs (INR 50,00,000), during the financial year immediately preceding the financial year in which such benefit or perquisite is provided by him.

## POINTS TO BE KEPT IN MIND WHILE APPLYING SECTION 194R

**NATURE**



**Benefit or Perquisite  
provided in Cash or Kind**

**PAYEE**



**Resident**

**PAYER**



**Any person (other than individual/HUF)  
&  
Individual/HUF with  
Turnover of over INR 1 Cr or  
Professional receipts of over INR 50 Lakhs**

**RATE**



**10%**

**Section 194R is effective  
from 1st July 2022**

**For calculating aggregate  
limit of INR 20,000, complete  
financial year will have to be  
considered and not period  
after 1st July 2022**

**The capital assets given as  
benefit or perquisites are  
covered within the scope  
of Section 194R**

**Section 194R shall apply to  
sellers giving incentives in  
kind. Eg: Car, TV, Mobile,  
Gold, Coin, Computers,  
Sponsored Trips etc. (other  
than discount and rebate)**

**For calculating  
aggregate limit of INR  
20,000, GST amount  
will not included.**

# KEY TAKEAWAYS FROM THE CBDT GUIDELINES OF 16TH JUNE 2022

## Test of Taxability – Not Required

- It is not necessary for the payer/deductor to check the taxability of the sum in the hands of the payee. Thus, TDS is to be deducted irrespective of the taxability of such benefit or perquisite in the hands of resident recipient.

## Benefit in Cash or Kind or Both – All Covered

- It is made clear that the benefit or perquisite covered under Section 194R can be either in cash or in kind or partly in cash and partly in kind.

## Capital Assets – Covered

- The nature of asset given as benefit or perquisite is not relevant and even capital assets given as benefit or perquisite are covered within the scope of Section 194R.

- CBDT categorically stated that the deductor is required to deduct tax under section 194R of the Act in all cases where benefit or perquisite (of whatever nature) is provided.

## No TDS on Sales Discount, Cash Discount & Rebates

- CBDT provides a breather on sales discount, cash discount and rebates allowed to customer by excluding them from the purview of Section 194R as their inclusion would put the seller into difficulties. CBDT does state that these are benefits or perquisites though related to sale/purchase.

### FOR EXAMPLE:

Cases where a few items are given free of cost with the original purchase, for instance, 2 kg sugar free on purchase of 8 kg sugar, in such cases also it is clarified that no tax is required to be deducted under Section 194R of the Act. This relaxation shall not extend to other benefits provided by the seller in connection with the sale. To illustrate, the following are some of the examples of benefits/perquisites on which tax is required to be deducted under Section 194R of the Act (the list is not exhaustive): 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 like IPL, etc.

When a person gives medicine samples free to medical practitioners.

### **For Social Media Influencers**

- Benefit or perquisite being a product given to the social media influencer which is returned to the provider after using it for the purpose of services provided by the influencer, shall not be subject to TDS. Thus, the products retained by the influencer shall be subjected to TDS.

### **Incentives other than Sales Discount, Cash Discount & Rebates – Subjected to TDS**

- Section 194R shall apply to seller giving incentives, other than discount or rebate, which are in cash or kind e.g., car, TV, computers, gold coin, mobile phone, sponsored trip, free ticket, medicine samples to medical practitioners. It is noteworthy that list provided by the CBDT is not an exhaustive but only illustrative.

### **TDS where benefit/perquisite used by owner/director/employee of the recipient entity**

- Section 194R shall cover benefits or perquisites even where that may be used by 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 since the usage by owner/director/employee/ relative is by virtue of their relation with the recipient entity and in substance the benefit/perquisite has been provided by the person to the recipient entity.

### **Benefit to Hospitals & Doctors Receiving Free Samples**

- CBDT clarifies that in case of doctors receiving free samples of medicines while employed in a hospital, Section 194R would apply on distribution of free samples to the hospital. The hospital as an employer may treat such samples as taxable perquisite for employees and deduct tax under Section 192.

In such cases, the threshold of INR 20,000 has to be seen with respect to the hospital. For doctors working as consultants with a hospital and receiving free samples, TDS would ideally apply on hospital first which in turn would require to deduct tax under Section 194R with regard to consultant doctors.

- To remove this difficulty, CBDT clarifies that as an alternative, the original benefit or perquisite provider may directly deduct tax under Section 194R with regard to the consultant doctor as a recipient. Section 194R shall not apply if the benefit or perquisite is provided to a Government entity, like Government hospital, not carrying on business or profession.

FOR EXAMPLE:

Free medicine sample may be provided by a company to a doctor who is an employee of a hospital. The TDS under Section 194R of the Act is required to be deducted by the company in the hands of hospital as the benefit/perquisite is provided to the doctor on account of him being the employee of the hospital.

Thus, in substance, the benefit/perquisite is provided to the hospital. The hospital may subsequently treat this benefit/perquisite as the perquisite given to its employees (if the person who used it is his employee) under Section 17 of the Act and deduct tax under Section 192 of the Act. In such a case it would be first taxable in the hands of the hospital and then allowed as deduction as salary expenditure.

Thus, ultimately the amount would get taxed in the hands of the employee and not in the hands of the hospital. Hospital can get credit of tax deducted under Section 194R of the Act by furnishing its tax return.

### On Valuation

- The general rule is that valuation of benefit or perquisite shall be based on the fair market value with following exceptions:

- Provider purchased it before providing it - purchase price
- Provider manufactured it – price charged to customers (Value shall be exclusive of GST).

## On Reimbursement of Out-of-Pocket Expenses

• Ordinarily, the expenditure incurred by a consultant is his business expenditure deductible against his income received from the client. Where the consultant incurs travel expenditure which is paid by the client, it is a benefit or perquisite provided the client to the consultant.

Applicability of Section 194R would depend on the name in which invoice for out-of-pocket expenses is made. If invoice is in the name of the client, paid by the consultant and reimbursed by the client then such reimbursement would not attract TDS.

If the invoice is not in the name of the client and the payment is made by the client directly or is reimbursed to the consultant, then it is benefit or perquisite provided by the client to the consultant on which Section 194R applies.

### FOR EXAMPLE:

A consultant is rendering service to a person Mr. A for which he is receiving consultancy fee. In the course of rendering that service, he has to travel to a different city

from the place where he is regularly carrying on business or profession.

For this purpose, he pays for boarding and lodging expense incurred exclusively for the purposes of rendering the service to Mr. A. Ordinarily, the expenditure incurred by the consultant is a part of his business expenditure which is deductible from the fee that he receives from Mr. A. Now if this travel expenditure is met by the Mr. A, it is a benefit/ perquisite provided by Mr. A to the consultant.

In case the invoice is obtained in the name of Mr. A and accordingly, if paid by the consultant, is reimbursed by Mr. A then in this case, the reimbursement made by Mr. A being the service recipient will not be considered as benefit/perquisite for the purposes of Section 194R of the Act. If the invoice is not in the name of Mr. A and the payment is made by Mr. A directly or reimbursed, it is the benefit/perquisite provided by Mr. A to the consultant for which deduction is required to be made under Section 194R of the Act.

## For Dealers or Business Conference

•The expenditure incurred on Dealers' Conference would not be subject to TDS if held with the prime object to educate dealers/customers about any of the following or similar aspects:

- new product being launched.
- discussion as to how the product is better than others obtaining orders from dealers/customers
- teaching sales techniques to dealers/customers
- addressing queries of the dealers/customers
- reconciliation of accounts with dealers/customers.

•Exception to this rule is that such Conference must not be in the nature of incentives/benefits to select dealers/ customers who have achieved particular targets. Also, TDS shall apply if expenditure is:

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

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

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

## Where Cash Component is Insufficient

•CBDT clarifies on a peculiar situation where a person is providing benefit in kind and is required to ensure that tax required to be deducted has been paid by the recipient where cash component is not sufficient to meet TDS.

The deductor may rely on a declaration along with a copy of the advance tax payment challan provided by the recipient confirming that tax on the benefit/perquisite has been deposited. This requires to be reported in TDS return along with challan number for which Form 26Q has included provisions for reporting such transactions.

Alternatively, the benefit provider may deduct the tax and deposit with the Government where TDS should be after taking into account the fact the tax paid as TDS is also a benefit under Section 194R. This needs to be reflected in Form 26Q as tax deducted on benefit provided.

### **Calculation of INR 20,000/- threshold for FY 2022-23**

- Section 194R comes into effect on July 1, 2022. Thus, CBDT clarifies on how this limit of twenty thousand is to be computed for FY 2022-23. Calculation of value or aggregate of value of the benefit or perquisite triggering TDS shall be counted from April 1, 2022. If the value of the benefit or perquisite provided or likely to be provided to a resident exceeds INR 20,000/- during FY 2022-23 (including the first 3 months), TDS would apply on any benefit or perquisite provided on or after July 1, 2022. CBDT amply clarifies that benefit or perquisite provided on or before June 30, 2022, shall not be subjected to TDS under Section 194R.

### **Disclaimer:**

The information contained herein is based on the provisions of the Income Tax Act, 1961, Finance Act 2022 and CBDT Circular No. 12 of 2022 dated 16th June 2022. While the information is believed to be accurate to the best of our knowledge, we do not make any representations or warranties, express or implied, as to the accuracy or completeness of this information. Reader should conduct and rely upon their own examination and analysis and are advised to seek their own professional advice. We accept no responsibility for any errors it may contain, whether caused by negligence or otherwise or for any loss, howsoever caused or sustained, by the person who relies upon it.



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