

INCOME TAX UPDATE

**Section 194R - TDS on
Benefit or Perquisite**



Section 194R – TDS on Benefit or Perquisite

Finance Act 2022 inserted a new section 194R in the Income Tax Act, 1961 (hereinafter referred to as “the Act”) with effect from 1st July 2022. Summary of Section 194R is as under:

Personal 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 twenty thousand 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 one crore rupees, or from profession does not exceed fifty lakh rupees, during the financial year immediately preceding the financial year in which such benefit or perquisite is provided by him.

Sub-section (2) of section 194R of the Act authorises the Board to issue guidelines for removal of difficulties and accordingly CBDT has issued the guidelines vide Circular No. 12 of 2022 dated 16th June 2022.

Some key takeaways from the said guidelines are as under.

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 benefit or perquisite though related to sale/purchase.

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

the 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 Rs. 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.

On Valuation

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

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

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

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 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:

- (i) new product being launched
- (ii) discussion as to how the product is better than others obtaining orders from dealers/customers
- (iii) teaching sales techniques to dealers/customers
- (iv) addressing queries of the dealers/customers
- (v) 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 Rs.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 Rs. 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.

For details, please refer the link below to the CBDT Circular No. 12 of 2022 dated 16th June, 2022:-

<https://www.incometaxindia.gov.in/communications/circular/circular-no-12-2022.pdf>

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. This note is not an offer, invitation, advice or solicitation of any kind. 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.

For detailing, please refer to the relevant provisions of Income Tax Act, 1961, Finance Act 2022 along with CBDT Circulars/Notifications including Circular No. 12 of 2022 dated 16th June 2022 as may be applicable.