

Income Tax Updates

**New Section – 194R: - TDS On Benefit or Perquisites
(applicable w.e.f. 01-07-2022)**

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Backup

In the Finance Act 2022, a new TDS section 194R, was inserted in the Income Tax Act, 1961 which has been made applicable w.e.f. 1.7.2022

Provisions of section 194R

- ANY person providing any benefit or perquisites to a RESIDENT arising from the carrying out of any business or exercise of any profession by such resident recipient is liable to deduct TDS @ 10% on the value of such benefit or perquisite.
- TDS is not applicable if the value of such benefit or perquisite does not exceed Rs. 20,000/- during the Financial Year.
- Such benefit or perquisite could be in the nature of cash or in kind or partly in cash and partly in kind.
- The person providing the benefit or perquisite would not be liable to deduct TDS in case such person is an Individual / HUF whose Total Sales / Gross Receipts / Turnover does not exceed Rs. 1 Cr. (in case of business) or Rs. 50 lakhs (in case of Profession) during the immediately preceding Financial Year in which such benefit / perquisite is provided.

Guidelines issued by the CBDT vide Circular No. 12 of 2022 dt. 16.06.2022:

In exercise of the power conferred by section 194R(2) of the Income Tax Act, the CBDT, has issued the following guidelines in a 10 tier question answer mode: -:

- Q1. Whether the person liable to deduct TDS u/s 194R need to check the taxability of such benefit / perquisite in the hands of the recipient?
- A. The person providing the benefit / perquisite do not need to check whether the amount is taxable in the hands of the recipient or under which section it is taxable.
- Q2. Is it necessary that the benefit / perquisite must be in kind?
- A. No. The benefit / perquisite so provided could be either in cash or in kind or partly in cash and partly in kind.
- Q3. Is TDS u/s 194R to be deducted even in case the benefit / perquisite is in the nature of capital asset?
- A. Yes. The provider of benefit / perquisite is required to deduct the TDS u/s 194R in all cases where benefit / perquisite of whatever nature is provided (including benefit in the nature of capital asset). CBDT has relied upon several judgements of the Hon'ble High Courts, wherein it has been held that business income falling u/s 28(iv) of the Act is taxable, even if the same is a Capital Asset.
- Q4. Whether Sales discount, cash discount and rebates are benefit / perquisite?
- A. No. TDS is not required to be deducted u/s 194R on sales discount, cash discount and rebates allowed to customers.
- However, this relaxation does not apply to other benefits provided by the seller in connection with its 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 Free Samples
 - 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
- When a person gives medicine samples free to medical practitioners.

There can be a possibility that the benefits/perquisites 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. However, the tax is required to be deducted by the person in the name of recipient entity 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

Note: The provision of sec. 194R shall not apply if the benefit / perquisite is being provided to a Govt. entity, like Govt. hospital, not carrying on business or profession.

Q5. How is the valuation of benefit / perquisite to be carried out?

- A. The benefit / perquisite is to be valued at FMV. However, if the benefit / perquisite is purchased from someone else and then provided to the recipient, in that case the value of benefit / perquisite will be the purchase price of that item. Further, if the benefit / perquisite is something that the provider manufactures himself then in that case it will be the price charged by him to other customers.

Note: GST is not to be considered for the valuation of benefit / perquisite

Q6. Whether the items given to social media influencer for the purpose of promotion of the product is to be considered as benefit / perquisite?

- A. If the Social Media Influencer does not retain with himself the Benefit or Perquisite or Product like Car, Mobile, Outfit, Cosmetics etc, for which he is exercising his social media influence, and such benefit or perquisite or product is returned to the company for which such promotion is being done, then TDS is not required to be deducted u/s 194R. However, if the product is retained then it will be covered u/s. 194R.

Q7. Whether re-imbursements of “out of pocket expense” incurred by service provider in the course of rendering service covered u/s 194R?

- A. TDS u/s 194R would be required to be deducted even on Out of Pocket Expenses, being incurred by the Service Provider, and being reimbursed to him by the Service Recipient, if the Bill/Invoice of such Out of Pocket Expenses, is not in the name of Service Recipient. However, if the Invoice/Bill of such Out of Pocket Expenses is in the name of Service Recipient, then TDS provisions u/s 194R would not be applicable.

Q8. If there is a dealer conference to educate the dealers about the products of the company – Is it benefit / perquisite?

- A. No. The expenditure so incurred in relation to such dealers conference in order to educate the dealers / customers about the new product, addressing queries, reconciliation of accounts with dealers / customers, etc are not considered as benefit / perquisite.

However, if such expenditure is in the nature of incentive / benefits to select dealers / customers achieving particular targets; attributable to leisure trips or leisure component; incurred for family members; incurred on account of prior stay or overstay beyond the date of conference, etc. these expenditures are considered to be in the nature of benefit / perquisite covered u/s 194R.

- Q9. In case the benefit / perquisite is in kind or partly in cash and partly in kind with the cash portion not being adequate for the TDS, how is the provider of benefit / perquisite suppose to ensure that the tax in relation to such benefit / perquisite paid by the recipient?
- A. The recipient may pay tax in the form of advance tax on such benefit / perquisite and the provider of the benefit / perquisite may rely on the declaration along with the copy of advance tax payment challan. In the alternative, as an option the provider can pay the TDS out of its own pocket. However, such tax paid out of own pocket would also be considered as benefit or perquisite and calculation of TDS shall be done after grossing up of taxable value.
- Q10. How is the limit of Rs. 20,000 for the applicability of sec. 194R to be reckoned for FY 22-23?
- A. Since the threshold of twenty thousand rupees is with respect to the financial year, calculation of value or aggregate of value of the benefit or perquisite triggering deduction under section 194R of the Act shall be counted from 1st April, 2022. Hence, if the value or aggregate value of the benefit or perquisite provided or likely to be provided to a resident exceeds twenty thousand rupees during the financial year 2022-23 (including the period up to 30th June 2022), the provision of section 194R shall apply on any benefit or perquisite provided on or after July 2022.

The benefit or perquisite which has been provided on or before 30th June 2022, would not be subjected to tax deduction under section 194R of the Act.

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