



**Newsflash:**  
**CBDT Guidelines for removal of difficulties under  
section 194R of the Income Tax Act, 1961**

## Newsflash

# Guidelines for removal of difficulties under section 194R of the Income Tax Act, 1961

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## 1. BACKGROUND

Finance Act 2022 inserted a new section 194R of the Income Tax Act, 1961 ('the Act'), which mandates a person, who is responsible for providing any benefit or perquisite (whether convertible into money or not) to an Indian resident, to deduct tax at source at the rate of 10% of the value of such benefit or perquisite. The benefit or perquisite should arise either from carrying out of business, or from exercising a profession by such resident. This provision shall be applicable with effect from 01 July 2022.

No tax shall be required to be deducted under this provision if the aggregate value of the benefits or perquisites provided or likely to be provided does not exceed INR 20,000 in a financial year.

This provision is not applicable to a person (payer / deductor), being an individual or HUF, whose sales, gross receipts or turnover does not exceed INR 1 crore in case of business or INR 50 Lakhs in case of profession, during the financial year immediately preceding the financial year in which benefit or perquisite is provided. In case of company or any other legal entity, there is no turnover threshold-based exclusion.

Sub-section (2) of section 194R conferred the power to Central Board of Direct Taxes ('CBDT') to issue guidelines for the purpose of removing the difficulty, if any, faced while implementing the provisions of the section. Since there were several ambiguities in regard to the applicability of section 194R, CBDT has recently issued guidelines vide Circular No. 12/2022 dated 16 June 2022 in the form of Frequently Asked Questions ('FAQs') to remove such ambiguities and the difficulties. The FAQs provide clarification to ten questions identified by CBDT as vital while implementing the provisions of section 194R of the Act.

## 2. GUIDELINES

### 2.1 Test of Taxability in the hands of Recipient

The circular provides that it is not necessary for the payer / deductor to check the taxability of the benefit / perquisite provided in the hands of the payee under Section 28(iv) of the Act. It is also highlighted that the sum could be taxable in the hands of payee under any other section as well like Section 41(1) of the Act.

CBDT has clearly distinguished the principles governing tax deduction at source ('TDS') under section 195 of the Act from TDS under section 194R of the Act and has placed reliance on Hon'ble Supreme Court ('SC') ruling in the case of PILCOM (Civil Appeal No. 5749 of 2012), *where it was held that where TDS at a specific rate is provided for, there is no need to see the taxability or the rate of taxability in the hands of the non-resident.*

### 2.2 Benefit or Perquisite may be in cash or in kind or partly in cash and partly in kind

The circular has clearly stated that the provisions of section 194R of the Act shall be attracted even if the benefit or perquisite is provided wholly in cash. Thus, tax under section 194R of the Act is required to be deducted whether the benefit or perquisite is in cash or in kind or partly in cash and partly in kind.

### **2.3 Benefit or Perquisite is in the form of capital asset**

CBDT provides that the nature of asset given as benefit or perquisite is not relevant and even capital assets provided as benefit or perquisite are covered within the scope of Section 194R of the Act. The CBDT has used the term 'of whatever nature' of benefit or perquisite for fastening TDS liability on the payers.

### **2.4 Whether sales discount, cash discount and rebates are benefit or perquisite**

It has been clarified that even though sales discount, cash discount and rebates provided to the customers are benefits, no TDS under section 194R of the Act shall be applicable on the same due to practical difficulties. The circular states that discount or rebate allowed from the listed sale price, in itself, represent lesser realization of sale proceeds and therefore reduce the purchase price, thus it would be practically impossible to identify the component of benefit and thus, section 194R would not be applicable.

However, incentive other than sales discount, cash discount and rebates like car, TV, computers, gold coins, mobile phone, sponsored trip, free ticket, etc. shall be treated as benefit or perquisite and tax shall be deducted accordingly.

### **2.5 Benefit or perquisite received by social media influencer**

Many-a-times a social media influencer is given a product of a manufacturing company so that he/she can use that product and make audio/video to speak about that product in social media. In such case, if the product is returned to the manufacturing company after using it, it shall not be treated as a benefit / perquisite for the purposes of section 194R of the Act. However, if the product is retained by such social media influencer, TDS provisions under section 194R of the Act shall have to be complied with.

### **2.6 Reimbursement of out-of-pocket expenses incurred by service provider in course of rendering services**

Applicability of section 194R would depend on the name under which invoice for out-of-pocket expenses is made. If invoice is in the name of the service recipient, paid by the service provider and reimbursed by the former, such reimbursement would not attract TDS. However, in case the invoice is in the name of the service provider and the payment is made by the service recipient directly or is reimbursed to the service provider, the same shall be treated as benefit or perquisite provided by the service recipient to the service provider and consequently TDS under section 194R of the Act shall be applicable.

### **2.7 Whether dealer conferences are subject to TDS under section 194R**

The expenditure in relation to dealer/business conference shall not be considered as benefit/perquisite for this section in case such conference is held with prime object to educate dealers/ customers about any of the following or similar aspects:

1. new product being launched;

2. discussion as to how the product is better than others;
3. obtaining orders from dealers / customers;
4. teaching sales techniques to dealers / customers;
5. addressing queries of the dealers / customers;
6. reconciliation of accounts with dealers / customers.

However, such conference must not be in the nature of incentive/benefits to select dealers/customers who have achieved particular targets.

Additionally, expenditure incurred for dealers/customers shall be treated as benefit/perquisite for the purpose of section 194R of the Act in the following cases:

1. Expense attributable to leisure trip or leisure component, even if it is incidental to the dealer/business conference.
2. Expenditure incurred for family members accompanying the person attending dealer/business conference.
3. Expenditure on participants of dealer/business conferences for days which are on account of prior stay or overstay beyond the dates of such conference.

## 2.8 Where Cash Component is insufficient

CBDT has provided clarification on a peculiar situation where a person is providing benefit in kind and is required to ensure that TDS has been deposited by the recipient where cash is not sufficient to meet TDS. In such a case, the recipient may deposit the tax in the form of advance tax. The deductor may rely on a declaration in this respect 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 is required to be reported in TDS return along with challan number. *Form 26Q (TDS return form for domestic payments other than salary) has already included provisions for reporting such transactions.*

Alternatively, the benefit provider may deduct the tax and deposit with the Government. Under this option, TDS needs to be grossed up to ensure that the tax paid as TDS is also treated as a benefit under Section 194R. This also needs to be reflected in Form 26Q as tax deducted on benefit provided.

## 2.9 For Hospitals and Doctors Receiving Samples

The circular provides clarification regarding TDS applicability under section 194R of the Act in case of doctors receiving free samples of medicines while in employment in a hospital. It has been clarified that TDS under section 194R would apply on distribution of free samples to the hospitals and the threshold of INR 20,000 has to be seen with respect to the hospital. Each hospital, in turn as an employer, may treat such samples as taxable perquisite for employees and deduct tax under section 192. Thus, the final TDS liability shall be borne by the doctor in employment and not the hospital.

In respect of doctors working as consultants with hospital and receiving free samples, the circular clarifies that even though TDS provision should first be applied on hospital, which in turn would be required to deduct tax under section 194R of each such consultant doctor. However, to remove difficulty, the circular clarifies that as an alternative, the original benefit or perquisite provider may directly deduct tax of the consultant doctor as a recipient under section 194R of the Act.

Further, 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.

### **2.10 How to calculate the value of benefit or perquisite**

Generally, valuation would be based on fair market value of the benefit or perquisite other than following exceptions:

1. When benefit/perquisite provider has purchased the benefit/perquisite before providing it to the recipient, purchase price shall treated as the value of such benefit/perquisite;
2. When benefit/perquisite provider manufactures the items given as benefit/perquisite, the value shall be price that the provider charges to its customers for such items/benefit/perquisite.

It is further clarified that GST shall be excluded for the purpose of valuation of benefit/perquisite for TDS under section 194R of the Act.

### **2.11 Period to be covered for computing the threshold limit of INR 20,000**

Section 194R shall come into operation with effect from 01 July 2022. Thus, CBDT has clarified that calculation of value or aggregate of value of the benefit or perquisite triggering deduction under section 194R of the Act shall be counted from 01 April 2022.

Hence, if the value or aggregate value of the benefit or perquisite provided or likely to be provided to a resident exceeds INR 20,000 during the financial year 2022-23 (including the period up to 30 June 2022), TDS provisions shall be applicable. However, the benefit or perquisite which has been provided on or before 30 June 2022, shall not be subject to TDS under this section.

## **3. OUR COMMENTS**

With the introduction of Section 194R, there were apprehensions regarding its scope and how the provisions of this section would be implemented practically. The timely issuance of Circular by CBDT is a welcome step and provides much needed clarity on the scope and coverage of this section. However, there are certain aspects of this circular that may add practical difficulties and compliance burden on the payers, for instance reimbursement of out-of-pocket expenses.

The provisions of section 194R shall be effective from 01 July 2022 and therefore, it is imperative for the taxpayers to analyse and identify transactions that would be liable to TDS under section 194R as non-deduction of TDS would not only lead to disallowance of expenditure but could also lead to interest and penal implications.

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This Newsflash summarizes on the Guidelines for removal of difficulties under section 194R of the Income Tax Act, 1961. It may be noted that nothing contained in this newsflash should be regarded as our opinion and facts of each case will need to be analyzed to ascertain applicability or otherwise of the said judgement and appropriate professional advice should be sought for applicability of legal provisions based on specific facts. We are not responsible for any liability arising from any statements or errors contained in this newsflash.

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