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CHARTERED ACCOUNTANTS

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2022

Introduction

Finance Act 2022 inserted a new section **194R** in the **Income-tax Act, 1961,** which is applicable from **1st July 2022.** The new section mandates a person, who is responsible for providing any benefit or perquisite to a resident, to deduct tax at source @ **10%** of the value or aggregate of value of such benefit or perquisite, before providing such benefit or perquisite.

The section **194R** as per Act is reproduced hereunder for ready reference:

"***194R (1)-***_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, shall, before providing such benefit or perquisite, as the case may be, to such resident, ensure that tax has been deducted in respect of such benefit or perquisite at the rate of ten per cent of the value or aggregate of value of such benefit or perquisite:_

Provided _that in a case where the benefit or perquisite, as the case may be, is wholly in kind or partly in cash and partly in kind but such part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of such benefit or perquisite, the person responsible for 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:_

Provided _further that the provisions of this section shall not apply in case of a resident where the value or aggregate of value of the benefit or perquisite provided or likely to be provided to such resident during the financial year does not exceed twenty thousand rupees:_

Provided _also that the provisions of this section shall not apply to a person being an individual or a Hindu undivided family, whose total sales, gross receipts or turnover does not exceed one crore rupees in case of business or fifty lakh rupees in case of profession, during the financial year immediately preceding the financial year in which such benefit or perquisite, as the case may be, is provided by such person."_

Background

As per clause (iv) of **section 28** of the Act, the value of any benefit or perquisite, whether convertible into money or not, arising from business or exercise of profession is to be charged as business income in the hands of the recipient. However, in many cases, such recipient does not report the receipt of benefits in their return of income, leading to furnishing of incorrect particulars of income.

Accordingly, in order to widen and deepen the tax base, it was proposed to insert a new **section 194R** to the Act to provide that the person responsible for providing any benefit or perquisite, as explained under this section, shall, before providing such benefit or perquisite, ensure that tax has been deducted in respect of such benefit or perquisite at the rate of ten per cent of the value or aggregate of value of such benefit or perquisite.

Applicability

1. **194R** is applicable to every person providing any benefit or perquisite to a **resident.**

2. This section will apply irrespective of whether the benefit or perquisite is Convertible into money or not.

3. Benefit or perquisite shall be arising from carrying out of a business or exercising of a profession by such resident.

4. The responsibility of tax deduction also does not apply to a person, being 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.

Threshold Limit for deduction under 194R

This deduction is not required to be made, if the value or aggregate of value of the benefit or perquisite provided or likely to be provided to the resident during the financial year ***does not exceed twenty thousand rupees.*** For the purposes of computing the threshold limit for the year **22-23** the perquisites provided upto **30.6.2022** should also be considered. However, TDS can happen for the payments from **1.7.2022**

The requirements of the above provision can be summarised as under:

Sl No:	Parameters	Provisions
1	Date of Applicability	1st July 2022
2	Person Liable to deduct TDS	Person providing the benefit perquisite i.e. Any person (other than Individual and HUF) and Individual/HUF having turnover above Rs.1 Crore or Professional receipts above Rs.50 Lakhs
3	Transaction Covered	. Provision of Benefit/ Perquisite to a resident.
4	Tax to be deducted on	Value or aggregate of value of such benefit or perquisite.
5	Threshold Limit	Rs 20,000 with respect to a Financial year.
6	Rate of TDS	Rate of 10% 206AA is applicable for no PAN cases
7	Due Date of Remittance	7th of the next month except for March. For March, due date is 30th April
8	Amount on which TDS to be deducted	On payment exceeding Rs 20,000
9	Return form and due date	Return form - 26Q; 15th of the next quarter except for Q4. For Q4, due date is 31st March.
10	Shall not apply to	194R shall not be applicable where benefit or perquisite is being provided to a Government Entity.

The Apex body CBDT has come up with a Clarificatory **Circular No. 12 of 2022**-Income Tax, dated **16.6.2022**, containing clarificatory guidelines in the form of 'Ten Question - Answers', on newly inserted provisions concerning applicability of TDS on Benefits or Perquisites, u/s **194R** of the Income Tax Act. The basic crux of the circular is provided hereunder for the ready reference:

**FAQ's as per Circular issued by the CBDT dated 16.06.2022
in Circular 12 of 2022**

Question 1: Is it necessary that the person providing benefit or perquisite needs to check if the amount is taxable under clause (iv) of section 28 of the Act, before deducting tax under section 194R of the Act?

Answer: No. The deductor is not required to check whether the amount of benefit or perquisite that he is providing would be taxable in the hands of the recipient under clause (iv) of section 28 of the Act. The amount could be taxable under any other section like section 41(1) etc. Section 194R of the Act casts an obligation on the person responsible for providing any benefit or perquisite to a resident, to deduct tax at source @ 10%. There is no further requirement to check whether the amount is taxable in the hands of the recipient or under which section it is taxable.

In this regard it may be highlighted that in the context of section 195 of the Act it is a requirement to know whether the payment made by the deductor is income in the hands of the non-resident recipient as section 195 of the Act requires deduction on any other sum chargeable under the provisions of this Act at the rates in force. Thus there is requirement that deductor needs to verify if the "sum is chargeable under the Income-tax Act". The term "rate in force" is defined in clause (37A) of section 2 of the Act and it allows benefit of agreement under section 90 or section 90A of the Act, if eligible, in determining the rate of tax at which the tax is to be deducted at source. Hence, there is further requirement of checking if the amount is taxable under tax treaty and if yes, at what rate. Such a requirement is not there in section 194R of the Act, in the absence of these two terms in this section. Hence, there is no requirement for deductor to verify whether the amount is taxable in the hands of the recipient or section under which it is taxable.

It may also be highlighted that these two terms are also not there in section 194E of the Act and Hon'ble Supreme Court in the case of PILCOM vs. CIT West Bengal (Civil Appeal No. 5749 of 20 12), held that tax is to be deducted under section 194E of the Act at a specific rate indicated there in and there is no need to see the taxability or the rate of taxability in the hands of the non-resident.

Our Interpretation of the Act read with the circular issued:

It is imperative to note here that the Memorandum explaining the provisions of the Finance Bill 2022 specially and categorically required the deduction of tax at source u/s 194R of the Income Tax Act, only in respect of those Benefits or Perquisites which are in the nature of business income falling under section 28(iv) of the Income Tax Act. However, the CBDT has taken a different stand and clarified that the section is not only confined to the income taxable in the receipt's hand only under section 28.

The payer has to analyse whether the payments made actually fall under the category of benefits/ perquisites in the hands of recipient for the purpose of application of this section. There is no further requirement to consider whether the same is taxable in the hands of the recipient, neither the same is taxable under section 28. The payer should also consider whether the same transaction falls under the applicability of any other existing TDS provisions. If the transaction is liable for TDS under any other existing provisions, TDS need not be deducted under section 194R.

Question 2: Is it necessary that the benefit or perquisite must be in kind for section 194R of the Act to operate?

Answer: Tax under section 194R of the Act is required to be deducted whether the benefit or perquisite is in cash or in kind. In this regard it is important to draw attention to the first proviso to sub-section (1) of section 194R of the Act, which reads as under:

"Provided that in a case where the benefit or perquisite, as the case may be, is wholly in kind or partly in cash and partly in kind but such part in cash is not sufficient to ll1eet the liability of deduction of tax in respect of whole of such benefit or perquisite, the person responsible for 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"

This proviso clearly indicates the intent of legislature that there could also be situations where benefit or perquisite is in cash, or the benefit or perquisite is in kind or partly in cash and partly in kind. ***Thus, section 194R of the Act clearly brings in its scope the situation where the benefit or perquisite is in cash or in kind or partly in cash or partly in kind.*** The proviso further clarifies that where the amount paid in cash is not enough for the TDS, it shall be sufficient compliance with the section if it is ensured that the receiver has offered the same to tax. There is no specific format mentioned for this in the act/rules.

Question 3: Is there any requirement to deduct tax under section 194R of the Act, when the benefit or perquisite is in the form of capital asset?

Answer: There is no requirement to check whether the perquisite or benefit is taxable in the hands of the recipient and the section under which it is taxable. Thus, 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 even if the same in the form of capital asset.

Thus, the asset given as benefit or perquisite may be capital asset in general sense of the term like car, land etc but in the hands of the recipient it is benefit or perquisite and has accordingly been held to be taxable. In any case, the deductor is not required to check if the benefit or perquisite is taxable in the hands of recipient. Thus, 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.

Our Interpretation of the Act read with the circular issued:

In addition, the FAQ gives a few examples like waiver of loan, provision of Car etc. It is pertinent here to not that only waiver of loan/receivable, where there is an express agreement to provide a benefit in the form of waiver either in an OTS scheme or otherwise can be considered under the section. The unilateral write offs made by the banks or other sellers for their customer, without any arrangement with the borrower/customers will not covered under this section.

Question 4: Whether sales discount, cash discount and rebates are benefit or perquisite?

Answer: Sales discounts, cash discount or rebates allowed to customers from the listed retail price represent lesser realization of the sale price itself. To that extent purchase price of customer is also reduced and hence the provisions of section 194R is not applicable.

Logically these are also benefits though related to sales/purchase. Since TDS under section 194R of the Act is applicable on all forms of benefit/perquisite, tax is required to be deducted. However, it is seen that subjecting these to tax deduction would put seller to difficulty. To remove such difficulty, it is clarified that no tax is required to be deducted under section 194R of the Act on sales discount, cash discount and rebates allowed to customers.

It is also clarified that situation is different when free samples are given and the above relaxation would not apply to a situation of free samples.

Similarly, this relaxation should not be extended 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 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.

It is further clarified that these 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.

The provision of section 194R of the Act shall not apply if the benefit or perquisite is being provided to a Government entity, like Government hospital, not carrying on business or profession.

Our Interpretation of the Act read with the circular issued:

- *The provisions of section 194R is not applicable in case of sales discounts, cash discounts and rebates which are provided in common parlance of conducting the business. However, if special schemes are provided to the customers/service receipt and they are provided with any articles or benefits*

whose nature is different from that of the principal product which is being sold, then TDS has to be deducted under section 194R on the said schemes provided to the customers.

- *However, in the above case, if the articles provided with the principle product is separately billed in the invoice, then 194R will not be applicable.*

- *TDS has to be deducted under section 194R when free samples are provided by an entity to the customers unless there is express agreement that the samples will be either get added to the future sale price/or the sample has to be returned if final sale contract not emulated from the sample/the agree to pay for the sample in case the same is consumed.*

Question 5: How is the valuation of benefit/perquisite required to be carried out?

Answer: The valuation would be based on fair market value of the benefit or perquisite except in following cases:-

(i) The benefit/perquisite provider has purchased the benefit/perquisite before providing it to the recipient. [n that case the purchase price shall be the value for such benefit/perquisite.

(ii) The benefit/perquisite provider manufactures such items given as benefit/perquisite, then the price that it charges to its customers for such items shall be the value for such benefit/perquisite.

It is further clarified that GST will not be included for the purposes of valuation of benefit/perquisite for TDS under section 194R of the Act.

Question 6: Many a times, a social media influencer is given a product of a manufacturing company so that he can use that product and make audio/video to speak about that product in social media. Is this product given to such influencer a benefit or perquisite?

Answer: In case of benefit or perquisite being a product like car, mobile, outfit, cosmetics etc and if the product is returned to the manufacturing company after using for the purpose of rendering service, then it will not be treated as a benefit/perquisite for the purposes of section 194R of the Act. However, if the product is retained then it will be in the nature of benefit/perquisite and tax is required to be deducted accordingly under section 194R of the Act.

Question 7: Whether reimbursement of out-of-pocket expense incurred by service provider in the course of rendering service is benefit/perquisite?

Answer: Any expenditure which is the liability of a person carrying out business or profession, if met by the other person is in effect benefit/perquisite provided by the second person to the first person in the course of business/profession and hence 194R is applicable.

The payer must consider the invoice submitted by the recipient for the purpose deducting TDS under the said section. If the invoice submitted by the recipient for

the reimbursement of the expenditure is actually in the name of payer itself, the TDS under section 194R will not be applicable. The section applies only when the invoice is initially raised in the name of the recipient and the same is subsequently reimbursed from the payer by the recipient.

Our Interpretation of the Act read with the circular issued:

The very essence of the section that the TDS under this section needs to be deducted on perquisites/ benefits is defeated here.

The reimbursement of out-of-pocket expense usually happens on a cost-to-cost basis wherein the service provider incurs certain expenditure on behalf of the service receipt and gets the same reimbursed from the service receipt. As the actual expenditure is getting reimbursed, there is no perquisite involved and hence the section shall not be applicable in this circumstance. This section r.w the FAQ now puts to rest the long pending debate around TDS on reimbursements where by entities which were earlier not deducting tax on reimbursement relying on case laws will now have to deduct tax on reimbursements which fall in the category mentioned in the FAQ.

Question 8: If there is a dealer conference to educate the dealers about the products of the company - Is it benefit/perquisite?

Answer: The expenditure pertaining to dealer/business conference would not be considered as benefit/perquisite for the purposes of section 194R of the Act in a case where dealer/business conference is 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
(iii) obtaining orders from dealers/customers
(iv) teaching sales techniques to dealers/customers
(v) addressing queries of the dealers/customers
(vi) reconciliation of accounts with dealers/customers

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

Further, in the following cases the expenditure would be considered as benefit or perquisite for the purposes of section I 94R of the Act:-

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

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

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

Question 9: Section 194R provides that if the benefit/perquisite is in kind or partly in kind (and cash is not sufficient to meet TDS) then the person responsible for providing such benefit or perquisite is required to ensure that tax required to be deducted has been paid in respect of the benefit or perquisite, before releasing the benefit or perquisite. How can such a person be satisfied that tax has been deposited?

Answer: The requirement of law is that if a person is providing benefit in kind to a recipient and tax is required to be deducted under section 194R of the Act, the person is required to ensure that tax required to be deducted has been paid by the recipient. Such recipients would pay tax in the form of advance tax. The tax deductor may rely on a declaration along with a copy of the advance tax payment challan provided by the recipient confirming that the tax required to be deducted on the benefit/perquisite has been deposited.

This would be then required to be reported in TDS return along with challan number. This year Form 26Q has included provisions for reporting such transactions.

In the alternative, as an option to remove difficulty if any, the benefit provider may deduct the tax under section 194R of the Act and pay to the Government. The tax should be deducted after taking into account the fact the tax paid by him as TDS is also a benefit under section 194R of the Act. In the Form 26Q he will need to show it as tax deducted on benefit provided.

Question 10: Section 194R would come into effect from the I" July 2022. Second proviso to subsection (i) of section 194R of the Act provides that the provision of this section does not apply where the value or aggregate of value of the benefit or perquisite provided or likely to be provided to a resident during the financial year does not exceed twenty thousand rupees. It is not clear how this limit of twenty thousand is to be computed for the Financial Year 2022-23?

Answer: It is hereby clarified that:

(i) 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 I" 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 1st July 2022.

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

Common queries which are not covered by the FAQ

Question 1: Does 194R apply to perquisites given to employees and directors including managing director?

Answer: The benefits or perquisites to be covered by this new section 194R are those perks, benefits, amenities, or facilities, in cash or kind, or in a combination of cash and kind, which a resident person enjoys, pursuant to, or in exercise of his business or profession, in lieu of the regular consideration payable to him, in monetary terms, in exercise of such business or profession.

The benefit or perquisite referred to in this new section 194R is not the perquisite u/s 17(2), under the head salary income, paid or payable by the employer to employees, as for that perquisite u/s 17(2), another TDS section 192 is already there. Therefore, any benefits or perks (perquisites) given by the Company to its Directors and Employees, like ESOPs, Cars, Rent Free Accommodations, Free Tours, LTCs, Mobiles, Performance Linked Incentives etc. are not covered u/s 194R, as these are already subject to TDS u/s 192 under the Salary Head, of the Income Tax Act.
The said clarification is indirectly given in **question 4 of the circular issued**, wherein explanation is given regarding the case of free samples provided to hospitals by pharma companies.

Question 2: Does customary gifts to business/ professional associations on festival occasions or other scenarios attract TDS under section 194R?

Answer: The said transactions will attract TDS under section 194R provided the value of the same exceeds the threshold limit.

Question 3: Whether TDS under section 194R is attracted on display items provided free of cost to dealers by the manufacturers?

Answer: As discussed in the FAQ above, TDS has to be deducted under section 194R when free samples/display are provided by an entity to the customers unless there is express agreement that the samples will be either get added to the future sale price/or the sample has to be returned if final sale contract not emulated from the sample/the agree to pay for the sample in case the same is consumed.

Question 4: Whether TDS under the section will be applicable in case of sponsoring an event or programme if the said expenditure exceeds the threshold limit?

Answer: Yes. TDS under the section 194R will be applicable in such cases as it is a perquisite/benefit provided.

Question 5: Whether the provisions of section 194R will be applicable on donations in excess of the threshold limit provided to charitable organizations/ political parties?

Answer: No. TDS will not be applicable as the receipts are not conducting business/ profession.

It is given in Question No.4 the circular that the provisions of section 194R of the Act shall not apply if the benefit or perquisite is being provided to a Government entity,

like Government hospital, not carrying on business or profession.

On interpretation of the above, it can be presumed that the provisions of the section 194R will not be applicable in case of donations provided to charitable trust/ political parties.

The same interpretation is applicable in case of CSR contributions also.

Question 6: Whether TDS under the section will be applicable in case of provisions made?

Answer: Unlike many other sections under chapter XVII-B, the section does not cast any onus of deduction on creation of provision. Therefore, the implied meaning is that TDS applies only on actual benefits/perquisite being provided

Question 7: Whether TDS under the section will be applicable when write off of debtors/loans happen in one year and the OTS or settlement happens in another?

Answer: Though there is no specific coverage of the above question in the act/FAQ, as discussed in the above question TDS will apply only on actual settlement

Question 8: How to practically deduct tax on perquisite given in kind?

Answer: In the common practice, most of the perquisites/benefits are given in kind either as an article or thing or as some other benefits like coupon, travel arrangements etc. Practically therefore TDS in all these cases will not be possible though the section warrants the same. The only place which clarifies such instances is in the Proviso which says "the person responsible for 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:". By the exact application of the above words, prior to giving away of such benefits in kind the payer should ensure that the tax on the same has to be paid which means that the receiver should pay the same as an advance tax and provide confirmation. The practical application of this has to be tested as it would give raise to following questions for which there are no answers

1. How to disclose the value of gift/benefit prior to providing the same.
2. The person may actually be below limit and be not liable for tax.
3. There is no specific format for declaration, so how does the payer rely on this.
4. The receiver may not always have the money to pay the tax.
5. The receiver may actually be having losses and hence will have no tax liability.

The alternative solution available is grossing up the value, however this would result in an additional outflow of tax to the receiver on account of him considering the TDS as part of the value as per the FAQ.