

Taxation of benefits or perquisites received in business or profession: Summary of clarificatory guidelines on section 194R of the Income-tax Act, 1961

The Finance Act, 2022 inserted a new section 194R in the Income-tax Act, 1961 (the Act) with effect from July 01, 2022, which mandates that any benefit or perquisite provided to a resident and arising shall be subject to tax deduction at source (TDS) at the rate of 1%. The CBDT issued guidelines vide [Circular](#) dated June 16, 2022 to address concerns in the implementation of the section, and the key takeaways are highlighted below:

- 1. No requirement to additionally check if the transaction subject to TDS under section 194R is taxable as income in the hands of the recipient.**
- 2. Applicability of TDS under section 194R where the benefit or perquisite is in cash or kind or partly in cash and partly in kind.**

TDS under section 194R shall be applicable even where the benefit or perquisite is in cash or kind or partly in cash and partly in kind. Further, in case where consideration is partly in cash and the same is insufficient to meet TDS liability, the provider is required to ensure that the recipient has paid the requisite TDS in the form of advance tax. A declaration to the effect and tax payment challan may be provided by recipient as proof of deposit of TDS.

In case of difficulty, the benefit provider may also deduct TDS and pay the tax, after taking into account that such TDS paid is also to be considered as a benefit under section 194R.

- 3. Clarification to include capital assets.**

TDS would be applicable under section 194R even where the benefit or perquisite is in the form of capital assets like car or land.

- 4. Clarification that the section shall not be applicable to sales discount, cash discount and rebates allowed to customers.**
- 5. Valuation of benefit or perquisite.**

The valuation of the benefit or perquisite shall be based on fair market value (FMV) except the following cases:

- Provider of benefit or perquisite has purchased it before providing to recipient: The value shall be the purchase price in this case
- Provider of benefit or perquisite manufactured the item: The value shall be the price charged to its customers

GST shall not be included for the purpose of valuation of the benefit or perquisite.

6. Applicability of TDS under section 194R on products given by manufacturing companies to social media influencers for marketing and advertising.

No TDS shall be applicable if the product is returned to the manufacturing company after providing the service. TDS shall be applicable if the product is retained.

7. Applicability of TDS under section 194R on reimbursement of out of pocket expense incurred by service provider in the course of rendering service.

Any expense incurred by service provider as part of rendering service is considered as deductible business expenditure and such expense reimbursed by service recipient shall be treated as benefit or prerequisite.

TDS shall be applicable on such benefit or prerequisite where the invoice is not in the name of the service recipient and payment is reimbursed by service recipient. However, no TDS shall be applicable if invoice is in the name of the service recipient.

8. Clarification on applicability of TDS under section 194R in case of expenditure on dealer conferences held to educate dealers about products.

Such dealer conferences must not be in the nature of incentives/ benefits to select dealers/ customers who have achieved particular targets. Further, expenditure on such conferences shall be considered as benefit or prerequisite if:

- Expense is attributable to leisure trip or leisure component;
- Expense is incurred for family members accompanying conference attendees
- Expense is for days prior or beyond the days of the conference

9. Clarification regarding user of benefit or prerequisite.

TDS under section 194R shall be applicable even where the benefits or prerequisites 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.

10. Clarification with regard to hospitals and doctors receiving free samples.

TDS under section 194R is applicable in case of doctors employed as consultants in hospitals receiving free samples of medicine. To avoid double deduction of TDS by both the provider company and then the hospital, the original provider of benefit or prerequisite may directly deduct tax under section 194R with regard to the consultant doctor as a recipient.

11. Clarification to the effect that TDS under section 194R shall not be applicable if the benefit or perquisite is being provided to a government entity, like government hospital, not carrying on business or profession.

12. Clarification for computation of threshold limit under section 194R

- For the purposes of calculating threshold limit of INR 20,000, aggregate value of benefit or perquisite shall be counted for the entire financial year from April 01, 2022 (i.e. including the period up to 30th June 2022).
- Benefits or perquisites provided before July 01, 2022 would not be subject to TDS.

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