



Newsflash:
**Brief Note on Section 194R: TDS on benefit of
perquisite in respect of business or profession**

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1.0 BACKGROUND:

- 1.1** Finance Act 2022 has introduced section 194R of the Income Tax Act, 1961 ('the Act'), which provides for deduction of tax ('TDS') by any person who is providing benefit or perquisite (whether convertible into money or not) to an Indian resident arising from carrying out a business or profession carried out by such resident person. TDS is required to be deducted at the rate of 10% (without surcharge and cess).
- 1.2** As per the Memorandum explaining the Finance Bill 2022, section 194R is applicable in respect of benefits or perquisites arising to the recipient as business income as mentioned in section 28(iv) of the Act.
- 1.3** The TDS shall be deducted under this provision if the value or aggregate of the value of the benefits or perquisites provided or likely to be provided during the financial year exceeds INR 20,000

This section is applicable w.e.f. July 01, 2022. The salient features of section 194R are as under:

2.0 SCOPE:

- 2.1** Section 194R of the Act is applicable to **every payer** i.e. domestic company, partnership firm, Limited Liability Partnership (LLP), Individual, Hindu Undivided Family (HUF), Trust etc. carrying business or profession in India. It shall also be applicable in case of **foreign companies** having branch/ project office in India.
- 2.2** TDS under section 194R needs to be deducted by payer on providing any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession **to any Indian resident** (recipient).
- 2.3** The provisions of this section shall not apply to a person (payer /deductor) **being an individual or a HUF** whose sales, gross receipts or turnover does not exceed **INR 1 crore rupees** in case of business or **INR 50 Lakhs rupees** 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.**

No TDS under section 194R shall be required if the aggregate value of the benefit or perquisite **does not exceed INR 20,000 in a financial year**. The limit is to be considered **per recipient**.

3.0 TAXABILITY IN CASE BENEFIT OR PERQUISITE IS WHOLLY IN KIND OR PARTLY IN CASH AND PARTLY IN KIND

3.1 Where the benefit or perquisite 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 TDS in respect of whole of such benefit or perquisite, the person responsible for providing such benefit or perquisite shall **before providing or releasing the benefit or perquisite** shall ensure that TDS required to be deducted has been paid in respect of the benefit or perquisite.

3.2 TDS obligation can be summarized under various circumstances as under:

- Perquisite or benefit provided wholly in kind - TDS on 100% value;
- Partly in cash and partly in kind and cash component is sufficient to deduct tax - TDS to be deducted from cash component;
- Partly in cash and partly in kind and cash component is not sufficient to deduct tax - TDS to be deducted from cash component and remaining to be deposited out of own pocket by payer or equivalent cash or TDS challan may be obtained from payee;
- Perquisite or benefit provided wholly in cash - No TDS under section 194R to be deducted. In such case where only cash benefit is provided, TDS applicability under other sections of the Act e.g. under section 194C or 194J or 194H etc. may be evaluated, basis the character of services provided by vendor/ dealer.

4.0 BENEFIT OR PERQUISITE PROVIDED BY THIRD PARTY ON BEHALF OF PAYER:

4.1 A person who has agreed to provide the benefit or perquisite and makes payment for the benefit or perquisite is responsible to deduct TDS, and not the third party who actually provides or delivers the benefit or perquisite (after accepting payment from the person who agrees to provide it).

4.2 For example, ABC Pvt Ltd (ABC) agrees to arrange foreign tours for its dealers, distributors or agents who achieve specific targets. It is the responsibility of ABC to deduct TDS under section 194R, not the tour operators or hotels or airlines who, after accepting payment from ABC delivers the agreed or promised foreign tour to the dealers or distributors.

4.3 As per the plain reading of section 194R if the provider of benefit or perquisite reimburses (in cash/ bank) to the vendors or recipient, such reimbursement should not be subject to TDS under section 194R, however applicability of TDS may be examined under other relevant sections like 194I or 194J or 194H etc. on the basis nature of arrangement.

5.0 ARISING FROM BUSINESS OR PROFESSION OF PAYEE:

5.1 The benefit or perquisite should arise out of and have a connection with the business or profession of the resident recipient and not with the business or profession of person providing (payer) the perquisite or benefit. Thus, any benefit arising from special occasions like festivities, marriage, etc. which are not arising from any business profession would not be subjected to TDS provisions of Section 194R of the Act.

5.2 Any gift or benefit provided to any end customers (B2C transactions) in addition to the purchase of any product / service would not likely attract TDS under section 194R. Accordingly, important test to be met while examining the applicability of section 194R is nexus between the business of dealer/ vendor and the perquisite or benefit provided.

6.0 EMPLOYER AND EMPLOYEE RELATIONSHIP BETWEEN PROVIDER AND RECIPIENT:

6.1 The provisions of section 194R of the Act are not attracted if the nature of relationship between provider and recipient of benefit or perquisite is of employer and employee and same shall be governed by section 192 with respect to TDS and section 17 of the Act.

7.0 RATE OF TDS AND COMPLIANCES:

7.1 Rate of TDS under section 194R of the Act shall be 10% and not be increased by surcharge and health and education cess since recipient is 'resident'.

7.2 In case recipient does not furnish his PAN to the provider of benefit or perquisite, rate of TDS shall be 20% as per the provisions of **section 206AA** of the Act. It is also pertinent to note that provisions of **section 206AB** of the Act is also applicable in case of TDS under section 194R, accordingly in case the recipient has not filed ITR for immediately preceding year and time limit to file return of income has expired, TDS shall be deducted at rate of 20%.

7.3 No specific return, deposit date or challan is specified under section 194R of the Act. Accordingly, TDS needs to be deposited in Challan No. ITNS 281 and return needs to be filed in Form 26Q as per the provisions of Chapter XVII of the Act. The obligation to ensure that tax has been paid shall be fulfilled **before providing such benefit or perquisite** not at the time of providing benefit or perquisite. Accordingly, liability to deposit the TDS would arise on 7th day of the month following the transfer of benefit or perquisite.

7.4 Non-Compliance of section 194R may lead to disallowance of expenditure under section 40(a)(ia), levy of interest under section 201/201(1A) of the Act and penalties and prosecution proceedings.

8.0 COMMENTS:

- 8.1 While the TDS provisions result in increased compliance cost in the hand of business and implications on failure to comply with provisions, it has been observed that tax department has been increasing the ambit of TDS provisions to promote disclosure and tax return filings by taxpayers.
- 8.2 The terms 'benefit' or 'perquisite' has not been specifically defined for the purpose of Section 194R nor there is any method prevalent for determining the value of such benefit/ perquisite where such benefit/perquisite could not be converted into money and the same needs clarity from the Government.
- 8.3 Sub-section (2) of section 194R provides that in case difficulty arises in giving effect to the provisions of section 194R, the Central Board of Direct Taxes ('CBDT') may issue guidelines. As per recent news, government is expected to issue clarifications/ guidelines soon. Few of the attributes that need further clarification are definition of perquisite/ benefit, applicability in case of capital receipts/ other sources in the hand of recipient, reimbursement towards benefits directly availed by recipient, procedural challenges in obtaining lower deduction certificate, applicability of judicial pronouncements/ circulars pertaining to section 28(iv) of the Act etc.
- 8.4 As the TDS provisions under section 194R are applicable with effect from 01 July 2022, it is advisable for companies to examine the applicability in advance to avoid any unwanted consequences at the time of providing benefits or perquisite to business customers, dealers, agents etc.

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This Newsflash summarizes on the aspects of provisions of Section 194R w.r.t. TDS on benefits/perquisites. 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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