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TAX FLASH NEWS

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CBDT releases guidelines to remove difficulties for deduction of tax under Section 194R

The Finance Act, 2022 had expanded the scope of transactions requiring tax deduction at source to benefits or perquisites arising from business or exercise of a profession. In this regard, section 194R was introduced in the Income-tax Act (the Act), requiring tax withholding at the rate of 10 per cent on the value or aggregate of value of such benefits or perquisites with effect from 1 July 2022.

Section 194R also provided that the Central Board of Direct Taxes (CBDT) may issue guidelines for the purpose of removing the difficulty in giving effect to the provisions of this section. Further, these guidelines can be issued with prior approval of the Central Government and needs to be laid before each House of Parliament. These guidelines shall be binding on the income-tax authorities and on the person providing any such benefit or perquisite.

In line with above provision, recently, the CBDT has issued guidelines[1] in a question-and-answer format. The guideline is summarised as follows:

Questions	Answers
Is it necessary that the person providing benefit or perquisite needs to check if the amount is taxable under Section 28(iv), before deducting tax under Section 194R?	• The deductor is not required to check whether the amount of benefit or perquisite would be taxable in the hands of the recipient under Section 28(iv) or any other section. • In this regard, reliance is placed on the SC ruling in the case of PILCOM vs. CIT West Bengal (Civil Appeal No. 5749 of 2012), where the SC while analysis Section 196D 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.
Is it necessary that the benefit or perquisite must be in kind for Section 194R to operate?	• Tax under Section 194R is required to be deducted whether the benefit or perquisite is in cash or in kind. • The proviso to Section 194R indicates the intent of legislature that there could also be situations where benefit or perquisite is in cash or in kind or partly in cash and partly in kind.
Is there any requirement to deduct tax under Section 194R, when the benefit or perquisite is in the form of capital asset?	• There is no requirement to check whether the benefit or perquisite is taxable in the hands of the recipient and the section under which it is taxable. • Further, Courts have held that benefits or perquisites are taxable even though one can argue that they are in the nature of capital asset.

[1] CBDT Circular 12 of 2022, dated 16 June 2022

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Whether sales discount, cash discount and rebates are benefit or perquisite?	• Sales discounts, cash discount or rebates allowed to customers from the listed retail price represent lesser realisation of the sale price itself. To that extent purchase price of customer is also reduced. These are also benefits though related to sales/purchase. Since TDS under section 194R is applicable on all forms of benefit or perquisite, tax is required to be deducted. However, subjecting these to tax deduction would put seller to difficulty and to remove such difficulty, it is clarified that no tax is required to be deducted under Section 194R on sales discount, cash discount and rebates allowed to customers. • Where a seller offers free additional goods, i.e., selling 12 items at a price of 10 items, in such a situation also, to remove difficulty, no tax is required to be deducted under Section 194R. However, when free samples are given, the above relaxation would not apply. Similarly, this relaxation should not be extended to other benefits provided by the seller in connection with its sale. For instance: ➢ 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 has been clarified that the above examples are only illustrative.
Tax deduction in the hands of recipient entity, where benefits are used by owner, director, employee or their relatives who in their individual capacity may not be carrying on business or exercising a profession	• Where benefits or perquisites are used by the owner, director, employee or their relatives who in their individual capacity may not be carrying on business or exercising a profession, the tax is required to be deducted in the name of recipient entity since the usage by these people is by virtue of their relationship with the recipient entity and the threshold of twenty thousand rupees should be seen with respect to the recipient entity. • For instance, where free medicine sample are provided to a doctor who is an employee of a hospital. The TDS under section 194R is required to be deducted by the company in the hands of hospital. However, where doctor is working as a consultant in the hospital, as an alternative, the original benefit or perquisite provider may directly deduct tax under section 194R in the case of the consultant as a recipient. • The provision of section 194R shall not apply if the benefit or perquisite is being provided to a Government entity, like Government hospital, not carrying on business or profession. • The circular also provides that the recipient entity may subsequently treat it as a perquisite given to employees and deduct tax under section 192.
How is the valuation of benefit or perquisite required to be carried out?	The valuation would be based on fair market value of the benefit or perquisite. In this regard: • Purchase price shall be the value, where such benefit or perquisites are purchased; and

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	• For self-manufactured goods, price charged to customers shall be the value. • GST will not be included for the purposes of valuation of benefit/perquisite for TDS under Section 194R
Where a social media influencer is given a product of a manufacturing company so that he can use that product and make audio or video to speak about that product in social media. Is this product given to such influencer a benefit or perquisite?	• In case products like car, mobile, outfit, cosmetics, etc. are returned to the manufacturing company after being used for the purpose of rendering service, then it will not be treated as a benefit or perquisite for the purposes of Section 194R. • However, if the product is retained then it will be in the nature of benefit or perquisite and tax is required to be deducted accordingly under Section 194R.
Whether reimbursement of out-of-pocket expense incurred by service provider in the course of rendering service is benefit or perquisite?	• Any expenditure which is the liability of a person carrying out business or profession, if met by the other person is in effect benefit or perquisite provided by the second person to the first person in the course of business or profession. • In this regard, by way of illustration it has been clarified that where the invoice is obtained in the name of client, paid by the consultant and then reimbursed. In such case, the reimbursement will not be considered as benefit or perquisite for the purposes of section 194R. However, if the invoice is not in the name of the client, but the payment is made by the client, whether directly or reimbursed, it is benefit or perquisite to the consultant for which deduction is required to be made under Section 194R.
If there is a dealer conference to educate the dealers about the products of the company - is it benefit/perquisite?	The expenditure pertaining to business conference would not be considered as benefit or perquisite for the purposes of Section 194R in a case where such conference is held with the prime object to educate dealers or customers about any of the following or similar aspects. However, such conference must not be for select dealers or 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 194R: • Expenditure attributable to leisure trip or leisure component, even if it is incidental to the business conference • Expenditure incurred for family members accompanying the person attending the conference • Expenditure on participants of the conference for days which are on account of prior stay or overstay beyond the dates of such conference.
Section 194R provides that if the benefit or 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 person be satisfied that tax has been deposited?	• 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, the person is required to ensure that tax required to be deducted has been paid by the recipient. • Such recipient can 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 or perquisite has been deposited.

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	• 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 and pay to the government. This would require grossing-up for the tax paid by him as a benefit under Section 194R.
Second proviso to Section 194R(1) provides for a threshold of twenty thousand rupees. It is not clear how the threshold of twenty thousand is to be computed for the financial year 2022-23 when Section 194R would come into effect from the 1 July 2022?	• 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 shall be counted from 1 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 30 June 2022), the provision of Section 194R shall apply on any benefit or perquisite provided on or after 1 July 2022. • The benefit or perquisite which has been provided on or before 30 June 2022, would not be subjected to tax deduction under Section 194R.

Our comments

The issuance of guidelines before the effective date of the provisions, is a welcome step and will help businesses better prepare for the implementation of this provision. However, the requirement of deduction of tax where the benefits or perquisites are not taxable may create additional compliance burden on the deductor and cash blockage for the recipient of the benefit, who would then need to seek tax refunds.

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