

TAX FLASH NEWS

17 September 2022

CBDT releases additional 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 for benefits or perquisites provided to a resident recipient arising from his business or exercise of a profession. In this regard, Section 194R was introduced in the Income-tax Act, 1961 (the Act), requiring tax withholding at the rate of 10 per cent on the value or aggregate of the value of such benefits or perquisites provided in excess of 20,000 with effect from 1 July 2022.

Section 194R also provides that the Central Board of Direct Taxes (CBDT) may issue guidelines for removing the difficulty in giving effect to the provisions of this section.

Accordingly, on 16 June 2022, the CBDT had issued guidelines¹ in a question-and-answer format. Subsequently, some more clarifications had been requested by the stakeholders on various issues. Recently, the CBDT has issued additional guidelines². It has been clarified that these guidelines are only for removing difficulties in the implementation of provisions of Section 194R and such guidelines do not impact the taxability of income in the hands of the recipient, which will be governed by the relevant provisions of the Act.

Questions	Answers
Will Section 194R apply in case of loan settlement/waiver by a bank ³ ?	<p>One-time loan settlement with borrowers or waiver of loan granted on reaching settlement with the borrowers by specified institutions⁴ would not be subjected to deduction of tax at source under Section 194R.</p> <p>The treatment of such settlement/waiver in the hands of the person who is benefitted from such waiver would not be impacted by this clarification. The taxability of such settlement/waiver in the hands of the beneficiary will be governed by the relevant provisions of the Act.</p>
If under the terms of the agreement, the expenditure incurred by the service provider is the cost of the service recipient, and such cost is reimbursed by the service recipient to the service provider, how is it benefit/perquisite if the bill is not in the name of the service recipient ⁵ ?	<p>If the service provider incurs some expenditure and the bill is in the name of the service provider, then in substance, such expenditure is the liability of the service provider and not of the service recipient. It is a service provider who gets input credit of GST included in the expenditure incurred by him. If it was the liability of the service recipient, then GST input credit would have been allowed to the service recipient and not to the service provider. Circular No. 12 clarified that in such a situation reimbursement of such expenditure is a benefit/perquisite</p>

¹ CBDT Circular 12 of 2022, dated 16 June 2022

² CBDT Circular 18 of 2022, dated 13 September 2022

³ With reference to question no. 3 of the Circular No. 12 - applicability of deduction of tax at source where the benefit or perquisite is in the form of a capital asset

⁴ Public Financial Institution, Scheduled Bank, Co-operative Bank, Primary co-operative Agricultural and Rural Development Bank, State Financial Corporation, State Industrial Investment Corporation, Deposit-taking Non-Banking Financial Company, Systemically Important Non-deposit Taking Non-Banking Financial Company, a Specified public company engaged in providing long term finance for construction or purchase of houses in India, Asset Reconstruction Companies registered under Securitisation Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002

⁵ With reference to question no. 7 of Circular No. 12 – whether reimbursement of out-of-pocket expenditure incurred by the service provider in the course of rendering service is benefit/perquisite

	<p>on which tax is required to be deducted under Section 194R.</p> <p>However, it was brought to the notice of the CBDT that in GST, if a service provider incurs an expenditure as a 'pure agent'⁶ and satisfies all the prescribed conditions, then GST input credit is allowed to the service recipient and not to the service provider. The amount incurred by such 'pure agent' for which he is reimbursed by the recipient would not be treated as a benefit/perquisite for the purpose of Section 194R.</p>
<p>Question No 30 of CBDT Circular No 715⁷, clarifies that tax deduction under Sections 194C and 194J is required to be made from the gross amount of the bill, including the reimbursement. A person has provided service to a company and out-of-pocket expenses are charged by him to the company along with the service fee in the same bill. The company deducts tax under Section 194J on both service fee components as well as on out-of-pocket expenses in accordance with the circular. Is there a non-compliance with the provision of Section 194R⁸?</p>	<p>If out-of-pocket expenses (reimbursement) are already part of the consideration in the bill on which tax is deducted under the relevant provisions of the Act⁹, there will not be a further liability for the deduction of tax under Section 194R.</p> <p>In the given case, the out-of-pocket expenses are already included as a part of professional fees. Hence there is no further benefit/perquisite which requires deduction of tax at source under Section 194R.</p>
<p>If there is a dealer conference to educate the dealers about the products of the company:</p> <ul style="list-style-type: none"> • Is there a requirement that all dealers must be invited in the conference? • What if dealers arrive one day before and leave one day after and • How to identify benefit against individual dealers in a group activity¹⁰? 	<p>It is not necessary that all dealers are required to be invited in a dealer/business conference for the expenditure to be not considered as benefit/perquisite for the purposes of deduction of tax under Section 194R.</p> <p>Expenditure on participants of dealer/business conference for days which are on account of overstay prior to the dates of conference or beyond the dates of such conference would be considered as benefit/perquisite for the purposes of Section 194R. However, a day immediately prior to the actual start date of the conference and a day immediately following the actual end date of the conference would not be considered as an overstay.</p> <p>If benefit/perquisite is provided in a group activity in a manner that it is difficult to match such benefit/perquisite to each participant using a reasonable allocation key, the benefit/perquisite provider may at his option not claim the expenditure, representing such benefit/perquisite, as deductible expenditure. In such a case, he will not be required to deduct tax under Section 194R on such benefit/perquisite and therefore, he will not be treated as an assessee in default under Section 201. Thus, in such a case, he must add back the expenditure, representing such benefit/perquisite, to calculate his total income if such expenditure is debited in the account.</p>
<p>Company 'A' gifts a car to its dealer 'B' and deducted tax on this benefit under Section 194R. Dealer 'B' uses this car in his business. Will he get a deduction of depreciation in</p>	<p>Once Company 'A' has deducted tax on the gifting of a car in accordance with Section 194R (or released the car after dealer 'B' showed him payment of tax on such benefit) and dealer 'B' has included this benefit as income in his tax return, it would be deemed that the 'actual cost' of the car for the purpose of Section 32 shall be the amount of benefit included by dealer 'B' as income in his tax return.</p>

⁶ A pure agent is one who while making a supply to the recipient, also receives and incurs expenditure on some other supply on behalf of the recipient and claims reimbursement (as actual, without adding it to the value of his own supply) for such supplies from the recipient of main supply.

⁷ Dated 8 August 1995

⁸ With reference to question no. 7 of Circular No. 12 - reimbursement of out-of-pocket expenditure incurred by the service provider in the course of rendering service is benefit/perquisite

⁹ Tax is deducted under Section 194C or 194J (other than Section 194R) and in accordance with the Circular No. 715, dated 8 August 1995

¹⁰ With reference to question no. 8 of Circular No. 12 - if there is a dealer conference to educate the dealers about the products of the company – Is it a benefit/perquisite?

calculating his income under the head 'profits and gains of business or profession' ¹¹ ?	Hence, dealer 'B' can get depreciation on fulfillment of other conditions for claiming depreciation.
Whether Embassy/High Commissions are required to deduct tax under Section 194R?	Section 194R is not applicable on benefit/perquisite provided by, an organisation in scope of The United Nations (Privileges and Immunity Act) 1947, an international organization whose income is exempt under specific Act of Parliament (such as the Asian Development Bank Act 1966), an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign state.
Whether issuance of bonus share/right share is a benefit or perquisite if issued by a company in which the public is substantially interested ¹² and whether tax is required to be deducted under Section 194R?	No tax is required to be deducted under Section 194R on the issuance of bonus or right shares by a company in which the public is substantially interested, where bonus shares are issued to all shareholders by such a company or right shares are offered to all shareholders by such a company.

Our comments

To remove difficulties in implementation of provisions of Section 194R, the CBDT had issued first set of guidelines in June 2022 where clarity was provided on several issues like valuation of benefit /perquisite, treatment of sales discount, cash discount and rebates as benefit or perquisite, applicability of provisions when benefit/perquisite is in cash or kind, etc. Subsequently, the stakeholders requested for some more clarifications on certain specific issues. Thus, the CBDT has issued these additional guidelines to provide certain exceptions from requirement of deduction of tax at source under Section 194R in some of the cases like loan settlement/waiver by a bank, issuance of bonus share/right share, benefit/perquisite provided by Embassy/High Commissions, etc. The issuance of additional guidelines is a welcome step, and it will provide clarity on some of the practical issues.

¹¹ With reference to question no. 9 of Circular No. 12 - 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 is 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?

¹² As defined in Section 2(18)

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