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Section 194R

Deduction of tax on benefit or perquisite in respect of business or profession

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Section 194R of the Income Tax Act, 1961

- a rationale to plug one of the possibilities of tax revenue leakages in business and profession

In its further endeavour to curb the tax evasion, the Finance Ministry has introduced a new TDS provision via Finance Act, 2022, which pertains to the deduction of tax on benefits and perquisites in respect of business and profession.

According to the memorandum, the explanation of the Finance Bill, the below-mentioned aspects has been provided regarding Section 194R-

According to clause (iv) of section 28 of the Act, the value of the benefit or perquisite, whether it is convertible into monetary terms or not, accruing from business or carrying on from any profession has to be charged as business income on the part of the receiver of said benefit or perquisite.

In most cases, the receiver of the benefit or prerequisite does not report the benefit that it has received in its income tax return, which can lead to furnishing incorrect and false income particulars.

Thus, the provided provision for tax deducted at source is being added and put in place to detect the benefits or perquisites which may largely remain unaccounted for thus, it is not taxed despite being there for specific taxation provisions as a result of its nature of accountability.

Business, companies, or entities often extend multiply type of monetary and non-monetary benefits/ perquisites to their distributors, dealers, agents, channel partners to incentivise them in the name of Business Promotion Strategy and claim it as business expense while the person receiving such benefits may not get taxed for the same. The main purpose of this section is to track these transactions and to make sure that such benefits shall be taxable in the hands of such agents and dealers etc. This section, 194R has definitely opens a pandora's box for the recipient, if such benefits/perquisites are not recorded in the books of account resulting in non-disclosure of income along with adverse tax implications.

The provision and the analysis of section 194R is as follows-

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.

(2) If any difficulty arises in giving effect to the provisions of this section, the Board may, with the previous approval of the Central Government, issue guidelines for the purpose of removing the difficulty.

(3) Every guideline issued by the Board under sub-section (2) shall, as soon as may be after it is issued, be laid before each House of Parliament, and shall be binding on the income-tax authorities and on the person providing any such benefit or perquisite.

Explanation— For the purposes of this section, the expression "person responsible for providing" means the person providing such benefit or perquisite, or in case of a company, the company itself including the principal officer thereof.

To Summarise the provisions-

Deductor	Any person (Resident or non-resident)
Deductee	Any Resident
To be deducted on	Any benefit or perquisites provided arising out of business / profession
Type of advantage	Cash or kind or partly in cash and partly in kind
Rate of TDS	@ 10% on Value or Aggregate Value of Such benefit
Limit (not applicable)	Value of the benefit <= Rs. 20,000/- in a FY
Deductor (Not applicable)	Individual or HUF- Business Turnover <= Rs. 1 Crore Professional Income <= Rs. 50 Lakhs In the FY preceding the FY in which the benefit of perquisites is provided. If the benefits/perquisites is provided by an organization 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.
Deductee (Not Applicable)	If the benefits/perquisite is provided to Government Entity like Govt. Hospitals, not carrying on business or profession.
Applicability	w.e.f. 01-07-2022

The Kind of transactions covered under this section are-

- ✓ When a person gives incentives in the form of cash or kind such as TV, computers, gold coin or chains, mobile phones, cars etc.
- ✓ When a person provides free tickets for an event
- ✓ When a person gives free medicine samples to medical practitioners.
- ✓ When a person sponsors a trip or arrange any business conference for the recipient or his/her relatives on achieving certain targets.
 - Expenditure attributable to a leisure trip or leisure component, even if it is incidental to any dealers/ business conferences
 - Expenditure incurred for the family members accompanying the person attending the dealers/ business conferences.
 - Expenditure on participants of dealer/business conference for days which are on account of prior stay or overstay beyond the dates of such conference.

Further Clarifications issued by CBDT-

- No TDS under this section on Sales discount, Cash discount/ rebates allowed to customer.
- The deductor need not required to check whether the amount of benefit or perquisites that he is providing would be taxable or not in the hands of the recipient i.e. it may be a capital asset as well. However, the recipient may claim depreciation on the same if applicable. For Example-
Once Company "A" has deducted tax on gifting of car in accordance with section 194R of the Act (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 income tax return, it would be deemed that the "actual cost" of the car for the purposes of section 32 of the Act shall be the amount of benefit included by dealer "B" as income in his income-tax return. Hence, dealer "B" can get depreciation on fulfilment of other conditions for claiming depreciation.
- TDS is to be deducted in the name of the recipient entity since the usage of the benefit/ perquisites given to the owner/ director/ employees / relatives of these is by virtues of their relation with the recipient entity. The benefits/ perquisites may be used by the owner/ director/ employees of the recipient entity or their relatives who is their individual capacity may not be carrying on business/ profession.
- The recipient entity may subsequently treat this perquisites/ benefit as the perquisites given to its employee, if the person who used the benefit is its employee u/s 17 of the Act and deduct TDS u/s 192 of the Act. In that case, the amount would be first taxable in the hands of the recipient entity and then allowed as deduction as salary expenditure. Thus, ultimately, the amount would get taxed in the hands of the employee and not in the hands of the recipient entity.

- The recipient entity can get the credit of tax deducted under this section by furnishing the Income Tax Return.
- The valuation of the benefit/perquisites would be based on the Fair Market Value except-
 - Where the deductor has purchased the items given as the benefit/ perqs before providing it to the recipient, the value shall be the purchase price.
 - Where the deductor has manufactured the items given as the benefit/perqs, the value shall be price it charges to its customer.
- GST will not be included for the purpose of valuation of benefits/ perquisites for TDS under this section.
- The calculation of value or aggregate of value of the benefit or perquisite triggering deduction under section 194R of the Act shall be counted from 1st 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. The benefit or perquisite which has been provided on or before 30th June 2022, would not be subjected to TDS under this section.
- The benefit or perquisite will depend upon the facts of the case. 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 benefit/perquisite and tax is required to be deducted accordingly. For example- Social media influencer is given the products to make Audio/ Video.
- 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.

Example-

Let us assume that a consultant is rendering service to a person "X" for which he is receiving consultancy fee. In the course of rendering that service, he has to travel to different city from the place where is regularly carrying on business or profession. For this purpose, he pays for boarding and lodging expense incurred exclusively for the purposes of rendering the service to "X". Ordinarily, the expenditure incurred by the consultant is part of his business expenditure which is deductible from the fee that he receives from company "X". In such a case, the fee received by the consultant is his income and the expenditure incurred on travel is his expenditure deductible from such

income in computing his total income. Now if this travel expenditure is met by the company "X", it is benefit or perquisite provided by "X" to the consultant.

However, sometimes the invoice is obtained in the name of "X" and accordingly, if paid by the consultant, is reimbursed by "X". In this case, since the expense paid by the consultant (for which reimbursement is made) is incurred wholly and exclusively for the purposes of rendering services to "X" and the invoice is in the name of "X", then the reimbursement made by "X" being the service recipient will not be considered as benefit/perquisite for the purposes of section 194R of the Act.

If the invoice is not in the name of "X" and the payment is made by "X" directly or reimbursed, it is the benefit/perquisite provided by "X" to the consultant for which deduction is required to be made under section 194R of the Act.

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 Act, other than section 194R, there will not be further liability for tax deduction under section 194R of the Act.

In the above example, if out of pocket expense is part of the consideration in the bill for professional fee that is charged to the Company and the tax is deducted under section 194J of the Act on the entire consideration including on out of pocket expense. In such a case, the out-of-pocket expense is already included as part of professional fee. Hence, there is no further benefit/perquisite which requires tax deduction under section 194R of the Act

Now, in case, where the service provider incurs some expense in the course of rendering service to service recipient and the bill is in the name of service provider, then in substance (irrespective of the terms of the agreement) this expense is the liability of the service provider and not of service recipient. It is service provider who gets input credit of GST included in the expenses incurred by him. If it was the liability of the service recipient, then GST input credit would have been allowed to him (service recipient) and not to service provider.

Further, if service provider incurs an expense as "pure agent", then GST input credit is allowed to service recipient and not to service provider and in that case, subject to the conditions mentioned under the GST valuation Rules, 2017, the amount incurred by such "pure agent" for which he is reimbursed by the recipient would not be treated as benefit/perquisites for the purpose of section 194R of the Act.

- The expenditures pertaining to business conferences would not be considered as benefit/perquisites under the section in case where it is held with the prime object to educate the dealers/ customers and not for achieving any particular targets.
- The deductor is required to ensure that tax required to be deducted has been paid by the recipient. Such recipient 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 in Form 26Q along with challan number.

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 considering the fact the tax paid by him as TDS is also a benefit under section 194R of the Act and hence, in the Form 26Q, he will need to show it as tax deducted on benefit provided.

Clarification on some specific transactions -

If loan settlement/waiver by a bank is to be treated as benefit/perquisite, it would lead to hardship as the bank would need to incur the additional cost of tax deduction in addition to the haircut that he has taken. Will section 194R of the Act apply in such a situation?

one-time loan settlement with borrowers or waiver of loan granted on reaching settlement with the borrowers by the following would not be subjected to tax deduction at source under section 194R of the Act:

- (i) Public Financial Institution as defined in clause (72) of section 2 of the Companies Act 2013;
- (ii) Scheduled Bank as defined in clause (ii) of the Explanation to clause (viiia) of subsection (1) of section 36 of the Act;
- (iii) Cooperative bank (other than a primary agricultural credit society) as defined III the Explanation to sub-section (4) of section 80P of the Act;
- (iv) Primary co-operative Agricultural and Rural Development Bank as defined III the Explanation to sub-section (4) of section 80P of the Act;
- (v) State Financial Corporation being a financial corporation established under section 3 or section 3A or an institution notified under section 46 of the State Financial Corporation Act, 1951;
- (vi) State Industrial Investment Corporation being a Government company within the meaning of sub-section (45) of section 2 of the Companies Act 2013, engaged in the business of providing long-term finance for industrial projects;
- (vii) Deposit taking Non-Banking Financial Company as defined III clause (e) of the Explanation 4 to section 43B of the Act;
- (viii) Systemically Important Non-deposit Taking Non-Banking Financial Company as defined in clause (g) of the Explanation 4 to section 43B of the Act;
- (ix) Public company engaged in providing long term finance for construction or purchase of houses in India for residential purpose and which is registered in accordance with the

guidelines/direction issued by the National Housing Bank formed under National Housing Bank Act 1987;

(x) Asset Reconstruction Companies registered under section 3 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SRF AESI) Act 2002.

This clarification is only for the purposes of section 194R of the Act. The treatment of such settlement/waiver in the hands of the person who had got benefitted by such waiver would not be impacted by this clarification. Taxability of such settlement/waiver in the hands of the beneficiary will be governed by the relevant provisions of the Act.

Whether issuance of bonus share/right share is a benefit or perquisite if issued by a company in which the public are substantially interested as defined in clause (18) of section 2 of the Act and whether tax is required to be deducted under section 194R of the Act?

TDS u/s 194R of the Act is not required to be deducted on issuance of bonus or right shares by a company in which the public are substantially interested as defined in clause (18) of section 2 of the Act, where bonus shares are issued to all shareholders by such a company or right shares are offered to all shareholders by such a company, as the case may be.

With the above clarifications and examples, it is expected that the vexed provisions of Section 194R of the Act would now be less cumbersome in their practical application. Needless to say, there are still several practical issues in Section 194R and its application on case to case, which continue to bother the assessee on a regular basis. It is hoped that CBDT, in the coming days, will continue with its avowed objective of making tax administration simple and provide further clarity on the other issues and challenges for the ease of these increasing compliances.

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