

TDS deduction on perquisites or benefits paid to resident under section 194R

- effective from 1st July 2022

Purpose for Introducing of Sec 194R

It was observed by department that many companies claimed expenses for business promotions by offering various gifts/ perks/ benefits to its dealers (on fulfillments of conditions of under agreement or as per prevalent norms/ tradition practice followed by over the years by business entity) under section 37 of Income Tax Act 1961, however majority of dealer did not declare the said gifts/ perks/ benefits under business income as required by sec 28 (iv) of Income Tax Act 1961. So to bring such gifts/ perks/ benefits received due to business connections by resident dealers TDS U/s 194R is introduced to track the undeclared income.

For example: Mr. X is the authorised dealer of a pharma company. The pharma company gives a foreign trip as an incentive to Mr. X valued at Rs. 2 Lakhs. Mr. X earned a net profit of Rs. 10 Lakhs from the sale of goods. For the purpose of income tax, Rs. 2 Lakhs should also be included in the total income as this amount is derived as a benefit or perquisite in the course of business by Mr. X

However, it is noticed that in many cases, the recipient does not report the receipt of such benefits or perquisites in their ITR, leading to the furnishing of incorrect particulars of income. Accordingly, to widen the tax base, section 194R is proposed to be inserted to the Act mandating TDS @ 10% on the benefits or perquisites, arising in the course of business or profession, to a resident.

Section 194R reads 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 10% of the value or aggregate of value of such benefit or perquisite.”

Analysis:

- Section 194R is applicable on the payer (whether resident or non-resident)
- The section applies where the receiver of the benefits or perquisites is a resident. TDS under this section shall not be deductible if the receiver is a non-resident.
- Before providing any benefit or perquisite to a resident, the payer shall ensure that tax has been deducted on such benefit or perquisite.
- This section is unique as unlike other TDS sections, it does not use the sentence “at the time of credit or payment, whichever is earlier”. Under section 194R, the payer shall ensure tax deduction before providing such benefit or perquisite to the receiver.
- The rate of TDS shall be 10% of the benefit or perquisite.
- The benefit or perquisite may or may not be convertible into money but should arise either from carrying out of business or from exercising a profession, by such resident.

Applicability of tax deduction

- Individual and HUF having turnover above Rs. 100 lakhs or professional receipts exceeding Rs. 50 lakhs during the financial year immediately preceding the financial year in which such benefit or perquisites are provided.
- All other assesseees

Exemption

- This deduction is not required to be made if the value or aggregate of the value of the benefit or perquisite provided or likely to be provided to the resident during the financial year does not exceed Rs. 20,000

Guidelines issued by CBDT relating to applicability of new TDS section

Is TDS under section 194R deducted if benefits / perquisites paid in cash?

- The benefits / perquisites can either be in cash, in-kind, or partly in both of these forms.

Is it necessary to check whether benefits / perquisites is in the form of business or capital asset?

- Capital assets given as benefits or perquisites are covered within the scope of Section 194R of the Income-tax Act

Is it necessary to check that amount taxable for recipient u /s. 28(iv) of I.T Act?

- The taxpayer does not need to check the taxability of the sum in the hands of the recipient or under which section it is taxed.
- For Instance u/s 28(iv) of I.T Act the value of any benefit or perquisites, whether convertible into money or not, arising from business and exercise of profession.

Valuation of Benefits or perquisites

- Valuation of benefits and perquisites can be calculated based on fair Value
- If Purchased and given - than purchase price
- If Manufactures such Items - price it charges to other customers

Is TDS required u/s 194R on sales discount, cash discount and rebates?

It is clarified that no tax is required to be deducted under section 194R on sales discount, cash discounts and rebates allowed to the customer

Is TDS required u/s 194R on free samples and incentives?

- TDS under section 194R shall be deducted by sellers who are giving free samples, incentives (other than discounts and rebate) which are in cash or kind such as car, TV, computers, gold coin, mobile phone, sponsored trips for recipient and their relatives, free tickets for an event, medicine samples to medical practitioners

Whether reimbursement of out of pocket expense incurred by service provider in the course of rendering service is benefit/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/perquisite provided by the second person to the first person in the course of business/profession therefore TDS to be deducted

Many a times, a social media influencer is given a product of a manufacturing company so that he can use that product and make audio/video to speak about that product in social media. Is this product given to such influencer a benefit or perquisite?

- 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 in the nature of benefit/perquisite and tax is required to be deducted accordingly under section 194R of the Act.

If there is a dealer conference to educate the dealers about the products of the company - Is it benefit/perquisite?

The expenditure pertaining to dealer/business conference would not be considered as benefit/perquisite for the purposes of section 194R of the Act in a case where dealer/business conference is held with the prime object to educate dealers/customers about new products, teaching sales techniques or addressing queries of dealers etc

How to ensure TDS payment if benefits paid in kind (or cash not sufficient)?

To ensure taxpaid by recipient

- Recipient to pay as advance tax
- Tax deductor to rely on declaration and copy of advance tax challan
- File TDS return 26Q

Reference

CBDT vide Circular No. 12/2022 dated 16.06.2022