

TDS on benefit or perquisite arising from business or profession w.e.f 1st July, 2022

The Finance Act, 2022 introduced a new section 194R under the Income Tax Act, 1961 which requires a person providing any benefit or perquisite arising from business or exercise of profession to a resident to withhold tax at the rate of 10 percent of the value or aggregate of value of such benefit or perquisite subject to certain conditions.

Subsequently, CBDT on receiving representation from various stakeholders, issued circular no 12 dated 16 June 2022 to remove difficulties and clarify issues on interpretation of the provision.

Provisions of the Income Tax Act

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:

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:

Intention of legislature behind introducing this provision

The explanatory memorandum to Finance Bill, 2022 stated that in many cases recipient does not report the benefit or perquisite arising from business which is chargeable to tax under section 28(iv) of the Income Tax Act, 1961, which leads to furnishing of incorrect particulars of income. In order to widen the scope and bring these benefits or perquisites under the withholding bracket, section 194R has been introduced.

Explanation

Deductor: Any person responsible for providing any benefit or perquisite in respect of business or profession.

Exception: These provisions are not applicable to an individual or a HUF having total sales/gross receipts/turnover below Rs.1 crore in case of business / Rs.50 lakhs in case of profession during the immediately preceding financial year in which such benefit or perquisite is provided by such person.

Deductee: A resident recipient who is receiving benefit or perquisite arising from such business or profession.

Nature of Transaction: Any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession. Illustrative list of benefits/perquisites where TDS u/s 194R could be attracted:

- When a person gives incentives in cash or kind such as TV, car, 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 a free ticket for an event
- When a person gives medicine samples free to medical practitioners

Threshold Limit: TDS u/s 194R is attracted where the value or aggregate of value of the benefit or perquisite provided or likely to be provided to resident during the financial year exceeds Rs. 20,000/-. For FY 2022-23, the threshold of Rs.20,000/- is to be considered from 1st April, however 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 u/s 194R of the Act.

Rate of TDS: 10 percent of the value or aggregate of value of such benefit or perquisite.

When to Deduct: Before providing such benefit or perquisite.

Applicable from: 1st July, 2022

Section 194R(3) provides that the guidelines issued by the Board shall be binding on the Income Tax Authorities and on the person providing any such benefit or perquisite. In light of the same, below guidelines issued by CBDT may be followed by deductors carefully.

Important points covered in CBDT Guidelines vide Circular No. 12 of 2022 dated 16-06-2022

1. No requirement for the deductor to check taxability in the hands of the resident recipient: The deductor is not required to check whether the amount of benefit or perquisite that is provided would be taxable in the hands of the recipient u/s 28(iv) or 41(1) or any other section of the Act. The deductor is required to deduct tax without considering the taxability in the hands of the resident recipient subject to other conditions being satisfied.

Taxability of monetary benefit or perquisite arising from the business or profession in the hands of recipient: Honorable Apex Court in case of Mahindra and Mahindra Ltd [93 taxmann.com 32 (SC)] has held that monetary benefit in form of waiver of loan is not taxable u/s 28(iv) or 41(1). The ratio laid down by the Honorable Apex Court in order to attract the provisions of section 28(iv) was that the benefit or perquisite has to be in some form other than in shape of money.

In view of the same, the monetary benefit or perquisite received to the recipient may not be chargeable to tax, however the deductor may deduct tax under section 194R to avoid litigation.

2. TDS u/s 194R will be attracted when benefit/perquisite are in cash or in kind or partly in cash or partly in kind.
3. TDS u/s 194R when benefit or perquisite in the form of capital asset:
There are judicial precedents, wherein it is held that benefits or perquisites are taxable even if it is in the nature of capital asset. Accordingly, capital asset like cars, land, etc. given as benefit or perquisite would be covered within the ambit of TDS u/s 194R.
4. No TDS u/s 194R of the Act on sales discount, cash discount and rebates allowed by sellers to customers in connection with its sale.

Also, relaxation is provided in case where the seller offers two items from its stock in trade free with purchase of 10 items i.e., in substance, the seller is actually selling 12 items at a price of 10 items.

Assuming the price of each item is Rs 12. In this case, the selling price for the seller would be Rs 120 for 12 items. For buyer, he has purchased 12 items at a price of 10. Just like seller, the purchase price for the buyer is Rs 120 for 12 items and he is expected to record so in his books. Thus, no tax is required to be deducted u/s 194R in circumstances of Buy one Get one free.

However, TDS u/s 194R is attracted in case of provision of free samples/ any other benefit provided by seller.

5. Where the benefits/perquisites are used by owner/director/employee of the recipient entity or their relatives, on account of their relationship with the recipient entity, who in their individual capacity may not be carrying on business or exercising a profession, tax is required to be deducted by the payer in the name of resident recipient entity as in substance the benefit/perquisites have been provided by payer to the recipient entity.

Also, the recipient entity needs to consider its responsibility to deduct tax u/s 194R or any other provisions depending upon the whether the person to whom the benefit or perquisite is ultimately passed is its employee or not.

To illustrate this, CBDT has provided an example of free medical samples provided by company to employee-doctors of a hospital. TDS u/s 194R of the Act is required to be deducted by the company in the hands of hospital as the benefit/perquisite is provided to the doctor on account of him being the employee of the hospital. This benefit/perquisite would be taxable in the hands of the hospital and the hospital may subsequently treat this benefit/perquisite as the perquisite given to its employee u/s 17 of the Act, deduct tax u/s 192 of the Act and claim deduction of this salary expenditure. Thus, ultimately, the benefit/perquisite gets taxed in the hands of the employee.

Where the free medicine sample is provided by company to consultant doctor (not an employee of hospital), the company may deduct tax u/s 194R in the name of the hospital or, alternatively, directly in the name of the consultant doctor. If the company deducts tax in the name of hospital, the hospital may again withhold tax under S.194R for providing the same benefit or perquisite to the consultant doctor.

6. The provisions 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.

7. Benefit or Perquisite in kind: 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 by the resident recipient in respect of the benefit or perquisite. In such a case the payer has to ensure that the recipient of such benefit pays advance tax on the value of such benefit. Alternatively, the benefits provider may pay TDS to the government u/s 194R in which case the TDS is also to be also considered as part of the benefit.

8. Valuation of Benefit/Perquisite:

The value for the purpose of TDS u/s 194R is the Fair Market Value of the benefit or perquisite except in the following circumstances:

- In case where the benefit/perquisite provider has purchased the benefit/perquisite before providing it to the recipient, then the value of such benefit/perquisite would be equal to the purchase price.
- In case where a manufacturer provides a benefit/perquisite in the form of items manufactured by it, then the price which the manufacturer charges to its customers in respect of such items shall be the value of such benefit/perquisite.

GST will be excluded for determination of value for the purposes of S.194R.

9. Reimbursement of out of pocket expense incurred by service provider in the course of rendering service:

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. TDS u/s 194R is applicable when invoice is in name of the service provider and not when in the name of service recipient.

CBDT has illustrated this by giving example of consultant providing services to person X for a consultancy fee. In course of rendering the service, consultant has to travel to another city and travel expenses in this connection are incurred by consultant for invoice raised in consultant's name and reimbursed by X or directly paid by X is a benefit provided by X to the consultant requiring tax u/s 194R to be deducted by X.

However, if invoice is raised in the name of X, paid by consultant and subsequently reimbursed by X, then the reimbursement made by X will not be considered as benefit/perquisite for the purposes of S.194R.

10. No TDS u/s 194R when expenditure incurred for dealer/business conferences held with prime objective to educate the dealers/customers about any of the following:

- new product being launched
- discussion as to how the product is better than others
- obtaining orders from dealers/customers
- teaching sales techniques to dealers/customers
- addressing queries of the dealers/customers
- reconciliation of accounts with dealers/customers

However, the following expenditure would be considered as benefit or perquisite for the purposes of S.194R of the Act:-

- Expenditure for dealer conferences are in the nature of incentives/benefits to select dealers/customers who have achieved particular targets.
- Expense attributable to leisure trip or leisure component, even if it is incidental to the dealer/business conference.
- Expenditure incurred for family members accompanying the person attending dealer/business conference.
- Expenditure on participants of dealer/business conference for days which are on account of prior stay or overstay beyond the dates of such conference.

Comments

The intent of legislature for introducing this provision was to withhold tax on the taxable benefits and perquisite, however pursuant to the guidelines, it appears that there is much more on offer. The basis and foundation of levy of TDS was majorly dependent on the income component of the recipient, however of late, the mindset seems to have been changed as prior to this, purchase of goods was brought within the scope of TDS and now benefit or perquisite arising from business/profession is subject to TDS irrespective of whether it is taxable or not in the hands of recipient.

Considering that non-compliance or inaccurate compliance with TDS provisions has onerous consequences, taxpayers are advised to equip themselves and update their accounting system.

09 July 2022

Disclaimer:

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Services by way of Renting of Residential Dwelling To Registered Person

To give effect to the 47th GST Council meeting recommendations various Notifications are issued by Government.

Service by way of renting of residential dwelling to a registered person is now covered under Reverse Charge Mechanism (RCM). Before the Notification No. 05/2022-CT (Rate) dated 13.07.2022 Supplier has to charge GST on forward charge basis if the residential dwelling is given on a rent for commercial purpose and if the residential dwelling is given on a rent for non-commercial purpose whether the tenant (recipient) is registered or unregistered was exempt under GST.

The dynamics of renting residential dwelling under GST is now taxable under Reverse charge mechanism The exemption has been withdrawn vide CGST (Rate) Notification no. 04/2022 dated 13.07.2022 and same has been notified under RCM vide CGST(Rate) Notification no. 05/2022 dated 13.07.2022.

GST will not arise if the residential dwelling is rented out to unregistered person for non-commercial purpose as it continues to be specifically exempted vide CGST (Rate) Notification no. 12/2017 dated 28.06.2017.

Considering the amendment now following scenarios are possible in case of renting of residential dwellings for residential purpose:

	Scenario-1	Scenario-2	Scenario-3	Scenario-4
Owner of Residential property	Unregistered	Unregistered	Registered	Registered
Recipient	Unregistered	Registered	Unregistered	Registered
Applicability of GST	No GST	GST under RCM	No GST	GST under RCM
ITC	Cannot claim.	ITC can be claimed if the property is taken on rent for the furtherance of business	Cannot claim.	ITC can be claimed if the property is taken on rent for the furtherance of business

When registered proprietor takes a residential property on rent for personal residence use, still he will have to pay GST under RCM being registered person. Further, input tax credit for GST paid under RCM not available as being for personal use and hence hit by the blocked credit provisions. This leads to a situation which was never intended. A suitable clarification

from the board will help to resolve this issue.

When a residential dwelling is taken by a registered person on rent for commercial purpose it will be treated at par with the commercial unit. If the landlord is unregistered then GST shall not be levied and paid by either the landlord or the tenant. If the landlord is registered GST will be charged on forward charge basis and the recipient can take the ITC of the same.

When a company, LLP, Firm, AOP, BOI, etc. takes a residential dwelling for the purpose of residence on rent for employees it will be considered as an item of business expenditure. GST will be paid under RCM and the ITC of the GST paid under reverse charge can be claimed.

When a composition dealer who is registered under GST takes a residential dwelling for the purpose of residence on rent then it will be considered as an item of business expenditure. GST will be paid under RCM but the ITC of the GST paid under reverse charge cannot be claimed as per section 10(4) by a composition dealer.

Comments:

The intention seems to levy GST on residential property which are used for the furtherance of business like Corporates taking residential property for the employees on rent. But, the way Notification is drafted it affects all the registered person irrespective of its use for personal residential purpose.

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